BOOK REVIEWS


By a coincidence, both of these works deal with al-Shafi’i’s Risalah, the work which, for the first time, formulated the principles of Islamic Jurisprudence at the turn of the third century A.H. The second of the two works offers a brief Introduction, mainly consisting of a life-sketch of al-Shafi’i, a summary of the “Basic ideas” of the Risalah and a translation of the Chapter on abrogation in the Risalah. The brief Preface laments the unobjective and prejudicial character of many Western studies of Islam, especially in the past. The complaint in itself is true but one fails to see its connection with the body of the work and one cannot help feeling that it is probably made to ensure the sympathy of the Muslims. While the Introduction, giving a general survey of the basic concepts of the Risalah, is useful for a general reader, it is obvious that it does not emanate from the pen of a mature scholar: no attempt has been made to present the various elements of this fundamental work as a legal doctrine. The quality of the translation is also not satisfactory and wherever the two translations differ, as they do so not infrequently, Khadduri’s translation is always better. One would also have liked to know why, among all the doctrines of the Risalah, the one concerned with the question of abrogation was singled out for translation. Let us hope, however, that Khalil Semaan will give us in future a comprehensive work on the Risalah of al-Shafi’i.

Prof. Majid Khadduri’s translation is a much more mature and scholarly work. The translation is accompanied by foot-notes explaining technical terms and tracing references of Hadiths etc. to later collections. The translator has, however, based his work on Aḥmad Shākir’s edition of the text (Cairo, 1358/1940) without any textual emendations and has contented himself with the admission that the text needs to be critically edited (p. 52). On the translation some comments will be offered presently.

The method adopted in the description of al-Shafi’i’s life in the Introduction is not satisfactory. Little attempt has been made at a critical appraisal of traditional reports about al-Shafi’i and especially his relation to the Iraqi school and particularly al-Shaybānī—reports which abound in contradictions. Instead of resolving contradictions, we have mere reports prefaced by “some authorities state”, “most authorities believe”, “some authorities stress”, etc. (see particularly pp. 12-13). Did al-Shaybānī really intercede on behalf of the captive al-Shafi’i before the Caliph? If so, are the stories of a subsequent public conflict between the two quite credible? If these stories cannot command much credence and if
it be true that al-Shafii returned to Mecca from Baghdad precisely in order to avoid an open dispute, then what can be made of the statement (pp. 27-23) that al-Shafii wrote the former version of the Riddah—an open challenge to the Hanafi school—during his first stay in Iraq, particularly in view of another report (given preference by Radd) that the Riddah was not first composed in Iraq but in Mecca?

But the basic dissociation of the work as an introduction to al-Shafii's performance which once and for all supplied the framework of Islamic law for the preceding generation until today, is the lack of any adequate conception of the development of Islamic law in its early stages—indeed the work done from Golther to Schacht. This is astonishing from a specialist in Islamic law like Prof. Kaddouri. The second sentence of the Preface runs, "In Islamic legal theory the law proceeded society and is considered to be an eternal, co-God." One would like to know which Islamic legal theory or theorist has made this claim, I suspect that there is a confusion—no such link between Law as Shafii Law and law as Fiqh. This is not the place to go into the distinction but Kaddouri's dictum does not apply in either case. It is the same confusion which must also be responsible for the statement, "Islamic law, the product of Islam's centuries of revered experience, is the embodiment of the Islamic ideal. It is the framework of Islam itself." (p. 3). For one thing, if Islamic law is "the product of Islam's centuries of revered experience," how could it precede society itself and indeed, how could it be "the framework of Islam itself?" And it is too much to ask anyone to believe that what the Muslims created over the centuries, they continued to attribute to God. For another, not only is law not the framework of Islam itself but even the framework of law is the result of the activity of the Muslims themselves—and al-Shafii's work is the monument of this creativity.

The same story applies to the concept Sunnah. On p. 4 Prof. Kaddouri says, "Thus the Qur'an became the basic source of legislation. The Sunnah, enough it continued to supply raw material for legislation, took second place in the eyes of the Muslim community." The Sunnah here does not mean the Prophet's Sunnah but the pre-Islamic Arabic Sunnah, the common law of Arabia. But did this Sunnah occupy the second place in Islamic legal theory? A little later, however, we are told, "After his death Muhammad's sayings and decisions became precedents on the strength of which jurists made decisions..." (p. 6). Footnote no. 2 on the same page states categorically: "After the death of Islam the term Sunnah came to mean the saying, act, and decision of the Prophet Muhammad." The truth is that Prof. Kaddouri wants to appropriate both to the doctrine of recent Western Orientalists, notably Dr. J. Schacht's (of which the result is the first statement) and to the Muslim legal theory (whence stems the second statement). But since he has not developed any adequate critical conceptual apparatus, the result is a bald juxtaposition of contradictions. We have tried to evolve a conceptual apparatus in two articles in this Journal (vol. I, Nos. 1 and 2). That leads us to believe that a concept which has the wrong base of law is essential for any adequate reconstruction of Islamic law. Prof. Kaddouri holds up before us (Preface) as a model of this reconstruction the work of Dr. al-Anbari. Now Dr. al-Anbari's work in its own field—general law—
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is admirable. But when a conceptual rethinking is required, this work cannot be more than a patchwork. These are fundamental questions. For if the bases of any Medieval legal structure are to be rethought, then why start from the detailed context of this structure as a hard datum for “modernization”? And if this structure is sacrosanct, then where is the sanction and where is the basis for its “modernization”? The translation itself is fairly accurate and it is only here and there that one may disagree, especially when Prof. Khamduri, while translating, interprets—two activities which, of course, can never be really separated. An interesting case of this kind occurs when Khamduri translates a well-known Hadith which al-Shafi’i happens to quote twice. On p. 119, its middle part is rendered as “I do not know [whether this is obligatory or not] . . . .” (p. 253), the same text is rendered as, “We do not know [whether this is obligatory or not].” The words in the parentheses are Mr. Khamduri’s and are supposed to explain the intention of the alleged Hadith. But it is obvious that there is a world of differences between ‘obligatory’ and ‘authentic’. The meaning that al-Shafi’i must attach to this Hadith and the purpose that must underlie it can only be fulfilled by ‘authentic’ and not by ‘obligatory’. It is, of course, another matter of regret that Prof. Khamduri exhibits absolutely no critical attitude to Hadith. He gives references in the footnotes but not a word of historical criticism. How could a Hadith, such as the present one, condemning those who reject the Prophet’s Hadith and accept only the Qur’an, be accepted as genuine on historical grounds? What kind of a situation could there be in the life-time of the Prophet where he would be compelled to issue such a statement? Similar is the case of the Hadith (pp. 223-4) preceding the one we have just discussed. First, the opening words of this Hadith should be rendered in an optative mood, “May God grant prosperity” and not in the categorical form, “God will . . . .”. As Khamduri does. The last part of the Hadith has been rendered as: “Their call shall proceed . . . . them from [the Devil’s] delusion.” This is a later interpretation cited by Shafii in his edition (p. 409) which Khamduri has incorporated in his translation. (There are, again, grave questions about the historicity of this Hadith. Its first part makes the Prophet tell his Companions that they should listen attentively to his sermon and transmit these to others who may be more possessed of understanding. This is hardly conceivable.) Again, in this Hadith, words, jihak, jihak, etc. have been rendered as law, lawyer, etc.: “May a transmitter of law is no lawyer himself . . . . etc.” This reads too technical a meaning, developed later into the Hadith which, we think, would be better replaced by “The heart . . . . shall not go astray.” For what is involved here is a natural generous application of the mind and heart to Islam and the Divine cause: vindictiveness is not an initial attitude but always a reaction and is out of place here. After this Hadith, Khamduri’s translation goes on, “Since the Apostle has urged men to listen to his words . . . . and since the man who hears them is only one person” (italics by the reviewer). The italicized translation is grossly wrong. What al-Shafi’i says is, “Since the Apostle has urged [men] to listen to
Consultation is at the root of such a State. There must be intimate collabora-
tion between the legislature and the executive, the leadership of both being vested
in one and the same person, the Aamir. The American type of Presidential
system of government corresponds "more closely to the requirements of an Islamic
polity" than the Parliamentary form of government. It is emphasized that by
adopting the American system Muslimeen "will realize a principle indirectly
recommended by the Prophet thirteen centuries ago." Citizens of such a State
will have an unlimited right to freedom of expression. Then follow certain
details of governmental structure which will fill the picture drawn above.

As soon the author contradicts himself. For example, on pp. 40-41 he clearly
have drawn that non-Muslim citizens of an Islamic State cannot be
"enslaved with the key position of leadership," but on p. 66 he says that there
"would be no great objection whatever to appointing a non-Muslim to a cabinet
post." Is a cabinet post not a key position in a modern state? Or does he
misread the American Presidential system to imply that the Secretary is of no
importance at all? He also does not seem to have completely understood
the working of the Parliamentary system. Ministers in this system are
"individually responsible to the legislators" (p. 60). Collective responsibility
of the cabinet is the essence of any form of Parliamentary government. Nor
does it convey the impression that he clearly grasps the distinction between
ministers and cabinet members under this system.

Objection may also be raised against his assertion that modern Western
political terminology should be employed in talking or writing about an
Islamic State. This point of view has been presented by many commentators
in Pakistan and the reviewer should like to take this opportunity of questioning its
validity. A rejection—total and complete—of all Western social and political
terms will lead to a dangerous divorce between the "Western" experts and the
"Islamic" writers. This will obviously lead to an inequality which hinders
constructive inquiry and debate. We admit that the new terms will, though an
interaction with the traditional concepts, be gradually modified and replaced
by fresh terms. But we must start with some tools. In Pakistan we are already
working under the crippling disadvantage of a dichotomy between Western
scholars and Islamic scholars. The Arabic-knowing intelligentsia are not trained
in the techniques of modern research, while Western-trained research scholars are
generally ignorant of Arabic sources. It is imperative to bring these two classes
together by co-operative effort and joint discussion. Another point need also be
made here. It is erroneous to describe the modern terminology as "Western." Modern
terminology, though originally Western, is now used and employed
throughout the world. It is practically impossible to write about any political
problem without borrowing terms and overtones from the current "Western"
equipment of research and this is inevitable until the Muslims evolve a crystal
clear and universally understood terminology of their own.

Mr. Asad's attempt is admittedly a piece of controversial writing and
exposes a view of the state which he regards as absolute. If the reader combines
a perusal of this book with the writings of Mawlana Mawdudi he will himself
pile points of diffidence as well as contrast between the two views. But it is
suggested that it will be far more instructive to supplement Mr. Asad and
Mawdood Mawdood with two declarations of a different school of thought, viz.,
his words ... And [since the equivalent of the word] 'man' [used] is in the singular ..."

There are but a few examples drawn from two pages chosen at random; these could undoubtedly be multiplied. Neither our criticism of the translation, nor our general criticisms, however, may be allowed to detract from the intrinsic value of this work. It is the first complete translation into any Western language of the difficult, pioneering and monumental work of the first known, formulator of the principles of Islamic law, and, as such, it is to be welcomed both by serious scholars and the lay intelligentsia.

FALZUZ RAHMAN


In 1948 Mr. Muhammad Asad, who was then the Director of the Department of Islamic Reconstruction in the Government of the Punjab, wrote a long essay on Islamic Constitution-making (later published in the 'Arabia') which attempted a reconstruction of an Islamic political system and reflected Pakistan's preoccupation with the question of her future constitution. In this essay he had primarily aimed at building a bridge between two extreme points of view: the conviction that a genuinely Islamic state is but a replica of the early Khilafah and the belief that the future lies in modelling Pakistan on the political values of the modern democratic West. Yet the material required in the construction of this bridge Mr. Asad turned to the original sources—Qur'an and Sunnah—and worked out "to their basis the concrete premises of the future Constitution of Pakistan independently of all that has been written on the subject of the Islamic state" (reviewer's italics). Hardly any of his findings were allowed (by political circumstances) to influence the content of the 1956 Constitution of the Republic of Pakistan.

The present work, which is a continuation of the 1948 discussion of the principles which ought to underlie the constitution of an Islamic state, may be controversial, but it has been presented in the healthy spirit of the Prophet's saying: "The differences of opinion among the learned of my community are a sign of God's grace." Sponsored by the Hall-Johnson-Rahman Memorial Society of Karachi it has now been published under the auspices of the Near Eastern Centre, University of California, Los Angeles with a foreword by Professor G. E. von Grunebaum, the Director of the Centre.

The author begins with a definition of the Islamic State. A state can be truly Islamic only "by virtue of a conscious application of the socio-political tenets of Islam to the life of the nation, and by an incorporation of those tenets in the basic constitution of the country." (What is a basic constitution?) He rejects the secular conception of a state in clear terms. He is also critical of those who apply "non-Islamic" terms to Islamic concepts and institutions. There are many forms of Islamic State and it lies upon the Muslims of every period to discover the form best suited to their needs. An Islamic State is not a goal but a means to the solution of such social conditions as would enable the community to live, morally and physically, in accordance with the Natural Law of God.