

EDITORIAL

Special Issue on Islamic Law

Islamic law is an old legal system. The only universally binding written rules in Islamic law are the Qur'an and the words and deeds of the Prophet collected in the Sunnah. Its legislative period – the time during which statutory law was adopted – lasted from the year 609 of the Gregorian Calendar and ended with the death of Prophet Mohamed (PBUH) in the year 632.

One of the central questions for anyone applying or trying to understand Islamic law is how the system addresses modern life issues that did not present themselves at the time when Islamic law was revealed and are thus not directly addressed in the ancient legislative texts. Two challenges, in particular, have to be overcome. First, some of the ancient rules may seem archaic today, in particular those pertaining to criminal punishment. Cutting off the hand of a thief or publicly flogging an adulterer are the kind of rules – or more precisely the kind of interpretation of rules – that contribute much to the widespread perception of Islamic law as out of touch, unfit for modern societies or even cruel and inhuman.

Second, whenever a limited set of rules that was adopted in different times and circumstances is applied, much depends on how these rules are interpreted and by whom. To give a modern day example, the United States Constitution is also an ancient text in need of interpretation. The legal system of the United States, in principle, gives the right of interpretation to each and every judge, at least those on the Federal courts. However, if there are divergent interpretations, there are rules about the powers of the Federal appellate courts to provide more uniform guidance, and the US Supreme Court is the final arbiter with the power to bind everyone in the entire country to one and the same interpretation. Islamic law does not have a similar structure of Islamic courts that can provide binding interpretation of the ancient texts. This makes for a considerable diversity of interpretations. Moreover, the only authoritative primary sources of Islamic law are the original texts in Classical Arabic. Any translations into any other language, including even modern Arabic, are mere secondary sources because they are no longer the actual words of God and his Prophet. Thus, all those who are not trained in Classical Arabic are developing their interpretations on the basis of earlier interpretations by the respective translators. This is why Islamic law generally does not treat interpretations as binding law, because humans can err and times can change. The only exception would be if all Islamic scholars came to the same interpretation, because the Prophet said that his community will never agree or be in consensus in an error. Given the size and diversity of the Islamic community of scholars today, consensus very nearly never happens, and each interpretation can be applicable only to those who want to apply it.

One may see this lack of an authoritative final arbiter for the interpretation of Islamic law as a weakness of the system. But is US law really any better, if it gives the power to determine such central issues as whether or not a woman can have an abortion, whether or not men and women of the same sex can marry, or whether or not there should be limits on the amount of money a person can donate to a political candidate or representative, into the hands of a single judge holding a so-called swing vote on the Supreme Court, in particular if that judge is him- or herself a political appointee?

Fortunately, Islamic law does not leave those who want to understand and apply it without guidance as to its proper interpretation. There are a number of hierarchical rules and general principles in Islamic law that every interpretation of its rules has to respect. These include, for example, the rule that everything is allowed unless it is specifically prohibited, as well as considerations of public interest, fairness, and equity, as guidelines for interpretation. Once we begin with the original Classical Arabic, instead of more or less accurate interpretations, and we diligently and consistently follow the rules and general principles, we find that Islamic law is not only flexible enough to accommodate modern life issues but it provides solutions that do not need to look and feel archaic or out of touch, let alone cruel or inhuman. Quite to the contrary, Islamic law provides surprisingly modern and decidedly just and fair solutions in many areas where Western systems still struggle, for example in areas such as consumer protection against abuse by mortgage lenders and credit card companies, or in the protection of the environment.

It is the goal of this special issue of the *European Journal of Law Reform* to shed new light on Islamic law as a legal system. While other publications have explained modern and just solutions offered in Islamic law for particular questions, we are attempting to draw a wide arc across issues as diverse as the place of Islamic law among legal systems (Saliba), the Sources and Fundamental Principles of Islamic Law (Taman), Democracy and Constitutionalism (Shehu), Human Rights and Procedural Guarantees (Mattar), Women's Rights (Alsunaid and Muneeza), Religious Dress (Gray), Freedom of Speech and Freedom of Religion (Akram), the Rights of Migrant Workers in Countries like Saudi Arabia or Qatar (Alzahrani), the Rights of Children (Malingreau), Medically Assisted Reproduction (Büchler and Schneider Kayasseh), Environmental Protection ('Arafa), as well as Intellectual Property Rights (Bagheri, Nayyer and Moalla). In this way, we hope to provide a kind of Handbook on Islamic Law, and an incentive to see this legal system in a new and more objective way.

Comments and questions from our readers are most welcome and should be addressed to the individual authors and/or to me as the editor of the present volume.

Sincerely Yours,

Frank Emmert (femmert@iupui.edu)

I am delighted that the EJLR has produced this wonderful special issue on Islamic Law. The issue has been a couple of years in the making and would have completely collapsed as a project had it not been for the intervention of Prof Frank Emmert who managed to put this special issue together in less than a year. What is particularly impressive about this issue is not just the quality of the articles but the breadth of topics, which puts this special issue on a par with a textbook on Islamic Law. I congratulate the guest editors and the individual contributors for their brilliant efforts.

Dr Constantin Stefanou

EJLR Managing Editor