

RAINER OSSWALD:

Das islamische Sklavenrecht.

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Das islamische Sklavenrecht by Rainer Oßwald can be situated within the growing field of slavery studies within the Islamic world, and presents two distinctive features: first, it does not focus on the formative phase of Islamic law, as the existing literature on slavery in Islamic law does (especially Irene Schneider, *Kinderverkauf und Schuldknechtschaft* (Stuttgart, 1999) and Jonathan E. Brockopp, *Early Māliki Law: Ibn 'Abd al-Hakam and his Major Compendium of Jurisprudence* (Leiden, 2000), but on the developed Māliki law (p. 13). Second, the book aims to offer a comprehensive overview of all the possible aspects related to slavery in Islamic law, even though the author only focuses on Māliki law.

The book is divided into 18 chapters, including an introduction and a conclusion. From the outset Oßwald makes clear that “die vorliegende Arbeit will keinen Beitrag zu einer Theorie der Sklaverei liefern, sondern die Stellung beschreiben, die das islamische Recht Menschen zuweist, die in den arabischen Quellen mit Termini belegt werden, die man üblicherweise mit ‘Sklave’ übersetzt” (The present work does not intend to offer a contribution to a theory of slavery, but rather to describe the position that Islamic law assigns to people that are described in Arabic sources with terms that are usually translated as “slaves”, p. 13). The sources analysed are Māliki works of the classical and post-classical period (chapter 1), that shed light on the legal theory and partially on the legal practice in al-Andalus and the Maghreb.

Oßwald makes clear that “Die Haltung des Islams zur Sklaverei entspricht zunächst weitgehend der des Christentums” (The attitude of Islam towards slavery corresponds first of all largely to that of Christianity, p. 22): on the one hand, Islam recognizes the equality of all human beings; on the other, it accepts the institution of slavery as a social reality. Oßwald also discusses the perception of slavery as connected to a status of disbelief (22, 24–7), even though conversion does not put an end to it (27–8). As Qarāfi (d. 684/1285) put it, “Zweck des Sklaventums seien erstens Erniedrigung, Zwangsarbeit und Zwang aufgrund vorausgegangenen Unglaubens, und zweitens die Abschreckung mit dem Ziel, den Unglauben in Zukunft zu unterbinden” (The purpose of slavery is first humiliation, forced labour and compulsion on the basis of prior unbelief, and second deterrence with the aim of preventing unbelief in the future, p. 28). Therefore, Oßwald argues that enslavement is first and foremost a product of *jihād* (chapter 3), even though other possibilities for enslavement exist, like the purchase of slaves from the *dār al-ḥarb* or the acquisition of slaves as a form of tribute (chapter 4).

Oßwald also discusses the extent to which slaves in general, and Muslim slaves in particular, should be considered a commodity or a human being, and comes to the conclusion that, while the slave is first and foremost a commodity, he/she remains a human being: for example, with regard to the *‘ibādāt* there are no differences with a free Muslim (p. 264). However, he cannot be considered a full and perfect human being, which is the free Muslim man: in this sense he shares some characteristics with women, prepubescent boys and insane people. Indeed, the status of the slave is subject to a number of legal limitations (a status known as *ḥajr*, that in some cases can be removed through an *idhn*, a permit of the master (chapter 9)).

Öbwald also points out that, even though manumission of individual slaves, in particular of Muslims, is considered a praiseworthy act or can be required as *kaffāra*, abolition of the institution of slavery was never discussed prior to the modern period (p. 22). When discussing manumission (chapter 14), the author highlights the importance of the relation of *walā'* that is established between the former master and the former slave, that can be compared to a form of agnatic kinship (p. 196). Moreover, he points out that freedom should not be understood as an “unteilbares Abstraktum” (an indivisible abstract, p. 266): there is theoretically a sharp division between a free human being and a slave. However, there are different “hybrid slaves” that enjoy a special status, as described in chapters 15 and 16. These include the *mudabbar* (a slave whose manumission is stated via *tadbīr* at the death of his master), the *umm walad* (a slave who had a child from her master, and becomes free when the master dies), the *mukātab* (a slave who has a contract with the master that requires the slave to pay a certain sum of money during a specific time to obtain freedom), the *mu'taq li-ajalin musammam* (a slave whose manumission has been fixed at some point in the future) and the *mu'taq ba'duhu* (a slave who has been only partially freed).

The chapter devoted to the rights of a slave, such as the indivisibility of the child from the mother and the right to maintenance (chapter 13), and the one devoted to the slave's “property” (chapter 7), that is always considered “imperfect”, as it theoretically belongs to the master who can appropriate it (the legal term is *intizā'*) are particularly interesting.

Other chapters are devoted to forced labour, which is considered “neben der Verkäuflichkeit vielleicht das wichtigste konstituierende Merkmal des Sklaventums” (together with the possibility of being sold, the most important constitutive element of slavery, p. 99), analogy in relation to slavery (chapter 10), homicide and bodily harm (chapter 11), marriage (chapter 12), and resistance to slavery, as in case of escape (chapter 17).

All in all, the book is a necessary addition to the field of slavery and Islamic legal studies, and offers a good overview of the most important aspects related to slavery in Islamic law, at least with regard to Māliki law (even though the title does not mention the specific focus, which I found a bit misleading). However, the work does not always allow one to situate the legal discourses within the historical background. Two annexes complete the book: a collection of biographical details on the quoted works and a glossary of terms related to slavery. The glossary is particularly praiseworthy: it will constitute an excellent working tool for scholars interested in the topic, as it covers the most important terms related to slavery and to the slave in Islamic law.

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