REVIEW

Collective Liability in Islam: The ʿĀqila *and Blood-Money Payments* by Nurit Tsafrir, 2020. Cambridge: Cambridge University Press, £75, xviii + 167 pp. ISBN: 978-1-108-49864-7.

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A man came before al-Hajjaj (d. 95/714) complaining that his house had been demolished and his stipend (ʿ*aṭā*ʾ) suspended because of the misdemeanours of a fellow tribesman. 'That's too bad', the governor replied, 'have you not heard the poet say: '…it might be that someone is seized for the sin of his tribesman/while the one who commits the deed escapes'?' 'God rectify the governor', the man replied, 'I have heard God say otherwise.' 'How so?' al-Hajjaj asked. The man recited: '"O Minister! He has an aged father, so take one of us in his place: we see you as one of the virtuous." He [Joseph] said, "We seek refuge in God that we should seize someone other than him in whose possession our [stolen] goods were found; otherwise, we would be of the wrongdoers"' (Q. 12:78–79). Al-Hajjaj ordered that the man's house be rebuilt, his stipend restored, and that a crier announce 'God has spoken the truth, and the poet has lied!'[1] As this anecdote stresses, and al-Hajjaj pointedly recognises, the principle of individual responsibility is crucial to Islam's moral *weltanschauung*. It marks a significant departure from *jāhilī* ethics, which were tribal in character and stressed group loyalty to the detriment of all else: 'Succour your brother, oppressor or oppressed'.[2] Nurit Tsafrir's brilliantly researched monograph on the institution of the ʿ*āqila*, its adoption and subsequent modification under the Umayyads and the Hanafī School, sheds much needed light on this development, and on how the careful reading of legal and other sources can allow for the reconstruction of aspects of social and legal history. The ʿ*āqila* is the group responsible for the payment of blood-money in cases of non-intentional homicide or injury. Jurists conceded that while its origins are indeed *jāhilī*, the Prophet confirmed (*aqarra*) this institution, rendering it properly Islamic. That those not responsible for offences should still bear the financial burden of compensation clearly reflects the tribal context of the Prophet's mission, and seemingly contradicts, Tsafrir observes, the principle of individual responsibility, a tension jurists alternately recognised and explained away (2–3). The Hijaz had no history of state formation prior to Islam, and as generations of Islamicists have remarked, the resulting law of homicide resembles a civil more than it does a criminal wrong (8). According to the jurists, it in fact belongs to a composite category, since the perpetrator is required to atone for their sin irrespective of any compensation (15).

Joseph Schacht, whose approach is closely followed by Tsafrir throughout, famously averred that law did not fall under the remit of religion *per se* in the first century AH. Building on this controversial finding, Tsafrir demonstrates how Umayyad practice entered into the mainstream of Islamic law once this finally emerged (44–52). Early jurists accepted

some aspects of Arabian custom while eschewing those that did not suit the Islamic ethos: accordingly, retaliation (*qiṣāṣ*) was limited to the perpetrator rather than potentially including tribesmen of equivalent status, and could only be exacted in cases that were fully intentional (*ʿamd*, 16–17). Similarly, jurists agreed that compensation could only be levied on the *ʿāqila* in cases that were accidental (*khaṭaʾ*) or in some views quasi-intentional (i.e. *shibh ʿamd*).[3] Nevertheless, in the early Islamic period one finds cases that were still adjudicated according to essentially tribal norms (46–47). The Umayyads introduced two major changes to the collection of blood-money: the funds were to be deducted from annual *ʿaṭāʾ* payments (solving the cashflow and collection difficulties this otherwise entailed), and these funds were taken from persons listed adjacently in the government register of stipends (the *dīwān*), initially organised according to tribe (44–46, etc). Tsafrir aptly terms this development the '*dīwān* innovation', and notes that it was taken up by many Kufan, and later, Hanafi jurists. Other schools, with the exception of some Malikis, rejected the *dīwān* innovation in favour of the original tribal principle (42–43). These other *madhāhib* did agree, however, to adopt a third allegedly Umayyad innovation, the division of the blood-money into instalments, attributing this in Schachtian fashion to Companions and in some cases to the Prophet himself (59–60).[4] The Hanafis were not only the most avid adopters of the *dīwān* innovation, but reflected later social developments in their legal doctrine to a much greater extent than other schools (e.g. xv). Tsafrir thus dedicates much of the remainder of her book to exploring transformations in Hanafi doctrine to Ibn ʿAbidin (d. 1258/1842), with particular attention to Eastern 'Iranian' scholars and their social-political contexts.[5] The author could perhaps have ventured some observations on why the Hanafis were so distinctive in this respect. Does their adoption of the *dīwān* innovation owe something to their early closeness to the Abbasid regime (a relationship she discusses at some length in her previous book)?[6] Tsafrir herself notes, after all, how early Hanafi diction here reflects administrative directives much more than it does juristic discourse (41). Nevertheless, she is to be commended on her extremely meticulous parsing of the source material and her not unconvincing reconstruction of Umayyad administrative measures. The book is structured with all the logical tautness of a mathematical treatise: there is not a single word out of place. Those not already subscribing to Schacht's account of early Islamic law are not, however, likely to be persuaded by Tsafrir, who seems to take its facticity at times for granted.

Following the transfer of Hanafism to Eastern Iran, no later than the second half of the second century AH, disciples of the school's eponym (or their students) were being appointed as judges, some of them for long tenures (96). Perhaps as early as the end of that century, Eastern Hanafism had come into its own; students no longer had to travel to far-away Iraq for instruction at the feet of prestigious teachers, but could go to regional centres like Balkh. Jurists from these territories now expressed sufficient confidence to depart from and modify the teachings of the founding fathers of the school on a range of doctrines (100–105). In accepting the *dīwān* innovation, early Hanafis like Muḥammad b. al-Hasan (d. 189/804-5) had already (potentially) moved away from the purely tribal basis of the *ʿāqila*. Though the introduction of the *dīwān*, attributed to ʿUmar I (r. 12/634 – 22/644), had originally reflected the tribal organisation of the conquest elite, the professionalisation of the military from the reign of ʿAbd al-Malik (r. 65/685 – 86/705) led to important changes in this institution (69). Eastern Hanafi doctrine reflects these developments. Tsafrir remarks that, like all good

jurists, Hanafis argued for their continued fidelity to the *ʿāqila*-ideal (61–62): in societies no longer structured by tribe, it made much more sense to base notions of collective responsibility on more relevant forms of group identity and mutual support, they insisted. These alternative bases of cohesion emerge first, in the juristic literature, in the discussions of the Eastern Hanafis: those registered in the *dīwān* – no longer based on alleged descent or military service – find their *ʿāqila* among fellow members of their *dīwān*. In cases where they are not so registered, their *ʿāqila* is either comprised of their '*nuṣra*-group' (those on whom they rely for mutual support), according to the earlier Balkhī view, or they (as *ʿajam*, Persians or non-Arabs) have no *ʿāqila* at all, according to the less popular later Balkhī view (123–127 and 137–139, respectively). Tsafrir traces the ascent of the former opinion from novel view to school doctrine, from *fatwā* literature, to commentary (*sharḥ*) and finally, to the most authoritative stage, adoption in the school-texts (*mutūn* or *mukhtaṣarāt*).[7] Her discussion of these changes is copiously documented. Tsafrir presents a relatively seamless narrative of legal development and its historical context with admirable attention to detail. The book is an extremely instructive example of how to read legal texts for social history, and how to successfully marry the two to account for longue durée changes in the legal practice – or, at least, discourse – of Muslim societies.

Concluding her narrative on the development of Hanafism, Tsafrir emphasises how later Eastern views came to be discussed alongside those of the founders of the school, not just in the domain of the *ʿāqila* but much more broadly (110–117). On a range of issues their departures from earlier doctrine became school teaching. This process was facilitated by the westward conquests of Turkic dynasties loyal to Hanafism, including the Seljuqs and, much later, the Ottomans. Eastern Hanafis, appointed to key teaching posts in institutions of higher learning, were able to guarantee the transmission and popularity of their views (117–118). The final stage of premodern legal development is represented by Ibn ʿAbidin, who notes that no mutual support can be found among the residents of towns and cities in his day (142). Tsafrir ends by noting a final development in the modern period: the view that cooperative insurance schemes can substitute for the *ʿāqila* (143–144). Though not devoid of a certain teleological quality, this is a richly documented and persuasive history of the development of the institution of the *ʿāqila*. I would recommend this book to anyone with interests in Islamic law, comparative and criminal law, and the interface between legal and social history.

NOTES

1. Ibn ʿAbd Rabbih, *al-ʿIqd al-Farid*, ed. Muhammad Saʿid al-ʿIryan, vol. 3 (Beirut: Dar al-Fikr, 2008), 172–173. This is a somewhat abridged version of the original.
2. The classic account of this transition is Goldziher's '*Muruwwa* and *Dīn*' and his 'The Arabic Tribes and Islam', in *Muslim Studies*, trans. and ed. S.M. Stern and C.R. Barber, vol. 1 (New Brunswick: Aldine Transactions, 2006), 1–44 and 45–97 respectively (esp. 70). For an illuminating discussion of the relevant hadith, see <www.alawni.com/m/articles.php?show=10> (last accessed 29 April 2020).
3. It is worth pointing out that not all jurists accepted the intermediate category, a fact Tsafrir does not note: for an early account of the difference of opinion on this point, see Ibn al-Mundhir, *al-Awsat min al-Sunan*

wa-l-Ijmaʿ wa-l-Ikhtilaf, ed. Ayman al-Sayyid ʿAbd al-Fattāḥ et al., vol. 13 (al-Fayyum: Dar al-Falah, 2009), 76–82.

4. Tsafrir adds that a number of jurists critiqued this attribution to the Prophet on *isnād* grounds. As Jonathan Brown has demonstrated, *ḥadīth*-critics were not unaware of the problem of the backgrowth of *isnād*s: 'Critical Rigor vs. Juridical Pragmatism: How Legal Theorists and Ḥadīth Scholars approached the Backgrowth of *Isnād*s in the Genre of *ʿIlal al-Ḥadīth*', *Islamic Law and Society* 14, no. 1: 1–41 (esp. 18–22).

5. 'Iranian', not in the modern sense, but culturally, extending as far east as Transoxiana.

6. I am unable to locate a copy of this book in order to cite it, owing to the current COVID-19 lockdown.

7. Samy Ayoub has recently emphasised this ranking of authority in texts of the Hanafi school and its consequences for 'doing' legal history: *Law, Empire, and the Sultan: Ottoman Imperial Authority and Late Ḥanafī Jurisprudence* (New York: Oxford University Press, 2020), 102, etc.