CUT AND PASTE IN LEGAL RULES: DESIGNING ISLAMIC NORMS WITH TALFĪQ*

BY

BIRGIT KRAWIETZ
Tübingen

The topic of talfīq, the fusing of different legal opinions, is mostly discussed in the context of the application of the Sharia in the modern state laws of the Islamic world.¹ As such, it is a means of inner Islamic reform attempts in order to prevent seemingly ‘out of date’ restrictions.² In addition to talfīq, there are other strategies to overcome the rigidity of taqlīd, the unquestioning adherence to one of the four orthodox schools of law,³ such as, on

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¹ N. J. Coulson, A History of Islamic Law, Edinburgh 1964, 197-200; Norman Anderson, Law Reform in the Muslim World, London 1976, 43-82; art. “Talfīk”, in EI² X, 1. In classical Islamic law (Wael Hallaq), 2. In modern Islamic legislation (Aharon Layish), 161. Hallaq found, “that no technical dictionary lists the term (in any of its forms) and that the strictly technical connotation attached to the concept in modern legal reform is absent from classical and medieval juristic discourse”.

² Syed Moinuddin Qadri, Traditions of Taqlīd and Talfīq, in Islamic Culture 57:2 (1983), 39-61 and 123-145, 135; Malcolm H. Kerr, Islamic Reform: The Political and Legal Theories of Muhammad ʿAbduh and Rashīd Riḍā, Berkeley and Los Angeles 1966, esp. 80 f., 89-96, 99; the same, Taqlīd, Legal Scaffolding and the Scope of Legal Injunctions in Post-Formative Theory:

the one hand mere replacement by modern state law (*qānūn*) of foreign origin or, on the other, fundamentally new rules based on a revised reading of Koran and Sunna.\(^4\) Anderson, in his monograph on modern legal reforms, mentions in all five such expedients: (1) the right of the ruler to regulate court jurisdiction, (2) eclecticism (*takhayyur*)\(^5\) “first put to systematic use in the compilation of the Majalla, the Ottoman Law of Obligations, which was completed in 1876”,—a means that might even lead to *talfiq*, (3) re-interpretation of the holy sources in the light of *ijtihād*,\(^6\) i.e. legal interpretation and development unbound by law school considerations, (4) administrative orders and (5) judicial decisions.\(^7\) In that context, the treatment of *talfiq* in Western secondary literature is mainly about the intricacies of personal status, hereditary laws or religious endowment (*waqf*)—thereby scaring away all but the ‘hard core’ legal experts. Qadri describes these state law endeavors as “the macro-juristic-approach of the ‘doctrines of *talfiq*’ to the national problems of the Muslim community” as opposed to the “micro-juristic-approach” of individual believers.\(^8\) Once part of the optimistic strategies used by liberal Islamic modernism and especially by the leaders of the *salafiyya*-movement,\(^9\) like Muḥammad ʿAbduh (d. 1905) or Muḥammad Rashīd Rida (d. 1935), it failed—according to many observers—to re-


\(^6\) For the issue of *ijtihād* see Wael B. Hallaq, *Was the Gate of *Ijtihād* Closed*, in *IJMES* 16 (1984), 3-41. Norman Calder, Al-Nawawi’s Typology of *Muftīs* and its Significance for a General Theory of Islamic Law, in *Islamic Law and Society* 3 (1996), 137-164, 159, however, criticized Hallaq, for he “allowed the term *ijtihād* to carry nearly the whole burden of allusion to creativity in Islamic law.” See also Sherman Jackson, *Taqlīd*, 169-173.

\(^7\) Anderson, *Law Reform*, 34-82.

\(^8\) Qadri, *Traditions*, 130, 133.