BOOK REVIEWS


This book on the principles of Islamic law, published outside the Muslim world, contains a foreword by a Western scholar; is compact in size; and was written by an Egyptian scholar closely connected with the Muslim Brotherhood, now living in Geneva.

The book is welcome, because such works on Islamic law, however much one may agree or disagree with their conclusions, are essential to stimulate thinking—constructive thinking—and generate a healthy community-wide discussion of the vital issues facing Islamic law today. The present stalemate and paralysis can only be ended once the essential problems are identified and tentative solutions put forward. In particular, while not losing sight of the application of legal principles to specific problems, it is essential that a clear understanding be reached on the principles themselves. Perhaps more than in any other legal system, in Islam the principles of jurisprudence dominate the application of the law to a specific problem.

Certain difficulties must be pointed out at the outset about Dr. Ramadan's book. The first is his unusual phraseology which does not assist in understanding his line of thought. His native language is Arabic and he obtained his doctorate at a German University and he uses phrases unfamiliar in the English language, to either lawyer or layman. For example, "spheres of influence" is his heading for a section concerned with relations between Muslims and non-Muslims both inside an Islamic state and on the international plane. Secondly, the author does not seem too clear as to the audience for whom the book is intended. He states that it is "a modest attempt by a Muslim student of law to suggest how and to what extent non-Muslims may accept its laws on a purely legal basis. It is an attempt to discuss the applicability of Islamic law, taking into consideration the perspective of non-Muslims and the way they are apt to react to it in terms of social co-existence and positive laws" (p. 16). If the main aim, then, of the book is to address non-Muslims, offering them an essentially descriptive account of Islamic law, a great deal of it can only leave them more confused than when they started, as Dr. Ramadan frequently dismisses generally-held ideas of Muslims on Muslim law as misconceptions or mistakes. For example, he begins (p. 23 et seqq.) by virtually dismissing two of the four principles of *fiqh*, namely *ijma* (consensus) and *qiyas* (analogy). Thirdly, and this constitutes a most serious reflection on his scholarship, Dr. Ramadan will quote a scholar, usually a Western orientalist, in support of his contentions, as if such a quotation is of the highest authority and, a little while later, will reject the same scholar's observations brusquely, without giving any reasoned arguments for why he

*This is an elaborated version of a review originally broadcast by Radio Pakistan on 11th January, 1964, for whose permission thanks are due.
chooses to do so. Thus, at page 37, H. A. R. Gibb is quoted twice and with approval to clinch an argument and three pages later, observations on the very same subject (of hadith) of the same H. A. R. Gibb, are summarily dismissed as “unfair” and as being “arbitrary accusations without a scholarly method of verification” and no further effort is made to elaborate on why this is considered such.

Broadly speaking, what Dr. Ramadan set out to do was to identify the sources of Islamic law, then proceed to examine its evolution and the characteristics it showed during its evolution and finally to discuss the place of non-Muslims *vis-a-vis* Islamic law, both within an Islamic state and outside it.

On the subject of the sources, Dr. Ramadan begins by writing that “most of the jurists are in the habit of classifying the sources of Islamic law...” To describe the structure of Islamic law as being due to habit seems a rather facile way of dismissing their classifications and ignores the concerted reasoning which went into the construction of the edifice of fiqh. The object of this comes clear soon after, when Dr. Ramadan seeks to confine discussion to the Qur’an and Sunnah and by pass *ijmāʿ* and *qiyyas* altogether. He describes *ijmāʿ* and *qiyyas* as juristic achievements of later ages which must be sharply distinguished from the Book and the Prophetic Traditions. This line of thinking carries with it a basic misconception about the nature of Islamic jurisprudence which becomes apparent in the second section entitled “Evolution” and to which I shall return later.

At the beginning of the second section, Dr. Ramadan attempts to summarise the characteristics of the philosophy of legislation of the Qur’an and Sunnah and sets down six main features which appear contradictory and without any attempt at reconciliation. The first principle, Dr. Ramadan finds, is that the Qur’ān and Sunnah are basically inclined towards establishing general rules without indulging in much detail while the second given is that these “basic texts” were concerned with actual events and excluded theorizing. The third is that everything not prohibited is permissible while the fourth is that even prohibitions can sometimes only be gradually implemented and the example given by Dr. Ramadan is intoxicants. The fifth feature identified by the author is that even that which is prohibited is permissible when a pressing necessity arises and, finally, that anything of utility may be adopted regardless of its origin provided that it does not go against the “basic texts”.

A discussion of *ijtihād* follows and it seems quite clear that the author has failed to understand this term correctly. *Ijtihād*, the author would have us believe, is free, unrestricted reasoning, where the basic texts of the Qur’ān and Sunnah are silent whereas, in actual fact, *ijtihād*, is reasoning applied to understanding the Qur’ān and Sunnah and it seems to be this point which has caused a great deal of the author’s confusion about the classification of the sources of Islamic law.

From here, the author proceeds to a chapter entitled “al-Fiqh (Muslim Jurisprudence)” where the same difficulty crops up again. It is quite true that we often confuse what God and His Prophet have prescribed with what the jurists have been propounding, but this does not mean that it is ever possible to separate out the Qur’ān and Sunnah, completely free from what human minds have understood about them. This attitude is, indeed, the cause of many of
our troubles: the attitude that what I am saying is the pure Qur‘ān and Sunnah and that what you are saying is merely your opinion or interpretation of the Qur‘ān and Sunnah. Once we face clearly that whatever is said about the basic sources of Islamic law is, of sheer necessity, interpretative in quality and to be distinguished from the sources themselves, we shall be able to avoid intellectual arrogance and the error of assuming that there is some magical escape from the frail and fallible filter of human understanding. There is always a difference between an object as it actually is and the object as human powers of comprehension can understand it and this is equally true of the Qur‘ān and Sunnah.

Perhaps the author is nowhere more muddled than in his examination of the various schools of law. His assertion that none of the founders of these schools intended to found schools of law does not minimise the differences of interpretation that exist between them and which the founders themselves recognised. Dr. Ramadan regards the principle of ijmā‘ as having been developed to counteract the divisive tendencies of the different schools of law and yet asserts that the great founders of the schools of law never had much regard for ijmā‘ (pp. 84-85). The chapter concludes with a sentence which summarises his contradictions of thought: “While the development of the concept of al-ijmā‘ was a concrete expression of a commonly-felt need for collective authority, as against individual interpretations and opinions, the juristic rules relating to al-qiyās came to be considered next to al-ijmā‘ as a means for bringing about a unification of thought. The result was the division of Muslims into various legal schools. That the desire for social unity was an overriding factor in the establishment of these schools is clear from the fact that their works are mostly similar” (p. 85).

In his discussion of ijmā‘ Dr. Ramadan describes this principle as obscure, variable and disputable and suggests its replacement by the general will of the nation (p. 89); though it is difficult to see how the “general will of the nation” is any more precise or less liable to variation and dispute. He subscribes to the idea that ijtihād be sought through a Muslim legislative assembly, but in view of Dr. Ramadan’s distinction between the basic texts and the work of the jurists, it is not at all clear what in the end parliamentary product will be or the extent of its powers.

The last section of this book deals with relationships with non-Muslims and the fact that over a third of his book deals with this subject is a welcome sign that this most important aspect of an Islamic state has not been ignored. He quotes various United Nations’ resolutions on the necessary essentials for human equality and basic human rights and shows how these existed in the time of the heroic early era of Islamic history. But when Dr. Ramadan comes to the immediate question of how Muslims today are to implement Islamic principles, he takes refuge in the fact that some countries today practise discrimination, as if this justifies similar measures by Muslims! He quotes, for example, from the Norwegian Constitution (p. 110), Article 2 of which states that “Jesuits shall not be tolerated”, and from the Constitution of Spain on the following page, Article 6 of which states that “No external ceremonies or manifestations will be permitted except those of the Catholic religion”. Dr. Ramadan bases his argument that early
Muslims dealt on terms of complete equality with non-Muslims, quite rightly, on the fact that their relationships were established contractually and by mutual agreement, but in putting forward his views on the essentials for such a contract with non-Muslims today in an Islamic state, his statement of conditions sounds more like a *diktat* than a basis for negotiations and he has not faced the implications of a refusal on the part of non-Muslims to sign on the dotted line put before them. The author has very properly referred to the judicial and social autonomy enjoyed by non-Muslims in an Islamic state and the historical precedents for this, yet the spirit underlying this relationship seems to have been missed by the author in his attempt to delineate the essentials for Muslim relationships with non-Muslims today.

Dr. Ramadan's book illustrates that as soon as a Muslim, in touch with contemporary affairs (and their implications), seeks to understand the methodology and principles of Islamic law as applicable today, he is bound to diverge, sometimes very far indeed, from what some conservative learned men of today would regard as orthodox. Indeed, Dr. Ramadan's book is an interesting illustration of how far from conservative thought are the Muslim Brotherhood and its equivalents in Pakistan and elsewhere. Whether such organisations concede the right to similar divergences to others is one of those unanswered questions which have made them unacceptable in modernist circles while their divergences have made them suspect with the conservative `'ulamā'``.

The book illustrates that being conservative is not necessarily the same thing as being orthodox.

KARACHI

KEMAL A. FARUKI


In most Muslim countries where the knowledge of a European language is widespread, it is becoming more and more common for Muslims themselves to learn about Islam from European sources. At the same time, of all the religions of the world none has been studied in the West with more bias and been more misunderstood than Islam. As a result it is difficult for a Westerner to understand why a Muslim believes in Islam, and a Muslim who reads Western sources on his own religion begins, to a certain extent, to wonder why he believes in it himself.

The present book, which has been translated from the original French work entitled *Comprendre l'Islam* (Paris, Gallimard, 1961), succeeds in redressing this lamentable and even dangerous situation. It succeeds in showing, as no other work we know of in any European language has done, why a Muslim believes in Islam and in expounding the principles of Islam in their most pristine purity. As the author writes in the preface, "This book is intended primarily for Western readers given the language in which it is written and the nature of its dialectic, but there are doubtless some Orientals, schooled in Western moulds—men who have perhaps lost sight of the solid grounds for faith in God and Tradition—who equally may be able to profit from it and in any case to understand that tradition is not a childish and outmoded mythology but a science that is terribly real."

The author, Frithjof Schuon, has already written several works that treat