

the notion that persons enjoy rights and freedoms antecedent to participation in any legal or political community. However, it is equally consistent with the positivist legal perspective that the law has elected to enter into (and regulate for) certain spheres of human interaction, while refraining from doing so in others. Both accommodate a sphere of personal autonomy. How has this residual personal autonomy informed the understanding of the term *ius* as supportive of a subjective right?

This book is concerned with that question. In formulating a response, Tierney engages with the subject in a masterly fashion. His suggestion that his work is 'descriptive' (p xi) does both his labours and the result a disservice. He invites the reader upon a journey along the avenues (and occasional cul-de-sacs) which mark the evolutionary travels of the Western legal tradition. He transports the reader through the authors, primary works and influences, doing so with all of the skill and facility of an expert tour guide and interpreter. This is a remarkable work, not only for its erudition but for its lightness of touch. Like many of the authors with whom Tierney has identified, this book is not directed to definitive statements but to the promotion of continued informed discussion on matters which continue to have a relevance to any jurist.

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Islamic Finance in Europe: Towards A Plural Financial System

Edited by VALENTINO CATTELAN

Cheltenham, Edward Elgar, 2013, Studies in Islamic Finance, Accounting and Governance, xi + 234 pp (hardback £80) ISBN: 978-1-78100-250-6

The Islamic finance sector has grown significantly over the last 20 years, not only in monetary value but also in terms of its market presence. Islamic finance is no longer the type of business that can only be found in Muslim countries: the different segments of this business have reached uncharted territories, primarily in the West. In this regard, not only has the financial industry taken notice of this sector but so too has academia. Throughout the development of Islamic finance, academic research has maintained its interest in different aspects of the subject. However, the legal aspect has not had the same level of academic attention until quite recently.

Since the different areas of Islamic finance have become parts of some of the leading Western financial markets, understanding the interaction between Islamic finance and the legal systems of these markets has become a more

pressing matter. *Islamic Finance in Europe* sets out to deal with the subject from legal, social and economic perspectives.

Chapter 1 broadly defines the main objective of this edited collection: that is, to interrogate the presence of Islamic finance in Europe through a pluralistic lens. The book is therefore divided into three parts: 'Pluralism and Islamic finance: conceptual tools', 'Islamic finance, economic development and social integration' and 'Islamic finance in Europe: accommodating pluralism in state legislation'.

Part I presents a distinctive theoretical take on the topic of Islamic finance. The theoretical discussion in Chapter 2, by Werner Menski, is not based on the typical Islamic jurisprudence (*usul al fiqh*) literature but draws on the theory of legal pluralism. Menski begins by highlighting the tension between law (a 'state-centric global phenomenon') and value/culture ('ethics and religion'), arguing that the interconnection between law and ethics is inevitable (p 17). He then goes on to argue in favour of legal pluralism, especially in the context of Islamic finance. In this regard, he suggests that Islamic finance cannot be 'value neutral commercial law' (p 15); therefore law governing Islamic finance should adopt a pluralistic methodology. Menski presents a kite structure for the law in which the four corners of the kite – nature (religion/ethics/morality), society (socio-legal approaches), state law (positivism) and international law – need each other to create 'the right law' (p 15). He notes the plurality of each one of these elements and maintains that the best approach to regulating Islamic finance is a system that take pluralism seriously.

In Chapter 3 Valentino Cattelan adds another block to the theoretical foundation of this book – namely conceptualising a pluralist approach to Islamic finance – as he explores the 'truths' about Islamic finance, encompassing in this process the ethical, religious, legal and economic grounds of the topic. In this regard, he highlights how 'truths' vary within the ethical context of Islamic finance depending on the theological framework used in the process of interpretation. Accordingly, he considers Ash'arism and Mu'tazilism streams, illustrating the variation in their underpinning theological methodology. Cattelan warns that Western social researchers should be aware of this multiplicity when addressing the wider context of Islamic finance. Finally, he finds a new way of introducing the key pillars of Islamic finance by using the Islamic theory of property rights, in this way distinguishing his argument from much of the literature already published on this subject.

Part II locates Islamic finance in the economic and social context with special reference to Europe. Chapter 4 examines 'Islamic moral economy' and its links to Islamic banking. Chapter 5 looks at the impact of Islamic finance on economic stability and growth. Chapter 6 defines some of the key Islamic banking products and their risk profile, referring to some of the regulatory challenges faced by Islamic financial institutions in Italy (this last section of the chapter might

have been better suited for Part III). Chapters 7 and 8 focus on introducing an economic contextualisation of Islamic finance in Europe: Chapter 7 examines the impact of Islamic finance on four central economic concerns in Europe – financial stability, banking efficiency, competition and access to finance; Chapter 8 considers the issue of migration to Europe, migrant banking and the prospects of Islamic banking in this respect. Despite its valuable contents, Chapter 9 stands at odds with the other chapters. Deborah Scolart addresses women’s empowerment and Islam in the Arab world and Europe; however, her subject is not thoroughly linked to the main theme of the book. It would perhaps have been preferable for the chapter to focus on women’s empowerment and the role that Islamic finance and its institutions could play in this context.

Part III examines the application of Islamic finance in a number of jurisdictions within Europe. While Chapter 10 considers the application of Islamic banking within the overarching European legal framework, Chapters 11, 12, 13, 14 and 15 focus on specific national jurisdictions. Chapter 11 looks at the UK experience, highlighting some of the legal challenges such as taxation and deposit guarantee; Chapter 12 examines the Luxembourg legal framework for Islamic finance; Chapter 13 highlights the potential legal challenges faced by Islamic finance in France; Chapter 14 provides a critical analysis of the slow development of Islamic finance in Germany; finally, Chapter 15 provides some insights into the legal and regulatory framework of Islamic finance in Turkey in the light of the political and economic environment.

Overall *Islamic Finance in Europe* makes an interesting contribution to the literature concerning Islamic finance.

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Pope Benedict XVI’s Legal Thought: A Dialogue on the Foundation of Law

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In his warm commendation of this series of significant essays exploring Pope Benedict XVI’s contribution to legal thought, Giorgio Napolitano, the former President of Italy, speaks both of the warm relationship he had with Pope Benedict and of his own conviction that ‘the social and political dimensions of