

BOOK REVIEWS

THE CONCEPT OF STATE AND LAW IN ISLAM.

By Farooq Hassan. University Press of America, 1981. Pp. 311.*

The religion of Islam arose in the 7th century. It has been known to Europe since its inception, but European scholars have studied it seriously only for the purpose of explaining it to the hierarchy of the Christian Church¹ and colonial authorities.² Rarely has the religion been presented by impartial scholars for the enlightenment of Western readers. Because of Islam's global expanse and its importance to every facet of the lives of its followers, the need to understand the religion is becoming increasingly important. Professor Hassan attempts to enlighten Western readers with his study of Islamic law,³ but unfortunately, his effort to cover such a vast field in such a limited space results in an overly broad and somewhat abstract narrative. The book covers various juristic aspects of Muslim society such as laws, legal institutions and their development, and international affairs. The chapters on the concept of law and state are particularly worth noting.⁴

After its beginning in the Middle East in the 7th century, Islam spread to Spain and even as far as the Phillipines. Numerous societies were established during this expansion with Muslim rulers.⁵ Their academic and economic contributions to civilization are well known.⁶ These societies had a built-in legal system that fulfilled

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¹ Y. ALI, *THE HOLY QURAN, TEXT TRANSLATION AND COMMENTARY; COMMENTARIES ON THE QURAN* x-xvi (1946) [hereinafter cited as Y. Ali].

² E. SAID, *ORIENTALISM* (1978); *see also* E. SAID, *COVERING ISLAM* (1981).

³ F. HASSAN, *THE CONCEPT OF STATE AND LAW IN ISLAM* (1981).

⁴ *Id.* at 29-129.

⁵ These societies included: the Ummaiyads in Spain; the Ummaiyads and Abbasis in Syria and Iraq; and the Ottomans, Moghals, Safarids, and a host of others in Asia, Africa, Southern Russia, and Europe.

⁶ 1 W. DURANT, *THE STORY OF CIVILIZATION* 459-76 (1954); 4 W. DURANT, *THE STORY OF CIVILIZATION* 206-81, 308-44 (1950); 6 W. DURANT, *THE STORY OF CIVILIZATION* 664-719 (1957); 7 W. DURANT, *THE STORY OF CIVILIZATION* 518-37 (1961).

their own needs without raising any of the problems of legal or institutional stagnation that are so prevalent today in the Muslim world.

It was the industrial revolution in the 18th century that enabled Western civilization to finally catch up with the much advanced Islamic society. The erosion of the feudal order and the rise of the democratic system that replaced it are responsible for Western civilization's modern achievements and for some of its problems as well. The Western legal system has been instrumental in supporting the fusion of the democratic political system with the interests of industrial growth.

Islamic societies, on the other hand, did not experience the industrial revolution and the concomitant erosion of the feudal or monarchical order. Consequently, they slipped behind and were systematically colonized by the West. Today their political systems continue to be headed by monarchs or military rulers. The interests of these rulers are best served by maintaining the status quo. Professor Hassan ascribes the stagnation of Islamic society to the adherence by the "Mullahs" or "Fundamentalists" to the law given in the 7th century. He asserts that the woes of modern Islamic society are attributable to the stranglehold of ill-educated Mullahs on Islam.⁷ It is not the Mullahs, however, who are behind the maintainance of the political status quo and, hence, the legal stagnation. Professor Hassan amply explains that Islamic society from its inception has been consultative and opposed to monarchy. His position is consistent with that of the leading theologians of the Sunni⁸ and Shiite schools.⁹ Unfortunately, this glaring conflict between the theory and practice of Islamic doctrines is not discussed.

Further growth of the consultative system in Islamic government should have taken place and eventually blossomed into a democratic system, but the colonization of Muslim countries prevented this transformation. Even though the Muslim countries have now been decolonized, the economic and strategic interests of the major industrial powers have continued to impede the growth of representative political institutions. Thus, Muslim societies invariably are ruled by families or authoritarian regimes interested in maintaining the status quo.

⁷ F. HASSAN, *supra* note 3, at 38-39.

⁸ H. ASKARI, *SOCIETY AND STATE BY ISLAM* 75-120 (1950).

⁹ H. ALGAR, *ISLAM AND REVOLUTION: WRITINGS AND DECLARATIONS OF IMAM KHOMEINI* 27-149 (1981).

Professor Hassan presents a good discussion of the concept of state in Islam. It is the Muslim belief that the Prophet set up an Islamic state in Medina, which later extended to Mecca and other parts of the Arabian Peninsula.¹⁰ After the Prophet, the first four Caliphs ran the state as enjoined by the Prophet. However, neither the format nor the guidelines for the administration of future Caliphates was spelled out by the Prophet.¹¹ The "twin guidance"¹² emphasizes first, the sovereignty of Allah (God), and second, a consultative form of government rather than a monarchy. This leaves one with the recurring question of what is an Islamic State.

It facilitates discussion to inject here the concept of law under Islam, which is called Shari'a.¹³ Unlike Western laws which are entirely man-made and, hence, secular, Islamic law is largely revealed or divine.¹⁴ Professor Hassan summarizes the Shari'a admirably:

Islam works as a code of life. The Muslim life consists of no dichotomy. In what a Muslim has to do in secular transactions, in his actions for social dealings, individual interest, national demands, international brotherhood, nay, in all relations of human civilization, there is a complete direction contained in the institutions which he follows. For these reasons, Islam is a religion of human nature, a religion of conduct of life. The name given to this entire system is the Shari'a.¹⁵

Thus, the distinction between the concept of law in the West and the concept of law in Islam, *i.e.* the Shari'a, is obvious. The sources of the Shari'a are ranked in order: 1) the Quran; 2) Sunnah; 3) Ijma; and 4) Qiyas.

The basic question is whether the Shari'a preempts the entire legal scene in the Shari'a based society. The author does not clearly answer this question, although he makes a very strong case for Ijtihad.¹⁶ Briefly, the Shari'a spells out a code of conduct for

¹⁰ See H. ASKARI, *supra* note 8.

¹¹ See Y. ALI, *supra* note 1, at — n.324. This is the position of the Sunni School. The Shiite position is that the Islamic regime continued for a period of 200 years until the Greater Occultation began, which continues to this day.

¹² See generally Y. ALI, *supra* note 1. The God has been described and defined in the book as all powerful and all knowing and, hence, the Sovereign. The concept of consultation is advanced by the Sunni School based on the appointment of the first Caliph after the death of the Prophet.

¹³ F. HASSAN, *supra* note 3, at 99.

¹⁴ The Quran was revealed on the Prophet and is the repository of the basic or controlling principles of all laws for Muslims and Muslim society.

¹⁵ F. HASSAN, *supra* note 3, at 99.

¹⁶ The doctrine of "Ijtihad" means the process of rethinking and reinterpreting the law

Muslims which either requires or prohibits acts. Examples of the former are the requirement to pay Zakat or to recite prescribed prayers. Shari'a prohibitions include dietary precepts and the proscription regarding usurious interest rates. However, there still remain areas of law on which the Shari'a is silent. The debate continues in the Muslim societies over whether these areas are subject to the Shari'a. It is generally agreed that the subjects on which the Shari'a is silent are open to legislation; however, the legislation should comply with the overriding spirit of the Shari'a and avoid doing any violence to it. Thus, the Shari'a acts as the ultimate guide or arbiter of laws of Muslim polity. It could also be described as the constitutional law of a Muslim Society.

How does Shari'a work under a Muslim state? The author's description of the theory of state in the West is helpful.¹⁷ Under the Western system, *i.e.* liberal democratic societies, states are political institutions for maximizing human happiness pursuant to a transient value system. The state is a means for achieving human goals. Another theory is that the state is the end in itself and human beings are the means to achieve its ends. Under one view, sovereignty is ascribed to humans, and under the other, to the state. In contrast to these theories, the Islamic view of the state ascribes sovereignty to Allah.¹⁸ It is obvious, therefore, that in an Islamic state, Muslims have to adhere to a spiritual value system or a Bill of Duties. However, a Muslim state is not a theocracy as was the Holy Roman Empire. Therefore, over the years the application and enforcement of the Shari'a has depended upon the commitment of Muslim rulers.

Muslim society's present struggle is to update their laws to meet the needs of the modern world. Professor Hassan's concern is well founded; the need for Ijtihad cannot be exaggerated. However, his target of attack, *i.e.* the Mullah, is mistaken. The "ill-educated Mullahs" certainly have their counterparts in the Western church. Does he mean that Muslim religious scholars are poorly educated? Or does he mean that Muslim society does not provide institutions of higher religious learning as Western societies do? Unfortunately, Professor Hassan is ill-informed on both questions. There is no dearth of Islamic divinity colleges or universities across the Mus-

independently. The history of the doctrine is treated ably in A. HASAN, *THE EARLY DEVELOPMENT OF ISLAMIC JURISPRUDENCE* 115-51 (1970).

¹⁷ F. HASAN, *supra* note 3, at 29-34.

¹⁸ *Id.*

lim world. Al-Azhar is the oldest of all the universities, including those in the West.

The malaise of Muslim society is primarily the result of its failure to develop a representative or participatory political system which would lend its strength to the challenging demands of the time. In the absence of democratic political institutions, Islam and the Shari'a have been invoked either to perpetuate the status quo or to promote self-serving revolution by the monarchs or military strongmen. In the process, the much touted slogans have served neither the Shari'a nor Islam.

Let us hope that Professor Hassan's book is followed by a detailed study of the concepts of Shari'a as interpreted and applied by some significant societies. His book will serve as a good foundation for such a study.

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