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Islamic Modernism, The Hanafi *Mazhab* , and Codification in Aman Allah's Afghanistan

Michael O'Sullivan

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of their actions.¹⁷ Imperial archives necessarily devalue the influence and authority of the horizontal exchanges that *Afghanistan Rising* prioritizes. (And it is no surprise, then, that the bulk of the scholarship since the nineteenth century has done little to change this orientation.) Indeed, sources that highlight the horizontal emerge not from the physical repositories we visit or the countless files we consult but from the questions we ask. Once we start to ask those questions—or are prompted, as in this case, by a colleague's scholarship to contemplate them—then we can begin to search for the sources that will help us illuminate the answers.

Faiz Ahmed's *Afghanistan Rising* is far from exhaustive, but the author knows this. At the end of the volume, after the endnotes and before the index, Ahmed provides us with ample evidence that the story he has told and the narrative he has uncovered is only partially complete. Appendixes A–E thus provide a roadmap for future scholars to follow. “Afghan Works in Islamic Law and Statecraft (1885–1923)” (appendix E), in particular, not only provides an answer for anyone wondering whether early twentieth-century Afghanistan has a legal history but also provides resources to consult, should other questions remain unanswered: What was that legal history like? Where did it draw from Hanafi *fiqh*? Where did it find “modern” inspiration? Where did it chart its own experimental path? And where did these forms of legal experimentation converge? If *Afghanistan Rising* offers one example of what scholars can gain by retraining their focus on a new center and following the careers of the rulers, scholars, and bureaucrats who occupied that center, then Kifayat Allah's response to the education minister's inquiry provides another road to follow. This road does not arise neatly from existing research on Afghanistan's constitutional history, nor does it jump out from the secondary literature on Islamic legal modernism, and it certainly confounds all but the most flexible definitions of area studies scholarship. But like the breadcrumbs that *Afghanistan Rising* not so much scatters but emphatically dumps into appendixes A–E, these sources chart news paths for examining the past and new frameworks for thinking about the future. If readers take away nothing else, then I hope they at least take away this much from reading Faiz Ahmed's work.

Elizabeth Lhost is a postdoctoral fellow in the Society of Fellows and a lecturer in the Department of History at Dartmouth College. Her current book project examines the history of Islamic law and legal practice in nineteenth- and twentieth-century South Asia.

Notes

1. Ahmed, *Afghanistan Rising*, 3; hereafter cited in text.
2. Kifayat Allah, *Kifāyat al-Muftī*, 2:25–40.
3. Kifayat Allah, *Kifāyat al-Muftī*, 2:26.
4. Kifayat Allah, *Kifāyat al-Muftī*, 2:26.
5. Kifayat Allah, *Kifāyat al-Muftī*, 2:28–40.
6. Kifayat Allah, *Kifāyat al-Muftī*, 2:29.
7. Kifayat Allah, *Kifāyat al-Muftī*, 2:29.
8. Kifayat Allah, *Kifāyat al-Muftī*, 2:30.
9. Kifayat Allah, *Kifāyat al-Muftī*, 2:34–35.
10. That is, *Ṣaḥīḥ al-Bukhārī*, book 3, chapter 35.
11. He refers to the “first centuries” (*qarūn-i ūlā*), which I have glossed as the “formative period.” Kifayat Allah, *Kifāyat al-Muftī*, 2:35.
12. Kifayat Allah, *Kifāyat al-Muftī*, 2:39.
13. Kifayat Allah, *Kifāyat al-Muftī*, 2:36–37.
14. Kifayat Allah, *Kifāyat al-Muftī*, 2:36.
15. Kifayat Allah, *Kifāyat al-Muftī*, 2:40.
16. My current book project focuses on these quotidian, everyday concerns.
17. These classifications come from the National Archives of India, the British Library, and the *Selections from the Vernacular Newspapers in the Panjab, North-Western Provinces, Oudh, Central Provinces, and Berar* for January 1880.

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ISLAMIC MODERNISM, THE HANAFI MAZHAB, AND CODIFICATION IN AMAN ALLAH'S AFGHANISTAN

Michael O'Sullivan

Faiz Ahmed's *Afghanistan Rising: Islamic Law and Statecraft between the Ottoman and British Empires* is a landmark contribution to several historiographies. Here the primary concern is to engage with the implications of Ahmed's work for the study of turn-of-the-century Islamic law, not only in Afghanistan but across Islamicate Eurasia. This essay specifically grapples with the implications of two of Ahmed's core arguments: that Afghanistan's constitutional provisions were based pre-

dominantly on Hanafi *fiqh* (Islamic jurisprudence), and represented a “codification” of it.

With state-level activities as his focal point, the picture Ahmed paints is largely one in which the international cadre of Muslim figures associated with Afghanistan’s state-building enterprise—from Aligarh-trained doctors to Ottoman bureaucrats—shared a rough consensus about the norms and assumptions underpinning Islamic law generally and its Hanafi variant specifically. As argued in this essay, this accent on codification and consensus potentially forestalls a deeper appreciation of the tensions endemic to Hanafi legal culture and the controversial status of the *mazāhib* (four Sunni-legal “schools”) in contemporary Islamic intellectual thought. Greater attention to these stresses and strains conveys the fissures at the heart of Aman Allah’s endeavor, which eventually undermined his reign.

If Afghanistan’s place in this wider legal canvas of Islamicate Eurasia was once poorly represented, we have Ahmed to thank for filling in the contours, and with such empirical and theoretical panache. No longer can Afghanistan be seen as merely the passive receptacle of Islamic legal ideas elaborated elsewhere and transplanted to the country, nor does it fit the mold of Kemalist Turkey and Pahlavi Iran. Now we are forced to think of the country as productive of new Islamic legal realities, which, though drawing inspiration from models originating in British India and the Ottoman Empire, achieved something unique. However, for the historian of Islamic law two questions arise: first, What was the “Islamic” character of this achievement and how “Hanafi” was it?; and second, Is it proper to describe Aman Allah’s code as a “codification” of *fiqh*?

Modernist-Heavy, Hanafi-Light

With great skill, Ahmed demonstrates that Afghanistan represented a unique laboratory for testing the viability of Hanafi *fiqh* as the legal blueprint for a modern state. This reimagining of the Afghan state’s legal pedigree simultaneously opens up a space for work that contests the statist narrative by looking beyond the state itself and the frictions prevalent among Aman Allah’s framers. As we turn attention away from the state, it is evident that more specificity is needed when describing Aman Allah’s project as one of state-sanctioned Hanafism. In particular, with Ahmed’s book as the model, future research must labor to integrate Afghanistan still further into the fraught intellectual landscape in which proponents of the Hanafi *mazhab* operated.

If the historiography tends to portray Islamic law as something of a transimperial ecumene in which Muslim actors (and select non-Muslims) with the requisite legal education could collaborate in a common lexicon, then considerably less attention has been paid to the divergences and disruptions that worked to “territorialize” Hanafi *fiqh* from the nineteenth century, if not earlier. Far from being euphonious in tone, Hanafi legal culture in this epoch was riven with divergent institutional trajectories and incompatible intellectual assumptions, especially in the Ottoman Empire and colonial India, which as Ahmed recognizes were the two most influential juridical models for the Afghan legislative project between 1885 and 1929. This occurred because of complex historical processes as geographically and temporally disparate as early modern Ottoman and Mughal legal reforms, the formation of Anglo-Muhammad Law, the compilation of the Ottoman Mecelle, the proliferation of new impresarios of Hanafi *fiqh* with irreconcilable positions on matters of both *‘aqidah* and *mu‘amala*, and finally the growth of anti-*mazhab* Islamic orientations across this space.¹

All of this ensured that the protagonists of *Afghanistan Rising* endorsed incompatible views about the viability of Hanafi legal traditions. This was all the more so because most of these figures were Islamic legal modernists who regarded Islamic law—or at least its living custodians, the ulema—as a source of controversy, if not outright derision. Some of them even saw Islamic law as a stumbling block to those two words Muslim observers of Aman Allah’s Afghanistan used repeatedly in their writings: *madaniyyāt* (civilization) and *taraqqī* (progress). When Muhammad Hussain Khan, an Aligarh graduate and employee of the Afghan Ministry of Public Instruction, hailed Aman Allah’s economic reforms as a fulfillment of Islamic principles, he intended not the canonical teachings of the Hanafi *mazhab* but the Islamic modernist trope of the “spirit of Islam.”² As such, to speak of Aman Allah and his “Hanafi jurists” may be a little misleading.³ Such a term demands disaggregation, as it runs the risk of presenting all these men as individuals with a traditionalist Hanafi legal training. Even more compelling than the argument that Afghanistan was an expression of “Islamic legal modernism in power” (in Ahmed’s wonderful phrase) is the reality that “Islamic law” meant irreconcilable things to the actors themselves. What makes Aman Allah’s Afghanistan singular is the intersection of all of these competing visions in one space.

As one earlier reviewer has pointed out, charting the connections between Afghan, Indian, and Ottoman

actors does not in itself demonstrate the contributions of individual actors to Aman Allah's Law Codes.⁴ These fissures can be briefly demonstrated with reference to the educational trajectories of three figures involved with Aman Allah's project: the Ottoman lawyer Osman Bedri Bey; the Indian teacher Dr. Abdul Ghani; and the Indian *qadi* Haji Abd al-Razzaq Khan. At Istanbul's Imperial Law School, Bedri Bey's first year would have comprised a training in *kalām*, *tafsīr*, *akhlāq*, *usul al-fiqh*, and the Mecelle, but these were followed by a deep training on Roman law, European civil law, and modern economics.⁵ Ottoman Jews and Christians trained at the law school studied the same curriculum,⁶ just as Hindu and Parsi judges and elite families in British India also possessed a working knowledge of Islamic law.⁷ Furthermore, Bedri Bey's tenure in the Ottoman Nizamiye courts was emblematic of a new breed of legal professional unique to the late empire in which Islamic legal training was largely pro forma, albeit entangled in "secular" legal activity.⁸ Therefore, to say Bedri Bey was engaged in the creation of a modern state-building project "under the banner of building an Islamic rule of law" may not adequately convey the precise character of his schooling in Islamic jurisprudence (273).

Dr. Abdul Ghani is another figure in *Afghanistan Rising* whose education in Islamic law appears minimal. To be sure, before his medical education at Cambridge, Ghani spent his early years at Islamia College in Lahore, founded by the Anjuman-i Hīmāyat-i Islām, which taught its associates the rudiments of Quran, hadith, and *fiqh*, and advocated a pietistic brand of labor, thriftiness, and lay preaching.⁹ Ghani served as head of Islamia College for three years in the late 1890s (225). Though it boasted the support of Islamic modernists like Muhammad Iqbal, its leaders deliberately pitched themselves against Sayyid Ahmad Khan's brand of Islamic modernism, which they regarded as materialist in inspiration.¹⁰ In fact, during a lecture given in 1893 a founder of the *anjuman*, Nazir Ahmad, insulted Sayyid Ahmad Khan as a materialist (*nechari*) and called Aligarh's Anglo-Muhammadian College *nechargarh* (the abode of materialism).¹¹ If he harbored such attitudes—and as head of Islamia he doubtless did—Ghani scarcely would have endeared himself to his Aligarh associates in Kabul. What he did share with the Aligarhis, however, was an education that over time deprioritized Islamic law, while privileging training in the modern sciences.¹²

In a category further removed from Osman Bedri Bey and Abdul Ghani was Haji Abd al-Razzaq Khan, a student of Rashid Ahmad Gangohi, among the greatest

scholars associated with Deoband seminary. After emigrating to Kabul during the First World War, Haji Abd al-Razaq Khan was appointed by Emir Habib Allah to the illustrious legal post of *mizān al-tahqīqāt al-sharī'a*, a testament to his expertise in *fiqh*.¹³ In 1916 he published, along with two Afghan scholars, a work on the five pillars of Islam according to the canonical texts of Hanafi jurisprudence.¹⁴ This work conforms more to the model of the "Hanafi jurist" Ahmed invokes, but we should also situate the text within a particularly Deobandi lineage. This can be detected in many places, not least in the section on Afghan commercial customs reprehensible according to the example of the Prophet and the dictates of the Hanafi *mazhab*.¹⁵ Among those customs was selling items of unequal weight and measure, which violated legal rules governing *ribā*.¹⁶ Upholding *ribā* bans was something that greatly troubled contemporary Deoband scholars, and it distinguished them from Islamic modernists in India.

The influence of a traditional legal scholar like al-Razzaq is detectable in Afghan government legislation in the 1920s, such as the statutes governing commercial disputes in "sharia courts."¹⁷ Although they do not reference Hanafi texts, these statutes have more in common with al-Razzaq's treatise than most Afghan government legal handbooks of this period, even if they were more willing to accommodate "customary" economic transactions than al-Razzaq was, including delayed sales and transactions involving commercial paper (*sanad*). Nonetheless, despite his work's earlier patronage by the Afghan court, Haji Abd al-Razzaq Khan does not seem to have played a direct hand in Aman Allah's legal projects, perhaps another reflection of the emir's marginalization of traditional legal scholars.¹⁸ Therefore, with Islamic law's inconsistent presence in so much legislation, and the actors' uneven mastery of the Hanafi tradition, one wonders whether it is beneficial to describe these developments as "codification," a subject taken up in the next section.

Compilation, not Codification

Another important argument put forward in *Afghanistan Rising* is that the "Aman Allah Codes should be considered one of the twentieth century's first episodes of Islamic legal modernism in power, defined as a statist project by Muslim jurists to promulgate a uniform body of national laws via the codification of Islamic jurisprudence (*fiqh*)" (209). This is a much-needed riposte to the argument that Islamic law was antithetical to modern state building, and codification an "impossible" endeavor contrary to "authentic" sharia (229–30).

Scholars of Islamic law would do well to follow Ahmed and eschew the self-defeating authenticity trap.

With that said, if by codification we mean the creation of a civil code where the state “determines what law is and that state law is the highest form of law,”¹⁹ one would assume that the state acquired a monopoly of interpretation over jurists (both those appointed by the state and those outside its remit) and constrained their decision-making powers. Although colonial legal experts, Ottoman state-appointed legal committees, and Aman Allah’s “jurists” might speak in the vein of “codification” (*tanzīm*), recent work has shown that there was a gap between the pretense of codification and actual implementation, even in British India, long seen as a site where the colonial state codified “Islamic” and “Hindu” law.²⁰ To emphasize this is not to brush aside the Islamic character of Aman Allah’s codes. It is instead to apply a degree of healthy suspicion to claims made by the Afghan state to have monopolized Islamic law, a posture that minimizes the cacophony of other Muslim voices that, for better or worse, disagreed with Afghanistan’s trajectory throughout the 1920s.

Instead, one might argue that the saga of Islamic law in Aman Allah’s reign conformed more to trends discernible in other Islamicate contexts, both colonial and noncolonial, from the early nineteenth century. In all these instances, codification necessarily presumed a bifurcation between sharia courts and Islamic jurisprudence, on the one hand, and new “secular” legal forums and codes, on the other. In practice, the bifurcation was much messier, with Islamic and European legal texts and institutions intermeshed. Still, while Aman Allah’s constitution might be usefully compared to earlier precedents like the Ottoman Mecelle, we have to be clear about the circumstances surrounding the creation of that digest. Much productive debate has raged over whether the Mecelle was a codification of “Hanafi *fiqh*” or merely a replication of the French Civil Code.²¹ Yet, even if we err on the side of the former position, we must be careful to not take the Mecelle’s authors at their word and say that European “influence” was absent: the reality is that the text was used in the newly created Nizamiye Courts, an institution distinct from sharia courts and without precedent in the empire. In a word, the Mecelle was expressive of legal bifurcation, just like Aman Allah’s “code.” Whether either represented codification remains debatable, however.

In this sense, the Islamic content of Aman Allah’s project may best be described as a compilation, rather than a codification, an undertaking similar to that of

semiofficial actors in Egypt, the Ottoman Empire, and India to create Islamic legal handbooks comprising rulings on everything from commercial to family law.²² In saying this, I am not arguing that Islamic law is inherently inimical to codification, but rather, following Lena Salaymeh, that attention to state-led codification makes us overlook local responses to codification and the vibrancy of nonstate legal traditions.²³ An examination of the always protracted, regularly transregional Hanafi *fiqh* debates in this period—both in Afghanistan and across Eurasia—reminds us of Rudolph Peters’s assertion that *fiqh* texts “do not resemble law codes. They contain scholarly discussions, and are, therefore, open, discursive, and contradictory.”²⁴ And since, as Ebrahim Moosa has shown, we know so little about the intellectual landscape of traditional Islamic legal scholarship in South Asia²⁵—let alone Afghanistan—we have to be careful to apply the label of codification.

Furthermore, the accent on an Islamic modernist codification does not sufficiently account for “the traditional ulema and the Southern tribes [who] remained outsiders to the constitutional order.”²⁶ For those members of the Afghan traditional ulema who did not enjoy state patronage and who were inspired by the Bareilwi movement in India, the Deoband and Aligarh background of Aman Allah’s jurists would have aroused much hostility. Still more, while the 1923 Constitution was in large measure based on Hanafi interpretations, it did not decree the Hanafi *mazhab* as the official *mazhab* of the state, something that became a highly contentious issue between traditionalist and the modernist ulema as the 1920s rolled on.²⁷ Without a doubt, the narrative of Aman Allah’s failure has been overblown, but it is undeniable that Aman Allah’s constitution “did not include the majority of key stakeholders who had the means to threaten any constitutional order that did not secure their interests.”²⁸ After all, the convening of the *Loya Jirga* throughout Aman Allah’s reign reflects just how intensely traditional legal scholars rejected the legal rulings of government-appointed Islamic modernists.²⁹ Ultimately, for all of Afghanistan’s importance to Islamic modernists, we must remember it was also an arena where interwar Indian Muslims associated with an array of other *masālik* (orientations) sought to project their own visions of Islam, in particular their fears of *lā-mazhabī*. That term encompassed the spectrum from Soviet “atheism” to those Muslims rejecting the four Sunni *mazhāhib*, whether of the Saudi or Islamic modernist variety.³⁰

Finally, one can only applaud *Afghanistan Rising’s* argument for a more “complex genealogy” of Afghan

state law, one that does not exclude borrowing altogether, but is largely Islamic-endogenous in inspiration (217). But we should not be unduly bothered by external borrowings: contemporary *fiqh* texts do contain references to European works. Thus, it might be a slight overstatement to say that Aman Allah's jurists engaged "the challenges of modern state building from within the Hanafi legal tradition, not from outside it" (234). Some Afghan jurists certainly portrayed matters in these terms: in his biography of Abu Hanifa, Burhan al-Din Khan Kushkaki, an employee of the Ministry of Education, used much of his prologue as a screed against European and "Christian" laws.³¹ Despite this, Hanafis across Eurasia read widely from various Islamic and European intellectual traditions, and for every posturing purist like Kushkaki, there were stalwart Hanafis like Ahmad Riza Khan or Muhsin al-Mulk—one a traditional legal scholar, the other an Islamic modernist—who moved readily between these domains.

In the end, *Afghanistan Rising* reminds us that, whether populated by modernists or traditionalists, the Hanafi *mazhab* was a broad church, though no less acrimonious and febrile for that. Ahmed can only be congratulated for a book that unites so many fraught historiographical issues in the study of Islamic law around a single coherent narrative and acts as a springboard for pursuing afresh themes that have long preoccupied historians of modern Islam.

Michael O'Sullivan is a Prize Fellow in Economics, History, and Politics at the Center for History and Economics at Harvard University.

Notes

1. Burak, *Second Formation*; Pirbhai, "Historiography"; Guenther, "Hanafi Fiqh."
2. Khān, *Afghān Bādshāh*.
3. Ahmed, *Afghanistan Rising*, 229. Hereafter cited in the text.
4. Fuchs, review.
5. Mehmedoğlu, *Tanzimat*, 205; İhsanoğlu, *House*, 46–49.
6. Campos, *Ottoman Brothers*, 1.
7. Chatterjee, *Negotiating Mughal Law*.
8. Rubin, *Ottoman Nizamiye*, 57.
9. 'Alī, *Anjuman-i-Himayat-i Islam*.
10. Sevea, *Political Philosophy*, 100.
11. Ahmad, *Fitratulla*.
12. Wide, "Refuge of the World," 125–34.
13. Aybak, *Khāfirāt*, 125.
14. *Sirāj arkān-i al-Islām*. Haji Abd al-Razzaq Khan signed his name "mizān al-tahqīqāt al-sharī'a" at the conclusion of this work.
15. *Sirāj arkān-i al-Islām*, 135–36. For more on Gangohi's attitudes toward custom, see Ingram, "Crises of the Public."
16. *Sirāj arkān-i al-Islām*, 139–40.
17. *Nizām-nāmah-i mahkamah-i sharī'a dar bāb-i mu'āmalāt-i tijārati*.
18. Indeed, al-Razzaq's position as *mizān al-tahqīqāt al-sharī'a* was brought to end during Aman Allah's reign and he was replaced by the modernist scholar Maulvi Abdul Wasay Kandahari. Olesen, *Islam and Politics*, 140.
19. Peters, "From Jurists' Law," 88.
20. Stephens, *Governing Islam*.
21. Rubin, *Ottoman Nizamiye*, 30–31; Ayoub, *Law, Empire, and the Sultan*, chap. 4.
22. Peters, "From Jurists' Law," 89.
23. Salaymeh, "Historical Research," 760.
24. Peters, "From Jurists' Law," 86.
25. Cited in Tareen, *Defending Muhammad*, 26–27.
26. Parsalay, "Making the 2004 Constitution," 72.
27. Parsalay, "Making the 2004 Constitution," 73.
28. Parsalay, "Making the 2004 Constitution," 71.
29. Olesen, *Islam and Politics*, 138–42.
30. Nizami Dihlavi, *Qadīm-o-jadīd*, "waw"—"zay."
31. Kushkaki, *Tuhfat al-amān*.

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SUCCESS, FAILURE, AND OTHER HISTORICAL CRAFTS

Faiz Ahmed

On the morning of August 17, 2019, a remarkable gathering of intellectuals coalesced in a modestly sized auditorium on the sprawling, tree-lined campus of Kabul University, Afghanistan's premier institution of higher

education for nearly a century. Assembled were primarily students and scholars from Kabul, followed by a handful of major cities in Afghanistan, in addition to scholars from India, China, Pakistan, Iran, the US, UK, and EU. The purpose of their gathering was an academic conference to reflect on the centennial of Afghanistan's independence from Britain, the meaning(s) of Afghan independence then and now, and how history might inform a present fraught with uncertainty. Hosted by the Afghanistan Centre at Kabul University, the conference was organized in timing and theme to commemorate 100 years since Afghanistan's first national Independence Day celebration (*Jashn-i istiqal / Da Afghanistan da khpalwakey wra*) on 28 Asad 1298, or August 19, 1919, which has largely remained the country's official Independence Day holiday ever since.¹

If participating in that conference, at that time and place, was among the greatest honors of my career since the publication of *Afghanistan Rising*, this Kitabkhana roundtable stands right beside it. Six distinguished colleagues have combined their expertise to provide a masterful "3D" perspective on the book. No less breathtaking for the author than peering over Kabul from many of its famed hilltops, the panoramic vistas offered by the commentators owe to their expertise and insights from at least six different vantage points: (1) the social and economic history of Afghanistan and British India (Shah Mahmoud Hanifi, "Local Experiences of Imperial Cultures"); (2) imperial citizenship and nationalism in the late Ottoman, Habsburg, and Russian Empires (Leyla Amzi-Erdoğdular, "Inter-Islamic Modernity at the End of Empire"); (3) Islamic law and legal praxis in colonial South Asia (Elizabeth Lhost, "Of Horizontal Exchanges and Inter-Islamic Inquiries"); (4) diasporic networks, legal pluralism, and Muslim sociolegal history in Southeast Asia and the Indian Ocean (Nurfadzilah Yahaya, "Juridical Pan-Islam at the Height of Empire"); (5) intellectual history in the modern Middle East and Islamic world (Michael O'Sullivan, "Islamic Modernism, the Hanafi *Mazhab*, and Codification in Aman Allah's Afghanistan"); along with (6) a dexterous introduction by Neilesh Bose ("The History of Afghanistan as Global History") situating this roundtable within recent scholarship on decolonization, migration, and legal history in the age of modern empire and a rapidly shrinking world more broadly.

What follows is a reply to my colleagues' perceptive observations, identified lacunae, and critiques, all of which I benefited from and am sincerely grateful for. And with a few exceptions, I find myself agreeing with the majority of their comments, as follows.