

REVIEW

Christian Müller: *Recht und historische Entwicklung der Scharia im Islam*

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In a comparatively small field like Islamic legal studies, it has traditionally been rare to witness the publication of monographs taking a comprehensive, macroscopic historical approach to Islamic law. And yet, fuelled by the steadily increasing access to documents (by which I mean texts not written for perpetuity, such as documentary papyri), the field is currently undergoing exciting changes and is as vibrant as ever. After Mathieu Tillier's *L'invention du *cadi** (Paris, 2017) and Yaacov Lev's *The Administration of Justice in Medieval Egypt* (Edinburgh, 2020), we now have a third monograph, in which the author's ambition is nothing less than to "understand the entire development of [Islamic] law in its historical contexts" (pp. 3–4).

The book's overall narrative is straightforward: Islamic law evolved from caliphal to jurists' law. This process peaked in the twelfth/thirteenth century when legal thinking was permanently severed from caliphal authority and *sharī'a* law became "the sole expression of Islamic normativity" (p. 119). Jurists undergirded their influence in Islamic society by developing legal schools (*madhāhib*) that pivoted around teacher–student relationships and an exponentially growing tradition of commentaries, in which students digested and annotated their teachers' treatises (p. 111). The historical narrative followed here is one of increasing legal complexity over the centuries. Müller observes that while the *uṣūl al-fiqh* (principles of jurisprudence) genre allowed jurists to legitimate existing legal rules, it also functioned as a meta-discourse for them plausibly to connect the realms of eternal divine law and temporally bounded legal rules (p. 216). The argument then takes on predictable contours. Because *sharī'a* law occupied the status of a "sacred" law independent of political regimes, it functioned as a stabilizing factor for Islamic society in the face of great political turmoil in the centuries to come. The breadth of legal sources Müller engages – literary and documentary – is truly impressive and lives up to the expectations of a monograph as ambitious as this one.

Although the main strokes of this historical narrative convince, the book has a few shortcomings. Building on Joseph Raz and Eric Millard's notions of law, the concept of law embraced here is one where the law steadily flows from the top down, from caliphs, judges, and other "great men" down to the populace. Müller observes that the law "becomes concrete" in court rulings, but these rulings remain derivative of jurisprudence in so far as they merely instantiate an already existing legal norm. Legal historians will hear the echoes of John Austin's command theory of law, where law is always the effect of the sovereign's order. There are two problems with this fairly common view: on the

one hand, people do not seem to have agency to change laws from the bottom up. On the other, it disregards the reality that even during the period associated with caliphal law, most legal disputes were never adjudicated by caliphs or even judges. Most disputes were resolved by arbiters, mediators and through other means, and research in recent decades illustrates that even in normative discussions of law, Muslim jurists praised the benefits of resolving conflicts outside of court. Unlike others, Müller refers to the important place of arbitration and mediation, especially in the legal thought of al-Shaybānī (p. 311), but its implications for the development of Islamic law could be fleshed out more fully.

Second, while the book integrates documentary sources, their inclusion does not warrant a distinct conceptual framework to approach this material. The absence of such a framework speaks to a more profound discrepancy in Islamic legal studies, where our approach to documents remains primarily informed by the desire to understand normative jurisprudential texts in action (what legal sociologists call the “gap problem”). Müller must certainly be commended for incorporating these everyday legal documents. But they are employed mainly to measure the impact of normative law rather than to parse the mechanics of legal documentary culture. Readers wonder through which material, textual, and visual markers documents attained legal clout and how documentary culture impacted the legal treatises written by jurists.

The normative claim of the *sharīʿa*'s immutability has stalled Western efforts to historicize Islamic law. Only in recent years have scholars taken a serious interest in the little-understood nexus between Islamic political culture and legal developments. Already Noel Coulson (1964) pointed out the theological thrust of the immutability argument, emphasizing the need to examine the historical and sociological influences on the development of Islamic law. In *Recht und historische Entwicklung*, Müller begins to fill this important gap by offering a genealogical, context-based approach to Islamic law (p. 196). However, the explanations offered for historical ruptures sometimes remain a bit too abstract to be useful. For instance, the shariatic turn is – following convention – explained with references to the Mongol invasions and the new legal system these rulers brought with them. I suspect the occasionally short historicizations stem from the book's focus on jurisprudential texts. As specialists know, even though these sources lend themselves to observe changes in substantive law, they rarely inform us about the political and social factors by which change was propelled. It would have been useful to narrate Islamic legal developments considering the circulation of specific political ideas and concepts (for which other types of sources may have to be incorporated), similar to what Sohaira Siddiqui recently accomplished in her monograph on al-Juwaynī.

Students of Islamic law will greatly profit from this rich and comprehensive study, which introduces them to several ongoing debates in the field. For specialists, the book is not only a treasure trove of references to Arabic legal sources but a welcome opportunity to familiarize themselves with the much-neglected subfield of Islamic legal documents. That said, I do not think the book entirely lives up to its promise of offering a “radically new approach” to Islamic law as it claims (p. 6). Indeed, the contours of the overall narrative are rather well-established. And yet, I believe it is precisely this synthesis of decades of scholarly findings that will make this book a classic on the shelves of Islamic legal specialists.