

deny Muslims the right to conduct sharia-based family dispute arbitrations would be a violation of the Canadian commitments to multiculturalism and religious freedom as enshrined in the Charter of Rights and Freedoms.

Referring to his own experiences and research, Broyde concludes that religious arbitration tribunals can successfully integrate secular values into their practice and procedure to do justice between the matters. Overall, this is a balanced, well-argued and carefully researched work, based on practical experience, which could be recommended reading for those researching or practising in this sensitive area of law.

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## **Coercion and Responsibility in Islam: A Study in Ethics and Law**

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ISBN: 978-0-19-878877-5

*Coercion and Responsibility in Islam* is an interesting, if at times difficult, read. It is worth noting at the outset that, despite a concerted effort by the author to make the text accessible, if the reader has no grounding or basic understanding of Islamic jurisprudence, the concepts discussed and terms used are not always easy to understand or navigate. Nevertheless, the book provides a valuable insight into how jurists and theologians from different classical Islamic traditions approach the issue of how coercion impacts the legal and moral responsibility of an individual's actions.

The introductory text (pp 1–30) invites the reader to consider various scenarios, each of which poses, within the framework of both the civil and criminal law, a series of legal and moral dilemmas. The purpose is an attempt by the author to illustrate how the existence of coercion within the given scenarios raises a number of problems about how responsibility for a particular action ought to be treated. The author explains that what follows is essentially an examination of the reasoning underpinning Muslim theological and legal positions on four 'concrete questions', namely: whether the absence of coercion or compulsion is a condition for moral agency; how coercion ought to be defined as a matter of law; what effect coercion has on the distribution of responsibility for particular speech acts, most prominently divorce, sale and legal acknowledgement; and what effect coercion has on the distribution of responsibility

for acts that involve causing harm to innocent bystanders, specifically coerced rape and homicide (p 3).

Each of Chapters 1–4 focuses on defining and exploring the concepts of compulsion and moral agency within four different classical Islamic traditions: Mu'tazilism, Ash'arism, Ḥanafism and Shaff'ism. The chapters explore, in some detail, how each tradition defines compulsion and, more significantly, what compulsion does to responsibility. For example, in the case of Mu'tazilism, the author explains that, for Mu'tazilites,

the presence of compulsion is morally incompatible with God's imposition of obligations: for God to hold a human being responsible for an act he was compelled to perform would be unjust, and in the Mu'tazilites' view God can never act unjustly. (p 50)

The author observes that, therefore, for Mu'tazilites, the existence of compulsion negates praise, blame, reward or punishment. What it does not do, however, is negate choice or the physical capacity to perform an act. In other words, even someone who acts under compulsion – in English criminal law parlance, 'duress' – still technically *chooses* to commit the act. His or her choice may be driven by the pressure which is being exerted upon him or her but it nevertheless remains a choice and, unlike the person who acts in a state of automatism, his or her capacity to choose and/or commit an act is not negated simply because of the existence of this external pressure.

Having identified and discussed these different traditions (and having noted the similarities and differences between them), the text proceeds to apply the traditions to different subject matter. Chapter 5 explores 'Coerced speech act jurisprudence' in both Ḥanafism and Shaff'ism. As the author observes, in Islam 'speech can do a lot of things' (p 149) and so there may be a number of instances where coercion could impact upon matters such as the sale and purchase of property, marriage and divorce, and rites relating to prayer and the recitation of parts of the Qur'an. In the case of marriage, a few simple words can result in significant legal consequences relating to status, sex, maintenance and inheritance. As the author puts it, 'the labour involved in contracting the marriage is not proportional to the responsibilities and rights shed and gained' (p 149). Accordingly, the chapter pays important regard to the significance that the different traditions attach to speech acts which are brought about as a result of coercive behaviour.

Of particular interest to this reviewer is the author's treatment of 'Coerced harm jurisprudence' in Chapter 6. The author analyses the effect of coercion in respect of two grave crimes – rape and murder. Even within a particular tradition, there may be differences. Thus in the Ḥanafite tradition there are divergent views on the penalty to be imposed in cases of coerced rape: (i) that

coercion can never excuse rape and therefore a coerced rapist is liable for full corporal punishment (which, broadly speaking, is mandated in scripture as being 100 lashes of the whip or stoning to death depending upon the circumstances); (ii) if the coercer is the ruler, the coerced rapist is not liable for punishment; and (iii) if the coercer is capable of coercing in the same way as a ruler, the distinction between a ruler and a non-ruler is immaterial and the coerced rapist is not punished (p 187). There is a brief discussion, which most, if not all, may find alarming, about the extent to which a rape victim herself (and for the purposes of this work, there is an assumption that a rape victim is always a woman – nothing is said about whether the legal or moral position would in any way be different if the victim were a man) may be held liable for punishment. The author concludes, however, that all of the traditions are in agreement that a rape victim is not liable for punishment (p 192).

On murder, the author explores the respective approaches to both the moral and legal ramifications of those involved in a case of coerced homicide. While all appear to be in agreement that, on a moral level, coercion is no excuse for committing murder, ‘the issue of the respective legal liability of the coercer and the coerced for the act of killing generated much internal disagreement within each of the traditions’ (p 198). Differences of opinion are expressed on the legal liability of each participant, as well as the appropriate punishment in cases where liability is established. For the English lawyer, famous cases relating to duress and necessity will spring to mind when reading the different scenarios discussed throughout the chapter.

In his conclusion, the author notes that, ‘for the most part, medieval Muslim societies tolerated the existence of a plurality of such traditions, which set the stage for intense competition among them’ (p 227). This is evident from the discussion throughout the text. The interplay between law and religion is always of interest, especially to readers of this *Journal*, but in the case of Islamic jurisprudence the two are inextricably linked. That is why the author and the scholars to whom he refers note not only legal obligations and consequences but also moral ones. As highlighted above, while there may be circumstances where a coerced killer escapes legal punishment, he or she nevertheless remains morally accountable. Why? Because he or she has committed a sin from which he or she cannot derogate. The Mu’tazilites query whether obedience to God’s command could result in unjustified harm to others. They provide the example of a judge who faithfully applies the Islamic law of testimony (legitimated by God’s command) where this leads to an unjust outcome because the testimony is false. In this case, the author observes, ‘Mu’tazilites hold that God owes other-worldly compensation’ to the victim (p 238). Quite what form such compensation would take is unclear.

Only a page and a half is given to thoughts on comparative studies as between the various Islamic traditions and Western jurists and theorists on the issue of

coercion and responsibility (pp 241–242). Undoubtedly this is a study in itself. The author observes that, notwithstanding the perhaps stark contrast between Muslim religious scholars on the one hand and contemporary Western theorists on the other, there remain clear similarities as regards ‘the ways in which theorists of different times and cultures articulate the reasons for their positions’ on different issues (p 242). This is undoubtedly correct.

Overall, *Coercion and Responsibility in Islam* is a worthwhile read for those interested in Islamic jurisprudence in this difficult area of the law.

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### **Ecclesiastical Law (fourth edition)**

MARK HILL

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### **Atkin’s Encyclopaedia of Court Forms, vol 18 (second edition, 2018 issue): Ecclesiastical Law and Equitable Remedies**

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This *Journal* does not normally publish reviews of books after their first edition but the fourth edition of the key text on ecclesiastical law by the chairman of the Ecclesiastical Law Society calls for a salute and a warm welcome, particularly after an interval of 11 years which have seen significant events in the Church of England, with new legislation and case law, succinctly summarised in the author’s preface.

The commentary which makes up two thirds of the text provides an accessible account of essential principles for a wide range of potential readers, from lawyers unfamiliar with the subject to laity serving as Synod members. It may be valued by a new member of the parochial church council of a large and active church who wants to get to grips with the law regulating the Church; at the other end of the potential market, with its handy collection of materials, it provides a useful *vade mecum* for the ecclesiastical law specialist. The last ten years have seen a culling of much outdated material and the consolidation and revision of major areas of ecclesiastical law, as a result of which the new Hill is a slimmer and more portable volume, reduced from the 793 pages of the third edition to 614 pages.