Islamic Law in Theory: Studies on Jurisprudence in Honor of Bernard Weiss, edited by A. Kevin Reinhart and Robert Gleave, with an Appreciation by Peter Sluglett (Leiden: Brill, 2014), xx + 370 pp., ISBN: 978-90-04-26519-6, €157.00USD $194.00 (hb)

This volume, celebrating Bernard Weiss and his seminal contributions to the study of Islamic jurisprudence, came out of a conference in Alta, Utah, in 2008. It contains a list of Weiss' publications as well as personal appreciation to the honoree by Peter Sluglett. The editors, Reinhart and Gleave, are to be commended for arranging the thirteen essays in a manner that gives the whole project intellectual coherence and depth without sacrificing the authors' varied research perspectives toward Islamic legal theory. They divided the contributions into four interrelated sections: Law and Reason, Law and Religion, Law and Language, and Law: Diversity and Authority, acknowledging that there is of course overlap and some chapters fit into more than one section.

As a Festschrift in honor of Bernard Weiss, the individual authors see themselves working in his intellectual legacy. In *The Spirit of Islamic Law*, Weiss (1998, 171) says "it was the toilsome task of the jurist to read the mind of God to the best of his ability." The authors of this edited volume bring to the fore how pre-modern jurists accomplished this task, attending to the intellectual environments in which they operated, and to which ends they translated the will of God into human conduct. The contributions, while uneven in quality, nevertheless highlight that the articulation of Islamic jurisprudence is closely intertwined with theological debates over the nature of God, with competing notions of authority in interpreting the divine law, and with different conceptions of how language relates to legal conduct. The chapters in this volume show in particular the deep impact that the engagement with Muʿtazilī thought leaves on all areas of Islamic jurisprudence. Intellectual historians of Islamic law will find in this book a rich mine of textual studies on the diversity of legal thought of the middle period of Islam.

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In the first chapter on “Law and Reason”, Ahmed El Shamsy complicates the common understanding of the dichotomy of ethical theories, with objectivist Muʿtazilī-Ḥanafīs on one side and subjectivist (or voluntarist) Ashʿarī-Shāfiʿīs on the other. Drawing on hitherto unstudied sources of two $4^{th}/10^{th}$ century Shāfiʿīs, al-Khaffāf (fl. first half of $4^{th}/10^{th}$) and al-Qaffāl al-Shāshī (d. 365/976), El Shamsy shows that the ethical theory of these two jurists had close affinity to their Muʿtazilī contemporaries. They likewise espouse that the sacred law is rational and promotes human benefit (*maṣlaḥah*), thus arguing in favor of jurists’ ability to extend God’s law to unprecedented circumstances by means of analogical reasoning (*qiyās*). El Shamsy also confirms Opwis’ earlier findings[1] that in practice *maṣlaḥah* had no role to play in law-finding. Al-Qaffāl, like the Muʿtazilīs al-Jaṣṣāṣ (d. 370/980) and Abū l-Ḥusayn al-Baṣrī (d. 436/1044), only argues that the ultimate cause of God’s law is intelligible, not the specific benefit of revealed rulings. Hence, he did not envision a specific *maṣlaḥah* to be used as *ratio legis* in analogy. The Muʿtazilī influence on Shāfiʿī jurisprudents is also documented by Éric Chaumont (chapter 2), who convincingly disperses the myth that the Shāfiʿī jurist al-Shīrāzī (d. 476/1083) was influenced by Ḥanbalī traditionalism. His detailed analysis shows that traditionalists were no interlocutors to al-Shīrāzī. Rather, what George Makdisi and Henri Laoust classified as traditionalist thought in al-Shīrāzī’s legal doctrine has in fact more of an affinity to Muʿtazilī views. Chaumont suggests that this explains why traditionalists of later times, such as Ibn Qayyim, are said to be promoting Muʿtazilī ideas. Perhaps, a re-evaluation of traditionalism as an intellectual current in jurisprudence is called for.

Despite the eventual decline of Muʿtazilism as an active player in the sphere of law, their intellectual impact on Sunnī jurisprudence persisted. The rejection of analogy (*qiyās*) by the Muʿtazilī al-Naẓẓām (d. ca. 221/836) makes itself felt for centuries. A. Kevin Reinhart (chapter 5) highlights his influence on debates on rituals (*ʿibādāt*) and whether analogy is possible in light of their apparent non-rationality. He traces how jurists from the $3^{rd}/9^{th}$ and $4^{th}/10^{th}$ century reconciled (or not) the non-rationality of rituals with their positions on the rationality of the divine law. Somewhat counterintuitively, it is the Ḥanafī school of law that restricts the use of *qiyās* to extend God’s law in the area of *ʿibādāt*, including expiations, *ḥudūd* punishments,

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1 Cf. Felicitas Opwis, Maṣlaḥa *and the Purpose of the Law: Islamic Discourse on Legal Change from the $4^{th}/10^{th}$ to $8^{th}/14^{th}$ Century* (Leiden: Brill, 2010), 16-41.

numerically fixed rulings (*maqādīr*), and legal license (*rukhaṣ*). Christian Lange (chapter 6) similarly points out how jurists' conception of the rationality and non-rationality of law influence their definition of expiations (*kaffārāt*) and whether and to which extent *qiyās* can be employed to find legal solutions for novel circumstances in areas like sin and expiation. Lange skillfully teases out the theological underpinnings of debates over the status of the grave sinner among Ashʿarī and Māturīdī scholars. At stake, ultimately, is the all-encompassing nature of the divine law. Does the revealed law cover all of human conduct, irrespective of changing circumstances, or are some areas, namely those for which no tangible rationale can be discerned, restricted to the legal assessment expressed in the authoritative texts?

The debate about extending the sacred law to new circumstances intersects with discussions over who has the authority to determine the correct ruling in a particular situation. Mohammad Fadel (chapter 4) focuses on the debate over the ethical implications of obligatory *taqlīd* when *mujtahid*s come to different *ijtihād*ic conclusions. He traces various solutions presented to such a scenario, which range from the *muqallid*'s free choice, to weighing the strength of *ijtihād*, to evaluating the social standing of the *mujtahid*. In all solutions, it is the lay person who has control over or autonomy in his/her legal fate. The *muqallid*'s pick among options, thus, shapes the legal landscape. Yet, such autonomy in deciding the legal outcome may be limited by real-life practicalities. Examining documents of the Shāfiʿī court of the Dakhla oasis in Egypt from 1579 to 1937, Rudolph Peters (chapter 12) suggests that much of the *madhhab* diversity found in these documents is not, as often assumed, the result of people's forum-shopping to get a favorable ruling, but rather driven by practical considerations, such as temporary vacancy of the local Shāfiʿī judgeship or a visit from a higher-ranking Ḥanafī court official who is asked to adjudicate a case.

That the private person is part of shaping legal doctrine and the development of Islamic law is also the subject matter of Jonathan Brockopp's article (chapter 5). He reads Saḥnūn's (d. 240/854) *Mudawwanah*, a formative work of the Mālikī school, as a text composed outside the radius of courts and judges, and, hence, without much consideration for legal practice. The *Mudawwanah*, according to Brockopp, is a text that does not aim at training lawyers,

judges or practitioners of law, but that sees the study of law as a road to piety and grace. The tension between personal piety and juristic authority is addressed in Raquel Ukeles' study (chapter 7) on how medieval jurists respond to popular devotional practices. Taking the *ṣalāt al-raghāʾib* as example, she presents the debates between Ibn ʿAbd al-Salām (d. 660/1263) and Ibn al-Ṣalāḥ (d. 643/1245) over innovation (*bidʿah*), showing how jurists creatively balanced their roles as preservers of the primacy of the sacred texts and as authoritative leaders of society attuned to popular sentiment and need. The role of jurists as leaders of society, so widely accepted for the later middle period of Islam, has however, not always been undisputed. Frank Vogel (chapter 13), re-reading al-Māwardī's (d. 450/1058) *al-Aḥkām al-sulṭāniyyah*, illustrates the way that al-Māwardī successfully delineates the powers of the political and legal arena to establish a constitutional theory in which jurists and their legal concepts and categories are the ultimate force to legitimize as well as constrain government. In al-Māwardī's work, *siyāsah* is successfully subordinated to *fiqh*.

The theme of interpretive authority also comes through in Joseph Lowry's study (chapter 11) which investigates the post-modern qualities of consensus (*ijmāʿ*), *ijtihād*, and interpretive communities. The notion that all *mujtahid*s are correct and the expanding legal disagreement that follows therefrom is diametrically opposed to the urge for consensus. Lowry presents the strategies used by 5th/11th and 6th/12th century jurisprudents to reduce the normative pluralism resulting from *ijtihād*. Rather than emphasizing the sacred texts as highest authority, they succeed in their efforts by making the interpretive community of the jurists, in the form of consensus, the arbiter of interpretive uncertainties. While in Sunnī circles, it is the community of jurists who have interpretive authority, Robert Gleave's analysis (chapter 9) of early Imāmī conceptions of literal meaning and interpretation shows a different picture. It is through linguistic analysis of meaning, literal and metaphorical, that the divine law is understood. Although lacking a uniform conception of "literal meaning," early Shīʿī jurists commonly agreed that meaning is inherent in a word and that it may differ from the way the speaker employs the word in a particular speech act. The diverse interpretations of the revealed law among even the Prophet's Companions leaves understanding the intended meaning of divine speech with *imām*s, who, through their special linguistics

knowledge, have interpretive authority to unveil the intended meaning otherwise inaccessible to the lay person.

Finding the divine in language is the subject of Paul Powers' study (chapter 8). Muslims debated the relationship of God's addressed speech (*khiṭāb*) with its legal assessment (*ḥukm*), and how it translates to human legal conduct. Powers differentiates between two basic approaches, foundationalist and formalist. The former holds that actions are given their intended meaning in the process of action, resulting in a tendency toward using subjective criteria, such as intention (*niyyah*), to determine the legal validity of acts. Whereas formalists, agreeing that actions are namable with words, focus on the actual verbal pronouncement to determine legal effects, disregarding the speaker's intention. How linguistic conceptions shape jurists' understanding of law is also demonstrated by Wolfhart Heinrichs (chapter 10), who presents the semantic categories that structure Ibn Rushd's *Bidāyat al-mujtahid*. Looking at the chapter on lost property (*luqaṭah*), Heinrichs illustrates the way in which linguistic categories of actor, action, and acted upon shape the author's analysis of legal acts. Structuring legal texts according to semantic entities also opens space in the text for explaining how legal differences come about.

All in all, *Islamic Law in Theory* is a valuable addition to the study of Islamic jurisprudence, a work worthy of recommendation to colleagues and students alike. Yet, as with many edited volumes, challenges persist. For one, a uniform citation style would have been desirable. There is no apparent reason why Fadel's chapter has references to *supra* notes when other authors use shortened title citation. The quality and focus of individual chapters is unfortunately rather uneven. A firm editorial hand should have assisted authors in cutting unnecessary digressions and repetitions, avoiding chronological jumps or bringing an author's main arguments into focus, so that the reader is not left questioning the point of a chapter and how it fits into studies on Islamic legal theory. Despite the diverse research perspectives displayed in this volume by exemplary scholars, this reviewer is puzzled by the lone French-language chapter of Éric Chaumont and the single female scholar represented (Raquel Ukeles) in a volume with thirteen contributors.

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