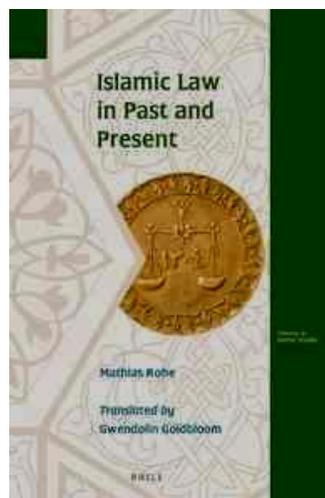


Mathias Rohe. *Islamic Law in Past and Present*, trans. Gwendolin Goldbloom. Leiden and Boston: Brill, 2015. Pp. xviii+658. Hardcover. ISBN: 978-90-04-27753-4. Price: 159 Euros/208 US Dollars.

Mathias Rohe's *Islamic Law in Past and Present* is an ambitious tome that sheds light on the diverse meanings and functions of the *sharī'ah-fiqh* complex, especially in the modern period. Rohe approaches Islamic law as a "constantly evolving" historical and contemporary legal system and is cognisant of its overlapping relationships with other bodies of legal thought and practice. At the outset, he points out that in order to understand this legal tradition's unique features we need to look beyond its "individual regulations." The Islamic legal tradition is best understood through the particular modes of jurisprudential reasoning that are available to Muslim jurists for interpreting a diverse range of textual and non-textual sources in order to discover divinely sanctioned juro-moral norms. The resilience of the *sharī'ah-fiqh* complex in the modern world is indebted to these longstanding modes of jurisprudential reasoning. Yet, the locations of the *sharī'ah* in modernity involve a host of attendant historical processes and political themes, such as secularism and disenchantment, the legal sovereignty of the modern state, and human rights. To study the modern manifestations of *sharī'ah* and *fiqh* thus entails two tasks: (1) tracing the histories of their usage in Islamic thought and practice over time in order to see how they have changed in the modern period; and (2) locating their invocations in shifting intellectual, social, and political frameworks that are often trans-regional, if not global, in scope and scale. Rohe's book is one of the many recent publications that attempt to place the modern configuration of the *sharī'ah-fiqh* complex in broader historical and discursive frameworks. To that end, Rohe tackles four main tasks that correspond to the book's quadripartite organisation. Part one "The History of Islamic Law" (pp. 23–211) summarises "the essential foundations and rules of classical Islamic law." The next part "Modern Islamic Law" (pp. 213–345) describes the modern emergence of "Islamic law." The third part "Paths Taken by Islamic Law in the Diaspora" (pp. 347–521) discusses the appropriation and adaptation of *sharī'ah* in the diaspora. In the concluding part of the book "Islamic Law and Its Prospects in a Globalised World" (pp. 523–33), Rohe



speculates about the future prospects of Islamic law in the age of globalisation. Each part is further divided into several chapters. In order to examine particular legal cases, the author relies largely, though not exclusively, on the *ḥanafī* school of Sunni jurisprudence, as this school had “spread most widely” in Muslim majority societies and often played important roles in imperial governance.

Before embarking on this descriptive-analytical adventure, Rohe furnishes his readers with an introductory chapter entitled, “‘Sharia’ and Law” (pp. 10–21). This chapter draws our attention to some of the key terms in the study of “Islamic law” and raises a crucial question for all students of Islam and its legal traditions: What are the advantages and disadvantages of translating *sharī‘ah* as law? Rohe cites both classical and contemporary sources—he even cites remarks made in international conferences on the subject matter—in order to complicate the assumed equivalence between *sharī‘ah* and law. In its mainstream usages, the term, “law,” lacks attention to the metaphysical postulations and notions as well as practices of moral subjectivity that are quite central to religious legal traditions. This term, therefore, needs to be expanded beyond meaning codified rules and regulations in order to do translational work for *sharī‘ah*. The latter term is at once about this-worldly norms and other-worldly salvation; *sharī‘ah* trickles down into multiple juromoral positions by means of *fiqh*, a contingent yet rigorous mode of understanding and elaborating the divine norms. The *sharī‘ah-fiqh* complex does not reduce the normative order to enforceable proscriptions and prescriptions. Rather, it encompasses acts that are outside the reach of state legislation and enforcement—acts that are termed “recommended” or “discouraged.” Hence the significance of the question: What is gained and what is lost when we translate *sharī‘ah* as law?

Part one begins with a chapter entitled, “The Origins of the Islamic State and Its Legal System” (pp. 25–53). Here, the author provides a synoptic description of the beginnings of *sharī‘ah*, *fiqh*, the law schools, and the emergence of judicial institutions in Islam. Throughout, Rohe treats “Islamic law” as a living tradition with a long history and attempts to connect the dots between its past and present as well as between its theoretical formulations and its practical contingencies. For example, he relates the medieval jurist Māwardī’s conceptualisation of “*sharī‘ah* politics” to the contemporary scholar of Islamic law Asifa Quraishi’s conclusion that “when a state makes a *siyasah*-rule for the public good, then the state is acting consistently with its Islamic obligation to uphold the Sharī‘ah, because *siyasah* that serves the public good is a part of the Sharī‘ah (as long as it does not force Muslims to sin)” (p. 42). Rohe’s bridges between the past and present—between theory and practice—

enable the reader to grasp the complexities of Islam's legal traditions. Yet, he should have bridged such gaps with more nuance and caution, as it would be erroneous to assume that Māwardī and Quraishi mean the same thing in their deployments of *sharī'ah* politics given that they think and act in two very different political entities across time and space.

The subsequent three chapters of the part one examine the sources, methods, and principles of Muslim jurisprudence (*uṣūl al-fiqh*), the practical and institutional manifestations of judgments and legal opinions (*qadā'* and *fatwā*, respectively), and the content of positive law in classical *fiqh*, ranging from marriage and inheritance regulations to criminal laws. The author sums up the chapter on *uṣūl al-fiqh* with these words: "All in all we can see clearly that there has been a gradual development of a self-referential system of sources of law and instruments of finding the law, within which the Quran and the sunna (*nass*) are the most prominent" (p. 93). The reader might be disappointed with the following chapter on *qadā'* and *fatwā*, which consists of only two and a half pages and does not discuss the complexities of these two legal practices. The final chapter of the part one discusses many areas of positive Islamic law with the exception of purification and the devotional rituals. Unfortunately, Rohe does not explain why these two areas are missing from an otherwise extensive discussion of legal *furū'* (readers interested to learn more about the other categories of legal *furū'* will appreciate the book's only appendix, which summarises the structure of Sarakhsi's *Kitāb al-mabsūt*). This chapter is embellished with several illustrations of how Islamic legal ideals and norms reverberated throughout European legal policies as well as practices until the Enlightenment.

Part two brings the reader into the key themes and debates around the reform of classical Islamic law in the modern period. Rohe rightly identifies the tension between "conformity to a traditional law school" (*taqlīd*) and "independent reasoning" (*ijtihād*) as a pivotal debate of modern Islam: "Most reforms crystallise around the central question of whether present-day Muslim jurists are bound by the conclusions of earlier scholars' finding of the law beyond the Quran and the sunna? . . . or are they free to employ *ijtihād* and arrive at new and independent decisions?" (p. 225). This is a powerful claim that requires both unpacking and substantiation, for it amounts to stating that the classical law school—that is, the *madhhab*—has become the testing grounds between *taqlīd* and *ijtihād* in the modern period. Yet, apart from marginal comments on the *madhhab* in modern Islam, Rohe does not unpack the implications of this claim, even though the part two features countless examples that portray the complex itineraries of *madhhab*-based legalism in various parts of Muslim majority societies. It is also unfortunate that the

author reinforces a dichotomous view of *taqlid* and *ijtihad* as mutually exclusive ways of belonging to the legal tradition. Yet, this chapter's greatest shortcoming is that it does not adequately address the modern emergence of "Islamic law" vis-à-vis colonialism.

Part three explores the opportunities and challenges of Islamic law in the so-called diaspora and consists of three chapters covering India, Canada, and Germany. The idea that India and Indian Muslims are located in the diaspora is quite misplaced (here, the author does not contextualise or justify his use of the term, "diaspora," with reference to India). This misplacement speaks to a broader problem in the book: at times the author is unable to shed remnants of Orientalist perceptions of Islam. We encounter the idea of a certain geographical region as being "the heartland of the Islamic world" (p. 89) and the Shaykh al-Azhar Muḥammad Sayyid al-Ṭanṭāwī as "the bearer of the highest authority in Sunni Islam" (p. 287), just to furnish two examples. In his discussion of the contestations around Islamic law in postcolonial India, Rohe is right to acknowledge the repeated use of "personal law" for "identity-forming" politics as well as the reactionary element in traditionalist stances. Moreover, he draws our attention to how globalised media are fracturing and restructuring communal authority among Muslims in India and the emergent scenes of intra-Muslim legal pluralism, especially with reference to the reform of gender-related norms. However, Rohe does little to contextualise the predicament of traditionalists' legal positions and practices as a symptom of the limitations, if not failures, of Indian secularism. Recent scholarship by Julia Stephens, Katherine Lemons, and Justin Jones on the varied discursive and political landscapes of Islamic law in contemporary India certainly offers more nuanced accounts.

Rohe also sheds light on how Muslims have invoked Islamic law in the UK, Europe, and North America. He acknowledges that in these contexts "many [Muslims] have adapted more or less to their new environment" (p. 519) and that Western states have to search for creative ways to accommodate Muslims' legal commitments while upholding the democratic rule of law. Rohe thus calls for finding the middle path between the "trivialisation and demonisation" of those Muslims who aspire to live their everyday lives according to the *shari'ah* (p. 521). The book's brief part four (a mere nine pages divided into two chapters) also calls for the need to reform Islamic law so that its practice might become compatible with secular democracy and liberal humanism. Rohe's centrist approach certainly has practical purchase; however, he hardly acknowledges the political context in which "Islamic law" figures in the racialisation of Muslims in Euro-America. The Islamophobia industry often posits "Islamic law" as the trojan horse of an

invading community that seeks to overturn an alleged Euro-American civilisation united by shared systems of governmental control, economic activity, and cultural expressions. This invading community is then connected to a regime of visible signs, such as the headscarf, the turban, and the beard. Rohe's statement, "Extremism does not lurk behind every headscarf and every beard" (p. 521) does not go far enough to expose the racialising schemes in which "Islamic law" and Muslim bodies have become stigmatised in contemporary Euro-America. I am thus suspicious of an accommodationist "tolerance" of the cultural-religious other that runs the risk of reinforcing a certain nationalist but also pan-European pride in the democratic rule of law.

While Rohe brings too this wide-ranging book the lawyer's penchant for details, the historian's search for cross-cultural comparisons, and the diplomat's measured political stances, *Islamic Law in Past and Present* often sacrifices depth for breadth. The book would have certainly benefited from meta-analytical reflections on the relationship between text and social practice, the analytical advantages but also limitations of trans-historical and cross-regional comparisons, and the porous nature of the conceptual and structural dichotomies that shape the diverse manifestations of *sharī'ah* in the modern world.

Ali Altaf Mian