

The Logic of Law Making in Islam: Women and Prayer in the Legal Tradition

THE process of law making in islam is one of the most complex legal processes. This is due to the claim made by Muslim scholars that the main sources which govern this process are divinely revealed. such complexity has caused great scholars such as Joseph schacht to see islamic law as 'a phenomenon so different from all forms of law' (Introduction to Islamic Law [Oxford1969], 1). sadeghi's book is an attempt to prove the opposite by identifying islamic law with other forms of law. He bases his argument on the pretext that both its formation and development are affected by procedures and topographies common to 'standard' human-made laws. He confirms such an objective within various parts of his book such as when discussing law and value where he states: 'i argue that islamic law should be understood in the first instance as Law'.

The book comprises eight chapters preceded by seventeen pages of helpful preface in which sadeghi claims that his book is 'the first book and diachronic study of scriptural hermeneutics in post formative positive law... in islamic legal studies'. This is followed by an appendix and bibliography. All the following chapters seem to me geared towards proving the point mentioned above by adopting the methodology of examining the genres in which the law was developed. This is also evident from the way sadeghi has organized his chapters.

The preface provides a general framework for the study of a legal tradition, islamic or not, and informs us that the book does not presuppose that all legal traditions are identical, this being due to variations in parameter from one tradition to another. it also informs us that the book examines how certain Hanafi laws, and the reasons Hanafi jurists gave for those laws, evolved from

Judul Buku
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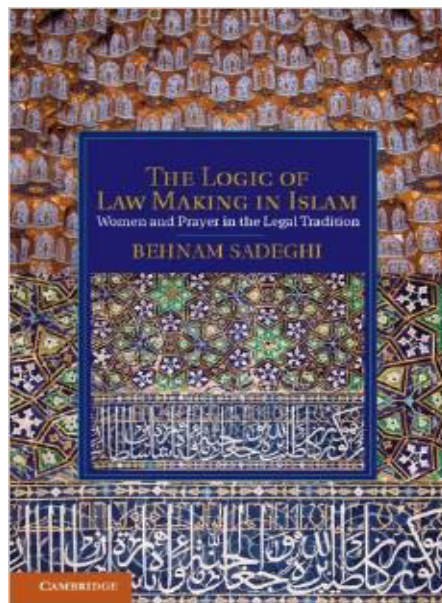
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the eighth century to the eighteenth century as reflected in the opinion of some thirty jurists.

Chapter 2: 'Preliminaries', scantily introduces the Hanafi school of law, the legal subject matter of the case studies, the scholars and 'the undesirable' or makruh as a technical term. This chapter in my opinion is not the best part of the book since the author fails to understand the connotation of some of the Arabic legal terminology.

Distinguishing between that which is makruh and that which is 'not preferred' or *ghayr mustajab* is an example here. The two terms might sound similar to a non-specialist but a huge difference exists when the meanings are carefully considered.

One of the questions to which one cannot find an answer in sadeghi's book is what is the practical and theological reasons behind the attitude of Hanafi scholars towards legal questions that are not in harmony with the Qur'an and sunna? I also find some of the questions posed by the author rather naïve, such as asking about the possibility of women leading men in prayer with a partition or a gap separating the female leader from men (p. 75). The idea of the Imam in prayer is not as simple as sadeghi sees it and a partition between men and women will not change the situation. The practice of having a leader for men during prayer is rooted in islamic political and social etiquette and man-woman social status. Added to this, if a partition existed between a female Imam and the congregation it could lead to mis-communication and total confusion during prayer. The Prophet's Hadith explains the rule concerning the Imam: 'The Imam is made so people can follow him'. in other words he is like a maestro who directs an orchestra to play harmonious tunes.

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Mirror for the Muslim Prince: Islam and the Theory of Statecraft

AT a time when the Middle East is being torn asunder by competing Muslim groups and has seen the emergence of an Islamic State, proclaiming a return to a Caliphate form of governance, a set of thirteen essays, written by some of the most expert commentators on Muslim political thought, is most welcome. The volume itself, edited by Mehrzad Boroujerdi, grew out of a conference held at Syracuse University in 2006, thus a half decade before the Arab Spring. The editor's introduction to this work, published in 2013, does make mention of the uprisings that swept through the Arab world, but the essays themselves do not. Nonetheless, this is a timely work, designed to show the great diversity in Muslim thinking about the political arena and good governance.

No set of essays on Islam's political flexibility would be complete without something on the Mughals who ruled as a minority over a vast Hindu population in South Asia. Muzaffar Alam in 'A Muslim State in a non-Muslim Context: the Mughal Case' does full justice to the series of Mughal princes who while adhering to Muslim practices and beliefs were tolerant of their Hindu subjects and went to great lengths to understand and appreciate the Hindu way of life. Of course, the great Mughal rulers—Akbar and Jahangir—come in for great praise, but much of the chapter, not surprisingly, is devoted to Nasir al-Din Tusi whose advice for princes, *Akhlaq*, although written in the thirteenth century, was widely read in Mughal India and influenced state building under the Mughals. Tusi championed a philosopher/king under whom many different religious communities could prosper.

Another path-breaking chapter is that of Bruce K. Rutherford, 'What do Egypt's Islamists Want? *Moderate Islam and the Rise of Islamic Constitutionalism in Mubarak's Egypt*'. The author identifies four moderate Muslims—Yusuf al-Qaradawi, Thriq al-Bishri, Kamal Abu al-Majd, and Muhammad Salim al-'Awwa—and using

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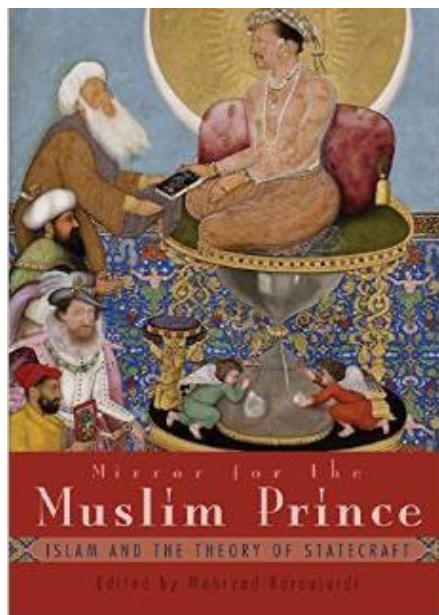
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their publications, especially their web-sites, elaborates on their political views. Much of the information that Rutherford provides comes from the contested election of 2005 when, in spite of a concerted opposition that brought together Muslim Brothers of all stripes and liberal secularists under the title of *Kifaya* (Enough!), nonetheless failed

to keep Hosni Mubarak from winning that election for another term as president. According to the author the moderate Muslims were in favour of a multiplicity of parties and freely contested elections of the Egyptian parliament. Yet as anyone who followed those elections knows, the alliance between the liberal secularists and the moderate Muslims had its sticking points, notably over the place that the Shari'a would occupy in a reformed Egypt and the attitude of the Muslims to women, even down to the wearing of the *hijab* (the head scarf).

Unfortunately, I cannot end this otherwise quite laudatory review without a complaint about the last essay, written by Aziz al-Azmeh, 'God's Caravan: *Topoi and Schemata in the History of Muslim Political Thought*'. Here, I was expecting a summing up of the volume, a clear statement of what readers should take away from so many excellent essays that, however, covered so much time, space, and political thought. I was disappointed. Not only was the essay over-written, unclear in places, and altogether too long at 70 pages, but in places it descended into a diatribe against the works of two scholars: Patricia Crone's *Medieval Islamic Political Thought* and Antony Black's *The History of Islamic Political Thought from the Prophet to the Present*. Al-Azmeh's chief complaint is that these two works are old-fashioned Orientalism at its worst. In fact, in an earlier chapter, Crone is described as 'the erstwhile Orientalist enfant terrible' (p. 83), but is it legitimate to devote seventy pages to a very savage review of two books that have already been rather well critiqued, if not often by name, then certainly by content in the rest of this volume? The entire volume makes eminently clear that Islamic political thought cannot be seen as something sui generis if that is indeed a position that Crone and Black represent.

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Penerbit: Sekolah Pascasarjana UIN Syarif Hidayatullah Jakarta Terbit sebulan sekali

