

Review of Ahmed El Shamsy, *The Canonization of Islamic Law*

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*This is the pre-print Author's Original manuscript (AO), made available on 8/18/2016 at <http://david.vishanoff.com/review-el-shamsy/> for personal scholarly use. The Version of Record (VoR), published in *Islam and Christian-Muslim Relations* 26 no. 2 (2015), 256-258, is available on the publisher's web site at <http://dx.doi.org/10.1080/09596410.2014.979575>.*

The Canonization of Islamic Law: A Social and Intellectual History, by Ahmed El Shamsy, New York: Cambridge University Press, 2013, ix + 253 pp., £55.00/US\$90.00 (hbk), ISBN 9781107041486

In a series of articles and a 2009 dissertation, Ahmed El Shamsy has given us a ground-breaking picture of the third-/ninth-century development of Shāfi'ī legal scholarship. His book proposes much more: a sweeping account of how the entire discourse of Islamic law was transformed from evolving local communal traditions of remembering and imitating the Prophetic past to a more transparent, systematic, and individualistic scholarly enterprise of interpreting a canon of fixed Prophetic texts.

The early jurists Mālik (d. 179/796), al-Shaybānī (d. 189/804), and Ibn 'Ulayya (d. 218/834) are presented in Chapters 1 and 2 as upholding variants of a common ideology: legal authority rests with a community of scholars whose present rule-making is legitimated by their claims to represent the collective memory of a sacred past. By contrast, al-Shāfi'ī's legal theory, presented in Chapter 3, grounds each jurist's individual authority in his ability to justify his legal opinions through systematic, rule-bound, repeatable, and falsifiable analysis of a specific canon of texts (the Qur'an and Prophetic Hadith). Chapter 4 argues that this new ideology prevailed because it addressed a social crisis: the old Arab elite who claimed to embody each region's genealogical connection to the Prophetic past were losing power as non-Arabs gained influence and the Abbasid state intruded into local governance. As regard for living local tradition waned, a new basis for normative authority was needed—one that would link the present to the Prophetic past in an objective and transparent way. Al-Shāfi'ī's textualism met this need, and gained a foothold

in Egypt thanks to a brief period of patronage under the Tulunid dynasty (Chapter 5). His thought was embodied in a new medium, the deliberately authored book (Chapter 6), which allowed it to be scrutinized and re-evaluated by his followers (Chapter 7) and rapidly disseminated among scholars across the spectrum of Sunni law and even in other disciplines (Chapter 8), so that today his concept of Prophetic law derived from revealed texts by rule-governed interpretation is largely taken for granted.

El Shamsy's decision to expand his history of early Shāfi'ism into a dramatic narrative about all of Sunni law (7) may have been a mistake. It is certainly not warranted by the evidence presented in the book, which adds little new material to the dissertation and is still based on overwhelmingly Shāfi'ī sources and on a few Egyptian chronicles that hardly suffice to make this a "social history" of third-/ninth-century Egypt, much less the Islamic world. The attitudes El Shamsy ascribes to individuals and groups are sometimes inferred from little or no specific evidence (e.g., 20-21, 37-42, 51, 83, 148, 217), while masses of relevant evidence are left unexamined. Mālik's watershed work *al-Muwatta'*, for example, is the main subject of Chapter 1 but is cited there only twice (29, 41). Al-Shaybānī and Ibn 'Ulayya, about whom the book adds considerable new material, are viewed almost entirely through the lens of al-Shāfi'ī's *Kitāb al-Umm*, which records debates with unnamed interlocutors whom El Shamsy identifies with these two figures (plausibly but still not definitively; the passage cited in n. 11 on p. 46 does not in fact name al-Shaybānī). One wonders whether a close reading of Mālik's *Muwatta'* or other non-Shāfi'ī sources might not complicate El Shamsy's interpretation of these two figures (and implicitly of all early Muslim jurists) as proponents of a common ideology of communal tradition. Ibn 'Ulayya, for example, emerges from the *Kitāb al-Umm* as one who based law primarily on scholarly consensus, whereas other available evidence suggests rather that he, like al-Nazzām (d. 221/836), equated proof with consensus only in the sense that he insisted on finding proofs that everyone could agree upon with certainty, and therefore joined other rationalists in rejecting individually transmitted reports. Like traditionalists and early scripturalists including the Khawārij (whom El Shamsy simply dismisses on pp. 5 and 185), Ibn 'Ulayya was just as much opposed to the authority of scholarly tradition as al-Shāfi'ī, and just as much a textualist, though he employed a smaller canon. Closer study of non-Shāfi'ī materials will undoubtedly reveal that al-Shāfi'ī's introduction of a textualist ideology was not as novel or dramatic an innovation as El Shamsy makes it out to be.

On the other hand, in grand scheme of things, El Shamsy's decision to reframe his history of Shāfi'ism as a history of Sunni law may turn out not to be a mistake at all. His broad narrative is compelling, and resonates with several recent scholarly trends: a renewed emphasis on al-Shāfi'ī's pivotal influence, a growing recognition of how swiftly al-Shāfi'ī's ideas spread, and a pendulum swing toward greater confidence in late writings as sources of historical evidence. He does rely too heavily on sources that are hagiographical, polemically motivated, or one-sidedly Shāfi'ī, but his use of one of those sources, al-Shāfi'ī's *Kitāb al-Umm*, is ground-breaking. (His use of other early Shāfi'ī writings by al-Muzanī and al-Buwayṭī is less developed, and the evidence for the latter's attribution, given in El Shamsy, 2007, is unconvincing). Furthermore, Chapter 8 draws from non-Shāfi'ī sources to add half a dozen new examples, not mentioned in the dissertation, of figures who somehow came to share aspects of al-Shāfi'ī's legal ideology and hermeneutic over the course of the third/ninth and fourth/tenth centuries. Most impressively, El Shamsy frames his findings in broad social terms (cultural memory, orality and writing, state institutions) and articulates them in striking, crystal clear, and virtually error-free prose. (I did notice one mistake in n. 63 on p. 133: *Umm* 10:5 should be 3:269.) His grand narrative about how and why al-Shāfi'ī almost single-handedly initiated the textualist transformation of Islamic law remains a hypothesis—it cannot be called an argument for anything beyond the third-/ninth-century history of al-Shāfi'ī's followers—but it is a compelling one, and I expect it will prove a productive heuristic lens for more cautious and modest scholarship on sources from other regions, schools, and disciplines.

One final caveat: the shift in ideology that El Shamsy describes, from communal tradition to textualism, is just that: a shift in ideology—in the imagined ground of normative authority. From the perspective of one who adopts that ideology, the relationship of dependence that al-Shāfi'ī and subsequent jurists established between legal rules and canonical texts is undoubtedly quite real: once a text is interpreted as supporting a legal doctrine, it is the basis of that legal doctrine, whose existence and authoritativeness are then explained by that text. Other explanations of the doctrine, however, are also possible. Islamic law can be (and has been) explained as the product of all kinds of social and intellectual factors, even though it is legitimated and imagined by jurists (and by El Shamsy) as the product of scientific, systematic, repeatable, and falsifiable interpretive reasoning based on textual evidence (70, 189). El Shamsy's book conflates ideology with constructive method. Having pointed out that al-Shāfi'ī's

hermeneutical tools were innovative, he spends surprisingly little time exploring their nature or function, and seems to take for granted that they did in fact dictate the results of interpretation—not infallibly but still decisively—so that somehow, over the course of the third/ninth century, Islamic law really did become a scripturally revealed law not only in theory but also in substance and method. That, I suspect, is the fundamental issue behind his recent critique (2014) of my own book (2011). I do not recognize as my own the dismissiveness about Hadith, the disdain for al-Shāfi‘ī, or the enthusiasm for literalism (which I consider a hermeneutical fantasy) for which El Shamsy chastises me, but I do recognize that we disagree on this question: does affirming a textualist ideology actually make the substance of one’s legal doctrine a function of the canonized text? El Shamsy’s overly dramatic but insightful and articulate book tacitly furthers that debate.

References

- El Shamsy, Ahmed. 2007. “The First Shāfi‘ī: The Traditionalist Legal Thought of Abū Ya‘qūb al-Buwayṭī (d. 231/846).” *Islamic Law and Society* 14: 301–341.
- _____. 2009. “From Tradition to Law: The Origins and Early Development of the Shāfi‘ī School of Law in Ninth-Century Egypt.” Ph.D. diss., Harvard University.
- _____. 2014. Review of Vishanoff, 2011. *Journal of the American Oriental Society* 134: 168–171.
- Vishanoff, David R. 2011. *The Formation of Islamic Hermeneutics: How Sunni Legal Theorists Imagined a Revealed Law*. New Haven, CT: American Oriental Society.