BOOK REVIEWS

SUCCESSION IN THE MUSLIM FAMILY, by Professor N.J. Coulson,

The Cambridge University Press, London, has recently published a book entitled: Succession in the Muslim Family. The author of the book, Professor N.J. Coulson, Professor of Oriental Laws, University of London, is a well-known and eminent writer on Muslim law. He has written a number of books and articles in the field of law and Oriental studies. His History of Islamic Law, (Edinburgh University Press, Edinburgh 1964), published under "Islamic Surveys" series No. 2, has been a successful attempt to study, though briefly the genesis of the Sharia Law and the Legal doctrine and practice in Mediaeval Islam, while his main contribution in the book consists of the study of and observations on the Islamic law in modern times as well as his conclusion on Religious Law and social progress in contemporary Islam. Later, he contributed another book: Conflicts and Tensions in Islamic Jurisprudence (University of Chicago Press, Chicago and London, 1969). This latter book is based on six lectures delivered by the writer under the auspices of the Center for Middle Eastern Studies and the Law School of the University of Chicago. (It is not clear as to why the inner title of the book bears the Hindu sign of “OM” instead of the more suitable sign of بسم الله الرحمن الرحيم already appearing on the outer title page).


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Now, these books have either dealt with the Inheritance Law of a particular school of Muslim jurisprudence (generally the Ḥanafī school) or have given briefly the Muslim family laws of a particular school or several schools, but none of them has devoted itself to the discussion in detail of a particular branch of the Muslim family laws.

Two other books have also appeared lately on the Muslim family laws. They are the *Muslim Law of Succession and Administration* by Dr. I. Maḥmūd (Karachi, 1958) and the *Islamic Law in the Modern World* by J.N.D. Anderson (New York University Press, 1959). As regards the former, its title is, in fact, a misnomer and it should, better be called "Some Principles of Muslim Law of Succession and Administration" as the book deals with some of the principles of the law and not the law itself. It is, no doubt, a successful study of some principles of the Muslim Law (Shārī‘a) relating to succession and administration of the deceased’s estate and a critical survey of the manner of its application in India and Pakistan. The latter, as is apparent from its very name, is devoted to a brief survey of the contemporary legal trends in the Muslim world and does not concern itself with the detailed discussion of the Islamic law.

The book under review is, thus, the only comprehensive book dealing with the Muslim Law of Inheritance with detailed references to the laws of the various schools of Muslim jurisprudence.

Islamic law of succession is the most complex, meticulous and subtle system in the world. Regarding its general nature the author has very aptly remarked: "In Islamic legal philosophy the rules of inheritance propound the ideal way for the deceased to fulfil his duty to his surviving family." (p. 2) Earlier he has observed: "The supreme purpose of the Islamic system (of inheritance) is material provision for surviving dependants and relatives... The manner in which this provision is to be made is prescribed by the law in rigid and uncompromising terms. Relatives are marshalled into a strict and comprehensive order of priorities and the amount, or *quantum*, of their entitlement is meticulously defined... The power of the deceased to dispose of his property by will is recognised but is basically restricted to one-third of his net assets... in sharp contrast, for example, with that of the English law..." (pp. 1-2).

Referring to the importance of succession law in Islam, the author says: "Within the framework of the Islamic legal system as a whole the laws of succession occupy a particularly prominent and important position. Historically, they provide an excellent example of the general process of legal development in Islam, under which new standards and precepts introduced by the religion were superimposed upon existing customary law and the two heterogenous elements gradually fused and welded together into a composite and cohesive system. From a sociological standpoint, the laws of inheritance reflect the structure of family ties and the accepted social values and responsibilities within the Islamic community... The system is firmly based on... the very word of Allah himself." (pp. 2:-3).

Later, at another place, alluding to the changes introduced by Islam into the customary Arabian law of inheritance, the author observes: "In the tribal society of pre-
Islamic Arabia... women occupied a subordinate and subjugated position within the group whose bond of allegiance was that of 'asabiyya. A woman who married into another tribe belonged henceforth, along with her children, to the tribe of the husband. The tribal patrimony meant the exclusion of females and non-agnate relatives from inheritance. Islam emphasised the more immediate family tie existing between a husband, his wife and their children, and aimed at elevating the status of the female within this group. These changes are mirrored in the novel rules of succession introduced by Islam.” (p. 29).

The aim of this book, as the author himself has explained, is “simply to present, in a spirit which is in conformity with the present trends of legal education, a subject which Muslim jurists of the past and the present have fashioned into one of the most illuminating and distinctive features of the Islamic legal system.” (p. 9)

The order of the topics, as admitted by the author himself, “is almost precisely the opposite of the chronological sequence of events and problems involved in the actual administration of an estate.” (p. 8) In this connection it may be observed that some of the chapters do not seem to have been placed in their proper place of arrangement. Thus, “Conditions of Inheritance” (Chapter 12) and “Impediments to Inheritance” (Chapter 11) should have better been placed at the beginning of the book as Chapters 1 and 2 respectively and the present Chapters 1 and 2 on “Family ties as grounds of inheritance” and “Priorities in inheritance” should have followed as Chapters 3 and 4 respectively.

As regards the scheme adopted by the author in this book, he has first described the traditional Shari'a law with an explanation of the principal divergencies among the several schools. He has dealt with the Ithnâ 'Ashari version of the Shi'a law with some detail but has omitted other minor schools. Meanwhile, he has also referred to the outstanding changes introduced into the law in modern times.

The author has omitted almost completely some of the institutions, such as slavery, which are no longer relevant to the present day Muslim society. Nor has he followed the particular techniques and methods of exposition adopted by the traditional Arabic authorities where these appear to place an unnecessary strain upon the powers of comprehension of the modern lawyer who is not also an Arabist. In such cases, instead of dealing with them as arithmetical discipline, he has tried to consider them in terms of legal principles involved without bothering the lawyer 'to don the mantle of the mathematician'. In this respect it may be remarked that the author has also not incorporated the cases relating to “hermaphrodites” which have been dealt with at length by the traditional jurists, both Shi'a and Sunni, which is, no doubt, a lacuna.

The author has discussed almost all the well-known cases, rules, principles and doctrines of the Muslim Succession Law under the relevant sections. This has added to the comprehensiveness of the book. Thus, he has discussed the al-Jabari rule regarding male agnates (p. 33:3.3.1) the principle of ta'sib (p. 41:2.1), the two decisions of 'Umar or 'UmariyatSn relating to the case of parents in competition with a spouse relict (pp. 45-46: 3.3.), al-Minbariyya case regarding 'awl (wrongly printed twice in the book as “a-Minbariyya”; p. 47:4.1), the doctrine of 'awl (p. 47:4.1), the doctrine of Ibn 'Abbâs regarding 'awl (p. 48: 4.2.), the doctrine of radd (p. 49: 4.3.), cases of the “Lucky and Unlucky Kinsman” (pp. 55 4.2. and 69: 5.2.), the doctrine of Ibn Mas'ûd regarding succession by the granddaughter (pp. 58: 4.4 and 71: 5.2.1), the case of the “Hen and
her Chicks" or *Umm al-furūkh* (p. 69: 5.1), the "Case of the Divided Inheritance" or *mujštarka* (pp. 73-77), the case of "The Tatters" or *al-Khuraqa'*(p. 79:1), 'Abd Bakr's doctrine regarding total exclusion of collaterals (pp. 80-82), 'Ali's doctrine on the same subject (pp. 82-83), Zaid's doctrine on the same subject (pp. 84-90), the "Computation" or the *Mu'ddəda* rule (p. 85: 4.3), cases of "The Restricted Female" or *al-Mukājəsara* regarding the restricted capacity of the germane sister to exclude the consanguines (p. 86:4 3.1), Mālik's rule or *al-Mālikiyya* relating to the effect of the presence of uterines upon the position of germane and consanguine brothers (p. 87:4.4.1), Analogy with Mālik's rule or *Shibh al-Mālikiyah* (p. 87:4. 4.2), the "Confounding Rule" or *al-Akdariyya* (p. 88:4.4.3), Views of Abū Yūsuf and Shaybānī regarding per capita and per stirpes representation (p. 92:2), the doctrine of *qaraba* (p. 98:3) and the *ghirra* -- rule (p. 17:2.3.4.1).

It may be pointed out here that the author has not given in the book almost any reference to his sources. Although a detailed reference would have entailed a great difficulty and even confusion and also added to the volume of the book, yet such references to a convenient and feasible extent would have enhanced the authenticity and value of the book.

One of the most important and useful contributions of the author is the reference to the modern reforms carried out in the different Muslim countries in the traditional family laws. Some of them have already been mentioned in Anderson's *Islamic Law in the Modern World* and a few other books on Islam and Islamic law by other authors. The author has mentioned these reforms in detail under the relevant chapters. Thus, the reforms relating to marriage registration are found on page 12 (1.1.1.5), marriageable age (p. 12: 1.1.1.6), woman's capacity for contracting marriage (p. 13: 1.1.1.7), polygyny (p. 15: 1.1.2.4), divorce law (pp. 20-22: 1.2.4), law of paternity (pp. 27-28:2.3), traditional system of priorities (pp. 135-163), dual relationship (p. 171:2), homicide (pp. 182-185: 3.3), difference of religion (pp. 190-192: 4.3.4. & 4.4), difference of domicile (pp. 193-194: 5.2), presumptions relating to missing persons and children in the womb (pp. 210-121: 3), documentary evidence for bequests (p. 216:4.2), age for making a bequest (p. 217:4.4), usufructory bequests (p. 221:5.2.2), conditional bequests (p. 223: 5.3.3), bar to testamentary succession (p. 230: 7.2.1.3), heirless persons (p. 244: 4.3), *ultra vires* bequests (pp. 255-258: 8) and death-sickness (p. 279:4).

The author has not merely described the various laws of succession in Islam, but in some cases has also offered his own comments. Thus, with regard to the maximum period of gestation which is held by some of the schools of traditional Muslim jurisprudence as exceeding even one year, the author says: "Contemporary medical science, of course, generally regards one year as the absolute limit of pregnancy. But in the more conservative areas of Islam.... the excessively long periods of gestation recognized as possible under traditional Shari'a law are still every much of reality both in popular belief and in judicial practice." (p. 24) Here the author has also cited a case in which the High Court of Mecca held in 1948 that a pregnancy had lasted for almost six years!

Likewise, while describing the rule of exclusion of paternal grand-mother by the father, the author remarks: "Hanafi law, perhaps, betrays some inconsistency in subscribing to the view that the father excludes a paternal grandmother. In regard to the issue of priorities among grandmothers, the Ḥanafīs maintain that a nearer paternal
grandmother excludes a more remote maternal grandmother because they regard all grandmothers as forming a single group. In other words, they ignore in that context the particular connection of the paternal grandmother through the father. On the present issue, however, this same connection is recognised by the Hanafis as the effective cause of the exclusion of the paternal grandmother by the father.” (pp. 62-63).

Similarly, commenting on the anamolous case of a cousin excluding an uncle the author says: "Sunni constitutional theory holds that a legitimate title to political sovereignty in Islam was vested in the ‘Abbasid dynasty, the succession of Caliphs who were the descendants of their progenitor ‘Abbas. On the other hand, the Shi’a maintain that, following the death of the Prophet, leadership of the Muslim community properly passed to ‘Ali and after him to his descendants. The anamolous rule of the Shi’i inheritance is clearly designed to reinforce their view as to who was the proper successor to the political authority of the Prophet..." (p. 123).

The author seems to be repudiating himself when he supports the Shi’i basis of inheritance assailed by Schacht. While explaining the jurisprudential basis of Shi’i inheritance, he has bitterly criticised the views expressed by J. Schacht in his “The Origins of Muhammadan Jurisprudence” (Oxford, 1950, pp. 260, 262). He says: “It has been suggested that the ‘variants of Muhammadan law which are recognised by the...Shi’ites do not differ from the doctrines of the orthodox or Sunni schools of law more widely than these last differ from one another’; that the differences which do exist are ‘features which in themselves were not necessarily either Shiite or Sunni, but which became adventitiously distinctive for Shiite as against Sunni law’, and that the reason for this is that the Shi’a adopted ‘Muhammadan law as it was being developed in the orthodox schools of law, introducing only such superficial modifications as were required by their own political and dogmatic tenets’.

“There is little to commend this view as an assessment or an explanation of the Shi’i system of inheritance. As opposed to the Sunni law, which rests upon the concept of the extended family or tribal group, Shi’i law rests upon the notion of the more limited or ‘nuclear’ family group consisting of parents and lineal descendants. It is a gross underestimation to regard the latter system, which reflects a fundamentally different idea of family ties and responsibilities, as a ‘superficial modification’ of the former. The fact is that such a view is dictated by the false premise that the Shi’a in general followed Sunni legal method; that the basic jurisprudential principles involved in the elaboration of Shari’a law were the same for both groups, and that it was merely a case of the Shi’a adjusting some hypothetically common body of doctrines in order to support the personal authority of those whom the Shi’a considered to be the legitimate political rulers of Islam. This is a false premise because it ignores the existence of certain distinctive features of Shi’i jurisprudential and political theory, or at least seriously underestimates the role which these distinctive features played in the formation of the law... The individual scheme of Shi’i inheritance, far from being ‘adventitiously distinctive’, has a natural and integral place within the scheme of those particular beliefs, principles and values that make up the Shi’i philosophy in Islam.” (pp. 125-126). “It surely does less than justice to Shi’i jurists to suggest that their notions of what was good or bad law were based essentially on personal animosities.” (p. 127). “The roots of the Shi’i system of inheritance strike to much deeper issues than the bare question of political allegiance or hostility towards this ruler or that.” (p. 128).
It must be pointed out that at this place while discussing the distinction between the Sunni and Shi'i legal theory the author has gone too far in describing some of the concepts of the Shi'a with regard to the Qur'an and the sunna. He says, for example, "They (i.e., the Shi'a) maintained that, in addition to the Qur'an and the sunna, the pronouncements of their Imams constituted divine revelation and therefore binding law". (p. 129) In fact, it is only the Qur'an and the Prophet's traditions which, like other Muslims, the Shi'a hold as divine revelation. The pronouncements of their Imams are, no doubt, held by the Shi'a as binding law, but this is not because they hold them as 'divine revelation', but because they believe them to be the true expositions and interpretations of the laws contained in the Qur'an and the sunna.

Likewise, the author says that "in Sunni jurisprudence the sunna of the Prophet constitutes a final and absolute authority, while in Shi'i jurisprudence it is subject to the overriding authority of the infallible Imam." (p. 130) This statement of the author is obviously exaggerated and seriously misguiding. No Shi'a jurist has ever believed that an authentic sunna of the Prophet is 'subject to the overriding authority' of an Imam, though the Shi'a, no doubt, hold their Imams as infallible.

The author is also mistaken when he says: "Equally consistently with their own political ideology, the Shi'a totally reject the notion of the continuing validity of pre-Islamic tribal law. For them the ultimate starting point of law in Islam was the Qur'an." (p. 131) In fact, the Shi'a, like other Muslims, hold the laws and customs prevailing in the pre-Islamic Arabia as valid unless otherwise abrogated or superseded by another injunction or law by the Qur'an or the Prophet's traditions. The Shi'a hold as valid, for example, the punishment of "rajm", or stoning to death a person guilty of adultery, which was prevalent in the pre-Islamic Arabia and though not contained in the Qur'an is reported to be confirmed as valid by the Prophet and 'Ali and a number of other companions of the Prophet.

Besides, in case of the interpretation of the word "walad" (which according to the Shi'a means "any child or grandchild", while the Sunnis sometime accept these meanings and sometime restrict its meanings to "son or agnatic grandson"), the author remarks: "Shi'i jurisprudence can at least claim in this context the merit of consistency, since it takes the term walad to mean 'lineal descendant' wherever it occurs in the Qur'an." (p. 132)

Likewise, while discussing the Shi'i rule of priority by qarabah the author concludes: "Through its basic doctrine of qarabah Shi'i jurisprudence majestically sweeps aside all those troublesome distinctions and divisions, between Qur'anic and other heirs, and between agnatic and non-agnatic relatives, in which the generality of Muslim jurists were enmeshed because of their preoccupation with the traditional claims of the 'asaba. Whatever appeal the doctrine of qarabah may or may not have to the Muslim religious conscience, the student of law may perhaps be forgiven if he looks upon it with the sense of deliverance of one who sees severed, at one clean stroke, the almost Gordian knot of Sunni inheritance". (p. 110-21.3)

On the other hand, the author has also criticised the view of Ibn 'Abbâs in which the latter has opposed the principle of proportionate abatement ('awl) and which has been endorsed by Shi'i law. He says: "'awl rests on the view that a Qur'anic portion does not represent an entitlement which is 'fixed' in an absolute sense, but which is 'fixed'
only in ratio to other allotted portions… ‘Equity is equality’ seems to be the guiding principle here, just as it is in the doctrine of the proportional abatement of creditors’ claims in cases of bankruptcy.” (p. 49: 4.2).

In some cases the author has criticised the digression from the accepted rules of traditional law which has taken place in some of the Muslim countries recently. Thus, he has vehemently attacked the Muslim law of inheritance applicable in India and Pakistan. Referring to the law of presumption of legitimacy applicable in this sub-continent which declares a child ‘born during the continuance of a valid marriage’ as a legitimate child, the author says, “This means that the paternity of a child born a matter of weeks or even days after marriage will be attributed to the husband.” He has also criticised the anomalous position of a daughter under the current Pakistan Family Laws Ordinance of 1961. (p. 157: 6.4.)

Likewise, referring to the rule of representational succession of lineal descendants, adopted by the Pakistan Muslim Family Law Ordinance of 1961 as an integral part of the laws of inheritance, the author remarks that ‘(it) effects a clean and total break with traditional Shari’a doctrine, orthodox or sectarian”. (p. 150: 6.3.1.) In this context he has also attacked Kemal Faruki for pursuing “the same erroneous course of reasoning” as adopted by the Pakistan Family Laws Reform Commission in the case, and has refuted the arguments put forward by the former in defence of the rule in *Islamic Studies, IV, no. 3, pp. 264ff*) and has observed: “It is difficult to imagine a more blatant instance of a non sequitur.” (p. 151) However, he is of the opinion that “Kemal Faruki is on much more solid ground when he argues that to ‘strengthen the Islamic social ideal it may prove desirable or necessary to revise our interpretations of Islamic principles as they find expression in rules of positive law’ far more particularly when he says ‘there is no Qur’anic statement excluding such grandchildren.” (p. 151: 6.3.1.) At the end of the discussion the author concludes that “if the reform does rest upon the right of contemporary society to depart from the interpretations of the traditional authorities, then those intrinsically legal arguments which seek to establish the inconsistent and irrational nature of the traditional law in the matter of representation are as unnecessary as they are unconvincing”. (p. 152: 6.3.1).

As regards the significance of Islamic law in the Muslim countries today the author is of the opinion that “today Islamic law is a living and developing system which, within the accepted limits imposed by the divine command, is conditioned by and grows out of the phenomena of social change”. (p. 6) Referring to the ‘far-reaching changes’ which have been introduced into the terms of the traditional law, he says that they have been effected in a variety of ways. “In the Indian sub-continent, for example, statute law has in many respects directly superseded the traditional Hanafi doctrine and become an integral part of the body of the succession law applied by the courts. In the Hanafi countries of the Middle East, on the other hand, there has been a particular concern to ensure that reforms should rest on a juristic basis for which support can be found in the principles of traditional Islamic jurisprudence. Thus… the codification of parts of the family law… which have recently appeared in the Middle East include rules and doctrines which are derived from schools other than the Hanafi school — on the principle that all are equally legitimate expressions of the Shari’a. This is a process which has naturally accentuated the comparative aspect of Shari’a law and led to a breaking down
of the barriers between the different schools...(The purpose of these reforms) is to align the terms of Islamic law to the present needs and circumstances". (pp. 5-6).

Under the discussion on reforms in the traditional legal system, the author has echoed the views of the protagonists of taqlid when he says, "For Islamic jurisprudence, however, social need and desirability does not per se provide an adequate justification for legal reform. Insofar as Shari'a law is the expression of the divinely ordained, and therefore eternally valid and immutable, standards of conduct, it is for the law to prescribe and determine social purpose and not for the social purpose to mould and fashion the law. Law, in the Islamic concept, does not grow out of society but is imposed upon society from above". (p. 136:2) This remark is not correct insofar as the Share'ia generally comprises the broad principles in the light of which further legislation, and amendment of the obsolete laws, are quite permissible. This is the spirit that pervades throughout the traditional codes of Muslim jurisprudence. According to Islam the principles of law forming Share'ia are, no doubt, immutable and they do not grow out of society, but the laws framed on the basis, and in conformity with, these principles can be changed with the changes of time.

In this context the author’s remark that “it was the apparently insuperable strictures of the doctrine of taqlid which forced the Turkish government of the 1920s to abandon the Share'ia entirely and adopt in its place Western codes as the only practical means of achieving reform in the family law” is also contrary to the fact, as he has himself admitted in the following lines that “such a total break with Islamic tradition... proved unacceptable to the other Muslim countries of the Near and Middle East, where means were found to adapt the Share'ia law, as applied through the courts, to the changing circumstances of society”. (p. 136:2) This via media adopted by the other Muslim countries was also open to the Turkish government.

Besides, the author remarks: “From mediaeval times until circa 1946... (because Egyptian law was enacted in that year)... the general view was that the legal manuals... authoritative in each school constituted a final and perfect expression of Share'ia law; any deviation therefrom was regarded, in strict theory, as a contradiction of the divine law and therefore inadmissible.” (p. 136:2) In this connection it may be observed that in fact, it was long long before the Egyptian law was enacted in 1946 that the “finality and perfection” of the traditional legal manuals were challenged by the Muslim scholars of repute as, for example, Ibn Ḥazm (d. 1064), 'Izz al-Dīn b. 'Abd al-Salām (d. 1262) Shāh Wālī Allāh (d. 1762) and Iqbal (d. 1938) and others, who in their writings openly advocated the doctrine of ittihād. It was only through the correct interpretation and confinement of taqlid within its proper limits and cautious adoption of the doctrines of siyāsa, or eclecticism, and ittihād that the legal reforms (referred to somewhat in detail by the author himself in Chapter 9 and elsewhere) could have materialised in the Muslim countries.

In some cases it is observed that there have been omissions and errors on the part of the author. Thus, he has not mentioned modern legislation and amendments in the traditional law effected in some Muslim countries regarding the effect of three divorces (p. 18: 1.2.1.1). He has also failed to refer to the effect of the wife's request for the return of her ransom during the 'iddah on the finality and irrevocability of a divorce by agreement (p. 19: 1.2.2.1).
Likewise, he has not given the Shi'i point of view regarding polygyny (p. 14:1.1.2.3) particularly no reference has been made here to the fact that in case of a temporary marriage there is no restriction as to the maximum number of wives. So also he has failed to give the Shi'i view regarding the marriage with the niece of one's wife during the subsistence of a marriage with the latter, or the Shi'i law regarding divorce by mutual consent (p. 19: 1.2.2), the judicial *talāq* (p. 19: 1.2.3.1.), distinction between moveables and immovable in apportionment of an estate in case of a childless widow (pp. 2 and 40) and perpetual prohibition of a wife after nine divorces (under divorces, p. 16: 1.1.2.6).

Likewise, while discussing legitimacy as a condition for the right of inheritance the author observes, “In the eyes of Shi'i law... an illegitimate child has no legal relationship with either its father or its mother.” (p. 23: 2.1). But here he has not mentioned the Shi'i rule that if the illicit connection is established from only one side, the child shall inherit from the side of the other parent and his/her relatives and vice versa. This rule is also contained in article 884 of the Civil Code of Iran. So also while describing the legal effect of the repudiation of a child by its father (p. 25: 2.2.2) the author has failed to mention the rule relating to the effect of the subsequent repudiation of the *liʿān* by the father, as, for example, also contained in article 883 of the Civil Code of Iran.

Besides the author has failed to give the law at present in force in Iran under modern reforms relating to registration of marriages (p. 12: 1.1.1.5), marriageable age (p. 12.1.1.16.), woman's capacity for contracting marriage (p. 13: 1.1.1.7), polygyny (p. 15: 1.1.2.4.) and abolition of the irrevocable forms of *talāq* (p. 21: 1.2.4.2.). Besides the author's opinion that "a stipulation creating inheritance rights for a temporary wife shall be void under the Civil Code of Iran, article 940," (p. 17: 1.1.5), is not correct as article 1119 of the Civil Code of Iran declares "any stipulation" as legal "provided it is not repugnant to the very purpose of marriage".

It is also a significant and happy quality of this book that there are almost no printing mistakes. A few words, however, have been misprinted, the repetition of which justifies their ascription to the author himself. Thus, we find *maraḍ al-maut* instead of *maraḍ al-maut* on page 259, 260, 261 (twice) & 262 and Minbār and Minbāriyya (twice) instead of Minbar and Minbariyya on page 47.

In the end, we esteem highly the author's successful efforts for undertaking the colossal task of a detailed discussion of the Muslim Law of Succession along with the countless variations and differences of the various schools of Muslim jurisprudence. A comparative and analytic study of all these laws was really a Herculean job and, therefore, we congratulate the author on acquitting himself of the task in such a marvellous manner. We hope that similar research works will also follow in various other branches of Muslim law by the same author and other experts on Muslim jurisprudence.

*Ali Raza Naqvi*
Writers Seldom confess that their's is not an objective study. The book under review is a noteworthy exception as the author candidly admits that he is writing history without an historical perspective. He owns, in a most disarming manner, that his work knows no distance to the subject and is, therefore, bound to be biased. It is because of this unusual confession that we reproduce here a rather lengthy excerpt from the preface:

"This work seeks to trace the course of political thought of the Muslims in India during the period 1919-1947. The historical and cultural background of political thought during this span of about three decades has been provided at some length so as to bring out and explain the prominent features of thought represented by each one of the personalities selected for study. These personalities have been chosen as representing strands of thought and movements in political life and not to make the present work a biographical study. The emphasis throughout has been on the interplay of the forces of religion and politics though prominence is accorded to political ideas and movements; on the almost total failure of the Muslims in India to separate religion and politics and achieve a secular outlook; and on their unwillingness to adapt themselves to the demands of the age - reason, liberalism, modernization and secularism. The partition of the country in 1947 has been shown as the tragic finale of the separatist thinking of the Muslims and of the extremism of some sections of the Hindu community. The concluding chapter sums up the arguments of the preceding ones and attempts a review of the present problems of the Muslim community in India. It ends with the note of optimism that though the political situation is still charged with suspicion and distrust and communalism has a vicious hold on some sections of the population, grounds for hope are not wanting and a spirit of understanding, fraternity and common citizenship may be found among progressive sections of all communities. It is on these sections and their increasing influence in the course of time that the future of our secular democracy rests."

This note by the author of the book under review is followed by an Introduction written by the late Professor Muḥammad Ḥabib of the Muslim University, Aligarh. The Introduction is in fact nothing but a deliberate attempt at presenting a chapterwise summary of the book and eulogising its author. It is neither a critical assessment nor does it determine the place of the present study in the range of similar works.


The proponents of each tendency are in turn assessed on the whetstone of three
concepts: nationalism, democracy, and socialism. That Abū l-Kalām Azād would fare the best through this tortuous procedure can be easily presaged after the author’s pledge in the “note” which prefaces the book. Nevertheless, the chapter on the Congressite Mawlānā is not altogether devoid of a critical attitude. Doctor Shākir has ably traced Azād’s intellectual development by clearly differentiating the various phases of his thought. This is partly also the case with Iqbal who stands next in the author’s appreciation. But the book is marred by one particular weakness: the more the writer is ideologically opposed to his respective candidate, the less he endeavours to distinguish the various phases of his career. This is especially conspicuous in the case of Mawdūdī, a writer whose life is characterised by many a volte face. Mu'in Shākir, no doubt, refers to the shifts of emphasis in Mawdūdī’s writings as well but the phases are not so clearly set off from each other as in the case of Azād. While writing about Mawdūdī, why does the author speak in the past tense and after a few pages switch over to the present tense? Does Shākir want to indicate a change in Mawdūdī’s stance? The lecture-English in which the whole volume is written hardly allows such a conclusion. As a whole, Khīlafat to Partition reads like a dictation which the author never went through after it was typed out (Innumerable printing mistakes make the reading all the more atrocious).

Besides, it must be acknowledged that even in the cases of Azād and Iqbal where Shākir offers a somewhat clear picture of the stages of their intellectual development, this is done without real systematisation. References have been made to extraneous influences without any substantiation, e. g., the impact of Near Eastern nationalism on Azād or the influence of the Muslim Brethren on Mawdūdī. In the latter case, as elsewhere, Shākir relies heavily on the evidence of Professor Muḥammad Sarwar of Lahore. Sarwar has done excellent groundwork on a number of subjects. But his aim appears to be to produce introductory works for a general readership without any pedantic pretensions. To use them as source material for a dissertation that raises academic claims, such as the one under review, does justice neither to Sarwar himself nor to the dissertation.

The author’s reliance on secondary sources has misled him all too frequently. For example, his evaluation of ‘Ubayd-Allāh Sindhi is near grotesque:

“Maulana Sindhi is the most original and progressive thinker of modern India. After Shah Waliulla and Sir Syed he made a sincere attempt to interpret Islam in accordance with the requirements of the age.” (p.48)

This much of praise for an anti-Muslim Leaguer like ‘Ubayd-Allāh Sindhi from the pen of Doctor Shākir is understandable. On the plain of pan-Indian nationalism they are, so to say, comrades-in-arms. But it becomes unbearable when Shākir writes: “Maulana Sindhi is the only Muslim thinker who supported the establishment of a democratic socialist state and society.” (p. 49) It is regrettable that the author did not care to look up the easily accessible Khuṭubāt-o Maqālāt-i Mawlānā ‘Ubayd-Allāh Sindhi published by Sarwar first in 1946 (reprint 1970). One wonders how Shākir would feel when reading that his hero’s main concern was to protect the Indian youth from that seemingly inevitable socialist revolution of which Sindhi was mortally scared. In fact, all his endeavours were directed toward one supreme aim, viz., to forestall socialism by means of a peculiar brand of Indian nationalism. This nationalism, however, was to be monistic and not pantheistic as Shākir writes. Pantheism is the author’s curious
translation of the mystic doctrine of *wahdat al-wujūd* preached by Sindhi as a common platform for all Indian religions and modern trends of thought. Pantheism, of course, is a possible consequence of this doctrine, but it is wrong to equate essential monism with pantheism as if the two were synonyms, especially in the case of ‘Ubayd-Allāh Sindhi who believed, like his *Imām*, Shāh Waliy-Allah of Delhi, in a reconciliation (*taṣbīq*) of the opposed doctrines of *wahdat al-wujūd* and *wahdat al-šuhūd*. By courtesy of ‘Azīz Aḥmad, another secondary source, Shākir characterises Sindhi’s teachings as a “Pseudo-Wali-Allahi communism. This is the characterisation of a religious scholar who wanted to perpetuate British tutelage over India for the sake of protecting it from the violence of land-reforms!

As regards Jinnah, one of Shākir’s favourite inspirations is Bolitho. In the face of such a propensity for the use of secondary sources the reader is rather disappointed to miss in the chapter on Iqbāl any reference to the excellent and most comprehensive study by Annemarie Schimmel entitled *Gabriel’s Wing* (Leiden 1963). But this is by no means the only reference-book to be recommended to Shākir. A perusal of international journals devoted to the study of Islam could have considerably enhanced the value and authenticity of his amorphous mass of information. Besides, such articles as the one by Freeland Abbott on “The Jamā‘at-i Islāmī of Pakistan” (in MEJ XI/1, 1957) could have served as a sample of how to tackle such materials as were culled by Shākir for his chapter on Mawdūdī. Of yet greater help could have been the chapter by Charles J. Adams on “The Ideology of Mawlānā Mawdūdī” contributed to *South Asian Politics and Religion* (edited by Donald E. Smith, Princeton 1966). Adams’ article makes Shākir’s chapter on the subject superfluous from the viewpoint of research. From the viewpoint of historical writing it could have served as a useful model, especially since Adams deals in similar categories of thought and Shākir would find his trinity-criterion of nationalism, democracy, and socialism applied by his precursor.

Adams, moreover, teaches a lesson in how to treat the subject of rationalism by expounding how, in the case of Mawdūdī, reason has only an instrumental function: it can decide which is the better of two things being compared, but it cannot independently establish the truth.

But then, these are issues of theology and philosophy beyond the reach, though surprisingly not beyond the scope, of an author endeavouring to write a political history of Muslims without studying Islam and the intricacies of philosophical thought. Therefore, another distinction one misses with Shākir is that of the ultimate content of Mawdūdī’s ethics, according to which men as individuals and in society have to submit themselves to the law. Once they have done so, they have done all that is required of them. Finally, Shākir has not clearly worked out the classification of Mawdūdī and his ideology. Here Adams has shown that due to his emphasis on *system* Mawdūdī, despite all his counter-reformationism, is to be counted among the modernists (“Mawdūdī talks of a ‘system’ that his ancestors felt no need of—the system is a kind of fortress whose intellectual walls turn aside the arrows of doubt and scepticism”, Adams op cit. p. 395).

Besides, Mawdūdī employs a principle of discrimination between the essentials and the forms of their embodiment. Like the modernists he uses this principle of discrimination to liberate himself from the authority of the accumulative Muslim past and to undercut the position of the ‘*ulamā’* who represent that authority. Instead of such ratio-
nakes, the author refers in a mystifying way to one Abü Muḥammad Muṣliḥ, as the forerunner of Mawdūdī. The story reminds us of the American Muslim leader Elijah Muḥammad and his mysterious spiritual guide, W. Fard. The difference is that unlike Eric Lincoln in his study on *The Black Muslims*, Shākir makes no attempt to verify the identity of the said Muṣliḥ or to explode the myth. Here it almost seems as if the author was on the verge of doing some original research, however, he did not pursue the track.

Shākir's highly misleading expression manifests itself in formulations that make the reader shudder time and again. About Mawdūdī he says: "He was equally attracted towards faith (Imān) and obedience (Iṣṣaʿat-e Amr) which are responsible for the rise of Hitler and Mussolini. Mauoodooi admires them because their principles are in agreement with Islam". (p. 221) What he means to say is that those principles agree with the particular notions of Islam as advocated by Mawdūdī, but it requires quite an amount of sympathetic understanding for Shākir to give the right interpretation to his sweeping statements.

Again about Mawdūdī: "His movement and his organisation were financed by the vested interests which sought religious sanction for the Zamindari (landlord) System from the Qur'an and the Sunnah. But after partition he realized the futility of his support to the Zamindari System and began to oppose it. This too he did on Islamic grounds." (p. 241)

This is a highly interesting question and one wishes Shākir to shed more light on this controversy. But again he disappoints his reader completely. He does not indicate even a secondary source for his startling revelation and skips over the issue conveniently.

It is quite obvious that Jinnah remained a most "enigmatic" figure to the author. The respective chapter is, therefore, less concerned with the personality and role of the Qā'id-i Ā'lam than with the Muslim League. This distinguishes Shākir's treatment of Jinnah from that of the other protagonists in the book under review.

In the concluding chapter the author makes an attempt at systematisation without, however, recompensating for the knots and tangles in his effusion of incoherent reflections throughout the preceding chapters. Abū l-'Ālam Mawdūdī and Mirzā Ghulām Āḥmad are apparently forces diametrically opposed to each other. It is certainly remarkable that Shākir perceived the identity of these Counter-Reformationist twins and put them together in the same category of retrogressive pseudo-reformers. His classification of the liberals and analysis of their role and failure could have proved useful had it not remained confined to a paragraph in the concluding chapter.

The development from 1885 to 1906 has been analysed by Rafiq Zakaria in his profound and systematic study on the *Rise of Muslims in Indian Politics* (Bombay 1970). If we take his scholarly work as a point of departure then we cannot but conclude that the following period, i.e., from *Khilāfat to Partition*, has as yet to be adequately treated.

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