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## Legal Receptions, Legal Academia and Islamic Legal Thinking in 19<sup>th</sup>- and 20<sup>th</sup>-century Egypt

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Schuldenkrise, die sich am Horizont abzeichnete. Denn in Bezug auf eine Hypothek hatte die Rechtsprechung die klare Tendenz, fällig gewordene *khiyar* zu verlängern, anstatt das mit Pfandrecht belastete Eigentum an den Gläubiger zu übertragen. Doch es half nichts. Als das weltpolitische Risiko wuchs und schließlich die Weltwirtschaft selbst kollabierte, war die Schuldenlast zu groß (178 und 215). Die Welt der Ozean umspannenden *waraqa* und *khiyar*, ein bottom-up von Kaufleuten und Juristen geschaffenes System, ging unter. An ihre Stelle traten Volkswirtschaften, die von nationalen Regierungen und ihren bürokratischen Apparaten gesteuert wurden (245).

Bisharas Arbeit ist beeindruckend. Theorieansätze, die Rechtswissenschaftler und Historiker anderer Weltregionen und Epochen umtreiben, werden hier in einer trotzdem nicht ausladenden Studie zusammengeführt. Ohne sich in hermetischen Theoriendebatten zu verstricken, diskutiert Bishara die Kategorien Raum, Rechtstransfer, Translation und Praktiken am Beispiel der *waraqa*. Das Ergebnis ist die Biographie eines Stück Papiers, das über das Wasser laufen konnte. Darin liegt die eigentliche Stärke dieses Buches: Das Forschungsobjekt wird nicht abstrakt oder an einer einmaligen Handlung analysiert. Bishara verfolgt über

mehr als ein Jahrhundert hinweg die Kaskaden von Austauschbeziehungen in einem (Kultur-)Raum, die mit diesem Rechtsinstitut gesponnen wurden und umgekehrt auf dasselbe zurückwirkten.

Das Buch weiß noch sehr viel mehr, als dieser kursorische Bericht zusammenfassen kann. Zahlreiche Details und Nebengeschichten ermöglichen den Lesern den Einstieg in die Geschichte des Westindischen Ozeans im 19. Jahrhundert, selbst wenn sie kein Vorwissen mitbringen. So wird schließlich auch die anfänglich kritisierte Nostalgie des Autors beim Betrachten des Ozeans wieder eingefangen, beispielsweise wenn es um die Verbindung geht, die gelehrte Juristen mit der mordenden Gewalt der Politik eingegangen sind. Al Khalili, so etwas wie eine juristische Großautorität seiner Zeit, scheiterte an seinem politischen Ehrgeiz und hatte auf die falsche Dynastie gesetzt. Er wurde nach einem Umsturz gefangen gesetzt und starb – je nach Legende an Diarrhöe im Gefängnis, in kleine Stücke zersäbelt oder mit seinem Sohn lebendig begraben. Der britische Konsul in Maskat, A. C. Way, der Zeugnis von diesem Geschehnis hätte ablegen können, erschoss sich jedoch kurz darauf selbst. ■

**Murat Burak Aydin**

## Legal Receptions, Legal Academia and Islamic Legal Thinking in 19<sup>th</sup>- and 20<sup>th</sup>-century Egypt\*

The late 19<sup>th</sup> and early 20<sup>th</sup> centuries witnessed some significant legal changes, reception and codifications. European influence and impositions were present not only in African and Middle Eastern countries, but in countries such as Japan and China as well. The nation-building process and

states' increasing control over the legal profession and law were expanding, and these developments presented challenges not only to Islamic law but also to other legal systems. Egypt was no exception. The introduction of European law in Egypt inspired an idea one author calls »Islamic legal

\* LEONARD WOOD, *Islamic Legal Revival: Reception of European Law and Transformations in Islamic Legal Thought in Egypt, 1875–1952*, Oxford: Oxford University Press 2016, 368 p., ISBN 978-0-19-878601-6

revivalism«. Leonard Wood, in his book *Islamic Legal Revival*, traces the idea of Islamic legal revival, »a popular ideological sentiment and a movement that advocated the revival, reform, and reapplication of Islamic law« (3) between 1875 and 1952 in Egypt primarily through academic jurisprudential works by Egyptian law scholars.

Wood primarily examines the idea of Islamic legal revivalism as a consequence of the European influence on law and legal thinking in Egypt between late 19<sup>th</sup> and early 20<sup>th</sup> centuries. The author's main aim is to illustrate how Egyptian legal scholars forged the discipline of law in Egypt, interacted with European legal scholarship and fostered efforts to revise and revive Islamic law. He traces intellectual changes, European interventions in Islamic law and Egyptian responses through prominent figures' works in legal academia and by analyzing law schools' curricula. He considers his work to be »intellectual history and legal-institutional history« (12). However, this approach limits the results his rich sources can provide and the context he deals with. Nevertheless, given the broad time range, the sheer quantity of jurists, and the complexity of the Egyptian legal scene, his work is relatively comprehensive. The book is generally well organized. However, the plethora of jurists and works he analyzes unfortunately makes it hard for reader to follow the main arguments of the book. One major argument in regards to Islamic legal revivalism is that the influence of political, ideological, and other external events »had their limits and Egyptian jurists were themselves the major engines of change in Egyptian juridical science and the law itself during the period 1875–1952« (14).

The book consists of four main sections. Section one, *Origins of Islamic Legal Revivalism*, deals with the origins of legal revivalism, primarily in the period between 1875 and 1884. The section provides a brief account of the context in which the idea of Islamic legal revivalism started to develop. He also illustrates that, as European law gained more prominence in Egypt, the idea of Islamic legal revivalism and skepticism toward European law started to gain ground. One significant point in the third chapter of the section is the use of comparative law in *The Sharia Lawyers Journal* in a sophisticated manner, yielding ideas about »a viable Islamic system of private and public law in the modern world« (74) through comparing »Islamic systems and other modern systems« (74). In the

same way, he points to the birth of Roman-law studies and comparative studies between Islamic law and the French *Code Civil* in Egypt.

Wood, in section two, *European Law and Imperialist Campaigns for Islamic Legal Reform*, primarily deals with the influence of European legal thinking on Egypt and attempts by Europeans to Europeanize Islamic legal thinking. He delves into scholarly studies on Sharia in Europe and the role of comparative law in this process. He analyzes Édouard Lambert's Islamic reform ideas and his claims on »how to apply comparative law to reform Islamic law« (141).

Section three, *Transformations in Education and Scholarship*, deals with legal academia, law schools, which were »laboratories for increasing the rigor of Islamic legal revivalism« (177), and teaching reforms in the 20<sup>th</sup> century. The author clearly illustrates the French and British competition for power over the law schools, their curriculum, and their staff as a result of these conflicts. He illustrates the changes in teaching and research agendas through a detailed account of admissions, curricula, school structure, and academic positions. The rise of advanced studies, debates over teaching Sharia law, and new professors advocating »new approaches to teaching Islamic law« (216) after the 1920s are some of the important points in the section.

Section four, *New Forms of Islamic Legal Thought*, deals with an interesting subject, »general theory«, and its penetration into Egyptian legal academia and Islamic jurisprudence. The author, primarily through analyzing Chafik Chehata's work, illustrates how the European civil-law concept of a general theory of obligations and contracts as well as European legal categories started to appear in academic works in Egypt. He argues that the idea of a general theory in jurisprudence was integrated into Egyptian academic scholarship, and it »helped to advance conceptions of a unified Islamic law that transcends differences among and within the four Sunni law schools« (231).

Wood fulfills his main aim and illustrates the changes in Egyptian jurisprudence and how Egyptian lawyers indigenously engineered those changes. In other words, Egyptians were »masters as well as objects« (6) of such change under the influence of Europeans and European legal thinking.

However, critical analysis of Franco-Egyptian law and the legal plurality of the context would help to better grasp the context in which Islamic

legal revivalism took place. This is not to ask for a detailed analysis of Egyptian positive law, but merely a critical look asking to what extent Egyptian law and its practice was *actually* French? To what extent did Franco-Egyptian law comply with Sharia? This is an important point because it would better capture the actual significance and grounds of Islamic legal revivalism. The author states that Islamic legal revivalism was a »popular ideological sentiment and a movement« (3), and one wonders whether all the sentiments and movements were in response to European influence. What were the technical, legal, or commercial grounds – other than popular sentiment – to revise Islamic law? This is not to advocate a classical, binary view of secular (European) versus Islamic law, which author also avoids. For example, in the case of the Ottoman Empire, the empire enacted a criminal code, a code of commerce, and codes of civil and criminal procedure under French influence. It introduced new courts, and Sharia courts were only to try cases of personal status. However, when one looks at especially private (not commercial) law and its practice, two codes appear to have governed this sphere: *Mecelle* and the Code of Civil Procedure. Even though the Code of Civil Procedure was influenced by the French Code of Civil Procedure (1806), some Sharia principles remained intact, such as judgment in absentia (*hük-m-i gıyâ-bî*), which required a different procedure in Hanafi law than in the French Code of Civil Procedure. Some evidence procedures, however, without interference by Sharia, closely resembled the *Code Napoléon*. Therefore, a general look at Ottoman private law in the late 19<sup>th</sup> century would reveal a hybrid scene. What was the case in Franco-Egyptian law?

The author draws upon variety of sources. He primarily relies on official and edited sources, such as law-school curricula, academic and professional journals, reports, memoirs, and correspondence. The law schools are most important to legal thinking and the reception of legal ideas. The dissemination and reception of legal knowledge, engi-

neering of new legal knowledge, legal education, and law schools are the foundation of the book. Such sources may seem sufficient for a book on institutional legal history. Wood, through these sources, illustrates different aspects of the life in the law schools, such as conflicts over academic positions, curricula, and foreign languages. However, one wonders about law students and their lives in the law schools. Their career trajectories and school-selection strategies would give some idea about the reputations of the schools they chose and the courts where they would later serve. Some sources on students' profiles, student life, and student careers in law schools would tell us about the style and quality of legal education from the perspective of the students. Some quantitative data on legal education and Egyptian students who studied in France and other countries would allow readers to grasp the extent of such intellectual transmission. These could reinforce the author's attempt to reconstruct »the outlooks and institutional culture of sophisticated Egyptian law students and jurists of the period under study« (14).

The author could embed Islamic legal revivalism in Egypt into a broader context. European, especially French, influence and other structural and legal changes were not an issue only in Egypt. Hallaq points to some of these common trends and challenges. This is not to suggest that the author should have studied and compared other countries, but rather to locate the meaning of the Egyptian developments in the broader context of late 19<sup>th</sup>-century and early 20<sup>th</sup>-century global legal change and legal thinking.

Nevertheless, the author successfully contributes to Middle Eastern legal studies. He illustrates the reception of European legal ideas in academia and law schools in a detailed and meticulous manner. For this reason, Wood's work is a good example of how researching intellectual and especially academic aspects of legal reception can illuminate further studies.

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