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The Logic of Law Making in Islam: Women and Prayer in the Legal Tradition. By Behnam Sadeghi. Cambridge: Cambridge University Press. 2013. Pp. 215. $95.00. ISBN-10: 1-107-00909-7.

In this insightful and carefully argued book, Behnam Sadeghi scrutinizes the juristic methods employed and reasons given for the maintenance and modification of laws in premodern Islam. On the basis of an original theoretical framework (or "general model") that articulates legal sources, principles, rationales, and outcomes, Sadeghi analyzes legal reasoning in the post-formative period of the Ḥanafī school of law (which he situates after the mid-eighth century CE) through three case studies on female participation in prayers. The book should be of obvious interest to students of Islamic law in the era preceding the rise of modern legal systems, and given its tendency to place Islamic legal thought within abstract frameworks of legal reasoning, the book should be of value to students of jurisprudence and comparative law as well.

The work manages to strike a balance between an awareness of the historical specificity of Islamic legal reasoning and an understanding of the generality of human attempts to articulate functional legal systems that remain faithful to their moral and cosmological foundations. As a result, Sadeghi succeeds in directly engaging the logic of premodern Muslim jurists with the accurate assumption that this logic was part of an attempt to construct a system of governance that faced challenges common to many, if not most, systems of social regulation. This achievement affords us a unique opportunity to learn about and engage in a constructive discussion of the nature of Islamic legal reasoning at its philosophical and structural levels.

The contribution of this book can be summarized in three important claims. First, it is not adequate to say that Muslim jurists *deduced* the laws from canonical sources. Second, laws have a tendency to survive changing social and cultural realities, yet occasionally, social pressure forces laws to adapt. Third, reasons given by Muslim jurists in support of their substantive opinions were not the *real* reasons behind those laws, but were ex post facto justifications designed to meet the needs of public reason. These arguments rely on an impressive number of sources in the genre of Ḥanafī *fiqh* and are advanced on the basis of meticulous and original analysis. Nevertheless, attempting to analyze Islamic legal reasoning through the lens of a "general model" that aims to explain any legal system that relies on textual exegesis is not without risks. This method of approaching premodern Islamic law leaves one wondering whether each component of Sadeghi's model is clear and uniform enough to be generalizable without neglecting certain elements that were central to the Islamic methods of producing legal knowledge.

Sadeghi's theoretical model, which aims to explain relationships between laws, their justifications, and the general methodological principles governing the use of exegetic rationales, is expounded in the first chapter. Sadeghi organizes different methodological approaches on a spectrum between the extremes of determinism and hermeneutic flexibility. At one extreme, the laws logically derive from the Qur'an and the *Ḥadīth*, and at the other extreme, the laws are justified by social circumstances or needs, while exegetic rationales serve to harmonize those laws with the texts. An example of the latter would be a case in which jurists, in accordance with established social habits, maintain the invalidity of the prayers of men who pray adjacent to women, but claim that this position stems from a direct interpretation of a *ḥadīth*. Among the elements that can drive legal continuity or change, we find foundational texts, received traditions, and the social and individual circumstances of the jurist. Thus, legal outcomes such as the invalidity of prayers in the above example, may involve relying on the semantic features of the foundational texts alone or

on a combination of foundational texts and other non-textual elements, such as prior opinions and social circumstances. Sadeghi concludes that "the degree of hermeneutic inflexibility is related inversely to the influence of canon-blind law" (19). In other words, when the formulation of legal positions is based primarily on the social or personal circumstances of jurists, or on any considerations not related to the legal texts, jurists tend to grant themselves significant latitude in interpreting sources in order to justify their conclusions (and vice-versa in cases of strict interpretation of the legal canon).

The third through fifth chapters offer analyses of the book's three case studies: women praying adjacent to men, women leading other women in prayer, and women praying with men in communal prayers. In the first case study, Sadeghi analyzes the justifications given for the Ḥanafī position that invalidates the prayers of all males who pray adjacent to females and shows that a number of rationales were given over the centuries including the prophetic *ḥadīth*, "Keep them behind." Sadeghi explains that early Ḥanafīs largely maintained the authenticity of this *ḥadīth*, although later scholars argued that it was a saying of a companion and not of the Prophet himself. Those who held that it was in fact an authentic *ḥadīth* disagreed on whether it was "solitary" (*aḥād*) or "well-attested" (*mashhūr*) (66–68 nn 35, 39, 40). In this instance, the jurists' attempts to prevent the occurrence of sexual thoughts during prayer, an analogy with the prohibition of praying behind a female *imam*, and the possibility that the *ḥadīth* could corroborate the Qur'anic verse, "Women have rights similar to the rights against them according to what is just; men have a degree of precedence over them" (Qur'an 2:228; author's translation), led them to the invalidation of prayers adjacent to females. The fact that rationales changed while the rule remained constant leads Sadeghi to conclude that the reasons given for the adjacency law did not *determine* the law.

The second case study concerns women leading other women in prayer, a matter on which the Ḥanafī position shifted from disapproval to outright prohibition. Here, too, Sadeghi makes the argument that the reasons jurists gave for the school's positions were after-the-fact justifications and did not determine the laws. Ḥanafī scholars had to deal with a report according to which 'Ā'isha led prayers, in response to which they argued that the practice was specific to early Islam but later abrogated. The efforts to defend the position of prohibition required a refutation of the desirability apparent in this report. While a few jurists attempted to refute the chain of transmission, the standard position was to claim abrogation. Sadeghi maintains that those who claimed abrogation by the Qur'an, such as al-Atrāzī, "interpret[ed] the Qur'an in the light of Ḥanafī law rather than the other way around" (83).

The final case study pertains to women praying with men in communal prayers. The Ḥanafī position grew increasingly opposed to female participation in public prayers over time. Abū Ḥanīfa related a tradition according to which women received a license to go out during the Eid, which would suggest that they would normally have to remain secluded. In general, early Ḥanafī reports reflected the undesirability of women going out, except, for some scholars, old women. Several jurists had to rely on sociocultural circumstances, especially the notion of the lewdness of some men, which support prohibition. The position evolved into absolute prohibition based on the nature of the age and the "prevalence of misdeeds" (116). This was a common notion that reflected the view that the degree of moral rectitude of early Muslims could not be matched by any later generation, which, in this case, justified the imposition of a stricter rule of conduct.

The seventh chapter discusses the conclusions that can be drawn from *fiqh* books, arguing that "(1) jurists may valiantly defend a law even though they find the values underlying it alien or even abhorrent; (2) the reasons they give in favor of a law are often not the same as their motives for advocating it; (3) their claims about social reality may be factually incorrect pieces of speculation designed in good faith to achieve needed legal outcomes; and (4) they speak for the legal traditions

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to which they belong, which at times makes it difficult to determine their views as individuals" (143).

The final chapter is dedicated to the complex interaction between laws and social reality. Sadeghi explains that social conditions force laws to adapt, and laws, in turn, force legal reasons to adapt. This chapter concludes by driving home the notion that, among the various candidates for law-generating factors (legal texts, interpretation, precedent, and social conditions), a combination of the third and fourth are the true reasons for legal change. Legal principles were more revisable than actual laws, and they were adapted to justify laws according to social conditions.

This argument represents a significant contribution to the growing body of scholarship regarding reasons for and justifications of legal positions advanced by premodern Muslim jurists beyond the frameworks systematized in the discipline of legal theory, an approach notably adopted by Sherman Jackson, whose debt Sadeghi amply acknowledges. Overall, Sadeghi's argument relies on linear relationships between specific generators of law (sources, social conditions, and authority of precedent) and legal outcomes, but it is not entirely clear that it accounts for all the important factors that shaped the reasoning of the jurists in this era. While Sadeghi's cogent analysis shows us that legal conclusions were *not* deduced from sources in any systematic manner, we ought to ask whether tackling the positive question of how Muslim legal reasoning *did* operate in all of its complexity would require, beyond the argument from after-the-fact-justification, an account that takes into consideration the various historical specificities of this particular type of legal-knowledge production. Two of these historically specific elements are of particular interest. First, this model does not appear to attribute a noteworthy role to broad and possibly more stable moral principles that may underlie and affect legal outcomes, such as piety, humility, and public decency, which, as this book's case studies show, are considerations invoked by jurists to resolve questions such as women's prayer in public. Second, this framework avoids non-linear forms of legal-outcome production such as polemical and dialectical methods of legal instruction and pronouncement. I will attempt to further elucidate these two points in the following lines.

First, the book's conclusions are predicated on the assumption that legal reasoning proceeds in a linear fashion from textual sources, authority of precedent, or social and personal considerations to reach a conclusion. This assumption ignores the possibility that the concept of textual source may differ so greatly from one tradition to another that a modification of the model would be required to account for such variation. As we can see from the book's case studies, legal "sources" often consisted of nothing more than a report about the Prophet or one of his companions, such as the case of 'Ā'isha's leading the prayers. We therefore ought to wonder whether the very nature of these sources imposed a type of legal reasoning more complex than the syllogistic deduction that Sadeghi cogently argues did not take place. Unlike any modern legislation, the Qur'an, the Sunna, and the consensus of the jurists (*ijmā'*)—together referred to by Muslim jurists as legal indicants or signs—are not structurally autonomous bodies of work designed to categorize and attach consequences to human action. Rather, they are composed of a large number of semantic signs (*dalīl*s), some of which cannot have a self-generating normative effect without the purposeful intervention of the jurist. Because this study treats the Qur'an and Sunna as autonomous legal sources that jurists inaccurately portrayed as self-generative of legal outcomes, it does not entertain the possibility that Muslim jurists dealt with those "sources" in an altogether different light.

While it may be true, in theory, that "almost any legal effect could be accommodated" (172) as a result of hermeneutic flexibility, one would need to consider the possibility that jurists, as the guardians of a system of a dual legal-moral nature, viewed those non-structural signs as reflections of broader, more stable moral principles such as the preservation of public decency. This dual nature can be clearly seen in the conflation of what is legal (*shar'ī*) and what is conducive to piety (*hudā*), a

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matter expounded in the interconnected genres of theology and legal methodologies, which was likely a matter that significantly impacted the jurists' social role and methods of reasoning. The case studies offered in the book present several arguments that explicitly rely on notions of public morality such as the preservation of public decency or the prevention of sexual thoughts during prayer. This conflation of the legal and the pietistic means that Muslim jurists viewed the enterprise of legal reasoning as both moral and epistemic in nature, and that they viewed themselves as community leaders formulating legal solutions based on moral guidelines. While the conduciveness to increased piety can be achieved without exact text-based deductive methods, this does not necessarily mean that legal reasons were nothing but after-the-fact justifications. Rather, legal reasons may be seen as proofs that afforded legal subjects the possibility of an ethically plausible outcome.

Second, although it cogently explains the jurists' social role in preserving legal tradition, the book's analysis does not account for the hierarchy of epistemic authority that was constructed and voluntarily adhered to within the *maddhab*, or doctrinal school of law. We can find only a single noteworthy reference to the concepts of independent reasoning (*ijtihād*) and reasoning based on prior authority (*taqlīd*) in the context of analyzing the thought of a particular jurist (140). Yet we know that jurists' methods differed greatly depending on their level of authority within the school of law. Largely unconsidered is the question of whether any given jurist was independently producing legal reasons to justify a given position or was simply reproducing the predominant reasoning of his school. Similarly, the book does not account for the polemical nature of the development of legal questions, whereby reasons were largely produced or reproduced for consumption within the *maddhab* or in cross-*maddhab* debates.

We therefore ought to wonder whether the sweeping conclusion that all legal reasons were ex post facto justifications applies uniformly, since reason-giving activities differed greatly among jurists. When reasons are produced in such a manner, one cannot assume that all those reasons served the same logical function. From a purely formal standpoint, the fact that many different reasons were associated over time with the same conclusion does not necessarily mean that none of those reasons was a *real* reason; yet one might reasonably assume, as Sadeghi did, that some were not.

In my view, the questions raised in this review highlight the fact that the book is one of tremendous value. In addition to providing us with enlightening and insightful arguments supported by an impressive array of premodern Islamic legal sources, the work presents us with an opportunity to engage in constructive reflection and debate about the nature and functions of premodern Islamic legal reasoning, an opportunity that, one hopes, scholars of Islamic law, legal theory, and comparative jurisprudence will immediately seize.

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