Acta Slavica Iaponica, Tomus 43, pp. 25–48

Bringing Order to the Muslim Family: Aleksandr Golitsyn and Imperial/Colonial Law for the Muslim Family[1]

Rozaliya Garipova

Introduction: Institutionalization of Religion in Russia's Non-Orthodox Communities

On August 25, 1822, the Minister of Spiritual Affairs and Enlightenment, Aleksandr Golitsyn, wrote a letter to the Orenburg military governor, Petr Kirillovich Essen, introducing a new project of compiling rules concerning marital and family issues among the Muslims of the Orenburg province. Golitsyn initiated this compilation as a result of a complaint by a certain Muslim (subject) on a wrong decision by the Orenburg Muslim Spiritual Assembly in his marital case. He also requested information and an opinion on this case from the Orenburg civil governor. In response, the civil governor reported about various "disorders" in Muslim families, their negative consequences, and offered his opinion about the measures that could be taken to stop those disorders. As a result of this correspondence, Golitsyn decided to compile rules on Muslim marriage. In his letter to the military governor, he underlined that he had already consulted the Tauride[2] Mufti and the Tauride Muslim Spiritual Assembly[3] about the appropriateness of these rules and their conformity to Muslim laws and traditions. The Crimean (Tauride) Mufti approved the fact that "the rules on marriage were in accordance with Muslim laws and customs."[4] Golitsyn also inquired with the Orenburg civil governor whether the rules were in accordance with the local civil laws and whether it was a good

1 I would like to thank Norihiro Naganawa, Daniel Beben and anonymous reviewers for their valuable comments on earlier drafts of this article.

2 After the annexation of Crimea in 1783, the peninsula became a part of a newly established Russian administrative district under the name Taurida, which was the ancient Greek name of the region. Several cities in the region were renamed with Greek names as a part of an unrealized plan to reestablish a Greek empire under the auspices of European powers instead of the Ottoman Empire at the end of the eighteenth century. See Hugh Ragsdale, "Evaluating the Traditions of Russian Aggression: Catherine II and the Greek Project," *The Slavonic and East European Review* 66:1 (1988), pp. 91–117.

3 Tauride Muslim Spiritual Assembly was a religious institution for the Muslims in the Crimea and was created in 1794 after the Orenburg Muslim Spiritual Assembly, which was established in 1789. On the history of this institution see Kelly O'Neill, *Claiming Crimea: A History of Catherine the Great's Southern Empire* (New Haven: Yale University Press, 2017).

4 Gosudarstvennyi arkhiv Orenburgskoi oblasti (GAOO), f. 6 (Kantseliariia Orenburgskogo general-gubernatora, 1797-1881), op. 4, d. 8085, l. 2.

idea to translate the laws into "the local Tatar language, spoken in Orenburg province" and later publish them in Tatar.[5]

This project raises several questions. What kind of "disorders" did Muslims bring to the Russian provincial authorities? Why did he reach out to the Crimean muftiate for a consultation when there was another Muslim muftiate, the Orenburg Muslim Spiritual Assembly [hereafter the OA], responsible for the Volga-Ural Muslims, to whom the rules would apply? More importantly, why was Golitsyn interested in handling such "disorders" and how was he going to do this?

Golitsyn's project has attracted the attention of scholars of Islam in the Russian empire. Robert Crews presents this initiative as a cooperation of "Golitsyn and his Muslim scholars" and as a "partnership between Russian officials and the guardians of Islamic orthodoxy" at creating the rules for disciplining Muslim subjects according to shari'a.[6] Aidar Khabutdinov and Danil Azamatov consider the project a failed attempt by the Russian state authorities to institute a hierarchy of Muslim clerics under the supervision of the OA and the Ministry.[7] I suggest that the Rules occupy an important place in the process of imperial creation of legal architecture for its Muslim community. The compilation reflects larger Russian imperial efforts at centralization and creation of a legal framework in the management of different confessional communities. It incorporated decrees that were previously issued for the Muslim community, and contained rules that would later be applied in Muslim adjudication of disputes. The process of preparing these rules shows how the Russian empire was colonial in nature. Identifying and defining problematic zones as "disorders," compiling rules on some Muslim practices from various imperial and random Muslim sources, and translating these rules from Russian into Tatar language to be used by Muslims, all point to the colonial approach of the Russian imperial officials, which was similar to that of other colonial empires.

Regulating Imperial Confessions

The process of construction and institutionalization of Russia's multi-confessional establishment started with Peter I's reorganization of the Russian Orthodox Church's authority and the creation of the Holy Synod, followed by a legislating process. The institutionalization of non-Orthodox religious

5 Ibid., ll. 1–4, 54–54 ob.

6 Robert Crews, *For Prophet and Tsar: Islam and Empire in Russia and Central Asia* (Cambridge, Mass.: Harvard University Press, 2006), pp. 154–156.

7 Aidar Khabutdinov, "Religioznoe samoupravlenie i shariatskoe semeinoe pravo v Rossii: opyt Orenburgskogo magometanskogo dukhovnogo sobraniia v kontse 18go – pervoi chetverti 19go v.," *Evraziia: dukhovnye traditsii narodov*, no. 2 (2012), pp. 117–123; Danil Azamatov, *Orenburgskoe magometanskoe dukhovnoe sobranie v kontse XVIII-XIX vv.* (Ufa, 1999).

confessions was modeled on the Russian Orthodox community and on the ideas of institutionalization introduced by reformist statesmen in the early nineteenth century.[8] At the beginning of the nineteenth century, between 1808–1811, Mikhail Speranskii, the reformist advisor of Tsar Alexander I, decided to reform state administration. He wanted to produce clear definitions of competencies, jurisdiction, and internal structure of each state institution. Prior to his exile to Siberia in 1812, he began compiling statutes for each ministry. His efforts included, among other things, the establishment of a "separate department" for religious affairs.[9] The Department of Spiritual Affairs of Foreign Faiths was initially part of the Dual Ministry of Spiritual Affairs and Enlightenment. Golitsyn headed the Dual Ministry from 1817 to 1824, and continued the project of regulating the communities of non-Orthodox faiths.[10] The new institution—The Central Directorate for the Spiritual Affairs of Foreign Confessions—became Russia's ministry of religious affairs. According to Paul Werth, "Speranskii's central idea—that institutions could function properly only if their authority and structure were clearly defined in law—served as a guiding principle for the directorate as its staff sought to forge functional relationships with Russia's diverse religions."[11]

Following that central principle, the Directorate produced a series of statutes that would regulate the foreign confessions until the end of the imperial regime.[12] Aleksandr Golitsyn was appointed as the head of the new Central Directorate in 1810, while he was already serving as chief procurator of the Holy Synod since 1803. In 1812, he also became head of the new Russian Bible Society, which in turn became part of the directorate two years later, and several officials held positions in both of them.[13] As both Werth and ChaeRan Freeze concur, "by 1814 virtually all religious affairs in Russia were in fact under the oversight of one person—Golitsyn"[14] and "as the emperor's chief agent in the religious domain, he had a powerful role in shaping state religious policy."[15]

The most extensive enactments on institution-building and legislation occurred in the late 1820s and the 1830s and "should be regarded as an effort to 'implant' the foreign confessions in the structure of the state as well."[16] The

8 See Paul Werth, *The Tsar's Foreign Faiths: Toleration and the Fate of Religious Freedom in Imperial Russia* (Oxford: Oxford University Press, 2016).

9 Ibid., pp. 46–64, here at 52.

10 Ibid.; D. Iu. Arapov, *Sistema gosudarstvennogo regulirovaniia islama v Rossiiskoi imperii (posledniaia tret' XVIII - nachalo XX vv.)* (Moscow, 2004).

11 Werth, *The Tsar's Foreign Faiths*, p. 57.

12 Ibid., p. 57.

13 Ibid., p. 53.

14 Ibid., p. 53. A.N. Golitsyn was the first chief procurator of the Holy Synod (1803-1816), then Minister of Education and Spiritual Affairs (1817-1824).

15 ChaeRan Freeze, *Jewish Marriage and Divorce in Imperial Russia* (Hanover, NH: Brandeis University Press, 2002), p. 335, n. 14.

16 Werth, *The Tsar's Foreign Faiths*, p. 63.

statutes were reactivated, completed, and published for the Lutherans between late 1820s and 1832 and for the Armenians in 1836; an 1835 enactment for the religious affairs of the Jews completed an earlier statute of 1804; a statute for Karaites was published in 1837 and 1850 for the western provinces; a statute on Kalmyks and the Buddhist affairs in 1834; and a statute for Shia Muslims and for Buddhists in Eastern Siberia was commenced in early 1830s and completed considerably later. One should note the project on the codification of Kazakh custom (*adat*), the first of which was undertaken by Speranskii in the 1820s.[17] The legal architecture of institution-building and legislation for Muslims started earlier, with the creation of the OA in 1788. However, it was not until the 1820s that the state embarked on a more systematic effort to regulate Muslim family life.

Regulating Family

The rationalization of the confessional communities included not only drawing general statues at administering them but also went into the heart of those communities, that is, the family. Overall, Russian statesmen defined marriage as a strictly religious institution.[18] Religion provided a general template for the relations of the empire with its subjects. While Orthodoxy was the main pillar for the tsarist order, maintaining a religiously defined order for Christian and non-Christian communities of the empire was an equally important commitment of the political system. As Paul Werth stated, "[t]he government accordingly insisted on the religious form of marriage for all the empire's confessions and invested their religious rituals with the force of law."[19] At the same time, the state sought to regulate marriage and family and impose greater "order" on the marital affairs of non-Orthodox confessions. "Such intervention involved greater codification of religious rules, which inevitably entailed their reworking in order to bring them into conformity with the state's own sense of morality and progress."[20]

Regulating family affairs had been an important part of this project for all religious communities of the empire and the imperial officials copied practices from the Orthodox community for this. According to Gregory Freeze, Golitsyn played a major role in developing more rigorous policies toward marriage and divorce.[21] As he explains, marriage and divorce disputes became one of the

17 For this project, see Pavel Shablei and Paolo Sartori, "Sud'ba imperskikh kodifikatsionnykh proektov: adat i shariat v Kazakhskoi stepi," *Ab Imperio*, no. 2 (2015); *Eksperimenty imperii: adat, shariat i proizvodstvo znanii v kazakhskoi stepi* (Moscow: Novoe literaturnoe obozrenie, 2019).

18 Werth, "Empire, Religious Freedom, and the Legal Regulation of 'Mixed' Marriages in Russia," *Journal of Modern History* 80:2 (2008), p. 300.

19 Ibid., p. 301.

20 Ibid., p. 302.

21 Gregory Freeze, "Bringing Order to the Russian Family: Marriage and Divorce in Imperial

major concerns of Church administrators and of the collegial board of clerics, the Holy Synod, which reviewed and approved all annulments and divorces. Dealing with "the crisis of the family" in the Russian Orthodox community, imperial authorities began to gradually devise a new set of policies to regulate the familial order.[22] Freeze underlines three important changes that occurred after Peter I initiated the "bureaucratic revolution" of the Church and after he was able to improve its administrative system by the last quarter of the century. The three changes included improvements in the structure of the Church administration and the ability to control the laity, the introduction of the parish records (*metricheskie knigi*), "a sine qua non for the strict enforcement of laws and the detection of infractions," and the preparation of systematic and more comprehensive laws on marriage and divorce. The combination of these three changes increased the Church's control over marriage and divorce.[23] Beginning in the early nineteenth century, Church policy toward divorce and family in general became more rigid. This reflected more conservative ideas throughout Europe, which regarded family "not only as the best defense against moral degeneration but also as the bedrock of political stability."[24] This was the principle that guided the policies of Golitsyn regarding the marital affairs of other confessional groups including the Muslim population. As ChaeRan Freeze underlines with respect to the Jewish community of the Russian Empire, the same concern for "bringing order for the Jewish family" guided imperial officials' policies.[25] The same is reflected in Golitsyn's rules for the Muslim population.

The goal of Golitsyn and other imperial officials, as Golitsyn himself explained in the Rules, was to deal with "disorders" in Muslim marriage and to find ways to eliminate them. Russian imperial authorities complained about "disorders" Muslims had committed in the family and hence in public space. When the civil governor of Orenburg, Grigorii Vasilevich Nelidov, wrote to Golitsyn, he especially underlined that there were too many "disorders" in "the current state of Muslim family" which had "detrimental consequences" for Muslims themselves.[26]

The rhetoric of "disorder" and fixing them is a pattern commonly found in colonial rule. Imperial and colonial rulers tried to establish a familiar order in their colonies in a number of ways: through establishing hierarchies or new administrative bodies over Islamic law or reforming the existing ones, through creating new procedures of appellation, making new legal systems more transparent, and introducing written record of litigation. They also defined

---

Russia, 1760-1860," *Journal of Modern History* 62:4 (1990), pp. 709–746, here at p. 723, n. 40.

22 Ibid., pp. 709–710.

23 Ibid., pp. 715–718.

24 Ibid., pp. 722–723.

25 ChaeRan Freeze, *Jewish Marriage and Divorce in Imperial Russia* (Hanover, NH: Brandeis University Press, 2002).

26 GAOO, f. 6, op. 4, d. 8085, l. 1ob.

and redefined certain aspects of the religious authority of the ulama and their jurisdiction, as well as specific local practices according to the new standards of "civilization."[27] Delineating jurisdictions, setting the written record of cases, opening up other legal forums for the local communities to appeal their cases, defining the authority of the religious clerics, and even introducing different sorts of colonial punishment for violating the norms defined by imperial and colonial law are patterns that can be observed in other imperial and colonial contexts. Writing on the British administration of Muslim law in India, Scott Kugle rightfully claimed that "the practice of jurisprudence is very different from other types of interpretation because it is also an exertion of power."[28] The rhetoric of creating order was a rhetoric of power, which allowed the Russian government to correct elements of "disorder" in Muslim family by either bringing them to uniformity with the Russian imperial (civil or criminal) law or transferring their jurisdiction to the imperial institutions such as civil courts. Ultimately, it was a sort of legal civilizing mission as civilization could arrive only through imperial law and imperial institutions.

Defining "Disorders," Establishing the Rules for the Muslim Family

Golitsyn's rules did not cover much of substantive issues of Muslim family law regulated by the shari'a; therefore, it would not be correct to call this project a codification of the shari'a in family matters. Rather, the rules tried to address the "disorders" as perceived by the state officials. For Golitsyn, "disorders" fell into two categories. The first category included "disorders" such as abduction of married and unmarried women, fleeing of married or unmarried women from their homes to marry a man of their choice, "stolen" property in the course of such a flight, and "insults and other disorders forbidden by the law." This category of "disorders" also included cases when relatives encouraged (*podstrekatel'stvo*) a woman to run away, concealed a woman, or gave a woman in marriage to other people. It was noted that marital dissolution among Muslims happened more often when relatives intervened rather than because

27 *Muslim Family Law in Sub-Saharan Africa: Colonial Legacies and Post-Colonial Challenges*, ed. Sh. Jeppie, E. Moosa, and R. Roberts (Amsterdam: Amsterdam University Press, 2010); Brinkley Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society* (Berkeley: University of California, 1993); Scott Kugle, "Framed, Blamed and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia," *Modern Asian Studies* 35:2 (2001), pp. 257–313; David Powers, "Orientalism, Colonialism, and Legal History: The Attack on Muslim Family Endowments in Algeria and India," *Comparative Studies in Society and History* 31:3 (1989), pp. 535–571. For such legal change in Central Asia, see Paolo Sartori, "An Overview of Tsarist Policy on Islamic Courts in Turkestan: Its Genealogy and its Effects," *Cahiers d'Asie centrale*, 17/18 (2009), pp. 477–507; Sartori, *Visions of Justice: Sharīʿa and Cultural Change in Russian Central Asia* (Leiden: Brill, 2016); Sartori, "Constructing Colonial Legality in Russian Central Asia: On Guardianship," *Comparative Studies in Society and History* 56:2 (2014), pp. 419–447.

28 Kugle, "Framed, Blamed and Renamed," p. 257.

of disagreements between the spouses. The document also mentioned cases of women who married for a second time "without having legal clout" [i.e., not being legally divorced] and when the former husband, upon returning, found his family "in disarray."[29] Domestic abuse, and disputes about kalym, which is defined as a sum of money that the groom agreed to pay to the bride's family after the conclusion of marriage and according to the conditions agreed upon in the presence of the bride and witnesses from both sides, were also included in the first category of disorders.[30]

The second category of "disorders" included issues related to religious/legal authority of the mullahs. Golitsyn underlined that Muslims brought complaints to different Muslim authorities (*dukhovnym chinam*), who accepted and tried to solve their cases, and oftentimes if the party which lost the case was unhappy with the decision of an akhund (an expert of Islamic law in the Volga-Urals) approached another one and finally the mufti."[31] For the Muslims, this was not a disorder but rather a natural order of the society. Golitsyn failed to understand this shari'a based socio-religious order and wanted to establish a hierarchy as proposed in the project of Baron Igel'strom.[32]

To deal with such "disorders," Golitsyn embarked on compiling the *Rules* to help local authorities settle these disputes or prevent them from happening altogether. In his first letter to the Orenburg military governor, Golitsyn systematized the rules into three sections: 1. The Rules (*pravila*); 2. The Purpose of the Rules and Their Basis, and 3. The Sources of the Rules from which these explanations were derived.[33] I suggest that Golitsyn's rules can be roughly summarized into six elements of the new legal architecture he envisioned for the Muslim population: 1. Definition and delimitation of the authority of Muslim clergy and hierarchy; 2. The rules about appeal to higher ranks of clerics; 3. The duties of the ulama in the officiation of marriage; 4. Division of jurisdiction of Muslim marital disputes between religious and civil authorities; 5. The measures of punishment in the case of breach of the rules; and 6. Criminalization of certain practices. The rules also included plans for the introduction of written evidence and defined the responsibilities of ordinary Muslims in performing marriage. The first five elements dealt with the religious and legal authority of the mullahs. Except the last one, all these rules were introduced into the Muslim community.

According to Golitsyn's rules, only certified religious scholars could perform marriage ceremony for the Muslims. The Rules clearly stated that "Among the Muslim clerics who can deal with marital cases are mullah, imam,

29 GAOO, f. 6, op. 4, d. 8085, ll. 57, 57ob.

30 Ibid., ll. 58, 59.

31 Ibid., ll. 59ob., 60.

32 For a detailed account on this, see Garipova, "Where Did the Ākhūnds Go? Islamic Legal Experts and the Transformation of the Socio-Legal Order in the Russian Empire," *Yearbook of Islamic and Middle Eastern Law* 19 (2018).

33 GAOO, f. 6, op. 4, d. 8085, ll. 2ob.–3.

qadi, akhund, and mufti. Each of them can deal with Muslim family cases only when they are approved in their title by the prescribed order." A footnote to this paragraph highlighted that lay Muslims, who had not received such title according to established rules, could neither perform religious rites of marriage nor deal with marital disputes.[34] In this question, Golitsyn took an example from the Russian Orthodox community, in which performance of marriage and different marital cases was the prerogative of the official priesthood. The document on the creation of the OA did not explicitly prohibit the performance of marriage by lay people.[35] As such, Muslim marriages were performed by any respected male adult (layperson) or by a mullah, certified or uncertified. Golitsyn's rules authorized only certified Muslim clergy to perform marriages, as was the practice in the Russian Orthodox community. This was an important basis for establishing the new legal order as it opened the floor for defining responsibilities and punishments for the Muslim clergy and had legal consequences for both mullahs and laypeople.[36]

According to Golitsyn's rules, "Muslims were to bring all complaints to the local mullahs and imams." Again, this differed significantly from Igel'strom's project, which mentions that in cases of marital problems and divorce, the two sides, with an agreement among each other, may choose any imam or akhund to perform the divorce.[37] Golitsyn tried to create a hierarchy that was rather artificial and restrictive in the choices of legal authorities for Muslims, who could otherwise have approached any mullah or akhund to adjudicate their disputes. The relevant rule that Golitsyn wanted to instate stated that "If it was a small complaint about a small disagreement between the spouses, local mullahs and imams had to do their best to reconcile the spouses." If a problem was more complicated and local mullahs were not able to reconcile the parties, then they were to pass the cases to Muslim clerics *who had legal authority* [emphasis by author]. Later, Golitsyn set to clarify legal authority in more detail: "Every Muslim marital case/discord, which has a legal nature (*vid sudebnyi*), is dependent on the consideration of the nearest qadi or akhund, which is presented or submitted by a local mullah or imam." The footnote to this paragraph underlines an important nuance here that the disputing parties could in fact choose any akhund[38] instead of the nearest one. It further

34 Ibid., l. 46ob.

35 "Proekt polozheniia o kompetentsii Dukhovnogo magometanskogo sobraniia, predlozhennyi simbirskim i ufimskim namestnikom O. A. Igel'stromom na reshenie imperatritsy Ekateriny II," 5 December 1789, *Materialy po istorii Bashkirskoi ASSR* (*MIB-ASSR*), ed. by S. M. Vasil'ev and N. F. Demidova (Moscow: Izdatel'stvo Akademii Nauk SSSR, 1960), vol. 5, pp. 564–565.

36 On how this affected the legality of marriage see R. Garipova, "Married or Not Married? On the Obligatory Registration of Muslim Marriages in Nineteenth-Century Russia," *Islamic Law and Society* 24:1–2 (2017), pp. 112–141.

37 "Proekt polozheniia," pp. 564–565.

38 In the document, akhund, the highest legal authority among the Muslim community of a certain location in the Volga-Ural region is used interchangeably and together with

explained that "The decision of qadi/akhund has the final legal authority and is not subject to reconsideration, if the decision is in line with Islamic law." Again, the footnote clarified that "if the disputing parties chose their own akhund for their case, his decision is also considered to be final and not subject to reconsideration".[39]

As is clear from the above rules, the authority of mullahs and imams was of a mediatory character and people could only bring complaints to them. While mullahs could perform marriage, they did not have legal authority, for example to perform divorce or decide on cases where laypeople potentially asked for a divorce. For example, if a woman brought a complaint to the local mullah that her husband had beaten her and if she had reliable witnesses, then a mullah passed the case to the higher Muslim authorities (akhunds) and a civil authority. If a wife brought a complaint that her husband had announced *talaq*, i.e., divorced her, the local mullah had to investigate the case and pass it to the higher Muslim authorities, as well as to separate the husband and wife until a decision was made.[40] The assumption underlining these rules was that mullahs and imams lacked independent legal authority.

Despite the fact that the rules defined the legal authority of akhunds as "final and not subject to reconsideration," Golitsyn reconfirmed the authority of the OA as a court of appeal.[41] In this, he accepted the suggestions of Baron Igel'strom regarding the right of the OA to annul the decision of an imam or akhund which was not fair or lawful and the right to appeal to the OA of any Muslim who was unsatisfied with decisions of imams or akhunds.[42] It is important to note that Muslims began to appeal to the OA occasionally beginning in the late 1820s and in the 1830s, and the appeals in cases of marriage, divorce, and inheritance division increased rapidly in the 1840s and 1850s. The number of petitions increased further in the second half of the nineteenth century.

The possibility of appeal in alternative courts was the single most important feature of any colonial regime. As Ebrahim Moosa underlines regarding the colonial justice system in Sub-Saharan Africa, "the incorporation of shari'a within a pluralist legal environment, and the possibility to appeal a ruling based on shari'a, formed a profound challenge to Muslim jurists and the

---

the term qadi. In the Volga-Ural region the term qadi is used only for the three board members of the Orenburg Spiritual Assembly. However, qadi is the legal authority among the Crimean Tatars, and was equivalent to the title of akhund. I decided to use only the term akhund when both terms were used together to refer to local Muslim legal authorities. On Islamic legal authorities in the Crimea see Il'dus Zagidullin, "Osobennosti formirovaniia musul'manskogo 'nasledstvennogo' dukhovenstva v Tavride v 1783-1831 godakh," *Minbar: Islamic Studies* 11:4 (2018), pp. 724–740.

39 GAOO, f. 6, op. 4, d. 8085, ll. 48ob., 49, 49ob.

40 Ibid., 47ob.–48.

41 Crews, *For Prophet and Tsar*.

42 "Proekt polozheniia," p. 565.

status of the shari'a within Islamic thought."[43] In the Russian society, divorce cases could be brought only to the Holy Synod, over which Golitsyn presided from 1803 to 1817. This was the only institution that solved marital discord and divorce cases, and its decisions were final. In the cases of Muslims, akhunds had this legal authority, but Russian authorities, who envisioned the Orenburg Spiritual Assembly as an example of the Holy Synod, ambiguously made it the highest legal authority for Muslims. Thus, Golitsyn's rules stated,

> If akhunds face difficulty or hesitate about their decision on the case, they can present it to the Mufti for a solution. Therefore, muftis can consider the marital dispute cases upon the request of akhunds when the latter are not sure about their decision. The OA can also reconsider a case upon complaints against akhunds if a petitioner claimed that the decision of an akhund was in breach of Islamic law. Muftis present such cases to the OA for the preliminary decision upon which they issue the final decision, which is called fatwa. Therefore, mufti's fatwa is the final legal decision.[44]

Although the legal authority of akhunds was defined as final and Muslims were to appeal to the OA only in extraordinary cases, in the nineteenth century many more lay people began resorting to the OA for the reconsideration of their cases. The OA in turn ordered a more thorough investigation of cases under akhunds' consideration, requesting them and the imams to report on all disputes that they handled. Imams' authority, although defined only as reconciliatory here, would acquire more substantial legal authority in the rules of 1840.[45]

When performing marriage, Muslim clerics had to strictly observe the following rules, which would become the first legal articulation of the duties of the ulama when performing marriage and become the basis for later rules compiled by Mufti Suleimanov in 1840: 1) Parents have to give their consent to the marriage of their daughter and the daughter must have free will to marry; 2) If a woman, whose husband had been missing, wants to remarry, imams have to ensure that she has the right to remarry according to Muslim law, that is, that she is free from marital bonds; 3) In cases when a divorced woman wants to marry another man, imams must ensure that she is divorced according to Muslim law, and a mullah who performed her divorce has to confirm her divorced status. In addition, mullahs and imams have to check that brides and grooms agreed on *kalym* and other monetary obligations from both sides, and that they recorded and signed the details of *kalym*, its content, and amount.[46]

The question of jurisdiction was another important issue that imperial

43 Moosa et al., *Muslim Family Law*, pp. 35–36.

44 GAOO, f. 6, op. 4, d. 8085, ll. 48ob., 49, 49ob.

45 *Sbornik tsirkuliarov i inykh rukovodiashchikh rasporiazhenii po okrugu Orenburgskogo magometanskogo dukhovnogo sobraniia 1836–1903* (Kazan: Iman, 2004), pp. 15–18.

46 GAOO, f. 6, op. 4, d. 8085, ll. 47–47ob.

and colonial authorities dealt with in different Muslim contexts. In his *Rules on Muslim Marriage*, Golitsyn devoted a large section to delimitating the authority of Muslim clergy in marriage and divorce and setting up the limits of jurisdiction. Paragraph 1 stated that "[t]he marital affairs of Muslims dealing with the performance of marriage and legality or illegality of marriage and divorce, which are resolved according to their teaching/religion (*po ikh ucheniiu*), and having no civil consequences (*grazhdanskikh posledstvii*), are submitted to Muslims who are accepted to be their religious authorities." A note to paragraph 1 clarified that "in all these cases, civil authorities must not accept any such petitions or complaints for consideration."[47] However, there were other cases which were defined as civil and, therefore, subject to the jurisdiction of civil authorities. Golitsyn especially mentioned two issues, financial disputes related to marriage (kalym/mahr) and domestic abuse, which were to be considered as civil law cases. Regarding the second one, Golitsyn's rules underlined that a woman could request divorce according to Islamic law, "but beating is a civil law offense (*dela grazhdanskie*) and should be dealt in accordance with general imperial laws (*soglasno s obshchimi zakonami*)." Therefore, he underlined that "it was the responsibility of mullahs to inform civil authorities about cruel behavior of men for the subsequent punishment with the necessary measures."[48]

"Bringing order" to the Muslim family also involved disciplining both Muslim scholars and laypeople. Similar to the regulation of the family in Orthodox community, the state, in pursuit of a more effective religious service, defined the duties and obligations of the Orthodox clergy as well as various punishments in cases of failure to carry out those obligations.[49] These were the measures introduced later into the Muslim community. While the state was negligent about these measures, in the middle of the nineteenth century it made stricter demands that mullahs perform their duties correctly and even began to introduce different measures of punishment, from warning to dismissal from one's position for a few months.[50]

Golitsyn also thought of measures of punishment if mullahs breached these rules. Mullahs, imams, and akhunds, in violation of all the above-mentioned rules, would be subject to trial (*podvergaiutsia sudu*) by the OA and in case they were found guilty, they would lose their religious title (*dukhovnogo zvaniia*). In addition to losing the title, if mullahs performed the marriage of a woman who was already married or of a girl who left her house in secret or was abducted,

47 Ibid., l. 46.

48 Ibid., l. 59.

49 Gregory Freeze, *The Russian Levites: Parish Clergy in the Eighteenth Century* (Cambridge, Mass.: Harvard University Press, 1977); *The Parish Clergy in Nineteenth Century Russia: Crisis, Reform and Counter-Reform* (Princeton: Princeton University Press, 1983).

50 See, for example, Tsentral'nyi gosudarstvennyi istoricheskii arkhiv Respubliki Bashkortostan (TsGIA RB), f. 295 (Orenburgskoe magometanskoe dukhovnoe sobranie), op. 3, d. 1978 from 1845 and f. 295, op. 3, d. 3050 from 1850.

they were also to be tried by civil authorities and punished according to their misdemeanor. If muftis failed to perform their duty, the Ministry of Spiritual Affairs and Enlightenment would send their case to the Ruling Senate.[51]

Golitsyn prescribed rules for the "laypeople" (*prostoliudiny*) too.[52] Common Muslims had their own responsibilities when performing marriage. They had to present to mullahs necessary evidence (*udostoverenie*) about the consent of the bride's parents, about the right of a married woman to be her own guardian at marriage (*raspolagat' soboiu dlia supruzhestva*), and a proof of agreement about *kalym* and other mutual obligations from both sides.[53] As was stated earlier in cases of spousal disagreement, lay Muslims were to apply to local imams and mullahs. A wife could not abandon her house until the final decision was made and until she was allowed to leave it. A wife of a missing person or a girl could not abandon her house to marry a man she wished. A wife could only leave her house to stay with her relatives if her husband beat her but she had to immediately inform the local mullah. Also, nobody could abduct a woman or a wife of another person with the purpose of marriage and nobody could help in such an endeavor.[54]

Golitsyn's proposal to criminalize a certain practice, in this case abduction of a girl or a married woman, was a common colonial practice. Several colonial regimes in different periods of modern history criminalized or outlawed certain practices that were tolerated by the indigenous peoples. As Moosa et al. demonstrate in the case of Sub-Saharan Africa, "Muslim family law in colonial Africa was subject to the repugnancy clause of the protectorate. This repugnancy clause essentially meant that all pre-existing laws would be legally recognized as long as they did not contravene metropolitan standards of 'civilization'." Thus, in both French West Africa and British Africa, issues of women's consent in marriage and prohibitions on child marriage were areas where shari'a practices collided with French and British standards and led to prohibitions and reform.[55] Russian imperial rulers were no exception to such practices. For example, although Kazakhs regarded *barymta* as "a legitimate judicial custom reflecting the Kazakh cultural understanding of wrongdoing, honor, and revenge," the 1822 imperial regulations defined it as robbery or plunder. By criminalizing *barymta*, the Russian administrators hoped to bring about its eventual disappearance.[56]

---

51 GAOO, f. 6, op. 4, d. 8085, ll. 50ob.–51.

52 The distinction between the two (lay people and the ulama) does not really exist in Islamic discourse. The category of "layperson" is essentially a creation of the Russian administration.

53 Ibid., l. 50.

54 Ibid., ll. 50–50ob.

55 Moosa et al., *Muslim Family Law*, p. 41.

56 Virginia Martin, *Law and Custom in the Steppe: The Kazakhs of the Middle Horde and Russian Colonialism in the Nineteenth Century* (Richmond: Curzon Press, 2001), pp. 140–141; V. Martin, "Barymta: obychai v glazakh kochevnikov, prestuplenie v glazakh imperii," in *Rossiiskaia imperiia v zarubezhnoi istoriografii* (Moscow: Novoe Izdatel'stvo, 2005).

Golitsyn's rules suggested that "a girl who left the house of her parents for marriage without parental consent (*dlia proizvol'nogo supruzhestva*) or a married woman who left the house of her husband would receive a punishment prescribed for a vagabond (*brodiaga*) by Russian imperial law. If an ordinary person offers accommodation to such women, he becomes subject to punishment as an accessory (*pristanoderzhatel'*)." The people who abducted or assisted the abduction of a girl or a married woman were subject to trial according to civil law, as violators of civil law. Any marriage performed in violation of any of these rules was considered invalid/illegal. The footnote clarified that if the father of a bride who was abducted or who left voluntarily forgave her and her husband, their marriage remained valid/legal and only the mullah who performed their marriage remained subject to punishment. If theft of property, rape, insult, or other acts that were against the law were also committed at the time of an abduction, the guilty parties would be punished for the additional criminal acts.[57] However, it would be too radical a change to criminalize customary family practices and would be beyond the capacity of the tsarist bureaucracy to implement, so this was the only item that was not introduced later.

As it is possible to observe from these rules, none of them addressed the substantial elements of fiqh on marriage and divorce. Rather, these proposals and the way these rules were formulated demonstrate the methods and approaches that imperial and colonial authorities sought to bring order to the Muslim family in other empires. Hierarchies, definitions and delineations of jurisdictions, appeals, and a set of responsibilities and punishments were methods typically employed by Russian imperial officials too. More importantly, these Rules would provide the basis for the subsequent rules and decrees. The nature of colonial rule is especially seen in the sources that served as the basis for Muslim marital laws and which constituted Part Three of Golitsyn's rules. The Sources in Golitsyn's compilation occupy an important place in the process of the formation of an imperial legal architecture.

The Sources

The third section of Golitsyn's rules titled "The sources from which the explanation of the Rules is derived" include the sources on which, as Golitsyn underlined, the Rules were based. The Rules occupy an important place in the process of formation of an imperial legal architecture for Muslims, because they were built on the previous imperial decrees and opinions and provided the basis for the successive rules and decrees. It was, in a way, the first comprehensive systematization of the existing decrees. The sources in Golitsyn's regulations of Muslim marriage demonstrate not only lack of intention of Golitsyn and Russian authorities to cooperate with the Muslim scholars but also a colonial

57 GAOO, f. 6, op. 4, d. 8085, ll. 51, 51ob., 52.

approach by which many sources in the rules constituted various imperial decrees. In addition, the sources included previous opinions of Orenburg and Tauride muftis.

The sources from imperial officials included excerpts from reports of the Orenburg military governor (from 4 December, 1817), decrees (*ukaz, imennoi vysochaishii ukaz*) of the Ruling Senate (from May 28, 1767; February 1, 1802; and May 5, 1811), decrees of the Emperor (*Vysochaishii ukaz*) from September 22, 1788 directed to the Orenburg governor-general, an excerpt of governor-general of Kherson (from June 28, 1811 and August 7, 1818), and that of the Orenburg civil governor (from March 31, 1819), as well as an excerpt from a report of the head of the Department of Foreign Faiths, which was approved by the Tsar Alexander I. Besides the decrees, the sources also include some previous cases or precedents, for example, the decision of Astrakhan Qadi Mukhtasip Niyazov from July 28, 1821 (no. 109) and the decision of the akhund of Orenburg province's Buzuluk township, Gumer Itkulov, from December 3, 1821 (no. 112). There were several other decisions between 1815–1820, but none of them provided any details in the document nor mentioned what these cases were about.

The above-mentioned decrees became an important basis for Golitsyn's rules. Therefore, the Rules do not represent an independent work of Golitsyn's mind but a careful collection of those decrees that were already introduced for the Muslim community. The earliest decree, from May 28, 1767, was taken from the Decree of the Ruling Senate instructing civil authorities (*svetskie komandy*) not to interfere in the family affairs of Muslims, such as marriage, and to inform Muslim petitioners to apply to their own religious authorities, unless they involved some theft or robbery, which was to be dealt by civil laws.[58] On May 5, 1811, the Ruling Senate confirmed the same idea with another decree, stating that the OA was established only for religious (spiritual) affairs and, therefore, the civil cases, such as a husband's claim on his wife's property or the wife's theft of husband's property, did not fall under its jurisdiction but had to be handled by civil institutions.[59] It was the Russian imperial state that decided on whether an issue was considered to be "religious" or "secular." Criminal cases were more easily defined as "secular." However, there were also religious matters or aspects of family law that were defined as "civil" (*grazhdanskie*) or that were supposed to be resolved through Russian imperial law.

Another decree that Golitsyn cited, which would also be utilized by the OA officials in response to the Muslim petitioners until the end of the imperial regime, was a state decree from September 17, 1796, suggesting that cases of inheritance division after the deceased Muslims had to be dealt by Muslim legal authorities if there was an agreement between the heirs regarding the division. If there was a dispute and disagreement, then they had to be handled

58 GAOO, f. 6, op. 4, d. 8085, ll. 68–68ob.

59 Ibid., ll. 68ob.–69.

in accordance with the general imperial laws on inheritance division.[60] In my reading of almost a hundred petitions involving inheritance division disputes, this was the decree the OA members always referred to in their responses to petitioning Muslims until 1917.

Sources included several reports by Orenburg governors in which they noticed problems that Golitsyn particularly wanted to solve. In one of them, an Orenburg civil governor stated that the Mufti singlehandedly solved family disputes of Muslims, even though he was warned against this.[61] Therefore, Golitsyn was especially interested in establishing a clear hierarchy within the Muslim clergy. According to him, the main duty of parish mullahs would be to reconcile the parties of a dispute, and the main duty of akhunds would be to deal with complex legal cases where simple adjudication and reconciliation was not possible. Since there was no clear hierarchy among the Muslim clergy, Muslims could apply to one akhund, and if they did not like his decision, they could apply to another akhund or even to the Mufti directly. Therefore, Golitsyn took the suggestion of the Orenburg civil governor from March 31, 1819, that Muslims should first bring their cases to mullahs and akhunds whom they chose of their own volition and agreed by all parties.[62]

Islamic sources were referred only as they were listed in the reports from Orenburg and Tauride muftis, so they largely constituted precedents (opinions of muftis from the previous cases). Golitsyn and other authors of the Rules did not consult Islamic sources. Some rules were based on excerpts (*vypiska*) from the reports (*donesenie*) of the Orenburg Mufti (of August 26, 1811 no. 33; of March 15, 1815; and of September 20, 1818) and from the reports of the Crimean Mufti and the Tauride Spiritual Assembly (from April 24, 1811; June 18, 1818; August 5, 1819; and November 21, 1819) as well as excerpts of reports, such as the one from Tauride khatyp Seid Ahmed efendi directed to Moscow mullah Askhabov on December 8, 1810.[63] Among the sources for the above-mentioned reports, we can list a collection of fatwas of the Hanafi school titled *Fatawa al-Bazaziyyah* by Muhammad al-Kurdi al-Bazazi (d. 1423), a Hanafi fatwa collection by Abu Bakr Khwahir Zadah (d. 1090), reference to Tirmidhi (Imām al- Tirmidhi) in an unknown fatwa collection, a book of Hanafi jurisprudence, *Jāmiʿ al-rumūz* by al-Quhustānī[64], *Jamiʿ al-Fuṣulayn* by Imam Ibn Qadhi Samawinah (d. 1420), and a legal Hanafi manual *Al-Durar al-hukkam* by Mulla Khusrow (d. 1480), (or *Al-durr al-mukhtār* by ʻAla al-Din al-Haṣkafi[65]) (d. 1070 AH).[66]

60 Ibid., l. 72ob.

61 Ibid., ll. 75ob.–76ob.

62 Ibid., ll. 76–76ob.

63 Ibid., ll. 68–79.

64 Shams al-Dīn Muḥammad al-Quhustānī (d. 953 h.), *Jāmiʿ al-rumūz al-riwāyah fī Sharḥ Mukhtaṣar al-Wiqāyah maʿa sharḥihi Ghawwāṣ al-baḥrayn fī mīzān al-sharḥayn lil-Mawlá Fakhr al-Dīn ibn Ibrāhīm Afandī al-Qazānī al-Bukhārī* (Bayrūt: Dār al-Kutub al-ʻIlmīyah, 2019).

65 Muhammad Ala al-Din Haskafi, *Durr al-mukhtār sharḥ tanwīr al-abṣār*.

66 GAOO, f. 6, op. 4, d. 8085, ll. 68–79.

Muslim sources were not cited as independent sources but were used in the precedents that were cited in the above-mentioned reports of the Tauride mufti. For example, the fatwa collection by Abu Bakr Khwahirzadah was used to support the opinion of the mufti from June 18, 1818 about the independent legal authority of qadis, stating that "they can perform marriages and terminate them without the permission of muftis and only in case of confusion, need they ask for permission from him. The Mufti can change the decision of the qadi or akhund if he finds out that the decision is taken not according to Islamic law."[67] Finally, there was one reference to an excerpt (*vypiska*, probably referring to an *ayat*) from the German translation of the Qur'an.

Four other Muslims sources were used by the Tauride mufti in his earlier reports, taken from previous cases. It is interesting that these reports dealt with similar cases such as when a husband left his wife and went to a faraway place. The question, evidently, was what a woman should do if her husband did not return after more than three years. The Tauride mufti cited the books of *Fatawa al-Bazaziyyah* and *Jami' al-Fuṣulayn*, stating that "If a man leaves his wife for a prolonged period of time and says that he may not return in three years, he grants his wife the right to remarry; if he fails to return during this period, his wife at the end of the third year can state her desire to divorce, and if she does not express her desire at the end of this period, she loses her right to do so later."[68] In another case, the Tauride mufti referred to the *Jāmi' al-rumūz*, from which he brought Imam Malik's opinion that when a man left his wife without maintenance for four years, the woman could be counted as fully divorced.[69]

The sources of these rules, as we can see, were constituted from a combination of previous imperial decrees and previous decisions (precedents) of the Crimean muftiate. Therefore, this compilation was important because it did two things: first, it compiled the previously issued rules to create a more systematic framework for dealing with Muslim family issues; secondly, this compilation provided a framework for further rules to be introduced later in the nineteenth century. The question as to what extent they were to regulate the Muslim family and marital disputes was a question on which imperial officials of the Orenburg province disagreed, but in any case, these rules would have a lasting impact on Muslim family life. The list and nature of sources also reveal that imperial officials did not seek the cooperation of the ulama to include any sort of comprehensive list of Muslim sources of family law, let alone hear their informed opinion on them.

Translation of the Rules as a Colonial Project

As we have seen, Golitsyn did not consult Muslim scholars or Islamic sources

67 Ibid., l. 69.

68 Ibid., ll. 73ob.–74.

69 Ibid., l. 74.

in the preparation of the Rules but got the approval of the Tauride mufti after the preparation of the Rules. However, he was aware that the approval of at least some respected and influential Muslim authorities was necessary for the implementation of the Rules. In 1824, Golitsyn explained that he had contacted the Orenburg Mufti in 1822 and asked for an opinion from the Orenburg Muslim Spiritual Assembly but did not receive any response from them.[70] Therefore, he decided to solicit feedback from the Crimean Mufti. Golitsyn underlined at the beginning of Section 2 of his Rules that Crimea was a Muslim land which was "closer to Turkey and Persia where the Muslim religion reigns."[71] Having failed to obtain an opinion from the Orenburg mufti, Golitsyn was luckier with the Crimean mufti. As we can see from his letter, the Tauride mufti consulted about the project with the Tauride Muslim Spiritual Assembly and found that the Rules were "in accordance with Muslim marital law."

It is rather odd that Golitsyn's rules and the correspondence with different imperial officials of the Orenburg province mention the Tauride mufti without his name, as an obscure and impersonal figure. In the 1820s, the post of Tauride Mufti was occupied by a certain Hajji Abdurrahim efendi, who was approved in this position in 1816 and was dismissed in 1829. When elections for the muftiate took place in 1816, a certain Seyit Jamil efendi was elected as mufti and Hajji Abdurrahim efendi was third in the election poll. However, based on the account of governors A.M. Borozdin and A.S. Lavinskii, the first candidate was found too young and unreliable, and hence Hajji Abdurrahim was approved as the new mufti. In fact, he had served in the Tauride Muslim Spiritual Assembly since 1794 as Qadiasker (chief judge).[72] Details of his competence and knowledge are unavailable, but we may conclude that the Russian authorities considered him to be a reliable person.

Despite obtaining the approval of the Tauride mufti, Golitsyn realized that he needed to find a way to get the approval of the Volga-Ural ulama for what was basically a fait-accompli. After all, the Rules were to be applied in the Orenburg region, or the region under the jurisdiction of the Orenburg Muslim Spiritual Assembly. "Because Tatars of the Orenburg province, although having the same Muslim law, can in fact also have different traditions (*obychai*)," he found it necessary to find out if the Rules were in accordance with the local Muslims practice. He therefore advised the Orenburg Military Governor Petr Kirillovich Essen to "request the feedback of the Volga Tatars, who are reliable (*blagonadezhnyi*) in their knowledge and impartiality."[73]

The Mufti of the OA, Muhammadjan Khusainov, ostensibly declined to cooperate and even prevented his subordinates, the qadis of the OA, to discuss

70 Ibid., l. 32.

71 Ibid., l. 54.

72 O'Neill, *Claiming Crimea*; Zarema Khairedinova, "Rol' pervykh tavricheskikh muftiev i problem integratsii musul'manskogo naseleniia Kryma v sostav Rossii (1783-1830)," *Vestnik Kemerovskogo gosudarstvennogo universiteta* 65:1 (2016), pp. 67–70.

73 GAOO, f. 6, op. 4, d. 8085, l. 3ob.

the project and express their opinion on it.[74] When there was no response and interest in providing an informed opinion on the part of the Orenburg mufti, Essen decided to solicit the help of some other ulama from Orenburg. On October 23, 1822, Essen ordered his subordinates to invite Abdussalam Abdurrakhimov, a prominent akhund from Orenburg, and Abdurrakhman Muhammadsharifuli, the latter's teacher from Kargaly, to his office to hear their opinion about the Rules. Abdussalam Abdurrakhimov and Abdurrakhman Muhammadsharifuli were not randomly chosen Muslim scholars. They had been cooperating with Russian authorities for a long time. Abdussalam Abdurrakhimov was appointed the first imam of Orenburg when the first mosque was built in 1799.[75] Thanks to his loyal service, he was appointed as the akhund and mudarris of Orenburg in 1805 and received a salary of 150 rubles as a "gift for his services to the Russian state."[76] He received a gold medal for his services in 1814 and his salary was raised several times from 1814 to 1820. He was appointed as a member of an imperial committee for the reorganization of Kazakh tribal autonomy in 1823 and was later appointed as the mufti of the OA in 1825. Likewise, Abdurrakhman Muhammadsharifuli was a member of the same commission for Kazakh affairs and a respected mudarris and imam from Kargaly.[77]

After listening to the Rules, akhund Abdurrakhimov and mullah Muhammadsharifuli underlined that to give a "thorough and solid opinion on this very important matter," they needed a "translation of the Rules as well as the sources on which these rules were based."[78] First, Golitsyn and Essen resorted to the Orenburg Border Commission (*Orenburgskaia pogranichnaia komissiia*) for a translation of the Rules. Created in 1799, the Orenburg Borderline Commission, was "the key state institution, determining the politics on the territory of [the Kazakh] Little Horde" and created to "coordinate the interaction with the Kazakhs."[79] Initially, the Commission appointed Kazakh sultans as Russian officials and as heads of different administrative units such as okrugs and auls, solved criminal and civil cases among Kazakhs, and took part in the

74 Khabutdinov, "Religioznoe samoupravlenie," p. 120; Azamatov, *Orenburgskoe magometanskoe dukhovnoe sobranie*, p. 17.

75 On a tense relationship between Muhammadjan Khusainov and Abdurrakhimov, see chapter 3 of Michael Kemper, *Sufis und Gelehrte in Tatarien und Baschkirien, 1789-1889: Der islamische Diskurs unter russischer Herrschaft* (Berlin: Klaus Schwarz, 1998); also chapter 2 of Danielle Ross, T*atar Empire: Kazan's Muslims and the Making of Imperial Russia* (Bloomington: Indiana University Press, 2020). We can speculate that a complicated relationship between mufti Khusainov and Abdurrakhimov inhibited Golitsyn's attempts in obtaining the approval from the Muslim scholars.

76 Rizaeddin Fakhreddin, *Āthār*, vol. 1, part 7 (Orenburg, 1904), p. 344.

77 See D. N. Denisov's entry in *Islam na Urale: entsiklopedicheskii slovar'* (Moscow: ID Medina, 2009), pp. 19–20; Rizaeddin Fakhreddin, *Āthār,* vol. 1, part 5 (Orenburg, 1904), pp. 241–246 including Muhammadsharifuli's judgement on a divorce case.

78 GAOO, f. 6, op. 4, d. 8085, ll. 7–7ob.

79 Shablei and Sartori, "Sud'ba imperskikh kodifikatsionnykh proektov."

foreign policy in the southern and eastern borders of the empire. By the 1820s, the commission became concerned with the question of better integration of the steppe population into the Russian empire. As Pavel Shablei and Paolo Sartori underline, imperial politics in this period aimed at the "homogenization of its administration and unification of legal norms."[80] On December 21, 1822, the Orenburg Borderline Commission ordered two translators to report to the Orenburg military governor for translating documents into the Tatar language. However, the two translators did not appear useful. One of them declared that he could not undertake the task of translation due to poor eyesight. The second was a septuagenarian and could hardly translate even "easy" texts.[81]

Golitsyn was luckier with two other institutions from which he sought assistance with the translation. One of them was Kazan State University. In early January of 1823, Golitsyn decided to seek the help of the Rector of Kazan State University Grigorii Nikol'skii. The latter requested a Tatar language instructor, Ibrahim Khalfin, to make the translation and asked him to finish it as soon as possible.[82] Khalfin was able to finish the translation of all documents with the sources only by July of 1823, upon which the rector of the university personally reported to the Orenburg military governor on July 23, 1823. He stated that the translation was completed and that it was communicated to the above-mentioned religious scholars.[83] Waiting for too long or without having much hope for Khalfin's translation, Golitsyn also ordered the translation of the same package to the Asiatic Department of the Ministry of Internal Affairs. The translators of that department made two translations, into "Turkish and simple Tatar."[84] Golitsyn sent this translation to the Orenburg governorship on February 11, 1824, to be presented to the attention of akhund Abdurrakhimov and mullah Muhammadsharifuli.[85] However, it took months before the two clerics were able to deliver their opinion "because of the illness of mullah Muhammadsharipov." They finally sent their feedback on this project on April 11, 1824. However, Golitsyn's report and his correspondence with different officials do not provide any information on their feedback.

It is unclear whether akhund Abdurrakhimov and mullah Muhammadsharifuli provided any meaningful opinion on the Rules. Golitsyn had to seek the help of the Orenburg mufti again in 1824. In his letter to the Orenburg military governor Essen from May 13, 1824, Golitsyn mentioned the promise of the Orenburg mufti to send him their opinion on this project and the request of the latter that other ulama "should not be consulted for their lack of knowledge and impartiality." Complaining about the former qadis of the Assembly, he put forth the condition that "if they were consulted," he was to be

80 Ibid., p. 65.
81 GAOO, f. 6, op. 4, d. 8085, ll. 10–10ob.
82 Ibid., l. 18.
83 Ibid., ll. 18–18ob.
84 Ibid., l. 20ob.
85 Ibid., l. 25ob.

relieved of this duty. In response, Golitsyn expressed hope that the current qadis were different people, and if the qadis indeed lacked knowledge and expertise, they could seek the opinions of local Muslim scholars. He finished his letter asking Essen "to request urgent consideration and the opinion of the Orenburg mufti on this project."[86] After the dismissal of Golytsin, Orenburg military governor Essen continued to ask for the opinion (*predpisaniia*) of the Orenburg mufti and the members (qadis) of the OA who were still dragging their feet on engaging in discussions about the Rules for absence of information.[87] The opinion of the Assembly never followed. The mufti died the following month, in July 1824, and in 1825, akhund Abdessalam Abdurrakhimov was appointed as the next mufti. On February 16, 1825, Essen was still complaining to Nelidov, the civil governor of Orenburg, that he was yet to receive any response and information "on the state of affairs" and was questioning "why it was so slow and who was responsible for it."[88]

The long-lasting saga about translating the Rules for the approval of the Muslim scholars and the stalling of the Muslim scholars about their opinion shows an interesting interaction between the Russian authorities and the Muslims. The Russian authorities were trying to find approval for their legal intervention among Muslim scholars, and Muslim scholars demonstrated a passive resistance to that by not providing a satisfactory translation or by avoiding to give an opinion after the translation was done. Even after Abdessalam Abdurrakhimov, who had been collaborating with Russian authorities, became the mufti, the long-awaited approval of the highest Muslim authority did not materialize.

The End of Golitsyn's Project and its Impact

Even though Golitsyn was relieved of his ministerial post on May 15, 1824, the military governor of Orenburg, Essen, pressed civil governor Nelidov to discuss this project with regional authorities of Orenburg province and take some decisions regarding its feasibility. Nelidov wrote that they were finally able to convene a meeting with the presence of all local higher officials. No Muslim scholars, not even akhund Abdurrakhimov and imam Mukhametsharifuli who were consulted and for whom the translation was made, were invited to take part in the meeting. The meeting was convened on February 23, 1825. All the participants listened to the Rules and concluded that, since the scope of Rules was extensive, they were not able to render their opinion without preliminary deliberation over these matters.[89] Therefore, everybody who participated in the general meeting received a copy of the Rules and Nelidov required every one of them to submit their opinions later.[90]

86 Ibid., ll. 32–32ob.
87 Ibid., ll. 33–33ob.
88 Ibid., l. 34.
89 Ibid., ll. 35–35ob.
90 Ibid., ll. 36–37.

Governorship authorities were able to collect the opinions of the meeting participants only in May of 1825. Opinions of officials regarding Golitsyn's rules varied. Some officials admitted that they knew nothing about Muslim laws and that it was better to leave things as they were before. Most of the officials agreed on the adverse impacts of granting mullahs and akhunds absolute authority in the decision of legal matters related to marriage. Several officials mentioned the communal aspect of the resolution of marital disputes and even the decision of divorce. Nelidov was rather critical of Golitsyn's rules. In an essentialist manner, he claimed that many rules for Muslims were already laid down in the Qur'an. For example, he claimed that Golitsyn's rules allowed for an intermediary role of mullahs in family disputes, but "the Qur'an did not contain such a rule." In his opinion, mullahs were ignorant and, if granted such authority, they would be partial (*pristrastnyi*), unfair (*nespravedlivyi*), and would ask for bribes.[91] He noted that there were 2,337 mullahs that were registered in the region (he probably referred to those under the jurisdiction of the OA), and it was necessary to think about "quality and not quantity." Therefore, it was better to leave the situation with the Muslim family as it was: cases of Muslim marital disputes had to be considered by akhunds, rather than mullahs. Nelidov failed to understand that mullahs had been part of the community and also helped in family disputes to their parishioners and could invite an akhund for a majlis or ask for an akhund's expertise when the case was more difficult.[92] He also offered to establish a higher Muslim spiritual administration in St. Petersburg to deal with more difficult cases; and cases that involved monetary disputes (such as kalym) and (marital) violence had to be dealt by civil and criminal courts, respectively.[93] Regarding the authority of mullahs, he also underlined that akhund Abdurrakhimov of Orenburg and imam Mukhammadsharifuli of Kargaly, who were consulted about the Rules, stated that mullahs "were not supposed to deal with legal cases and that such investigations were to be in the authority of akhunds," and, apparently, "only one in a hundred mullahs had the necessary level of expertise for solving legal disputes."[94]

Other arguments of Nelidov were also essentialist and ignored the actual practices. Even though Golitsyn's rules did not contain any rules on divorce, he claimed that these rules would not work for ordinary Muslims because divorces were easy among Muslims and there was no need to make them more complicated. As written in the Qur'an, he claimed that husband and wife could easily divorce when they did not want to live together: "Muslims would

91 Ibid., l. 196.

92 See Garipova, "Where Did the Ākhūnds Go?"

93 GAOO, f. 6, op. 4, d. 8085, ll. 202–202ob.

94 Ibid., l. 203. This is the only information we get to know from the opinions of these religious scholars. The package of opinions of different imperial officials that were attached to the rules and Nelidov's final concluding assessment does not include their opinions. In fact, imam Mukhamedsharifuli himself did not have the title of akhund.

hardly like rules that limit their ability to divorce and force them to overcome so many obstacles (*mytarstva*)."[95] Regarding the rule that Muslims should not engage in abduction of women, "violence in general was prohibited by state laws" and the "decree of 1823 about vagabonds and runaways should not apply to Muslims."[96] He also suggested solutions to the issue of how status of nobility was to be inherited among Muslims by wives and children.[97] Nelidov was not satisfied with Golitsyn's rules because they were vague and suggested substantial interventions. For him, it was desirable that the rules also included the rights and obligations of husbands toward wives and children, and vice versa. Nelidov concluded that Golitsyn's rules were not comprehensive, did not consider many cases (of family and marital problems), constrained some Muslim customs and rights, and even contradicted Islamic law.[98]

Despite Nelidov's final negative assessment of them, the Rules not only systematized previous decrees, but also became the basis for legal regulations for the Muslim community in the subsequent years. The OA was confirmed as the court of appeal to which Muslims could apply if they had family disputes and if mahalla imams could not solve them. Indeed, Muslims began to apply to the OA with different cases on marriage, divorce, and inheritance in the second half of the 1820s and early 1830s. As Golitsyn stated, all Muslim clergy was made subordinate to the authority of the OA. The OA could ask any akhund, imam (or imam-khatyp) to investigate the case anew, render their own decision, and write a report to the OA with a full explanation of the investigation and the final decision.

In December 1826, the State Council reconfirmed that all Muslim clergy was subordinate to the OA in religious/spiritual matters and that all matters pertaining to Muslims that were not religious/spiritual had to be dealt with by civil authorities/courts (*v grazhdanskikh mestakh*). It also decided to confirm the opinion of the former Minister of Spiritual Affairs and Public Enlightenment about Muslim marital affairs, presented by the Orenburg military governor. This held that, following the decrees of March 28, 1767, and May 5, 1811, marital cases of Muslims were to be considered by the court of Muslim authorities only when they pertained to religious questions (*v otnoshenii k religii*). They would be handled by civil authorities if they pertained to civil matters such as stealing of (marital) property or personal insult (*lichnaia obida*).[99] As I explained earlier, Golitsyn's rules included rules on the separation of jurisdiction in Muslim marital disputes between Islamic and imperial civil authorities. As my reading of numerous petitions to the OA between the 1820s and 1910s demonstrates, whenever Muslims applied to the OA with cases that had a "civil component," such as dower and inheritance cases for example,

95 Ibid., l. 197.

96 Ibid., l. 200.

97 Ibid., ll. 200 ob.–201.

98 Ibid., l. 201ob.

99 *Polnoe sobranie zakonov Rossiiskoi imperii, 2-e sobranie*, vol. 1, no. 715, p. 1265.

the OA always redirected them to Russian institutions, emphasizing that these matters were not under the jurisdiction of Muslim authorities.

At the meeting where imperial officials discussed how to solve the problem of disorders in the Muslim family Golitsyn and other officials suggested introducing record keeping. They also considered the benefits of introducing civil registries (*shnurovye knigi*) and record keeping of different aspects of marriage, such as kalym and its amount, consent to marry, and the dissolution of marriages, to prevent further disputes.[100] Golitsyn suggested that family disputes which were solved verbally by mullahs might have a written record that could serve as a basis for correct handling of those disputes in the future. At least the cases that were handled by akhunds had to be recorded.[101] The idea of requiring written records resulted in the introduction of civil registry books in 1828. From then on, each mahalla imam would receive two books every year and he had to record the information on Muslim rites such as births, deaths, marriages, and divorces. In addition, imperial officials decided to introduce other ways to exert more control over issues of Muslim marital affairs. Beginning in 1836, the qadis at the OA were obliged to keep records of all cases that they received and to provide details on their resolution. These journals allow us to keep track of all cases that Muslims sent to the OA, the names of the akhunds and imams to whom the cases were sent for consideration, the summaries of the cases, and their resolutions, up until 1917. The new regulations, which were introduced later into the Muslim community, aimed to bring homogeneity with other communities of the empire. This is especially reflected in the extension of several laws to the Muslim community in 1835. Imperial law on minimum marital age for brides and grooms (where marriage age among Muslims would become a civil issue because it was set by imperial law as such), the law on the wives of exiles and their ability to divorce and remarry, and the law on marriage of the army recruits would apply to the Muslims just as to the other subjects of the Russian Empire.[102]

Golitsyn's rules were important as they outlined the obligations of imams at the time of performing marriage ceremonies. These obligations became the basis for another compilation on Muslim marital issues which was prepared by mufti Gabdelwahid Suleimanov in 1840. Like Golitsyn's rules, it addressed two main concerns—questions addressing the so-called disorders in marital issues and the question of authority. To an extent they would repeat Golitsyn's rules and extend them further by bringing up more regulation. As Golitsyn suggested, before performing marriage, the imam had to collect information about the bride, such as whether she was in a legal marriage with somebody else, whether she was legally free from previous marital bonds if she was married before, and whether she expressed her consent to the present marriage. As Golitsyn's

100 GAOO, f. 6, op. 4, d. 8085, l. 61ob.

101 Ibid., l. 61ob.

102 D. Iu. Arapov, *Islam v Rossiiskoi imperii (zakonodatel'nye akty, opisaniia, statistika)* (Moscow: Akademkniga, 2001), pp. 114-116.

rules underlined, the imam was also required to make sure that *kalym/mahr* was agreed upon (to ensure the absence of disputes about the kalym), and he had to record the sum of the prompt and the deferred parts into the civil registry book. The new rules also included new imperial laws. For example, the imam had to ask about the age of the bride and groom and check if they reached the marital age according to the imperial law of 1835. Besides these, there were several rules expanding the authority of parish mullahs. While earlier mullahs had to play a mediatory role by reconciling the spouses and avoid making in legal judgments and report these cases to higher religious authorities,[103] the 1840 rules allowed imams to perform *khul'* and talaq divorces, and record them in civil registry books.[104] Finally, Golitsyn's and mufti Suleimanov's measures of disciplining the ulama as well as the lay people became the basis for further rules that would determine different measures of punishment for the ulama for failing to properly fulfill their obligations.

Conclusion

Aleksandr Golitsyn is a representative of an epoch which was characterized by "enlightened" governance including more regulation, homogenization, and bureaucratization of state structures and institutions. One way to do this was through creation of different statutes to better manage different confessional communities. Clear definitions of the duties and obligations of community leaders, including clerics, would lead to more efficient management of the growing and diverse empire. These are the concerns that guided many high officials in St. Petersburg and in the provinces. The 1820s and 1830s was a watershed period for these efforts, and Golitsyn's rules are reflective of this era. While Jane Burbank is right to suggest that religious law, in our case shari'a, was something that defined a confessional community and provided it with a set of legal rights and obligations, making each community a legitimate part of the imperial legal rights regime,[105] it was not in fact the correct application of shari'a that bothered such statesmen as Golitsyn but a more or less predictable order of how to deal with family and public "disorders." Golitsyn's rules are important because they systematized the previous rules and offered the basis for new ones for the ulama, to follow when performing marriage and when debates arose in the Muslim family. The Rules provided a more comprehensive guide and, no doubt, more regulation for the Muslim community, which only increased in the following decades.

103 GAOO, f. 6, op. 4, d. 8085, ll. 58ob., 59ob.

104 *Sbornik tsirkuliarov i inykh rukovodiashchikh rasporiazhenii*, pp. 15–18.

105 Jane Burbank, "An Imperial Rights Regime: Law and Citizenship in the Russian Empire," *Kritika: Explorations in Russian and Eurasian History* 7:3 (2006).