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BRIDGING LEGAL CULTURES: MOURADGEA D'OHSSON PRESENTS ISLAMIC LAW TO ENLIGHTENMENT EUROPE

CARTER VAUGHN FINDLEY*

Mouradgea d'Ohsson went to Paris in 1784 to write and publish his *Tableau général*, which proved to be Enlightenment Europe's biggest and best book on Islam and the Ottoman Empire. The title of the book translates in full as the "General Picture of the Ottoman Empire, divided into two parts, of which one contains the Muhammadan legislation, the other the History of the Ottoman Empire." In fact, his presentation of law and religion fills five–sixths of the book. The final one–sixth contains, not a history, but a precise account of the structure and workings of the Ottoman governmental system in his own time. The fact that Mouradgea placed such emphasis on law suggests questions as to why he presented matters as he did. The answers to those questions depend, in turn, on whether we consider not just the accuracy of his knowledge of Islam but also the European cultural debates in which he sought to intervene. Most important among these debates was his pro-Ottoman, pro-reform advocacy: the Ottoman Empire was no mere lawless despotism, as detractors asserted, but a state ruled by law and only needing an enlightened ruler and good advisors to set all aright.

Before leaving Istanbul, Mouradgea devoted years to collecting and studying original sources. He rather clearly studied with tutors, including learned ulema. The manuscripts he carried with him to Paris included a Qur'an, al-Nasafi's *Aqa'id al-Islam*, two fetva collections, and the Mevkufati commentary on Ibrahim al-Halabi's *Multaqa al-Abhur*. Mouradgea relied on his Qur'an primarily as a reference work, quoting from it to prove points and demonstrating precise knowledge of it. He launched his discussion of "law" with a discussion of doctrine based on al-Nasafi, and then built the rest of his discourse on religion around al-Halabi.

The presentation of al-Halabi is absolutely critical to understanding Mouradgea's goals. By Mouradgea's account, Ibrahim al-Halabi was the author of the "code" that included everything laid down by the founding imams of Hanefi fiqh. Mouradgea exalted al-Halabi's "code" as a work of such "clarity and precision" that one seldom needed to refer to earlier texts. Then he added that the *Multaqa* was "almost the only

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book of jurisprudence observed in the empire."[1] As if this did not contradict those assertions, Mouradgea then continued that there was little system in the drafting of "these laws" and that al-Halabi's fifty–seven "books" mixed different topics. He had therefore rearranged them in "codes," ultimately six in number: religious, political, military, civil, judicial, and penal.[2]

Mouradgea professed to give a "perfectly exact" translation of al-Halabi's *Multaqa*.[3] However, what he really relied on was Mevkufati's Ottoman commentary, which he actually possessed in manuscript, rather than al-Halabi's original work in Arabic. The more than fifty Ottoman-era commentaries on al-Halabi's *Multaqa* formed more than one tradition. In one series, twenty or more commentaries emphasized the kind of legal issues that a *kadı* or *müfti* needed to consider in making practical use of the *Multaqa* in the courtroom or in issuing fetvas. In another tradition, a series of works commented by explaining the *Multaqa* in Turkish. The commentary of Midillili Mevkufati Mehmed, to cite his full name, came from this tradition that explained al-Halabi's text by translating it, although Mevkufati added to this extensive substantive commentaries in Ottoman Turkish.[4] Exactly why Mouradgea's manuscript collection included this commentary out of all those available is not clear. Later evidence that Mevkufati's commentary was widely appreciated appears in the fact that at least seventeen printed editions of it appeared by 1900.

Experts might dispute at length over the pros and cons of Mouradgea's method. One Arab scholar who has compared Mouradgea's renderings with the Arabic originals of al-Halabi has endorsed Mouradgea highly for accuracy and impartiality.[5] As for whether al-Halabi was systematic or not, a Turkish expert has made the point that al-Halabi was more systematic than the earlier authors whose works he systematized.[6] No doubt, too, expectations about the meaning of "system" had changed quite a bit between the sixteenth and eighteenth centuries. Some of

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1 Mouradgea d'Ohsson [MdO], *Tableau général de l'Empire othoman* [*TGEO*]. 3 vols. in folio. Paris, 1787–1820, I, 7–8. Except as otherwise noted, this study relies on the 3 volume folio edition, rather than the seven-volume octavo edition, Paris, 1787–1824.

2 For the page where each of his "codes" begins, see MdO, *TGEO*, I, 21 (Code Religieux); III, 3 (Code Politique); III, 21 (Code Militaire); III, 56 (Code Civil); III, 207 (Code Judiciaire); III, 236 (Code Pénal). One modern edition that numbers the books in its table of contents shows only fifty–six: Ibrahim al-Halabi, *İzahlı Mültekâ el Ebhur Tercümesi*. Mustafa Uysal (tr.), 4 vols. Konya, 1974–1976, IV, 472–73.

3 MdO, *TGEO*, I, 142.

4 Şükrü Selim Has, 'Mülteka'l-Ebhur', *Türk Diyanet Vakfı İslam Ansiklopedisi* [*TDVİA*], vol. 31, 551–52. Online at http://www.tdvislamansiklopedisi.org/index.php

5 Abdeljelil Temimi, 'Mahometanism' in the Work of the Swedish Diplomat d'Ohsson', in *The Torch of the Empire, Ignatius Mouradgea d'Ohsson and the* Tableau Général *of the Ottoman Empire in the Eighteenth Century*. Istanbul, 2002, 101–115. (bilingual volume in Turkish and English).

6 Şükrü Selim Has, 'Mülteka'l-Ebhur', *TDVİA*, vol. 31, 551–52.

Mouradgea's rearrangements that would not make sense to an expert on fiqh also become more understandable if we bear in mind that he was writing for European readers. Just to cite one notable example, Mouradgea discusses evkaf as a subtopic under the heading of zekat. That makes no sense in Islamic terms, but for his European readers, it would not have made sense to separate two kinds of charity.

For purposes of brief presentation, it probably helps not to delve more deeply into such details but to focus on the larger contours of Mouradgea's argument. He reinforces his argument about the character of the *Multaqa* as a "code" in interesting and sometimes surprising ways. For example, in introducing this argument, he explained that the *Cour'ann* and *Hadiss* are *Nass*, signifying "the text par excellence," that all the works written in the spirit of these primary "books" are *Methn*, the commentaries on them are *Scherhh*, subsequent explications are *Haschiyé*, and further developments from them are *Tâlikath*. This led Mouradgea to two conclusions. First, "the code *Multéka*, which embraces the universality of religious legislation..., is the résumé of this immensity of works." All points of law having been fixed invariably, the second conclusion was "that axiom so common in the mouth of modern doctors: *Idjtihhad capoussy capanndy*, that is, the gate of ijtihad is closed."[7] Whether ijtihad was really closed or not, this argument – which Europeans later evaluated negatively – serves Mouradgea positively to clinch his argument about the completeness and sufficiency of the *Multaqa* as a law code.

If answers to some of the questions about Mouradgea's presentation of law pertain to the internal logic of Islamic religious studies, answers to other questions no doubt lie among the expectations of his European readers as he anticipated them. For Mouradgea, presenting the *Multaqa* emphatically as a law "code" that encompassed the "universality of religious legislation" clearly helped him prove his point in the European enlightened despotism debate by showing that the Ottoman Empire was anything but a lawless polity, as its detractors claimed. Yet that in itself does not explain how he arrived at the idea of presenting the *Multaqa* as a code. Some signs indicate that his choice of strategy may have had causes other than the most obvious.

In order to appreciate what the idea of legal codification might have meant to an author of his place and time, it may also help to bring in some other, related questions. How systematic did a body of law have to be to qualify as a code? Did

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7 MdO, *TGEO*, I, 107. To illustrate Mouradgea's efforts to guide Francophone readers in the pronunciation of the original terms, I retained his spellings here. The corresponding Arabic terms are Qur'an, hadith, *nass, matn, sharh, hashiya, ta'liqat, Multaqa, ijtihad*. Although he defines *nass* as text, he does not define *matn*, another term that can apply to a "text," also has meanings of "soundness," and is used to refer to foundational works of the major schools of jurisprudence; see Judith E. Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine*. Berkeley–Los Angeles, 1998, 11–22. MdO actually translates the Turkish sentence – *ictihad kapısı kapandı* in modern Turkish – as "the gate of glosses (*la porte des gloses*) is closed forever."

legal codification require a sovereign legislator or legislative body to enact the law? In qualifying a body of law as a code, how important was "legal unification," that is, the enforcement or observance of the law throughout the entire realm or community? In the 1780s, what models of legal codification were available?

Although it might be easy in hindsight to imagine that Mouradgea exaggerated in an effort to make the Ottomans look as good as Enlightenment Europe, it would also be hasty to draw that conclusion. As of 1784 when Mouradgea arrived in Paris to write, legal codification may have been an aspiration of Enlightenment thinkers, but no major European state yet had a codified legal systems that applied throughout the land. In France, efforts at legal systematization had begun earlier. Yet such efforts never got beyond compilation of local customs, which were anything but models of enlightenment, before the *Code civil* of 1804. The long, slow process of unifying the French kingdom had also left France with different laws for different provinces. As Voltaire quipped, in France the cross-country traveler changed law codes more often than horses.[8] Little did Voltaire realize that the traveler across the Islamic world did not have that problem. By standard accounts of European legal history, the "first national legal code actually to come into force" was the Prussian code (*Allgemeines Landrecht*) of 1794, encompassing civil, penal, and parts of public law. In Austria, efforts to compile a civil code began earlier but reached fruition only in 1811.[9] All these codes of the major European powers were enacted too late to have inspired Mouradgea's argument.

Mouradgea's reasons for characterizing al-Halabi's treatise as a "code" therefore lie somewhere other than in the legal systems of Enlightenment Europe, at least other than the major states' legal systems as they actually existed. Present-day scholarship understands Islamic jurisprudence a field of disputation among scholars, therefore not amenable to codification. Yet it was not an exaggeration to assume that Ottoman Muslims relied on al-Halabi's *Multaqa* as much as if it were a code of Hanefi jurisprudence, that being the official legal school of the empire. This extent of reliance continued long after Mouradgea's time.[10] Compared to most modern legal codes, the *Multaqa* lacked an officially empowered legislator or legislative authority behind it. However, non-legislative codification was not without historical precedents – or modern examples either, for that matter. In Europe, too, the early, foundational texts in the religious law of the Roman Catholic church, as well as those of Germanic law and those of European private law, were all non-legislative in origin. One expert has argued that until the rise of the modern state, it was not even

8 J. Q. C. Mackrell, *The Attack on 'Feudalism' in Eighteenth-Century France*. London, 1973, 52 (citing Voltaire); Csaba Varga, *Codification as a Socio-Historical Phenomenon*. Budapest, 1991, 71–90.

9 J. M. Kelly, *A Short History of Western Legal Theory*. Oxford, 1992, 262–63.

10 Şükrü Selim Has, 'Halebî, İbrâhım b. Muhammed', *TDVİA*, vol. 15, 231–32; Has, 'Mülteka'l-Ebhur', *TDVİA*, vol.31, 549–52; Has, *A study of Ibrahim al-Halabi with Special Reference to the Multaqa*. PhD diss., University of Edinburgh, 1981.

conceivable for a sovereign to have full public control of the law.[11] In a way resembling Ottoman Muslims's reliance on the *Multaqa*, ongoing reliance by a wide community of users had amounted to a kind of non-legislative ratification in medieval Europe. In not dissimilar fashion, an "international" of religious scholars – in Richard Bulliet's memorable term – had created sharia law independent of rulers' authority.

Another example of non-legislative codification comes from a quite different quarter, of which Mouradgea may have had some awareness. Far from the major states of Enlightenment Europe, the Armenian merchant community of Astrakhan (Russia) had created a code of laws. Written down in Armenian in 1760, this code governed relations among the farflung network of Armenian merchants centered at New Julfa, a suburb of Isfahan (Iran), a network that had formed and flourished in the preceding century.[12] Mouradgea never mentioned this example, and there is no way to know whether he knew of it or not, but Armenian merchants in his native Izmir and Istanbul must have known of it.

Mouradgea's thinking was surely also stimulated by a European country that was no longer a major power but was very important to him: Sweden. Mouradgea had made his career and much of his fortune in the service of the Swedish diplomatic mission in Istanbul, and he dedicated his book to Sweden's King Gustav III. Sweden may have also contributed to his project in an indirect way. Beyond the range of most comparative European legal historians' attention, Sweden had codified and unified its laws in the lawbook of 1734. The Scandinavian kingdoms differed from other European states in having legal systems based on neither the common law nor the Roman law traditions and had consequently faced the need to revise obsolete medieval systems of law at comparatively early dates. In Sweden, the result of a fifty-year project was the lawbook of 1734 (*Sveriges Rikes Lag*), with nine parts (*balk*) covering the major topics of civil law, criminal law, and judicial procedure.[13]

Mouradgea was officially a Swedish protégé, but he did not know Swedish, and never even visited Sweden more than briefly. Be that as it may, a major

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11 Nils Jansen, *The Making of Legal Authority: Non-Legislative Codifications in Historical and Comparative Perspective*. Oxford, 2010, 4, "sovereign's full public control of private law" not "conceivable" before rise of modern state; 20, the "three fundamental reference texts of European *ius commune*": the *Decretum gratianum* (canon law), the Saxon Mirror (Saxon and Germanic law), *corpus iuris civilis* (European private law).

12 Sebouh David Aslanian, *From the Indian Ocean to the Mediterranean: The Global Trade Networks of Armenian Merchants from New Julfa*. Berkeley, 2011, 174–76 and passim.

13 Wolfgang Wagner (ed.), *Das schwedische Reichsgesetzbuch (Sveriges Rikes Lag) von 1734: Beiträge zur Entstehungs- und Entwicklungsgeschichte einer vollständigen Kodifikation*. Frankfurt am Main, 1986, 61–106. (Dieter Strauch, "Quellen, Aufbau und Inhalt des Gesetzbuchs"). Lars Björne, *Patrioter och Institutionalister. Den nordiska rättsvetenskapens historia, Del I, Tiden före år 1815*. Lund,1995, 8–10, 72–89, 252–53; Wilhelm Chydenius, 'The Swedish Lawbook of 1734: An Early Germanic Codification', *Law Quarterly Review* 20 (Oct. 1904) 377–91. My thanks to Johanna Sellman for help with Swedish sources.

responsibility of European diplomats and especially consuls in the Ottoman Empire consisted of the notarial and judicial business of the subjects and protégés of the state they represented. Mouradgea was immersed in the affairs of the Swedish legation in Istanbul for twenty years before he went to Paris, he was active in trade, and he was notoriously litigious. No specific evidence proves that he was aware of the Swedish law code for those reasons. The most extensive study now available of consular jurisdiction in the eighteenth-century Ottoman Empire, based primarily on Dutch rather than Swedish evidence, implies that the actual practice of consular courts in Ottoman lands followed "standard 'Levantine' procedure," with little reference to "national laws," except in cases that gave rise to litigation in "the native country."[14] True though that may be, Mouradgea was no ordinary consular protégé. He did pursue some of his litigation all the way to Stockholm. He was an intellectual on intimate terms with the members of the Swedish elites, and it is quite likely that he had seen and heard about the Swedish law code.

All these inferences together suggest that Mouradgea's presentation of the *Multaqa* as a code may have had multiple sources, as far apart as Stockholm, Astrakhan, and the Ottoman medreses. The discovery of how little his argument owed to the actual achievements – as opposed perhaps to the aspirations – of Enlightenment Europe reveals the ambitiousness of his intervention in the enlightened despotism debate and the ardor of his advocacy on behalf of the Ottomans before the court of European opinion. In asserting to European readers, that the Ottoman Empire had a comprehensive code of law, he did not need to remind them that they did not.

Before concluding, I should like to make a few additional points. First, as noted, Mouradgea regrouped the subjects treated in al-Halabi's fifty-seven books (*kitab*) into six codes. That raises questions: why six, and why those six? The six codes into which Mouradgea regrouped his discussion of al-Halabi are religious, political, military, civil, judicial, and penal. It is not surprising that he began with the religious code. It may seem surprising that it filled two out of three volumes in the folio edition and four out of seven volumes in his small-format edition. He expanded the subject to include "parts" on dogma (based on al-Nasafi rather than al-Halabi), ritual, and "morals," into which he regrouped behaviorial norms that al-Halabi treated in his later books, such as dress, food and drink, and other matters of Muslim lifestyle.

Mouradgea's choice to move these behaviorial matters further forward from the positions they occupy in al-Halabi's *Multaqa* may seem to support his point about lack of system in al-Halabi. However, the Ottoman concept of *ilm-i hal*, the basic religious knowledge that every Muslim should know, resembles Mouradgea's religious code in combining the same three major topics in the same order: dogma,

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14 Maurits H. van den Boogert, *The Capitulations and the Ottoman Legal System: Qadis, Consuls and* Beratlıs *in the Eighteenth Century*. Leiden, 2005, 259.

ritual, and behavioral norms.[15] Mouradgea's manuscripts did not include a manual of *ilm-i hal*. Perhaps they did not need to. Intended for the wide inculcation of basic religious knowledge among Muslims, numerous *ilm-i hal* manuals had been produced across Ottoman Rumelia and Anatolia since the fourteenth century. The ulema with whom he studied would have understood the concept thoroughly. Conceivably, the idea that the sequence of "books" in al-Halabi did not correspond to the order in which Muslims needed basic religious guidance may not have been a new idea of Mouradgea's.

In Mouradgea's organization of the remaining codes, we can begin to surmise possible interaction between Islamic norms and emerging European thinking about legal codification. His "political code" has chapters on the sovereign, public finance, the status of foreigners in Muslim lands, and the status of Muslims in foreign lands. His "military code" corresponded essentially to the topics that al-Halabi treated in his *kitab al-siyar*, ranging from jihad to the status of conquered lands and their non-Muslim inhabitants.[16] Mouradgea's "civil code" grouped together topics in the law of persons and property, ranging from marriage and divorce to inheritance, slavery, and commerce. These were some of the topics that most occupied the minds of Islamic legal scholars, but al-Halabi discussed them in widely dispersed "books" of his treatise. In this case, the idea of combining the law of persons and property into a "civil code" may indeed reflect Enlightenment thinking about legal reform. It is also true that the first five of the nine sections (*balk*) of the Swedish Lawbook of 1734 dealt with analogous matters, respectively, marriage, inheritance, land, building, and trade.[17] Somewhat similarly, Mouradgea's last two "codes," on judicial and penal law group together topics in sharia law that correspond in nature to the last four books of the Swedish code. Obviously, legists in many cultures would not have needed foreign models to deduce that normative law by itself would not get far without procedural standards and penal sanctions. In any event, the subjects that

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15 Derin Terzioğlu, 'Where *İlm-i Hal* Meets Catechism: Islamic Manuals of Religious Instruction in the Ottoman Empire in the Age of Confessionalization', *Past and Present* 220 (August 2013), 82, 83, 89; Şükrü Selim Has, 'İlmihal', *TDVIA*, vol. 22, 139–41; Hayreddin Karaman – Ali Bardakoğlu –H. Yunus Apaydın (eds.), *İlmihal*. 2 vols. İstanbul, 2002, I, 68–140 ("Akaid", beliefs), 141–82 ("Fıkıh", religious law, general principles), 183–571 (ritual obligations: cleanliness, prayer, fasting, almsgiving, pilgrimage); II, 29–193 ("Haramlar ve Helâller", largely overlapping the topics in Mouradgea's "Moral Part").

16 Ibrahim bin Muhammad bin Ibrahim al-Halabi, *Multaqa al-Abhur, wa ma'ahu Al-Ta'liq al-Muyassar 'ala Multaqa al-Abhur*. Wahbi Sulayman Ghawji al-Albani (ed.), 2 vols. Beirut, 1409/1989, I, 169–95 (Kitab al-Zakat), 354–79 (Kitab al-Siyar); al-Halabi, *Sharh al-Mevkufati*, Mevkufati Mehmed (ed., tr.), 2 vols. İstanbul, 1302/1884–1885, I, 139–59 (zakat), 341–58 (siyar); Halebi, *İzahlı Mülteka*, I, 217–50 (Zekât); II, 303–69 (Siyer Bahsi).

17 Wagner (ed.), *Das schwedisches Reichsgesetzbuch*, 61–106 (Strauch, "Quellen, Aufbau und Inhalt," list of the nine "parts" on p. 68): Björne, *Den nordiska rättsvetenskapens historia, Del I, Tiden före år 1815*, 8–10, 72–89, 252–53; Chydenius, "Lawbook of 1734", 377–91.

Mouradgea assembled in his judicial code are ones that al-Halabi treated in six different books grouped together in the second half of his treatise.[18]

Standing back to look at Mouradgea's treatise from a distance, one of its most striking features is that he says very little about *kanun*. His manuscript sources did include the *Kanun-ı Cedid*, a collection identified with the reign of Süleyman the Magnificent and dated at the end 1084/1673–74. Mouradgea also made clear in several places that there were four sources of Ottoman law: the sharia, kanun, custom (*adet*), and "the arbitrary power of the sultan" (*örf*).[19] By comparison, Joseph von Hammer, who wrote the next work that most resembles Mouradgea's *Tableau*, placed much more emphasis on kanun. He had a different and much larger set of manuscript sources at his disposal, and he exercised the option of summarizing what Mouradgea wrote about sharia law and then discussing kanunnames of different types. In a sense, this was Hammer's choice to make.[20] He justified his choice on the ground that he was writing a book about the law and administration of the Ottoman state, and that most of the topics discussed in al-Halabi's treatise – with the notable exception of the law of war – did not pertain to that subject.

Comparing the treatment of Ottoman law in the two works does, however, reveal a final significant point about Mouradgea's goals. By submerging what he said about state law in a treatise presented as a translation of al-Halabi's all-inclusive "code," Mouradgea found yet another way to reaffirm his pro-Ottoman argument that this was a pious, law-abiding state with a systematic, all-encompassing legal system, worthy of European readers' positive interest and serious effort to understand and support.

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18 Al-Halabi, *Multaqa*, II, 68–134; Mevkufati, *Şerh*, II, 57–124; al-Halabi, *İzahlı Mülteka*, III, 189–330. Sequentially, the subjects of the books in question are judgeship (*al-qada*), witnessing or testimonials (*al-shahadat*), power of attorney (*al-wakalah*), litigation (*al-da'wà*), confession (*al-ikrar*), amicable settlement (*al-sulh*).

19 MdO, *TGEO*, I, vi; III, 335.

20 Joseph von Hammer, *Des osmanischen Reichs Staatsverfassung und Staatsverwaltung*. 2 vols. Hildesheim, 1963 [1815], I, xvi–xxi (the *kanunnames* he cited), 3–29 (Islamic law, following Mouradgea), 30–32 (the four sources of law), 162–180 (Islamic law of war, with footnote reference to book 13 of the *Multaqa* [*Kitab al-Siyar*, the "book of campaigns"], 87–162 and 180–499, discussion of the *kanunnames*). Hammer translated *örf* with *Willkühr*, modern spelling *Willkür*, a term with meanings ranging from "decree", to "arbitrariness, caprice, despotism."