BOOK REVIEWS

LAW REFORM IN THE MUSLIM WORLD

by Norman Anderson, University of London 1976, £6

This is a book on law reform in the Muslim world by the acknowledged master on the subject, Sir Norman Anderson, who has recently retired as Professor of Islamic law in the University of London and Director of the Institute of Post-graduate Legal Studies, London. In this book he has tried to bring together and assess the various changes that have brought about in Muslim countries and view them as "part of a movement which now embraces the whole Muslim world." Students of Islamic law must feel grateful to Professor Anderson for bringing together in a book and bringing up to the date the various accounts which he had given from time to time of these movements for reform in the Muslim world.

There are only a few points on which a Muslim lawyer would want to join issue with Prof. Anderson in this book. He follows Hugronje in giving a paramount place to "ijma" as a source of Muslim law and at page 6 of the book he says in effect that the Quran, the Sunnah of the Prophet and the ijma or consensus of the great jurisconsults, "were accepted as wholly authoritative." The Muslim lawyer would prefer to say with Imam Shafii that only the Quran and the Sunnah are the "wholly authoritative" sources of the Muslim law. Again Professor Anderson follows the late Dr. Schacht in stating at p. 8 that the Muslim law is "derived primarily from the raw material of the existing customary law and practice, which was worked through and systematised by the scholar jurists in the light of such Islamic reaching as was already current." This view is as Professor Anderson himself points out opposed to the views of Muslim writers, some of whose researches appear to have been ignored by non-Muslim scholars. In this respect perhaps the Muslim scholar can appreciate better the reference to the Holy Quran and Sunnah in the Constitution of Pakistan, which Professor Anderson gives at p. 175f. of this book. It might be pertinent to note that the administration of Muslim law enactment in the State of Perlis in Malaysia also refers to the Holy Quran and the Sunnah as the sources of Islamic law.

Professor Anderson makes a penetrating remark when he says at p. 36 of the book that "it has always been a far more heinous sin to deny or question the divine revelation than to fail to obey it." So it seemed preferable to continue to pay lip service to an inviolate Sharia as the only law of

fundamental authority and to excuse a departure from much of it in practice by appealing to the doctrine of necessity (darura) rather than to make any attempt to adapt that law to the circumstances and needs of contemporary life". It is sad that the Muslim law ceased to be developed in practice after the time of the Prophet and the early Caliphs and that subsequently it was left for the most part to be developed by theoretical jurists. At the same time one must be grateful to the jurists for preserving the core of the Islamic law and not allow it to be changed according to the whims and fancies of the secular rulers. It is because of this that so much of the Muslim law and its sources are still preserved today.

Professor Anderson is such an authority on the subject that at times he forgets that lesser men than him might like to have the source of his facts. At page 61 for example Professor Anderson refers to the newspaper article of Shaik Mohammad Abduh but gives no reference to the article; nor does he indicate where the interpretation of Imam Shafii on the last clause of the "Verse of Polygamy" (referred to at p. 62 of the book) can be found. At page 67 again there is reference to the views of Ibn Al-Qayyim but again no reference is given. At page 71 Professor Anderson says that the doctrine of radd has been adopted by most modern Shafiis. Again one asks for the reference, for the Minhaj-et-Talibin, which is the textbook relied on in Malaysia and Indonesia states the contrary and practice in Malaysia is also to the contrary. One would have wished to find that the statements about Saudi Arabia at p. 99–100 and 184–186 had better authority than "a reliable source". Again the very last line in the book refers to the views of Abd al-Raziq and others but no reference is given.

The book gives an excellant summary of the changes in the law which have taken place in the Arab countries, in Iran and in the countries in Africa, and to a lesser extent in India, Pakistan and Bangladesh. It is somewhat surprising to find (at p. 175f) a reference to the Pakistan Constitution of 1956 but none to the Constitution of 1973. Unlike many other Western scholars, Prof. Anderson does refer to Indonesia, Singapore and Malaysia but even then one would have wished that more space and more attention were given to this bloc of Shafii mazhab countries, especially as Indonesia has enacted the Marriage Law of 1974 which is made applicable to all citizens of Indonesia. Although the law is uniform, it will be implemented not only by the civil courts but by the Muslim courts. Singapore and Malaysia too have Shariah courts and the administration of the Muslim law in these countries pose problems which are similar but not the same as those in other Muslim countries. It is not quite correct to say as Professor Anderson says at p. 11 that in much of Malaysia "there are many spheres of life in which the adat or customary law alone holds sway." At page 112 where Professor Anderson refers to the control of polygamy in Singapore reference might have been made to the article of Mrs. M. Siraj.

At pages 123-124 of the book where Professor Anderson deals with the "triple" divorce, he seems to give the impression that detailed provisions about this are unnecessary in Singapore. This is not quite correct as the position in Singapore is uncertain and in Malaysia at any rate a "triple" divorce is still recognised as a final, irrevocable divorce. No reference is made to the provisions in Malaysia for the division of the property acquired during the marriage under the custom or as harta sapencarian — which Professor Anderson says at p. 202 (in reference to the proposals in Kenya) "have no parallel in Islamic law."

In talking of changes or reforms in the Muslim personal law in Malaysia one cannot ignore the place the Sultans hold as the heads of the Muslim religion in their States. Also and perhaps this is a point which could have been made by Professor Anderson, one cannot ignore the religious scholars who must give at least their support to such changes. The influence of the University mosque of Al-Azhar in particular is significant in Malaysia and in the future one can expect to find increasing impetus from the graduates of the National University and the Nilam Puri College. Unlike India and Pakistan, it would appear that in Malaysia Muslim law cannot be changed by decisions in the courts. It is the religious scholars, of Al-Azhar, the National University and Nilam Puri, to whom one must look for leadership in the movement for change, not only within the applied Muslim law itself but also in the other branches of the law, which have to a greater or less extent replaced the Muslim law as the law of the land in Malaysia.

Ahmad Ibrahim

Perpustakaan Pakulti Ekonomi dan Pentadbiran Universiti Malaya Kuala Lumpur

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1974			7. 6		*::*	200		1808	***	1:297
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1975		20	3.0	2723	200		(a. a)			2:372
1976	300		5.0	202	2/02		2 1	10.4	*58	3:328
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										2:373
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1973		202		4747	02.00	192	902	30(0)	39083	1:158
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