

Hallaq, Wael B. *The Origins and Evolution of Islamic Law*. Cambridge/New York, Cambridge University Press, 2004. ix + 246 pp, maps. Casebound £40.00. ISBN 0-521-80332-2. Paperback £14.99. ISBN 0-521-00580-9.

WILLIAM BALLANTYNE*

The publication of this book is timely and apposite. At the time of writing this review, bombs have been exploded on the London transport system, killing and injuring many. The responsibility is often attributed to a mastermind holed up in a cave somewhere, precluded from the use of communication equipment which would reveal his whereabouts, but nonetheless able to control a worldwide terrorist network. Be that as it may, acts of terrorism are increasingly identified with El Islam. When the Iron Curtain collapsed, the world needed a new enemy. With the world now ruled by economic forces based upon the taking of interest (not only illegal but also a grievous sin in Islam), with not only sovereign states but also most individuals in debt, the political conflicts are obvious and frightening. Clearly, the more studies devoted to Islam and its laws at this time, the better. In his introduction Professor Hallaq states:

There is no doubt that Islamic law is today a significant cornerstone in the re-affirmation of Islam, not only as a matter of positive law but also, and more importantly, as the foundation of a cultural uniqueness. Indeed for many of today's Muslims, to live by Islamic law is not merely a legal issue, but one that is distinctly psychological (1).

The aim of this book, which it successfully achieves, is to make a survey of the origins and evolution of Islamic law with emphasis upon what the author describes as the formative period, that is to say the first three or four centuries of its life. Professor Hallaq points out that there have been no real attempts previously to cover this subject, although he describes some partial exceptions, which he nonetheless regards as studying the formative period 'through a rather narrow lens'.

This reviewer has experienced, in a professional career of over 50 years, the promulgation of civil and commercial legislation by the Arab Muslim states which, often paying lip service to Islamic law, nonetheless, particularly in commercial matters, directly evades its precepts. Professor Hallaq cogently points out in this book that so long as the shari'a, the law of Islam, was applied, being a religious law and thus not subject to the dictates of political power, this created a vital distinction between the power of the executive and the rule of law. The law was developed by the *fuqaha'* of the various schools (*madhahib*), ie by formative jurisprudence, not by politically inspired legislation. At the end of the book, the author movingly points out:

It was this reality — which made the approval of the men of law indispensable to the acts of politics — that gave formative Islam what we call today the rule of law. The dismantling of Islamic law and the religious legal institutions during the 19th and early 20th centuries automatically meant the decimation of whatever rule of law there was in that traditional society. The dynamics that govern the

* Of the Editorial Board; Barrister, Serle Court Chambers, 6 New Square, Lincoln's Inn; Professor of Arab Law at the School of Oriental and African Studies, University of London.

relationship between the Madhabic jurists and political power disappeared with the wiping out of the class of legal professionals who mediated another relationship between the masses and what have now become the all powerful nation-state of modernity. The rise of modern dictatorships in the wake of the colonial experiences of the Muslim world is merely one tragic result of the process in which modernity wreaked violence on venerated traditional cultures (205-206).

This conclusion is justified and explained by the content of the book, which deals in essence and in detail with the development of the judiciary, legal reasoning and legal authority during the first century of the development of Islamic law. The book also covers the dramatic rise of prophetic authority, the crystallisation of legal theory, and the formation of the all important *madhahib*. Finally, the book explores the interplay between law and politics, explaining how the jurists and the ruling elite had a symbiotic existence and mutual dependency that seemingly paradoxically allowed Islamic law and its application to be uniquely independent of the state — as reflected in the author's conclusions stated above.

The book consists of some initial maps; an introduction; eight chapters and a conclusion; a glossary; short biographies; bibliographies; suggested further reading and an index. The three maps (Arabia ca 622 AD, Muslim lands in the third/ninth century, and contemporary) are extremely useful.

From the start, the author shoots down 'the classic orientalist creed that the Arabia of the prophet was a culturally impoverished region and that when the Arabs built their sophisticated cities, empires and legal systems, they could not have drawn on their own vacuous cultural resources'. The author points out that these assumptions have consistently failed to stand the test of scrutiny.

Chapter one, entitled 'The Pre-Islamic Near East, Muhammad and Quranic Law', deals with early origins. Chapter two provides a sketch of the evolving culture as reflected in the transformations that took place in the office of proto-qadis, the earliest quasi-judges of Islam. Chapter three studies the development of the legal specialists or jurists, together with the development of prophetic authority and the emergence of hadith — and the development of the sunna. Chapter four, entitled 'The Judiciary Coming of Age', examines the way in which, as the Islamic empire achieved its structure, the essential features of the court came into existence. Chapter five discusses the relationship between competing sources of law — the increasing number of prophetic hadith and the concepts of consensus, *ijtihād* and *ra'y*. Chapter six examines what the author describes as the 'great rationalist traditionalist synthesis' and how legal theory emerged out of it. Chapter seven, entitled 'The Formation of Legal Schools', goes on to a study of the emergence of those bodies of jurists, the main four of which, of course, remain as the Hanafi, Maliki, Shafi'i and Hanbali schools of law. Chapter eight examines the matter of law and politics — the caliphs, judges and jurists.

The book admirably develops these themes in detail. A particularly interesting analysis relates to the reasons for the development of an Islamic concept of law, and indeed religion, as distinct from the precepts of the other monotheistic religions, Judaism and Christianity. The author points out that the Prophet Mohammed was certainly aware of the cultures of Judaism and Christianity. Before migrating to Medina, the Prophet's message was clearly a matter of continuity with Judaism and Christianity, with Islam representing little more than a pure form of these two religions. In Medina, however, he came face to face with Jews who opposed him. Probably as a result, Jerusalem was

replaced by the Ka'ba as the sacred shrine of Islam. No mention is made by the author of the possible conflict created by the Islamic ban on interest on monies lent which must also, presumably, have created a further point of friction with the Jewish mercantile community. The author refers to the situation lucidly in his conclusion:

it was his encounter (ie the Prophet Mohammed's) with the relatively powerful Jewish tribes, and in particular their reluctance to acknowledge his mission as an equally legitimate religion, that prompted him to escalate the challenge: if Judaism and for that matter Christianity could and did possess laws then so could Islam. The logic was simple: God created religious communities, each with its own law, and since Islam was undoubtedly one such community, then it had to have its own law. This transformation marks the beginning of an Islamic legal conception but obviously not yet of law, as a legal system. In fact Mohammed could not have thought of law in such developed terms, since in the world in which he lived there was no religious law that was at one with the law of the body politic This was to be one of Islam's greatest innovations (195).

This is a good book. I would have liked to deal in greater detail with many more of the points contained in it than space permits in a short review. I hope that one day I may be able to discuss them with the author.