

BEHNAM SADEGHI:

The Logic of Law Making in Islam: Women and Prayer in the Legal Tradition.

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This is a version of Behnam Sadeghi's PhD dissertation (Princeton, 2006). He reviews a series of legal problems as discussed by Ḥanafī jurists to the end of the Mamluk period, especially whether a man may perform a prayer with a woman standing next to him, not behind, whether a woman may lead the prayer of other women, and whether women may pray in a group behind men. He takes his material mainly from a series of detailed handbooks offering not only rules but justifications for them. Of the Sunni schools of law, the Ḥanafī was the most restrictive of women's ritual worship. Prophetic hadith is apparently more permissive, but Ḥanafī jurists found ways to neutralize it.

To summarize the argument of the book: "What is thought to be the outcome of jurisprudence, namely the laws, are actually the starting point for the jurist . . . The role of the methods of interpretation . . . is not to generate the laws, but rather to reconcile them with the textual sources" (p. xii). Jurists built up the appearance of inferring the law from revealed sources, but it seems plain, as Sadeghi argues concerning one case after another, that their actual starting point was the rule they wished to defend. It might take a long time for someone to get around to dealing with important contrary hadith. The rule defended would remain the same, but jurists would come up with novel reasons. For example, al-Sarakhsī (d. c. 483/1090–91) explains that a woman praying next to a man threatens to invalidate his prayer because of mutual sexual desire, whereas a boy next to a man does not invalidate his prayer because desire goes in only one direction, and a woman praying the funeral prayer next to a man does not invalidate his prayer because that prayer is about rendering a duty to the deceased, not communication with God. Later, Mamluk-era Ḥanafī writers would adduce instead an analogy from the rule that women may not lead men in the prayer. They say this rule is established by consensus. Sadeghi does not point out that there is well-documented disagreement from the Ḥanbali school, but he does observe how inconsistently they reason from not leading men to not praying beside a man. The historical origin of the rule, says Sadeghi (plausibly, I think), is the early Basran doctrine that the impurity of women is such as to contaminate water and invalidate men's prayers whether or not they are menstruating. The Ḥanafīyya maintained the rule without the original foundation of far-reaching female impurity, which could never be guessed from Ḥanafī discussions.

After reviewing his case studies, Sadeghi devotes three chapters to generalizing his results: the difficulty of inferring values from law books, the relation of legal rules to Islam as actually practised, and the main patterns of argumentation. The book is a little short, and I wish Sadeghi had made more comparisons with non-Ḥanafī discussions. But readers will themselves recognize many similarities in handbooks from other schools. For example, the carelessness about hadith that Sadeghi observes among Ḥanafī jurists before al-'Aynī (d. 855/1451), particularly willingness to quote hadith not found in famous hadith collections, I have repeatedly observed in al-Māwardī the Shāfi'i (d. 450/1058). Shāfi'i, Māliki, and Ḥanbali writers characteristically quote more of their predecessors than Ḥanafī writers, but

they seem no less willing to propose novel arguments for customary rules or, occasionally, to cast them aside.

At the end is appended a reworked journal article on the authorship of two works by al-Shaybānī, *al-Āthār* and *al-Muwaṭṭaʿ*. Cataloguing different ways of introducing quotations (e.g. *wa-hādihā qawl Abī Ḥanīfa* as opposed to *wa-huwa qawl Abī Ḥanīfa*), Sadeghi identifies a P-corpus comprising most of *al-Āthār* and a Q-corpus covering a small part of it. He proposes that P and Q were different persons taking dictation directly from al-Shaybānī, Q acting as a substitute for one or more sessions when P could not attend. Al-Shaybānī's *Muwaṭṭaʿ* is in P's style. Sadeghi's identification of corpora P and Q is convincing, and the process of copying the composite work appears to have been remarkably faithful, not smoothing out the differences. But it's not time, yet, to say that we now know that these two works are straightforwardly al-Shaybānī's, just as he framed them. The distinction between P and Q is more secure than their being direct auditors and the data of introductory formulae still need to be supplemented by analysis of the texts they introduce. It also remains to explain the received history of *al-Āthār* and *al-Muwaṭṭaʿ*, for the former is said to have been conveyed from al-Shaybānī by a string of Khurasanis, the latter by a string of Baghdadis. This seems difficult to square with the *Āthār* as predominantly and the *Muwaṭṭaʿ* as entirely P's direct transcription of al-Shaybānī's dictation. (Sadeghi suggests that one line may have come from transcription of al-Shaybānī's dictation, the other from reading someone else's transcription back to al-Shaybānī for his approval.)

In all, Sadeghi makes a significant contribution to our evolving understanding of Islamic jurisprudence. As between Norman Calder and Wael Hallaq, Sadeghi is with Calder: *uṣūl al-fiqh* is retrospective, not predictive, providing plausible justifications for laws already established for reasons it tends not to bring to light but actively to obscure. As regards Calder and Baber Johansen, on the other hand, he seems to be with Johansen: he stresses change over time and the dynamics of a legal system (very often quoting the Scottish legal historian Alan Watson) rather than literary artifice.

The name *al-Atrāzī*, frequently cited by al-'Aynī and so pointed in the edition Sadeghi uses, should be corrected to *al-Utrārī*. (Sadeghi seems to have correctly identified the man, who died in Cairo, 758/1357; see *GAL* 2:95 [79]; *S* 2:87–8, and Kaḥḥāla, *Mu'jam* 3:4.) Despite Brockelmann and Sam'ānī, Sadeghi continually writes “Bābirtī” rather than “Bābartī”. A few dates are wrong; e.g. Ibrāhīm al-Nakha'ī is said to have died 96/713 (p. 40) and 96/715 (p. 43), whereas Ibn Sa'd says he died at the beginning of 96/September 714.

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KRISTEN STILT:

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Kristen Stilt studies social and economic practices in the cities of Cairo and Fuṣṭāṭ during the thirteenth–sixteenth centuries by focusing on the actions of a particular