

Tangled web

Islamic Jurisprudence: an international perspective

by C. G. Weeramantry
Macmillan.

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Islamic Law: social and historical contexts

edited by Aziz al-Azmeh

Routledge.

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Just as it is difficult to imagine that the common or civil law traditions could come under a critique undermining their very existence, or require extended defence as major historical investments of the human mind, the same should be true of Islamic law, the *shari'a*. That this minimal methodological axiom is not respected only leads to such vain exercises as C. G. Weeramantry's *Islamic Jurisprudence*. For the sake of "generating mutual appreciation and understanding" between the nations of the earth, the author sets out to defend the value of a whole field of knowledge which, in the first place, is in no need of apologetics.

When the justificatory approach is reinforced with naive proselytism the result is invariably dull. Weeramantry is a late-comer to the world of Islam, and despite all the good intentions in the world, he has fallen even more behind when dealing with Islamic law. *Islamic Jurisprudence* is full of badly digested historical information, lax approximations and anecdotal repetitions. There is a wholly useless chapter on the merits of "the Arabic resurgence of learning", where the reader is bombarded with errors and platitudes. The Arab historian al-Tābari is mixed up with a book that is entitled *Tabari*, and it is a complete anachronism to say that in Islam "the usual machinery was the Majlis, consisting of representatives of the people", the said Majlis being formed of an upper and a lower house in the purest constitutional tradition.

Comparative and historical material are loosely combined, there are interminable arguments about the debt of Grotius to Islamic law, an unconvincing and meaningless exercise which is immediately followed by a section on Islam and the world order three centuries later. References to Western ideas are similarly approximative. Rousseau is said to have been "a student of Islamic ideas" and Montesquieu's *Spirit of the Laws* to have "carried forward to fuller development many of the ideas first revealed in the *Persian Letters*", as if the completely opposite genres of the two books could

be salvaged by a rapprochement based on Islamic law.

None of this would be seriously damaging were it not for the pretention of the author to "reveal to those outside the world of Islam some of the facets of Islamic Jurisprudence which may not otherwise be readily accessible to them". Weeramantry's apologetically aggrandizing tone only compounds his bad scholarship and *Islamic Jurisprudence* achieves the exact opposite result by reducing a complex and brilliant subject to superficial and unilinear generalities. The lay reader interested in an overall presentation should stick to classic introductory works, such as the translations of Ignaz Goldziher or Subhi al-Mahmasani's works on the *shari'a*. If an international perspective is absolutely necessary, James Piscatori's recent work is a far better source of accurate and intelligent information.

The collection of essays edited by Aziz al-Azmeh provides a welcome contrast. The quality ranges from good to outstanding, with a sense of how the riches offered by the *shari'a* tradition can encompass the subtleties of pure classical legal theory of *Usul* (Azmeh) or the questionable application of penal law in contemporary Sudan (Safiya Safwat).

Enid Hill's chapter on the great Egyptian jurist of the 20th century, Abd ar-Razzaq as-Sanhuri, describes in clear and minute details the efforts of a universal mind in his awareness "that basic areas of concern to Western jurisprudence could benefit by comparison with the Shari'a, that is, that there might possibly be something in the Shari'a that was valuable, not just to orientalist scholars, but for Western practising jurists".

One will also find original contributions on law in the Ottoman Empire (R. Repp), the transformation of the judicial system in colonial Algeria (A. Christelow), and the judiciary in Fatimid Egypt (A. Haji). But the outstanding article of the collection is Martha Mundy's essay on "the family, inheritance and Islam", a brilliant work destined to become a classic of the law of succession in Islam, as well as a landmark in the methodological approach to the *shari'a*, which has so far tended to divorce the black letter of the law from the various social and historical layers in which it is embedded.

A good general introduction to Islamic law would no doubt be timely. But until this is written, Azmeh's book remains an arduous but inevitable detour along the only road.

Chibli Mallat

Chibli Mallat is lecturer in Islamic law, School of Oriental and African Studies, University of London. He is editor of Islamic Law and Finance (Graham & Trotman, 1988).