REVIEW

Islam and Law in Lebanon: Sharia within and without the State by Morgan Clarke, 2018. Cambridge: Cambridge University, £75, xiv + 337 pp. ISBN: 978-1-107-18631-6 (hbk).

Robert GLEAVE
University of Exeter, UK

The term "Islamic law" means different things to different people. The equivalents in Muslim world languages (such as *al-qānūn al-Islāmī* and *Islam hukuku*) are generally contemporary attempts to translate back into a Muslim social and political context an (arguably) alien notion. Even within the various scholarly languages of the study of Islamic law, the terms used do not always have identical resonances. The difference between the ideas conjured up by *la loi islamique* and "Islamic law" might be considerable – never mind the debated contract within Francophone circles between *la loi islamique* and *le droit musulman* (and the many variants of these locutions). The nuances of *Recht*, *Jura* and *Gesetz* are flattened somewhat in any translation of these terms out of a German context. These terms are shaded in meaning in a European milieu, and the idea of an "Islamic law" is similarly nuanced. That "Islamic law" appears alien to Muslim majority (or possible "Islamicate") contexts is not to say that these calques are recognised as such within those contexts. In various Muslim political and social discussions, there exists a rhetorical and intellectual currency for something like "Islamic law", where *al-qānūn al-Islāmī* and similar terms are put to task in the course of argumentation in the public sphere. The idea of "Islamic law" seems to be a foreign import which has captured at least some of the market of ideas in the Muslim world. These terms sit alongside others that have deeper historical roots: *sharīʿa*, *fiqh*, *aḥkām* amongst others (perhaps even *qānūn*, unqualified). These substantive notions can be combined – *al-aḥkām al-sharʿiyya*, *al-aḥkām al-fiqhiyya*. We have then, an extremely fluid, often perplexing and (one suspects) often intentionally ambiguous and overlapping lexicon of terms describing all or part of a phenomenon we take to be a single entity: Islamic law. That this is methodologically troublesome (perhaps "problematic" is a better term) is a recurrent theme in the scholarship in "Islamic legal studies".

Against this background, Morgan Clarke – in his recent ground-breaking monograph *Islam and Law in Lebanon: Sharia Within and Without the State* – has been typically careful both in his use of terms and in his methodological approach. His study is an examination of the various ways in which some ethical and legal arguments, institutions and structures in modern Lebanon are framed in broadly Islamic terms. Even in the title, we have a commitment to there being a relationship between two things, "Islam" and "Law," and the indication that this relationship is worthy of investigation. This might be because the interaction between Islam and law is contested, particularly so in multi-confessional Lebanon. There is also in the title a foregrounding of the Sharia as an identifiable object of investigation, operating both in institutions (state-sponsored and otherwise) and – perhaps equally importantly – at the personal and community level.

Clarke is wary of defining "Sharia" and wisely opts for "Sharia discourse" over "Islamic law." He is also careful not to allow any postulated "rupture" between the premodern and the modern notion of the Islam-law relationship to dominate his analysis. Emphasis on "rupture" has become popular in the secondary literature, but it makes the Sharia something entirely premodern (and hence redundant in the modern age). This, in turn, implies that those who use Sharia discourse in any contemporary context are constructing an enormous anachronistic folly, and this is not the direction Clarke wishes to travel. There is a danger in the fashionable "the nation-state cannot accommodate Sharia" approach. It fails to take seriously those who take Sharia seriously. It makes any modern talk of Sharia about as authentic as living in the self-build, flatpack medieval castle you put in your back garden. An overemphasis on rupture would re-orientalise the subjects of Clarke's study, for whom Sharia discourse is central to their way of live as well as the way of work. Clarke, very wisely, avoids a full commitment to this, recently popularised, approach.

Clarke's project is, in part, to demonstrate that Sharia discourse happens in Lebanon across numerous settings, and that a commitment to the authority of (properly articulated) Sharia discourse underpins many political, legal, and social structures. Political actors – both Lebanese and colonial, both past and present – have expressed their loyalty to Sharia discourse. Their commitment is manifest in the Lebanese constitutional arrangements, in successive legal instruments (statutes, parliamentary bills, procedural laws), and in the maintenance of the plural court system. These constitute, for Clarke, the instances of "Sharia within the state" (Part II, p.105–235). Lebanon's plural laws on marriage and divorce, for example, are a blend of different influences, and the product is a unique – and one might argue eccentric – set of court-specific regulations. The Muslim courts, as Clarke presents them, are headed by judges who, on the one hand, are scholars with community responsibilities and social respect and, on the other hand, figures who take on a highly-technical bureaucratic role in the court room. And yet in both instances, they are engaging in Sharia discourse, which creates tension.

Furthermore, because the area of human life that comes under Shari'a court jurisdiction in Lebanon is so-called "family law" or "personal status law" (*al-aḥwāl al-shakhṣiyya* as it is sometimes termed), the tension concerning what is and what is not Sharia is overlaid (or, indeed, underpinned) by conflict over personal, family (and usually "private") conflict. Unsurprisingly, there are occasional eruptions of conflict. The success of Muslim Lebanese of whatever confessional "sect" in switching between compliance and evasion of the national regulations is well known (leaving the country to get married, for example, is a common ploy). This might be taken to indicate that Lebanese Muslims do not take Sharia discourse seriously. While that may be true for some, for many, Sharia discourse is simply a fact of existence. One takes care on the road because one values life (particularly one's own) and one knows the system is designed as a societal expression of that ultimate value. This does not mean all people cross exclusively at Belisha beacons, or all drivers come to a full stop at a stop sign. So people engage with the directives from Sharia discourse at varying levels and with varying degrees of assiduousness. For many, they are a part of life, operating as a code of behaviour that straddles religious commitment, ethical responsibility and legal subjecthood. Regularly, it seems, some leave the court thinking that what happened there was not the "real" Sharia.

Clarke brings out the wider aspect of Sharia discourse in the second part of the book ("Sharia outside the State," p.235–305), and he does this with a focus on the operations of the offices (and the person) of Sayyid Muhammad Husayn Fadlallah. The full subject range of Sharia discourse in the work of a scholarly authority – that is the areas of human existence on which the scholar is expected to produce rulings – contrasts with the limited nature of the state's Sharia court engagement. Running through the whole book is an exploration of legal authority. Rules may be promulgated, but they are not disembodied in the Lebanese context. They are issued by individual scholars – whether acting as an ayatollah or as a judge; to an extent it is the individual scholar's status which creates the rule's authority rather than the process of rule formulation. "The judge as tragic hero" is Clarke's evocative way of demonstrating how the judge is caught between the demands of the bureaucracy and his task of upholding God's law. He can make a wrong move, and his status is endangered as his identity shifts from scholar (*ʿālim*) to bureaucrat (*muwaẓẓaf*) and he walks a precious line between the sacred and the mundane. The years of learning that establish the community status of an individual provide a basis for authority, but they are no guarantees of its permanence. Fadlallah himself faced many challenges – institutional, doctrinal and personal – which threatened to unseat his dominant position amongst the Lebanese Shiʿa.

It is difficult to do justice to the full range of Clarke's arguments, sources, personal stories, and engaging interactions with scholars, litigants and legal agents in a short review. From the work as a whole, one finds a Sharia system – both in state institutions but also in the lives of ordinary Lebanese Muslims – which is vibrant, developing, and debated. The process of family law reform in Lebanon moves at a glacial pace (though even glaciers are changing faster these days). Still, some important changes have occurred since Clarke did his fieldwork. From a scholarly perspective, one hopes he will return to examine how the authority of religious scholars, the functioning of the Sunni and Ja'fari courts, and the responsibilities of the judge have evolved in a decade of tumultuous change in Lebanon and the wider region. For the moment, political reform is very much a live topic in Lebanon, and the gap between state institutions and the lives of ordinary Lebanese seems ever-widening. One wonders if public frustration with the "sectarian" (*ṭāʾifī*) court system indicated by Clarke at various points has contributed to this political fragmentation and the ever-widening gap between the state and the people. How has the Syrian refugee crisis impacted the *ṭāʾifī* nature of the court system? Could a reformed religious court system become a part of a reinvestment in the state by the population? One looks at Lebanon today, and the Lebanon when Clarke was doing his fieldwork, and already it seems like a very different country. It is far from certain which elements of the old order (or rather the now-old "new" postcolonial order) will survive. Clarke's ground-breaking book, though, reveals how the deep roots of Sharia allegiance in Lebanon must, surely, be part of the process of change that is already underway.