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framework is a good deal more elusive. Aziz effectively argues that the focus must shift from law to legal culture, and that "[w]e should recognize . . . the modesty of what Europe's constitutional moment can deliver." (p. 169). In her view, "[e]nstitutional rights may . . . in effect be rhetorical and are not always capable of transforming power structures" (p. 170). The book's proposals for how to effect that transformation, however, seem rather facile. Aziz's major practical suggestion is that elites should be required to take a loyalty oath to the European Constitution as well as their own country, and her chief theoretical proposal is for a "comprehensive multi-disciplinary approach [that] would allow jurists to map, classify and monitor the respective constitutional orders and cultures, modes of governance, the relevant elites, and any transformative dimensions in response to European rights" (p. 172). These steps will not in themselves move very far to the goal, but Aziz's book helps put scholars on the right track to understanding the evolving legal culture of European integration.

**Islamic Jurisprudence**


Lawyers and academics alike regard Islamic law with questions of practical and scholarly interest. If there is a continuing place for Islamic law in the modern world, what is the process of legal derivation and what modes dictate continuity or contemplate the possibility of change? Roy Mottahedeh, Professor of Islamic History at Harvard, provides an introduction to and translation of *Lessons in Islamic Jurisprudence* by the late Muḥammad Bāqir aš-Šadr that makes it easier for English speakers to pursue such questions.

An influential twentieth-century Islamic scholar and jurist, Šadr hailed from a family of leading Iraqi Shīʿī clerics. He quickly became prominent in Iraqi intellectual and religious circles through his scholarship, with books such as *Lessons* joining or replacing centuries-old texts of the seminary's core curriculum. He was also active politically, and co-founded a major Iraqi Shīʿī political party in 1950. Feeling threatened, Saddam Hussein executed Šadr in 1980. Ironically, Šadr's nephew, Muṣṭaṣṣ aš-Šadr, has completed no religious or legal training, yet has capitalized upon the Šadr family renown to gain a platform for his radical policies in Iraq.

Though other English expositions and paraphrases of Islamic legal texts precede this volume, none examines a complete work of Shīʿī jurisprudence. With *Lessons*, Mottahedeh now presents an account of Shīʿī jurisprudence, renders Islamic jurisprudential thought intelligible for both the lawyer and the non-specialist, and provides a key to understanding pre-modern Islamic jurisprudential literature through a lucid modern work.
The book is divided into three principal sections. First, Mottahedeh provides an introduction that places Şadr’s work in the broader framework of Islamic legal development. Next follows the translation of Şadr’s work itself. Finally, Mottahedeh offers the reader a number of useful tools: a summary of Şadr’s text (with commentary), a glossary, a list of Arabic terms mentioned in the glossary, and an index.

Mottahedeh introduces Islamic law and jurisprudence by focusing on four core fields: the nature of Islamic law, its historical development, the nature of Islamic jurisprudence, and medieval Western and Islamic law.

Throughout the Introduction, Mottahedeh highlights distinctions between Islamic and Western legal philosophy. He explains how Muslim jurists aspired to a combined moral and legal system that attempted to classify and develop rules concerning all human acts. Subsets of only two of those categories—forbidden and mandatory—could be litigated in Islamic courts; these also happen to be the only categories that Western lawyers would label “law” proper.

Mottahedeh’s brief overview of Islamic law’s composition includes both Sunni and Shi‘i developments. He traces, for instance, how the initial carte blanche enjoyed by the first four caliphs to promulgate public and personal status laws gradually shrank to cover only matters of public and administrative law. The decline in their lawmaking authority stemmed in part from the impact of the “pious opposition,” composed first of proto-Shi‘is, then of Sunni jurists who had also become suspicious of the government. Mottahedeh further notes how this opposition birthed the enduring split between legal and government institutions in the Islamic system.

Mottahedeh also discusses considerations that are gaining currency in some modern studies of the field. For instance, the evolution of geographical differences into interpretive differences for Mottahedeh reflects a “pre-Islamic underlay” that many Muslims have “downplayed . . . unnecessarily” (p. 9). Although it is well-known that Islamic law jurists classically allowed a place for custom (it had legal consideration as long as it did not conflict with existing law), Mottahedeh argues that in developing that law, jurists did not always say when they were adopting existing custom or relying on local presuppositions to guide their rational interpretations of the law. In other words, they ignored the impact of culture (over and above custom) on the law.

The translation of Şadr’s work includes four sections. The first, “Characterization of Jurisprudence,” reviews the definition and history of the development of Islamic jurisprudence and describes its place alongside the related discipline of law. Şadr notes that while the former deals with the theory and methodology of law, and the latter with its practical application, the two are related. “[E]xpansion of discussions of application impels discussion of theory a step forward . . . [because] it stirs up difficulties as it advances and necessitates the establishment of general theories for their solution” (p. 44).

The second section, “Substantiating Arguments,” comprises the bulk of the book, dealing with the two main sources of Islamic jurisprudence: the Qur’an and the Sunna (prophetic practice for Sunnīs, prophetic and “imamic”
practice for Shi’is). In attempts to create a coherent method of legal derivation from those sources, jurisprudential specialists must analyze texts that record both verbal and non-verbal arguments based on divine law. Accordingly, Šadr devotes many pages to word origins, the lexical elements of texts, and the signification(s) of words and forms of speech with legal relevance. Evident here is a unique feature of Islamic legal jurisprudence and education: a focus on text-based, formalistic legal hermeneutics that arise out of what Professor Bernard Weiss has called Islamic law’s “textualist/intentionalist bent.”

Šadr follows his discussion of textual bases with a section on the rational bases for interpretation: “Procedural Principles.” These principles cover situations in which jurists cannot define the law vis-à-vis the sources with absolute certainty. Instead, jurists rely on the legal sources to provide a means of arriving at a practical duty before the law by defining a default procedural rule-of-thumb.

Finally, Šadr turns to the “Conflict of Arguments” in a last, short chapter (which expands in volumes two and three).

With his translation of Lessons, Mottahedeh offers English speakers a clear, sophisticated treatment of the core topics, definitions, categories and problems in Islamic jurisprudence. While other works in translation interrupt the text with complex Arabic terms (including Arif Abdul Hussain’s translation of this same work in 2003) and use reasonable though sometimes inapt translations, Mottahedeh has provided a deliberate all-English rendering. This complete transformation of the text may initially be off-putting to a reader familiar with Arabic terminology but not with Mottahedeh’s English renderings. But this is one of the underlying points. The English reader should become absorbed in a scheme of understanding Islamic jurisprudence for its legal concepts and reasoning, rather than for philological exercises that focus on foreign terms. A quick look at the glossary or index of Arabic-English terms can overcome any confusion. Mottahedeh’s useful notes that accompany the summary help further explain conceptual usage.

Mottahedeh follows common translations for familiar terms such consensus (ijmā’) or derivation (istiḥbāt); where appropriate, he also offers translations for concepts particular to Shi‘I thought, such as exculpatoriness (mu‘adhdhirīyya), inculpatoriness (munajjizīyya) and procedural principles (uṣūl ‘amaliyya). He also proposes excellent ways to resolve unsettled translations: argument (for dalīl), prima facie meaning (for zāhir or zuhūr); presumptive (for zannī); and, of course, law or legal understanding (for fiqh) and jurisprudence (for uṣūl al-fiqh). Some translations read awkwardly, such as “probativity of assurance” (for hujjīyat al-qat’) or “permittedness” (for ibāha). There are some inconsistencies, as when Mottahedeh translates istiḥsān in his Introduction as “favorable construction” (p. 14) and later as “discretionary opinion” (pp. 50, 178)—in the latter case specifying the Sunni context of the term. And there are some omissions, as when the glossary lists some types of lawyers—the juristconsult (mujtahīd) and the jurist (faqīh)—but not the jurisprudential specialist (uṣūlī) that appears frequently in Šadr’s text.
However, these minor points do not detract from the enormous value of this work. Mottahedeh has well met his aims to present Shi'i jurisprudence and make Islamic jurisprudential thought more tractable for the English reader. In typical form, Mottahedeh has managed to present the most important aspects of a vast Islamic tradition in precise, readable form with a helpful introduction that leaves the reader thirsting for more. One hopes that Mottahedeh will follow this work with translations of Şadr's subsequent two volumes, and that he will write his proposed companion book that will cover Islamic legal history more thoroughly. In the meantime, with the increasing interest in Islamic law in U.S. law schools, other universities, and among non-specialists, here is a volume that can be put to wide use.