Book Review

Lena Salaymeh, *The Beginnings of Islamic Law: Late Antique Islamicate Legal Traditions* (Cambridge: Cambridge University Press, 2016), xiii+242 pp. ISBN 978-1-107-13302-0. Price: £64.99/$99.99.

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This is apparently a reworking of Salaymeh's Ph.D. dissertation (UC Berkeley, 2012). As she describes her vantage point, "I engage in a post-foundationalist understanding of history that rejects the positivist methodologies of modernism and the nihilistic relativism of post-modernism. A postfoundational understanding of historical objectivity rejects the positivist notion that particular methodologies generate Truth" (15–16). I confess I do not follow her theory, which seems to veer between accepting multiple truths (as in refusing to take contradiction as a sign that one or more of the accounts in question are untrue) and seizing on unanimity (i.e. lack of contradiction) as a reason to believe that something did happen as described. My approach in this review will therefore be to look past her theory to see whether she explains particular early legal problems in ways that seem useful to a traditional historian of Islamic law.

One chapter, then, deals with the problem of whether prisoners of war may be executed. Reports vary but Salaymeh thinks the preponderant suggestion is that the Prophet's precept and example forbade execution after a battle (although, as she notes, there is no report that he said anything explicitly). She treats Ibn ʿAbbās and Mujāhid's comments on some relevant verses of the Qurʾān. The latter expressly interprets Q. 9:5 ("kill the polytheists wherever you find them and take them and confine them"—Jones transl.) as allowing the Muslim leader to execute, ransom, free, or enslave prisoners of war, but she argues that *killing* and *taking* treat respectively before and after the conclusion of combat, so that the Qurʾān really allows killing only in battle. It seems to me, to the contrary, useless for an historian to identify what the Qurʾān means. It is the nature of Scripture to be interpretable in multiple ways, and the most an historian should try to do is to assess why some interpretation either

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did or did not catch on. Salaymeh's survey of later commentators and jurisprudents is adequately wide-ranging, and her conclusion agrees with my own sounding of the evidence: that jurisprudents of the Followers are commonly quoted as doubting whether prisoners should be killed, of the ninth century and later as leaving it completely up to the leader. But she implicitly dismisses retrojection of competing eighth-century views to account for the confused picture we have of practice in the earlier seventh.

Salaymeh next surveys the law of circumcision, which she finds weakly supported as an obligation for Muslims and only sometimes advocated as a boundary marker, distinguishing Muslims from others. It is as if the early community took circumcision so much for granted that it did not trouble to document its exact legal status. I was reminded of Norman Calder's generalization about ritual purity laws:

> The Rabbinic system is a complex and rarefied elaboration of a common Near Eastern set of beliefs about purity (complicated by its hermeneutical relationship to the biblical laws). The Muslim system is probably very near to that common or basic system; and has proved on the whole rather resistant to efforts at making it more complex.[1]

Salaymeh never cites Calder, but the similarity of her conclusion shows that she proposes nothing upsetting here to conventional opinion.

Salaymeh's survey of wife-initiated divorce in Jewish and Islamic law turns up much variation earlier on, then a certain convergence on allowing judges to dissolve marriages for specified reasons and wives to dissolve marriages with some reduction of the normal settlement. She also detects a certain shift from considering divorce a sort of emancipation to considering it a breach of contract. The Jewish parallel is interesting. In this case, it was Jewish jurisprudents who rejected earlier practice on the grounds that it reflected external influence, presumably Islamic. However, although Salaymeh is sure that influence and borrowing are bad concepts, she offers only the vaguest generalities such as "a shared social space and historical tradition" (p. 193) to explain the similarities.

A theoretical chapter against the idea of identifiably Aryan or Semitic origins of Islamic law seems mostly an exercise in knocking down straw men. Another chapter proposes to identify the following stages of legal history: "Legal circles and networks (*c.* 610–800 CE), Islamic legal beginnings; Professionalization of legal schools (*c.* 800–1000 CE); Consolidation and formalization (*c.* 1000-1200 CE); Technocratization (*c.* 1200-1400 CE)" (pp. 147–48). The obvious difference between Salaymeh's scheme and, for example, Marshall Hodgson's is that she simply marks out periods of 200 years, whereas he implicitly points to political changes as major pivots: the advent of the Marwānid caliphs to mark the end of the "Primitive Period," the advent of the Būyads (my spelling) to mark the end of the "High Caliphal Period," the Mongol conquest of Baghdad to divide two "Middle Periods." One point of Salaymeh's scheme is to stress the arbitrariness of any periodization. This

1. Norman Calder, *Studies in Early Muslim Jurisprudence* (Oxford: Clarendon Press, 1993), 212.

seems to me easy to concede but minor inasmuch as all classifications break down at the margins. *Contra* Salaymeh, a scheme like Hodgson's that turns on political events does not downplay contingency. Rather, it stresses what a difference politics can make (and indeed dynasties play major roles in Salaymeh's own detailed description of the evolution of Islamic law, as by judicial appointments). More original, at least for a professed history of Islamic law, is the following periodization of Jewish legal history, identifying similar developments in each of her 200-year periods.

Minimally, I would say that Salaymeh offers credible sketches of how discussions of rules changed over time with relation to the three problems of killing prisoners, circumcision, and wife-initiated divorce. The second seems the most successful, but anyone wishing to make more thorough surveys will wish to consider these chapters as starting points. On the other hand, I do not see that she offers credible alternative explanations to existing ones based on supposedly faulty historiographical theories. Maximally, I would venture that her ambitions are thwarted by systematically looking away from conflict among classes and status groups in the premodern Middle East. She admits a conflictual understanding of divorce law, men asserting control over women, while expressing regret that evidence is lacking to show exactly the basis of women's power to resist. (I do not object except for the contrast with Salaymeh's earlier scorn for those who say we sorely lack evidence from the seventh century and so can say little with certainty.) But this is more typical: "Interpretive communities give meaning to legal texts in ways that cut across social, geographic, or confessional boundaries" (p. 203). More credible, to my mind, is that the medieval legal texts on which Salaymeh relies (like the rest of us) reflect the interests and views of particular, aristocratic interpretive communities intent on protecting their own moral and material interests.

Transliteration is accurate. Dates are given in CE only, sometimes carefully split, sometimes not; e.g., al-Awzāʿī said to have died precisely in 774, whereas he is most often said to have died in 157, which overlapped 773 and 774, but also 155, 151, 156, and 158, and never with a month. The bibliography usually includes editors' names but sometimes alphabetizes strangely; e.g.. Mālik under *i* for Ibn Anas, Muslim under *q* for al-Qushayrī. Also strange is its identification of al-Muzanī as the editor of *al-Umm*.