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Key Ideas in Islamic Law

der »Supplikationen«, wie dies mehrere Autoren postulieren (vgl. Würgler, 48, der die Denunziation als »Sonderfall der Supplik« bezeichnet; ähnlich Nubola, 67–69 und Härter, 255–258). Gerade in den Fällen von »Justiznutzung«, in denen der Obrigkeit deviantes Verhalten von einer namentlich genannten Person in Briefform gemeldet wurde, liegt formal tatsächlich häufig eine Supplik vor (Verwendung verbaler Demutsbezeugungen gegenüber dem Adressaten, Schilderung der Vorfälle, die zu dessen Anrufung als letztem Ausweg führten sowie Bitte um Abhilfe). Bei anonymen Anzeigen ist regelmäßig nicht einmal mehr diese formal-strukturelle Ähnlichkeit mit der Supplikation gegeben. Und inhaltlich ist wohl eine grundsätzliche Differenz zwischen der Anzeige, mag diese anonym sein oder nicht, und der Supplikation festzustellen. Der Supplikant will unabhängig vom Kontext, in dem die Bitte artikuliert wird, stets etwas *für* jemanden erreichen: für sich selbst oder (wie es Renate Blickle anhand der Interzession thematisiert) für eine nahe stehende Person. Die Anzeige dagegen richtet sich primär *gegen* jemanden, erst in zweiter Hinsicht ergibt sich ein Zusatznutzen für den Anzeiger (so die Entlastung vom gewalttätigen, ›liederlichen‹ Ehemann, die Disziplinierung des ›unnützen‹ Sohnes, die Absetzung eines korrupten Amtsträgers). Funktional mögen gewisse Ähnlichkeiten gegeben sein, wie die Information für die Obrigkeit; die Unterschiede treten jedoch klar hervor. Heutzutage käme niemand auf die Idee, die Anzeige gegen einen Dritten wegen einer Verwaltungsübertretung und die Bitte um einen Druckkostenzuschuss für eine Dissertation in einen Topf zu werfen – für die Frühe Neuzeit sind vergleichbare Bedenken geringer ausgeprägt.

Es ist das große Verdienst des Sammelbandes, dem Leser nicht nur die vielfältigen Auswertungsmöglichkeiten der Quellengattung »Supplikation« exemplarisch und auf hohem Niveau vor Augen zu führen, sondern zudem den Blick auf die italienische Forschungslandschaft zu erweitern.

Martin Schennach

Key Ideas in Islamic Law*

Introduction

History is essential for understanding, and in today's difficult climate there are few areas which are in greater need of understanding, particularly for non-Muslims, than Islamic law. Yet, in Chibli Mallat's words: »A history of Islamic law, let alone of Middle Eastern law, is yet to be written.«[1]

Indeed, as Wael Hallaq points out in his introduction,[2] our level of knowledge of the most important part of the history of Islamic law, its origins and early evolution, is surprisingly low, despite considerable improvements in recent years. The difficulty is increased by the lack of a general monograph, as the recent scholarship which has cast new light on some areas and disproved earlier ideas in others, making »classic« works such as those by Coulson and Schacht largely out of date and misleading in many respects, is mostly scattered in journal articles and book chapters. Those monographs

* Wael B. Hallaq, The Origins and Evolution of Islamic Law, Cambridge, New York: Cambridge University Press 2004, ix, 246 pp., ISBN 0-521-80332-2; this review has benefited from that by Professor William Ballantyne, ›Wael Hallaq: The Origins and Evolution of Islamic Law‹, in: Journal of Comparative Law 1 (2006) 208.

1 C. Mallat, ›From Islamic to Middle Eastern Law‹, in: American Journal of Comparative Law 50 (2003) 699 at 700.

2 1–2.

which do deal with some aspects of the subject focus on more specialist topics.

This book constitutes an attempt to fill that gap, the author's aim being to sketch the outlines of the formative period, presenting a general survey of the main issues in the light of modern scholarship, much of it the author's own.

The Content

The written content is preceded by two/three maps.[3] The introduction is followed by eight chapters and a conclusion, plus several additional sections: a glossary, short biographies, bibliographies, suggested further reading and an index (all the additional sections are very useful apart from the index, which could have been fuller). Most chapters terminate with a helpful summary and conclusion.

Chapter 1 (»The pre-Islamic Near East, Muhammad and Quranic law«) is concerned with the historical and cultural background and the time of the Prophet himself. A convincing claim is put forward that, contrary to the former »Orientalist« view which regarded Arabia as a primitive backwater, the »cradle of Islam … [was] part and parcel of the general culture that pervaded the entire Near East since the time of Hammurabi«,[4] a conclusion of enormous importance for the nature of Islamic law and its development.

Chapter 2 (»The emergence of an Islamic legal ethic«) deals with the period immediately after the death of the Prophet. It looks at the »*qadi*s-cum-administrators« or »proto-*qadi*s«; consensus, based in Arabian tribal practice; established practice with its concomitant idea of *'ilm*, the knowledge which enabled one to apply such practice; »*ra'y*«, discretionary opinion; and the beginnings of the idea of *ijtihad*, the »effort«, based in practice, which enables the deduction of a solution through the use of *ra'y*.

Chapter 3 (»The early judges, legal specialists and the search for religious authority«) continues the story of the judges and the court systems as a greater degree of legal specialisation took place, and recounts the way in which a class of legal specialists emerged, separate from the ruler's administrative apparatus, »distinguished by their knowledge, and their knowledge alone«.[5] These changes occurred against a background of a rise in Prophetic authority and the increasing use of Traditions (*hadith*s) as an indication of what that authority required. The chapter ends with a preliminary mention of a major subsequent theme, the traditionist-rationalist conflict.

Chapter 4 (»The judiciary coming of age«) deals with the judicial appointment system devised in the mature Islamic Empire, judicial independence, the composition and procedure of the court and the extra-judicial *mazalim* tribunals.

In Chapter 5 (»Prophetic authority and the modification of legal reasoning«) the author looks at various legal phenomena. He picks up the theme of Traditions, examining the background against which *hadith*s came to predominate over »practice-based *sunna*«, then considers the further development of consensus, *ijtihad* and *ra'y*, and Shafi'i's role in the formulation of legal theory, a role which is too often misrepresented and exaggerated.

Chapter 6 (»Legal theory expounded«) describes and analyses »the emergence and fundamental articulation of legal theory«. The author starts by discussing »the Great Synthesis« (his own expression) of rationalist thinking, relying on human reason, and the traditionalist method, relying on *hadith*. As the Empire expanded,

3 »Two/three« because the »third« is tantalisingly without a title and must, presumably, be a continuation of the second, but this has to be deduced from examination.

4 25.

5 77.

guidance was needed in new areas and for new converts, who, unlike the Medinans, for example, could not rely on knowledge of what the Prophet's *sunna* actually had been; and the class of peripatetic scholars which grew up needed a documentary source on which to base their teaching.[6] In the next section we have a development of legal theory, including key ideas such as *ijtihad*, *ikhtilaf* (plurality of opinion), *qiyas* (reasoning by analogy), *ijma'* (consensus) and various techniques employed to deal with problems of language and the transmission of texts. As elsewhere in the work, the author's explanation of the development of concepts is always linguistically precise, showing the ways in which words were used at different periods, in different places and by different people, and the way in which those concepts evolved to what they are today.

Chapter 7 (»The formation of legal schools«) traces the development of the schools of law (*madhhab*, plural *madhahib*) (1) from scholarly circles to personal schools (»when a leading jurist attracted a loyal following of jurists who exclusively applied his doctrine in courts of law or taught it to students, or issued *fatwa*s in accordance with it«);[7] and (2) from personal schools to doctrinal schools, one of the characteristics of which is the possession of »a cumulative doctrine of positive law«,[8] a doctrine which relies »on an interpretive methodology or on an identifiable and self-sufficient hermeneutical system«.[9] In this chapter the author also looks at the reasons for the success of those schools which survived and the failure of those which did not, as well as their diffusion. He draws particular attention to the unique nature of the schools in world legal history, and to a vital consequence of their formation, the fact that »legal authority became epistemic rather than political, social or even religious. … In other words, a masterly knowledge of the law was the determinant of where legal authority resided«, and that therefore »legal authority never resided in the state«.[10]

Chapter 8 (»Law and politics: caliphs, judges and jurists«) brings together many of the themes mentioned so far to look at the symbiotic relationship between the ruler and the law, a relationship in which »there always remained a point of friction between worldly, secular power and religious law« and which was therefore »constantly negotiated«.[11] The author's vitally important conclusion is, however, that: »On balance, if there was any pre-modern legal and political culture that maintained the principle of the rule of law so well, it was the culture of Islam.«[12]

The Conclusion reprises the main themes of the book, stressing key points such as the unique nature of Islamic law: a »religious law that was at once the law of the body politic«,[13] the salient points of the development of traditionist reasoning and its true significance, and legal methodology. Notably, the author returns to the non-state nature of Islamic law, stressing the non-governmental source of legal rules (»Never could the Islamic ruling elite, the body politic, determine what the law was.«)[14] He expands on this theme by pointing out that there was a true rule of law, reliant on the *madhhab*s; and that, tragically: »The dismantling of Islamic law and the religious legal institutions during the nineteenth and early twentieth centuries automatically meant the decimation of whatever rule of law there was in that traditional society.«[15] The consequences are, of course, profound and are still very much with us.

6 126.
7 155–156.
8 156.
9 163.
10 165. See also 204: »the uniqueness of the doctrinal schools in world legal cultures«.
11 187.
12 193.
13 195.
14 204.
15 205.

Some Quibbles and a Suggestion

Like any other work, the book is not perfect, and will not wholly please everyone. Some may complain, for example, that the question of outside influences on Islamic law is not dealt with in any great depth, other than the discussion of the general context of legal development. For this reviewer, though, the main quibble is the way in which the author presents his knowledge. The book is very scholarly, an advantage of course, but at the same time it creates something of a difficulty, in that the author defends and justifies his positions at some length, resulting in a text which is quite dense and at times not as easy to follow as it might be, since one must absorb not only the historical development but the academic controversies surrounding it. If he had concentrated on the story as he sees it, and left the reader to delve into the controversy if she wished to do so by reading the more specialised works, there would have been a significant increase in clarity and ease of reading in many passages. This viewpoint may reveal a personal bias, as Professor Hallaq has already convinced this reviewer of the validity of his views. In addition, there is a significant amount of repetition, some of which is understandable, but which could have been reduced by a closer revision of the text.

The result is that, although the book is described as an introduction, and can certainly be considered as such in a sense, for it introduces the reader not only to the fundamentals of the story but also to the academic debates, it would be quite hard going for an absolute beginner in the field. Therefore, if a suggestion may be made, it would be useful for teaching purposes and, more generally, the spread of knowledge about Islamic law, to have a truly introductory work, one which delves less deeply into the controversies and academic arguments and allows a clearer view of the main lines of development. The problems associated with such a work are obvious, but clear caveats would satisfy all reasonable critics.

Overall Assessment

These points are, however, counsels of perfection (or maybe beyond perfection, it is a chronic fault of reviewers to criticise a book for not being something different). Overall, this is an outstanding book. It demonstrates an extraordinary depth and breadth of research and a seemingly effortless mastery of the material – hardly surprising, perhaps, as the author is one of the foremost authorities on Islamic law, perhaps the foremost historical scholar in the field alive today. The work fully achieves Professor Hallaq's aim of plugging the hitherto gaping gap in the monograph literature. It should have a place of honour on all Islamic law reading lists, and will be of considerable interest for anyone wishing to expand her knowledge of world legal history to include this vital subject.

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