

BOOK REVIEW
Islamic Law in Past and Present
Rohe M *Islamic Law in Past and Present*
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Abstract

This contribution provides a review of the book entitled "Islamic Law in Past and Present" authored by Matthias Rohe, and published by Brill in 2015.

Keywords

Islamic law.

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1 Introduction

Generally, the view of Western countries on Islamic law is unfavourable. Islamic law is viewed as a religious legal system that operates contrary to the laws of secular states that adhere to the rule of law, as well as these states' understanding of human rights. However, it is not only Westerners that view Islamic law from a particular vantage point. Even among Muslims there are divergent viewpoints on the topic. First, one comes across those Muslims who embrace Islamic law positively as part of their faith. Next, one finds Muslims who show interest in the topic only once the affects thereof come into close proximity to their everyday lives. In the last instance, there are Muslims who completely reject Islamic law "as being an outdated construct of medieval scholars".¹

Given these divergent viewpoints, particularly the underlying tension between them, the author notes that it is difficult to asseverate on the topic of Islamic law.² As such, this book is also not an attempt at doing so. As the author explains, "this book cannot ... explain how Islamic law could be a part of religious culture, and what ... its 'correct' substance" is.³ Instead, the author pragmatically plots the historical and continuous development of Islamic law with reference to the work of Muslim scholars and institutions, as well as specific sources from legal practice. In doing so, the author seeks to:

... render the essential connections within Islamic law – and in particular its sources and the methods of applying it – transparent, and to show outlines and developments of the characteristic areas it covers.⁴

He does this by thoroughly examining distinct issues, both historically and in the present, that are emblematic of Islamic law in jurisdictions with a minority and majority Muslim population respectively.

As to the question of who will find a book of this nature valuable, the author himself states that it was written to appeal to a vast audience that includes Muslim readers, members of other religions and belief systems, jurists, Islamicists, scholars of other disciplines and even interested laypersons. However, as the author so eloquently puts it, "Haters of Islam will not like

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¹ See the preface to the book.

² See the preface to the book.

³ See the preface to the book.

⁴ See the preface to the book.

this book". Also, readers who are expecting an exhaustive analysis of the Shari'ah or Islamic jurisprudence will be disappointed, because the author focuses on the substance, orientation and functions of Islamic law rather than Islamic rituals and practices.

2 The contents of the book

Essentially, the book comprises of three parts. The first part is devoted to the history of Islamic law and is made up of four chapters. In the first chapter the author provides an overview of how the Islamic State and its legal system originated from the earliest of times. The chapter also elaborates on the emergence of Schools of Law within Islam, which had a direct bearing on the importance of legal scholars. The chapter continues with an explanation of how the intricate judicial system with its accompanying role-players developed from the time of the early Muslim community in Medina. Thereafter the development of the law of evidence is canvassed before concluding with a brief explanation of how other important administrative institutions such as the *shurta* (the police) developed. In Chapter 2 the author not only deals with the development of legal sources of Islamic law but also outlines the methodology used to deduce the laws from these sources. Although the title of Chapter 3 indicates that it covers "Judgments and Opinions", most of the chapter is devoted to the significance of expert opinions in judicial proceedings, particularly when such opinions were sought, and the importance thereof as an aid in finding the law. The final chapter provides an overview of the various areas of law, both civil and criminal, that were governed by classical Islamic law.

In the second part, which consists of three chapters, the author focuses on modern Islamic law. The first chapter tracks the development of Islamic law from the thirteenth/nineteenth century and onwards, while Chapter 2 outlines the methods employed for the further development of Islamic law and provides examples of its practical application. In the last chapter of this part the author discusses the legal reform that occurred within the core areas, both civil and criminal, of modern Islamic law.

The author introduces Part 3 of the book with the following reminder:

Outside the territory under Islamic rule, the norms of Islamic law can only be applied insofar as this is permitted by the law in force in the respective country.⁵

⁵ See Chapter 1 of Part 3.

Therefore, to illustrate the development of Islamic law in the diaspora, the author tenders in this part of the book a comprehensive discussion of the legal situations in India, Canada and Germany. In explaining his reason for selecting these particular jurisdictions, the author states that Muslims in India transitioned from being politically and legally dominant in the past to being a largely deprived minority at present. Furthermore, there has also been a change in the ways Islamic law is interpreted and applied in India.

The author finds Canada interesting as a "typical immigration country" because, although the number of Muslims in Canada is rapidly rising, most of the immigrants in recent times have come from Asia and Africa, while hardly any came from Europe. As far as Germany is concerned, the author refers to it as a "late" immigration country where so far very little attention has been paid to the fact that irreversible immigration has already occurred. Furthermore, only a few attempts have been made at debating a possible collision of norms between these two legal systems. In essence, this chapter not only focuses on how secular state laws delineate the application of Islamic law, but also considers the (pluralistic) attitude of Muslims towards such application.

3 Concluding remarks

This book not only provides a thorough study of the past and present development of Islamic law, but also thoroughly examines the legal theory, reform mechanisms and application of Islamic law in both Islamic and non-Islamic countries. It enriches the reader's understanding of Islamic law by collating information from a plethora of sources on the core areas of both classical and modern Islamic law. This work will undoubtedly prove to be instrumental in the research of any student or academic interested in a detailed study of the development of Islamic law.