

Book Review/*Ulasan Buku*

*Shari'as Law and The Modern Nation State: A Malaysian Symposium*. Editor Norani Othman. SIS Forum (Malaysia) Berhad. Published with the support of the Friedrich-Naumann-Stiftung, Germany, Kuala Lumpur, 1994. Reviewed by M. Barry Hooker.

This is a very brave book. It may appear unusual to use the adjective 'brave' in a book review, but I do so for two reasons.

First, with one exception, all the contributors are either Malaysian or live and work in Malaysia. Moreover, a number of them are women.

Second, all the essays are in direct opposition to the recognised 'authorities' – the *ulama* (especially in Malaysia) who yet again are attempting to exercise their baleful influence in the formation of public law.

The occasion for this book was a public symposium on *shari'a* and the nation state, sparked by the now controversial Kelantan legislation on *hudud*. From a certain point of Islamic view, the *ulama* are collectively the voice of Islam. They constitute the educated 'authority'. On the other hand men and women whether educated in Islam or not, do have minds, do have other forms of education, do live in nation states, do have the options of democratic government, do understand and have views on the ills of society, do exercise tolerance of other in daily life, do wish to marry across racial and religious lines and, importantly, do *not* wish to maim or kill other people.

We come, therefore, to the issue of authority. To challenge authority is not just brave, but also necessary as both Islamic and European history have many times demonstrated. Is the authority of the *ulama* absolute?

This is a huge question. Historically the answer is 'no', because government override the *ulama*, or there is no-popular acceptance of their view, or because of reasoned intellectual opposition. The political dominance of the *ulama* is always ephemeral, though none the less damaging for that. This is not to attack the *ulama*. I merely point out that their function is necessary and valuable, but it is only a function. Islam abhors an absolute authority and indeed encourages if not enjoins, the exercise of the individual's intellect in all matters concerning religion, social life and the state. There are of course, defined rules and ways of doing this but the *ulama* have no monopoly on these except to the extent that their decisions base on an acceptable and recognised training, are consonant with real life, and the problems of the nations state of Malaysia. However, they do not have the sole monopoly of knowledge. There always were and are now, other sources of how we 'know'.

This is a point made by several of the contributors to the books under review. This is the core argument of Dr. Chandra Muzaffar's essay (p.21). I think the point he really makes strongly is that (a) the *ulama* need not feel threatened or side-lined by non-traditional approaches to Islam and (b) that the Qur'an is to be taken as a whole and undue emphasis on selective interpretation is ultimately self-defeating.

A professional *shari'a* scholar's version of the same argument is given in Professor Hashim Kamali's essay (p.45–68) on "The Islamic State and its Constitution". This is an essay to which no *ulama*, however 'conservative', could take exception. The issue is not one of emphasis alone. Those in authority do have a duty to distinguish and promote the constant values of charity, compassion and the greater good of mankind and womankind. The classical studies which Professor Hashim Kamali cites provide irrefutable evidence for the correctness of this approach. Anything else must be an aberration in terms of Islam.

The two essays by Dr. Abdullah Ahmed An-Na'im on respectively "Towards an Islamic Reformation" (pp. 7–20) and "Umma and Citizenry in a Contemporary Muslim Country" (pp. 69–76) raise a related issue; in this case the citizen-state relationship. His argument, as I understand it, is that the *shari'a* as such, has severe limitation within the confines of the nation state. This is quite true. The rights and duties conferred by the citizenship of a nation state are not strictly comparable with those derived from *shari'a*. There is a simple reason for this. It is that the definition of the *umma* does not involve the existence of 'state'. One is or is not a member of the *umma* and from this religious identity certain consequences flow. For the state on the other hand, the authority flows from a constitution which defines a citizen within its own terms. To interpolate 'Islamic' as a definer into any constitution advances the Islamic argument no further. For example, any state which does this is duty bound, in this interpretation of *shari'a*, to issue passports to any Muslim irrespective of his or her place of origin or nationality. So far as I am aware, this is not current practice. But this is not to say that *shari'a* has no place in the State. Of course it does, as the example of Malaysia shows where *shari'a* governs a number of areas in the lives of Muslims but, and it is a big 'but', these areas are defined by the Constitution and organised by the federal and state bureaucracies.

This is the issue raised by Norani Othman in her papers "Umma and Citizenry: Civil Society in the New World Order" (pp. 81–88) and in the epilogue "Hudud Law or Islamic Modernity?" (pp.147–153). These two subjects are, of course connected, a civil society is essentially a nation state—the Greeks and Romans are the ancient exemplars—but in its contemporary version it dates from the 18th century. All modern states, including the postcolonial states of Southeast Asia are heirs to those

formulations. A civil state is as such, because it is based on 'empiric rationalism'. Revelation is not an essential foundation for the civil state though of course elements of religion may be present in a Constitution and so also are different political ideologies (e.g. 'democracy', 'communism'). The point is that the civil state is not based on a revealed 'given'. It is instead posited on a Constitution, the principles of which are *sui generis* and interdependent. Exactly the same is true for 'science', 'modernity', and 'modernism'. To deny this is to deny the motorcar, heart by-pass operations and air conditioning. It is the mode of thought which is basic; but this is not in any way to deny the preservative and fundamental status of values however defined. An Islamic value is crucial to Muslims and within states populated by Muslims. As I have said elsewhere, values are absolute but the method of ascertaining them is, and always has to be, relative. As Norani says, a civil society is one within which "there is scope and space for honest, reasoned and thoughtful discussion, within an atmosphere of principled openness...not constrained by an authoritarian imposition of uniformity..." (p. 83). Malaysia is in fact a civil society, but one in which Islam has a constitutionally dependent status. This is a fact of that state as at present constituted and the proponents of *shari'a* must act within the constitutional constraints of the civil society. Those are points well made by Asma Larif-Beatrix in her two essays, "Islamic Reform, Muslim Law and the Shari'a State", and "The Muslim State: Pursuing a Mirage?", and with particular reference to the position of Muslim women, by Amina Wadud-Muhsin, "The Qur'an, Shari'a and the Citizenship Rights of Muslim Women in the Umma".

'Islamisation' is thus a far more complex endeavour than the simple minded adoption of such symbols as *hudud* would suggest. It involves a whole range, from values to political, legal and social contexts. Each presents us with a range of choices and options none of which is without its own particular difficulties. The essays on Islamisation in Part IV of this book demonstrate the difficulties. Essentially, the issue is the relation between Islamic values broadly conceived and social and political realities. The essays by K. Haridas and Muhammad Syukri Salleh are especially informative on these issues.

In short, this is an excellent and brave book. It should be read by all Malaysians and persons with an interest in Islam in the modern world. I look forward to a reasoned response from the *ulama*.

And this brings me back to the opening sentences of the review, where I noted that the questions is one of authority. 'Authority' is a large issue. In its simplest sense it means to speak with 'knowledge' or 'competence', just as a recognised surgeon does, or a recognised accountant, or a recognised plumber. I would not ask my accountant

to pass an opinion on the genetics of breeding stud animals, nor would I presume to tell my plumber how to go about his job.

We are all 'authorities' in our own ways, and so are the *ulama* in theirs. However, this does not qualify them to pass an opinion on the social, economic and political aspects of whatever ruling they wish to make on *figh*. A much wider sense of and respect for knowledge is here needed. Such is also required for historians, economists and for medical men.

The Prime Minister of Malaysia has himself said that other sources of knowledge—'authority'—have to be invoked in the practical application of Islam in Malaysia. He is absolutely right about this, and in his acceptance of Islamic values, but these do not provide an answer to the detailed regulations required to govern and administer a modern nation state. While the technicalities of plumbing fare values free, they are also essential. I have not yet seen 'Islamic plumbing' proposed, but I have seen 'Islamic social life', and 'Islamic economics' so proposed, even 'Islamic medicine'. It seems to me that the proponents of these views are moving dangerously close to a theocratic treatment of life in the modern world. My point simply is that life is now so complex, that a restricted ('Islamic') interpretation cannot alone cope with such complexities. Other sources of authority—knowledge and competence—have to be employed as well as the Islamic. It is the recognition that interdependence of various authorities is a key to the problems of the times which will secure the place of Islam in the modern nation state.

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