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Laleh Bakhtiar. *Encyclopedia of Islamic Law: A Compendium of the Major Schools*. Chicago: Library of Islam, Kazi Publications, 1995. xl + 624 pp. \$39.95 (paper), ISBN 978-1-56744-498-8.

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## A Primer in Islamic Law

To the uninitiated lawyer trained in the west, the corpus of Islamic law may appear to be a bewildering mass of disconnected rules, principles, maxims, and aphorisms – some seemingly out of touch with the demands of the modern world and others requiring unreasoned adherence to wooden, stoical forms of behavior. This is far from the truth, yet a search of Islamic law materials in English may not give the uninitiated lawyer much comfort, since there are still very few readable, understandable, and comprehensive English language treatments of this important subject.

Laleh Bakhtiar's *Encyclopedia of Islamic Law: A Compendium of the Views of the Major Schools* (Kazi Publications, Library of Islam Series, 1995), is a commendable attempt to fill part of this gap. Ms. Bakhtiar is known to western authors primarily through her English-language works on Islamic women, and Sufi ceremony; her history of Islam will be published later this year.[1] Her "Encyclopedia" is an English language adaptation of a modern work, Muhammad *Jawad al-Mughniyya's al-fiqh ala-l-madhahib al khamsa* ("The Jurisprudence According to the Five Schools"), first published in Arabic in Beirut in 1982. The "Five Schools" or "al madhahib al khamsa" are the five major eponymous "schools of law" (or, more properly, "schools of juristic thought") which, over the past one thousand years, have come to predominate in the development of particular rules of law governing the behavior of all Muslims. Every good Muslim must accept and follow the fiqh or "jurisprudence" of one of the "schools of law" in his or her daily life. While the Arabic word "fiqh" is often translated as "jurisprudence," and

we follow that practice here, this is a somewhat inaccurate rendering, especially if one acknowledges that the word "jurisprudence" can have multiple meanings in English as well. The word "fiqh" is derived from the Arabic verb root "faqiha" which means to understand or comprehend. "Fiqh" then, is literally an "understanding" or a "comprehension." In the technical language of the Islamic law, "fiqh" is the legal scholar's understanding and explication of the rules or "branches" of the law, as they are derived from the two divine sources or "roots" of Islamic Jurisprudence – the Holy Qur'an, the divine text, and the Sunnah, or example, of the Prophet Muhammad (peace be upon him).

Dr. Bakhtiar's adaptation of al Mughniyya's work offers English language readers a survey of the basic rules of fiqh (the practical rules of law governing the ritual and non-ritual behavior of Muslims) as they are derived and applied by the major madhahib or "schools of law" in Islamic jurisprudence. The book assiduously reports these rules to the reader in the same order found in most classical books of fiqh, beginning first with the rules governing worship (purification, prayer, fasting, and pilgrimage), and then treating economic and social issues (charity, marriage, divorce, capacity, guardianship, and inheritance) separately. Although Islamic scholars classify rules governing charitable obligations as part of the law of worship, they are dealt with here as an aspect of economic relations. This is apparently a concession to the convenience of the reader and it does not detract from the organization of the work. It should be noted that Dr. Bakhtiar's adaptation does not contain any material on

the law of sales and other commercial relations, crimes, torts, war, international law and diplomacy, oaths, or judicial proof – topics commonly encountered in other specialized books of fiqh.

On each topic covered in this adaptation, the author describes, in bare-bones language, the rules of conduct for Muslims as they are prescribed by each of the four Sunni Schools of Law (Maliki, Hanafi, Shafi'i and Hanbali) and by the Jafari School, a major school followed by many Shi'i Muslims. I use the adjective "bare-bones" with some emphasis because that is essentially all the adaptation offers the reader. It does not purport to be a work of erudite scholarship. It is simply a recitation of the black-letter rules and the variations in those rules that sometimes manifest themselves between and among the Schools of Law. There are no analytical discussions of the rules, or their variations, and there is a noticeable absence of footnoting to known sources. While there are some useful footnotes, the citation form used is woefully inadequate and the footnotes often raise more questions than they answer.

For example, footnote 2 on p. 551 attempts to describe the distinction made by the Hanafi scholars concerning certain mandatory obligations that flow from commands found in the Holy Qur'an and the Sunnah. This is a basic point familiar to many scholars in comparative Islamic jurisprudence. While the other Schools of Law make no distinction between obligatory acts commanded by the Qur'an and Sunnah, the Hanafis divide obligatory acts into two classes (fard and wajib). This division gives rise to varying results for those who fail to obey a command, depending on the level of definitiveness found in the language of the text or in its mode of transmission. For example, while all Muslims should acknowledge the obligation to individually perform the three-unit witr prayer after the conclusion of the mandatory evening prayer, the authenticity of the Prophet's command requiring this extra prayer is not free from doubt. Therefore, according to the Hanafis, the Muslim, while still obligated to make the prayer, is not considered an unbeliever if he, in good faith, disputes the authenticity of the command or its applicability in certain situations.

Although the subject is somewhat complex and academic, requiring some knowledge of Arabic grammar, the sciences of hadith, and principles of legal interpretation, the footnote does not explain the distinction well and the reader will likely come away from the topic with less understanding of the Hanafi position than if he had never read the footnote. To make matters worse, the

reader is not referred to any other sources that might assist in clarifying the issue. The only bibliography in the book is a simple list, in an appendix of "authors consulted" without mention of any titles or other useful bibliographic information.

Thus, Dr. Bakhtiar's *Encyclopedia of Islamic Law* is probably misnamed. It is not a true encyclopedia, and it simply cannot be compared to other important encyclopedic English language works on Islam and Islamic Law, such as the massive *Encyclopedia of Islam*, Gibb and Kramers' *Shorter Encyclopedia of Islam*, or Fyzee's *Outlines of Muhammadan Law*.

All that having been said, Dr. Bakhtiar's work will be of considerable use on a number of levels, in spite of these shortcomings. Its black-letter descriptions of the rules of fiqh on various points appear to be reasonably accurate and, because of that, it certainly can serve as a useful quick reference work for teachers and advisors on Islamic law. Anglo-American lawyers are familiar with and frequently use digests of the law in an effort to quickly ascertain what the law is on any given subject. Because of the nature of the sources in Islamic Jurisprudence and the absence of a code or system of precedents, it is very difficult to find a compendium of Islamic law that will digest the law in the Anglo-American style. Dr. Bakhtiar's adaptation performs this task quite nicely. Although the author should have taken more care in referring the reader to sources and in not oversimplifying some of the more complex rules, this book will be appreciated by Muslims and non-Muslims alike as the first attempt, in English, to digest the Sunni and Shi'i fiqh in one coherent effort.

The book is also improved by the addition of a fine introduction by Professor Kevin Reinhart of Dartmouth College. Professor Reinhart offers the non-Muslim reader a succinct description of the Islamic legal system and the place of the "Schools of Law," including the Shi'i schools, in that system. While frankly acknowledging that Dr. Bakhtiar's adaptation barely "scratches the surface" of the rich intellectual tradition of Islamic law, Professor Reinhart points out that the adaptation can serve as a "Reader's Digest" of Islamic law that will be of some use to those who have a need to compare and contrast the views of the five major schools on particular practical points of law. For example, if one needs to know whether the presence of witnesses is a necessary precondition for a valid Islamic marriage contract, the book (at Section 10.2, p. 400) answers this question, quickly, (generally two witnesses required, except the Jafaris, who do

not make the presence of witnesses mandatory) as well as offering a useful comparison of the views of the Schools of Law concerning the gender of the witnesses and other particular details.

Similarly, in the law of worship, the book nicely summarizes the points of consensus and the fine points of difference among the Schools of Law concerning the times of prayer and the obligatory aspects of the prayer, including the recitation of the Qur'an, bending forward, prostration, and the sending of greetings. In many other instances, the book gives pithy and succinct comparative descriptions of the law that will put the reader on the right track in developing a better understanding of the fiqh and the differences among the schools of law. Although poorly documented, Dr. Bakhtiar's adaptation is a short workmanlike comparative abridgement or "Reader's Digest" of the central issues in the fiqh. Within that limited sphere it is a useful addition to the English language literature on Islamic law.

#### NOTE

[1]. A partial listing of Bakhtiar's recent works as editor, author, or translator includes: Laleh Bakhtiar, "Shaykh Muhammad Hisham Kabbani," *Encyclopedia of Muhammad's Women Companions and the Traditions*

*They Related* (1998); Laleh Bakhtiar, *Traditional Psychoethics and Personality Paradigm (God's Will Be Done, vol. 1)* (1994); *Moral Healer's Handbook: The Psychology of Spiritual Chivalry (God's Will Be Done, vol. 2)* (1994); Laleh Bakhtiar, *Simon Bakhtiar, Moral Healing Through the Most Beautiful Names: The Practice of Spiritual Chivalry (God's Will Be Done, vol. 3)* (1995); Laleh Bakhtiar, *Muhammad's Companions: Essays on Those Who Bore Witness; (trans.), Ali Shariati, Shariati on Shariati and the Muslim Woman* (1996); *Abu'L-Qasim Al-Qushayri, Rabia Harris (trans.), Laleh Bakhtiar, ed. Sufi Book of Spiritual Ascent: (Al-Risala Al-Qushayriya)* (1997); , *Sufi Women of America: Angels in the Making* (1996); , *Sufi: Expressions of the Mystic Quest (Art and Imagination)* (1997); , *Handbook of Traditional Psychoethics : Jihad Phase I: Centering the Self* (1993); , *Muhammad's Companions: Essays on Those Who Bore Witness* (1998); (ed.), *Ramadan: Motivating Believers to Action: An Interfaith Perspective* (1994); , *Moral Healing Through the Most Beautiful Names*. See also Laleh Bakhtiar, *History of Islam* (forthcoming 2000).

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