Book Review

Islamisches Völkerrecht. Studien am Beispiel Granada, Rüdiger Lohlker*

The study of Islamic law poses a number of challenges to the Western student. Apart from the linguistic and cultural obstacles that have to be overcome in order to penetrate an alien legal system, two characteristics present particular difficulties. First, there is the enormous diversity of divergent yet equally orthodox normative, procedural and methodological positions. If difficult to enter due to the sheer size of its literature, methodically this diversity poses no inherent problem, as the system of Islamic law is based on a microcosmic conception of law, i.e. “inner-directed instance-law, law linked to a concrete event and generated by an act of individual conscience”, as opposed to a macrocosmic “outer-directed rule-law, law in the form of general, abstract rules issued by an external, worldly institution” (Frank Vogel, Islamic Law and Legal System, 2000, 26–32).

An added difficulty is the extreme discrepancy between the dogmatic ideal with which the learned jurisprudence (fiqh) is exclusively concerned and the legal reality which, although not acknowledged by doctrine, often sharply diverged from the allegedly uniform and immutable stipulations of the sacred law. Legal dogma takes notice that it depends for its realisation on a sanctioning state but refuses to accept the reality of actual governance where historically the state has always assumed far-reaching, but dogmatically unacknowledged legislative and judicial competences. Here one must recall that fiqh has been the product of the efforts of private specialists, not the creation of the early Muslim state, evolving often in conscious opposition to the latter. Given this private origin, the highly idealistic and procedur-
ally cumbersome content of fiqh becomes understandable. However, the functional needs of government administration, and the responsibility to maintain public order, did not always permit the state to live up to these high standards of procedural and substantive equity, eventually leading to the development of siyasa as state law, distinct and at times in opposition to fiqh.

Given its aspiration to be all-encompassing and universal, fiqh obviously does contain detailed stipulations about the character of the Muslim state and the limits of internal and external governmental action. These rules remained largely abstract, idealistic, and the extent of their applicability in actual historical state practice remained questionable. The discrepancy between the learned manuals of fiqh and a legal reality that remains dogmatically unacknowledged is particularly pronounced in the sphere of public law, where the relationship between political theory to historical reality has been disjointed and conflictual. Dynamic legal development did not lead to amendment of doctrinal teaching. The ‘historical yes’ of practical accommodation to changing historical circumstances continued to be staunchly opposed by a ‘dogmatic no’ insisting on the immutability and timelessness of the sacred law (see Wael Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni usul al-fiqh*, 1997, 162–254; and Baber Johansen, *Contingency in a Sacred Law - Legal and Ethical Norms in the Muslim Fiqh*, 1999, 266). This discrepancy is particularly pronounced in the realm of Muslim international relations, a fact that forms the point of departure for Lohlker’s important historical study of the contractual and diplomatic relations of the last European Muslim state with its Christian neighbours.

The relatively few books on Muslim international law mostly ignore the above-mentioned discrepancy and focus exclusively on restating the dogmatic position of fiqh. The most comprehensive of the historical fiqh manuals is Shaybani’s *Kitab as-Siyar* (translated by Majid Khadduri as *The Islamic Law of Nations. Shaybani’s Siyar*, 1966). Together with its authoritative commentary by as-Saraskhiy, the siyar forms the basis of most modern restatements, such as the still widely used works by Muhammad Hamidullah, entitled *Muslim Conduct of State* (1953) and by Majid Khadduri, *War and Peace in the Law of Islam* (1955). More recent authors such as Isam Kamel Salem, *Islam und Völkerrecht* (1984) and Christopher Weeramantry, *Islamic Jurisprudence: An International Perspective* (1988) follow the same approach of focussing narrowly on the dogmatic rules of fiqh, i.e. the private scholar-