Law, Medicine, and the Meaning of the Modern State in Nineteenth-Century Egypt: Bringing History and Humanity to Bear on Ideology

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Khaled Fahmy

In Quest of Justice: Islamic Law and Forensic Medicine in Modern Egypt (Oakland: University of California Press, 2018), 408 pp.

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ABSTRACT: Khaled Fahmy mounts a significant challenge to conventional assessments of the modern state in the Middle East. He does this by foregrounding the human bodily detail of the practice of the emerging modern state and bureaucracy in nineteenth-century Egypt. He tells a new story of the bottom-up and gradual construction of the modern state in the detail of everyday facts of being human: being born, getting ill, defecating, bad smells, proving your identity, and wanting justice for your loved ones. Modernizing practices of law and medicine are shown to have intersected in ways that materially and institutionally made possible new kinds of choices and values involving specific persons and predicaments. He thus brings to life what the emergence of the modern state meant in the messy reality of human living in a way that challenges prevailing ideologies that reduce modernity to the impersonal causality of ideas and essences.

KEYWORDS: Modernity – Islam – law – medicine – *siyāsa* – practice – governance

Khaled Fahmy's *In Quest of Justice* explores the modernization of law and medicine and, in particular, the legal use of new forensic medical practices in the Khedival period (1805–79) of nineteenth-century Egypt. It is impressive in the way it simultaneously addresses a number of imbalances and gaps in a number of literatures and fields connected to the highly contentious topic

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of Islam and modernity. What seems to have allowed him to break out of traditional molds of analysis and connect up many topics at once has been his methodology and philosophy of history: an uncompromising grounding of his research in the bodily and bureaucratic detail of the human agency and practice of the modern state—wherein historical things and people do not divide into neat subjects, but appear in their living interrelation. It is evident from the book's detailed reference to a rich array of governmental sources that this has been made possible by a labor-intensive immersion in a giant archival footprint left in the Egyptian National Archives by the nineteenth-century Khedival bureaucracy. Fahmy has managed to bring to light its record of the everyday practice of law and medicine in state administration. The jewel in the crown is his discovery of the inner workings—from initiation of legal action to sentencing—of what he calls a "*siyāsa* legal system" of governmental legal councils, that is, the growing public political arm of Egypt's criminal law system.

Fahmy's archive-centered iconoclasm of traditional binaries and ideas of ahistorical essences targets the grand narratives about modernity in the Middle East—Islamism, Orientalism and nationalism—at the same time as bringing a focus on gritty neglected aspects of modernization in academia. He seems to want to show the shifting human micro-detail of modernity—the how, the who, the why, and the when—that gets lost in the ahistorical claims of ideological narratives: claims of a lost authentic identity (Islamism); or a Muslim backwardness and resistance to modernity (Orientalism); or the rise of the modern state in Egypt being the birth of the Egyptian nation and the decisive break from its traditional Ottoman past (nationalism). His efforts in this regard are comparable to the social historical approaches of Ottoman historians like Alan Mikhail and Beshara Doumani who have sought to shine a light on the social regional dynamics and vibrant political economy of the Ottoman Empire in the eighteenth and nineteenth centuries. To this empirical end of privileging everyday detail, he makes the human body the center of his analysis with each chapter having a different bodily sense as its focus: sight corresponding to new medical practices of autopsy; hearing and sound to the shift from the *fiqhī* (Islamic legal) requirement of hearing the testimony of a witness in the *sharīʿa* court to the silent written mode of *siyāsa* legal proof (37); smell to the reorganization of Cairo's urban planning to alleviate the build-up of stinky miasmas, presumed to be toxic; taste to modernized methods and institutions for supervising the quality of food products in markets; and touch to the gradual decline in official use of corporal punishment. The effect of this emphasis on the human bodily experience is a palpable sense of what modernization meant in daily concrete experiential

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terms—a kind of anthropology and phenomenology of modernization in Egypt that encourages the reader to take the period seriously as a functional living world with its own processes and rules and therefore as a real world like our own.

Making the body the book's "unit of analysis"—"the site on which state power and non-elite resistance is performed" (36)—elides with its subject matter of legal and medical reforms. Fahmy's interest in law and medicine focuses on practices and institutions that deal with the basic tasks of building and running a modern state. This is a history, he says, viewed through the lens of "cemeteries, slaughterhouses and cesspools" (15). By tracing the development and everyday use of such institutions, he offers a convincingly fleshy picture of the indigenous emergence of a modernized and sophisticated Ottoman-Khedival state-legal-medical apparatus before the direct colonial intervention of the European powers in the Egyptian government from 1876. He shows how the imperatives and deep structural shifts of modernization were rooted in complex local, institutional, and practical logics and processes of maintaining Ottoman Khedival power and sovereignty in the everyday lives of the governed. In doing so, he not only places the agency of the Khedival state at the center of the narrative of modernization, but also the non-elite agency and bodies of the people of Egypt who used and were used by the state medical and legal institutions on an everyday basis.

A running thread in the book is the non-elite's pursuit of justice via whatever legal or medical means were available to them, amply illustrated by some extraordinary and moving legal cases involving the complex interaction of *sharīʿa* courts and government legal bodies, the *majālis siyāsiyya* (political councils). In both these ways, he effectively expands the thesis of his ground-breaking work, *All the Pasha's Men: Mehmed Ali, His Army and the Making of Modern Egypt*.[1] He makes this thesis a larger argument about the nature of modernization in state institutions up until 1876 and continues the picture of the ambiguous and messy human reality of the implementation of modernization—in contrast to Timothy Mitchell's depiction of a continuous application of a colonial apparatus that totally reorders society from above.[2]

The implication for the grand narratives of modernity is a broader and more compelling case for a paradigm shift away from a focus on the causality of identity, ideas, and cultural authenticity toward considering the material and institutional conditions of the possibility of modernization: the building of

1. Khaled Fahmy, *All the Pasha's Men: Mehmed Ali, His Army and the Making of Modern Egypt* (Cairo: American University of Cairo Press, 2002).
2. Timothy Mitchell, *Colonising Egypt* (Berkeley: University of California Press, 1991).

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a modern state in Egypt cannot be equated to some superficial phenomenon or secular colonial imposition or sudden decision by Muhammad Ali to copy European nation-state models, but was in its fundamental practice and principles the continuation and intensification of a Muslim Ottoman physical practice of governance. The following commendation of Fahmy's book considers how it more specifically contributes to different academic literatures, dividing the contributions discussed here into modern Middle Eastern studies, Islamic legal history and, more generally, Islamic studies, all converging on the theme of Fahmy's location of the modern state in humans and their bodies.

MODERN MIDDLE EASTERN STUDIES

Fahmy's book, by way of its focus on the everyday practice of the modern state, goes some way in dismantling what Dyala Hamzah has identified as the intractable dialectics of Albert Hourani's "impact and reaction" paradigm in which modernization in the Middle East is understood as a response and reaction to European modernity.[3] The centerpiece of this dismantling is Fahmy's account of the modernization of the state criminal law system, which challenges the traditional paradigm on several levels. He shows how if you look at the way this system operated and for what reasons, you see that it had its own internal logic and process. It would be wrong, he argues, to see it as an approximation of European systems and judge it by their standards and goals as Egyptian and Western historians have conventionally done. The new criminal and penal codes and practices formed part of the Khedival appropriation of a long historical political-legal tradition known as *siyāsa*. This tradition was conceived as a supplement to the private penal system offered by local Islamic jurisprudential or *fiqhī* mechanisms of the *sharīʿa* courts. More will be said of this legal arrangement of complementary institutions later.

Fahmy, in line with his emphasis on practice, compares the legal methodologies of *fiqh* and *siyāsa*—each step of their legal process from legal initiation to juridical identification, to investigation and sentencing—in a way that gives convincing depth to his challenging of the "impact and reaction" paradigm. He shows that *siyāsa* had important differences from *fiqh* that reflect its public political status of dealing with crimes against the social order in contrast to *fiqh*'s dealings with private claims of the individual. For example, the state police department itself initiated cases in an "inquisitorial" manner,

3. Dyala Hamzah, *The Making of the Arab Intellectual: Empire, Public Sphere and the Colonial Co-ordinates of Selfhood,* (Abingdon: Routledge, 2013), 3–4.

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unlike in *sharīʿa* courts where the litigants initiated the case themselves in an "adversarial" manner and the judge oversaw the procedure of the court case; individuals were identified in *siyāsa* cases by government legal documentation known as the *tadkhara*, which identified them by legal domicile and patronymic name, unlike in *sharīʿa* courts where the litigants were identified by at least two local witnesses from their community; the *siyāsa* councils that reviewed the cases could sentence on the basis of circumstantial evidence—significantly, medical forensic proof—in contrast to the requisite condition of a morally upright witness to a crime in *sharīʿa* courts; and while punishments in the *siyāsa* sentencing were standardized for all litigants, the punishment in *sharīʿa* sentencing was relative to the various differences in the litigant's status such as gender, religion, age, and class—for example, one crime could entail imprisonment for higher-class litigants and beating for lower-class litigants.

This comparison of the different practices of *fiqh* and *siyāsa* solidly grounds an intriguing argument that notions of the individual and equality that are generally considered distinctively modern and secular were made "thinkable" in the evolving legal practice of *siyāsa* (92–131). They were implicit in the way *siyāsa* legal reasoning isolated individuals from their locales within an impersonal textual order and judged them by standards rationalized and officially legitimated across the whole nation, standards that were indifferent to particularities of individual status. This was not a case, as it would be in the traditional "impact and reaction" paradigm, of a new European model of justice inspiring a faulted and flawed application of that model. Rather, Fahmy is showing how ideas and cultures have their impetus and life in practice—namely, the bureaucratic techniques of the modern state—and should be understood within this practice.

Another level of this refutation of a Europe-centered approach is Fahmy's tracing of the evolution of the *siyāsa* realm of justice. One aspect of this evolution was new penal codes that reduced and specified the extent of corporal punishment for different crimes, leading to the eventual abolition of official violence. Fahmy traces a general move from corporal punishment toward punishment by imprisonment up until July 1861 when the Cairo Police drafted a decree replacing all flogging with imprisonment, ending the official sanction of the infamous *kurbaj* (whip) as a legal punishment (234–35). He situates the changes within their material and institutional conditions of possibility to reveal a credible practice-driven historical trajectory. They did not emerge as a sudden reactionary transplant of European legal norms but were part of a gradual process of legal reform from the 1830s to the 1860s, which intersected with the rise in use of forensic evidence and its substitution for the use of torture

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to secure probative evidence by confession. His conclusion makes sense of this history in a way that directly targets the "impact and reaction" paradigm as:

> a significant trend that was instigated not by intellectuals and thinkers inspired by Enlightenment ideas but by administrators, physicians, and bureaucrats who were intent on making Egypt more efficient and manageable. (268)

Part of the persuasiveness of this conclusion is the way Fahmy frames it within the politics of Khedival sovereignty. Limiting the scope of violence via different penal codes, as it had done for Muhammad Ali, served to codify and centralize Khedival authority and jurisdiction across the region at the expense of the autonomy of the different Ottoman households and, more widely, the power of the Ottoman Sultan. The classic example of this was the Khedival renegotiation of the 1850 Ottoman criminal code's edict that all death-sentence (*qiṣāṣ*) verdicts would be ratified by the Ottoman sultan (122). In the Egyptian version of the code (1852), it was the Khedive who would ratify these verdicts. This politics is likewise in the background of the *siyāsa* councils that adjudicated state legal process and police investigations. As we hinted at earlier, they were part of the long political tradition of the discretionary power of the ruler, which Muhammad Ali and his lineage of Khedives wielded over their subjects. Fahmy's intricate account of the steps of the councils' legal deliberations reveal a multilevel system of judicial oversight that culminated with the Khedive's own personal cabinet (*maʿiyya saniyya*)—a genuine legal—not just political—apparatus and judiciary (118–19). This political contextualization of the rivalry between households not only foregrounds the local dynamics of state modernization and bureaucratization, but also brings a very interesting angle that evinces the fragility and precariousness of the Khedival state, developing the arguments of historians of late Ottoman Egypt like Ehud Toledano and Adam Mestyan (231).

It should now be clear that Fahmy's challenging of the traditional view of the modern Middle East is not by hard and fast arguments, but by the incremental building-up of a credibly real picture out of details from different but overlapping kinds of bureaucracy-related practices. The book is an incredible synthesis that plays on the structural intersection of legal and medical reforms to suggest the historical reality of a wider interlocking picture. So, for instance, the legal change of replacing the local *muḥtasib* or market-supervisor—the official purveyor of the *sharīʿa* principle of *ḥisba* (public morality)—with the state police department and its team of

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medical experts and chemists was not a sudden move toward secularizing or Europeanizing governance. Rather, as Fahmy shows in chapter 4, it was part of a wider emerging practice and discourse of public health and its management of the population via a new system of health offices as well as the possibility of new scientific methods of testing food that were beyond the expertise of the *muḥtasib*.

Likewise, the attention he draws to the governmental discourse of public health gives a palpable sense of the concrete governmental tasks at the center of Khedival politics and legal administration. Fahmy uses this focus to get us incrementally out of the "impact and reaction" dialectic by preventing our casting of Khedival governance in the image of the European colonial project. In chapter 3 Fahmy shows how the urban landscape of Cairo, although, architecturally, appearing to be divided between modern European and old traditional districts as the traditional paradigm has emphasized, was in fact uniformly subject to large-scale infrastructural public health measures of reducing concentrations of bad smells and miasmas—measures like the relocating of cemeteries outside the city and the filling of Cairo's system of waterways. From this reassessment of the traditional view of Cairo's urban modernization, Fahmy argues that Khedival reforms considered the whole of the Egyptian social body and not just the governing elite who lived in the architecturally modernized areas of Azbakiyya. Here Fahmy is arguing for the absence of a colonial racist model, as exemplified by the British Raj in India, of a clear division between ruler and ruled based on an idea of the ruled as inherently inferior and diseased. In Foucauldian terms, sovereignty and discipline were not divorced from governmentality—a concern for the civilizing reform of all Egyptian subjects. The argument for the historically constitutive role of government practice not only dismantles the "impact and reaction" paradigm, but builds a case against the idea of a "modern order" as colonially imposed on Egypt, while addressing his concern for recovering the agency of the Egyptian people who governed and were governed. The nineteenth century saw deep structural change, but this change did not occur as a dramatic break, but like all things that endure, via a gradual process and through the work of and upon many human bodies. A concluding remark after his account of Cairo's public health reforms in chapter 4 captures Fahmy's gritty bottom-up perspective and interest in the everyday stuff of life and death as the site of substantive, but gradual historical change:

> They reshaped the way that Egyptians registered their babies, built their houses, ate and drank, urinated and defecated, and buried their

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> dead. None of the acts that are celebrated by the traditional accounts of how Cairo was redesigned—supposedly to acquire a Parisian look—was as significant or long lasting. (178)

The questioning of the "colonial" nature of the Khedival period in nineteenth-century Egypt takes us to another important contribution the book seems to make: Fahmy humanizes the state by identifying the human agents and users of new state institutions. One approach to overcoming the "impact and reaction" paradigm is to, as Mitchell has done in his *Colonising Egypt*, see the indigenous population not as reacting to European modernity, but as internalizing its logic in the form of a reordering binary code. But the machine-like picture of colonial order that this offers is refuted by the logic of the *siyāsa* system and its accommodation of legal pluralism by working with the *sharīʿa* courts as opposed to replacing them.

In Fahmy's first chapter he shows how medicine, contrary to the accounts of colonial officials who claimed that Islamic beliefs discouraged its adoption and use, was not forced upon a reluctant Egyptian population. Rather, it was actively chosen for practical and pragmatic purposes. One fascinating insight made possible by the book's interest in the detail of the everyday running of state institutions is that new legal uses of forensic medical practices were embraced, in their early stages, not just among the elite, but among the non-elite. Perhaps the most compelling site of Fahmy's narrative is his detailed accounts of legal cases wherein non-elite Egyptians are not simply reordered and restructured by the modern bureaucracy of *siyāsa*, but make use of it in pursuit of justice for their loved ones when the *sharīʿa* court failed to deliver this justice (76–79). Families or friends of victims of homicide, for instance, would request autopsies by governmentally trained medical professionals if they could find no one to witness to the crime and thereby provide the only valid kind of legal proof in a *sharīʿa* court. The *siyāsa* authorities would accommodate their request, investigate the case and prosecute the perpetrators if foul play were detected.

The modernization of law and centralization of power, in this light, did not appear to unfold in a machine-like and formulaic manner, but involved the everyday agency of humans in their effort for justice and dignity. There is an extraordinary case in chapter 5 of one group of black slaves who left the estate of a powerful member of the ruling family and took their case to the Cairo Police Department. With the help of the forensic work of the department's chief doctor, they managed to secure the sentencing of a high-ranking dignitary for the crime of flogging one of them to death (226–33). The dignitary strongly resisted the *siyāsa* investigation, which is testament to the contested

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nature of the *siyāsa* order as it gained control over the monopoly of violence in Egypt. The incremental picture of the emerging state-bureaucracy that emerges from these snapshots mounts a significant challenge to the view of the nascent modern state as a colonial machine-like order.

ISLAMIC LEGAL HISTORY

This point about the work the book does to humanize the modern state carries over strongly into the field of Islamic legal history. Mitchell's argument about the mechanical and totalizing nature of modernization in Egypt plays into the influential arguments of Wael Hallaq and Talal Asad about the modernization of law that Fahmy addresses in the book. Hallaq associates the rise of the modern state with a violence-backed systematic divorce of law and morality and consequent privatization of the *sharīʿa*.[4] Talal Asad argues that this separation of law and morality happened in Egypt after the British invasion in 1882 and formation of the National Courts and new secular civil code in 1883.[5] While Fahmy does not dispute the claim that *sharīʿa* was reduced to the private realm after the British invasion and occupation of Egypt, his argument about the cooperation and complementarity between *fiqh* and *siyāsa* does challenge the idea that the emergence of the modern state and the power of its public legal mechanisms entailed this colonial reordering and restriction of the Islamic legal tradition. Fahmy directly challenges Hallaq's thesis and complicates Asad's narrative by asking questions about the process—the how and why—of legal change in Egypt as opposed to focusing on the end result and its conceptual "genealogy."

Fahmy is bringing an approach to the debate about Islamic law and the modern state that emphasizes the practice of Islamic law and its social context and power structures. This approach is found, in particular, in the renowned works of Brinkley Messick, Leslie Peirce, and Judith Tucker. Fahmy sees this approach as filling an important gap in Hallaq's account of pre-Islamic law and society (26). His contention is that Hallaq's account relies heavily on his study of the jurisprudential theory of *fiqh* and that this theory only discloses a "conceptual world" that existed in the minds of the jurists—in particular there is a noticeable absence of the role of the state in Islamic

4. Wael Hallaq, *The Impossible State: Islam, Politics and Modernity's Moral Predicament* (New York: Columbia University Press, 2013), chap. 4.
5. Talal Asad, *Formations of the Secular: Christianity, Isla and Modernity* (Stanford, CA: Stanford University Press, 2003), chap. 7.

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law. As Peirce shows in her *Morality Tales*, jurisprudential theory is only one part of a complex historical picture in which the meanings of the law and the court are socially contingent: factors such as the social, political, or institutional locations of the judge and those who make up the court's personnel affect how the law is understood and interpreted.[6] The interaction between a wider state legal apparatus of professionally trained bureaucrats and doctors, on the one hand, and local *sharīʾa* courts and their personnel in Khedival Egypt, on the other, is an instance of this social contingency that calls for serious engagement.

For Fahmy a significant shortcoming of this overemphasis on theory is evident in Hallaq's and Asad's accounts in the form of what he identifies as a reductive presumption of equating *sharīʾa* with *fiqh*. The key to this challenge is his account of the *siyāsa* system in practice. He creatively builds on the work of legal historians like Colin Imber, Miriam Hoexter, Rudolph Peters, and Yosef Rapoport who have drawn attention to the constitutive and legislative role of the state in the history of *sharīʿa* law under the legal sphere of *siyāsa*—also known as *taʿẓīr*—and its state courts (*al-mazālim*). This state-run legal sphere, as we alluded to earlier, existed alongside the *fiqhī* sphere of the *sharīʿa* courts and judicial process (*qaḍāʾ*). It legislated state law (*qānūn*) that provided the public political legal apparatus that *fiqh* and its emphasis on the private claims of the individual did not offer. Fahmy's point is that there was already a distinction between public and private legal mechanisms within the *sharīʿa*. As such, the state's modernization of law by its formulation of a sophisticated *siyāsa* legal system in the nineteenth century did not entail a rupture with *sharīʿa* in the form of a privatizing restriction of its sphere, but rather its continuation in an evolved form. In particular, Rudolph Peters's articles have been foundational in pointing to the development of the *siyāsa* system in Khedival Egypt as a continuation and expansion of Ottoman legal tradition. *Sharīʿa* has had multiple legal methodologies and *fiqh*—the jurisprudence practiced in the *sharīʿa* courts—was only one of these.

Fahmy extends and bolsters this line of research in a way that particularly challenges the narratives of Hallaq and Asad by offering detailed examples of how the legal mechanisms of the *siyāsa* councils cooperated with *fiqhī* mechanisms in practice as part of a "complex and highly organized penal system" (83). In one case, in 1879, a litigant who believed his brother was murdered sought to challenge the claim made by the local village strongman that his

6. Leslie Pierce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley: University of California Press, 2003).

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brother's death was natural, and was unable to offer witness-based proof in the local *sharīʿa* court. The litigant therefore, in the words of the bureaucratic record, "deferred the matter to the government" and, after an investigation by the local police force, a number of people involved in the death were sentenced via the judgment of a local *siyāsa* council based on circumstantial evidence informed by forensic medical reports on the condition of the victim's body. Importantly, in cases such as this one the *siyāsa* verdict did not negate the judgment of the *sharīʿa* court. *Fiqh* dealt with murder as a matter of private law, whist *siyāsa* dealt with it as matter of public interest. Moreover, the *siyāsa* judgment is made after the *qāḍī* has made his judgment and the punishments entailed by each were both mandatory, neither excluding the other (84). It was only the *sharīʿa* court that had the authority to sentence the defendant found guilty of homicide with death and, then, reflecting its function of arbitrating the private claims of individuals, the heirs of the victim could step in to excuse the defendant and demand compensation instead. The *sharīʿa* sentence would then be sent to a *siyāsa* council for ratification (100–103).

Another fascinating case of cooperation, originally identified by Peters, that Fahmy delves into, was an instance of a loophole in *fiqh* whereby death caused by an instrument that was not a weapon would be considered manslaughter rather than homicide. This had encouraged a rise of cases of death caused by a thick wooden stick known as the *nabbūṭ*. The high *siyāsa* council known as the *majlis al-aḥkām* responded by legislating a piece of *qānūn* that defined the *nabbūt* as embodying homicidal intent, which if demonstrated by *sharīʿa* courts would be liable to the death sentence. This is a clear example of how the *siyāsa* councils creatively worked with and modified *fiqh* as its main reference point (117–20). Its method was one of supplementation rather than substitution. Councils would overturn *sharīʿa* decisions on the basis that they were not fulfilling *fiqhī* principles and there would be a *muftī* (a *fiqhī* jurisconsult) on each council to help in these decisions. The *sharīʿa* is shown in concrete historical terms to be a complex legal mechanism that combines different moral legal logics. An account of *sharīʿa* purely based on the principles of *fiqh*, Fahmy argues, would ignore the multifaceted reality of its practice. The more theoretical question about the *sharīʿa* status of an increasingly assertive political realm is open to debate, but it cannot be answered in terms of a straightforward historical narrative.

Fahmy shows that modernization of law did not mean a systematic secularization of law. The legal practice of the state realm was not divorced from indigenous systems of religious meaning and legitimacy. In defetishizing this issue of secularization and loss of authentic identity, his book records the

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extraordinary modernizing transformation in the tradition of *siyāsa* in a way that makes us look at the institutional and technological changes that made this transformation possible—like forensic medicine, an emerging centralized police force, and a printing press—as opposed to an idea of the sudden causality of identities and ideas. There is change and there is something new in how *siyāsa* became a vast "textual order" recording and isolating the identities of each Khedival subject, but this grows gradually out of an already-existing bureaucratic world and process.

The book is an exciting and refreshing contribution to the debates over the relation between Islamic law and the modern state because it makes the historical practice of the modern state the driving force of its analysis and argument—as opposed to history being made to align with the familiar premises of contemporary expectations and assumptions about the modern state. Fahmy thus allows us to see the *siyāsa* system as an actual practice and bureaucratic language with its own meanings and logics. This more complex view of the modern state as an impersonal and violent structural phenomenon, I think, will help raise new questions about the modern state. It sensitizes us to how it is constituted not only through violence and "structure," but through discrete human choices to do with specific persons and values.

While it is a great strength of the book that Fahmy clearly spells out the implications of his historical work for larger contentious debates, he could be criticized for conceding too much to Asad's and Hallaq's usage of the terminology of the "legal" and the "moral," "fact" and "value." The *siyāsa* tradition is proof, Fahmy argues, that there was already an indigenous version of the separation between law and morality within *sharīʿa's* multiple "discursive traditions" (25). The separation was not a western colonial insertion. But binaries of "legal" and "moral," "fact" and "value," with which Hallaq and Asad operate, seem out of tune with the historical reality of *sharīʿa* that Fahmy demonstrates. Does the fact that the *siyāsa* realm is subject to considerations of *raison d'état* make it a nonmoral realm? Law (involving compulsion) and morality (involving conscience and choice) come in different kinds. A legal regime may preclude one kind of moral choice, but make possible another kind; examples from the new *siyāsa* legal regime might be a private individual's choice to pursue the prosecution of an unwitnessed crime or a public official's choice to impose a quarantine (59). If *siyāsa* legality is one of *sharīʿa*'s discursive traditions alongside *fiqhī* legality, one could imagine it could also be seen as involving a type of *sharīʿa* morality—different from *fiqhī* morality—that underpins government and legislative choices. The terminology of the "legal" and the "moral" assumes a clear understanding of what is "moral" and what is not, and this is not clear. This lack of conceptual clarity

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in the wider debate could even be considered politically dangerous in reifying an idea of the modernized public realm of *siyāsa* as unencumbered by the moral. Nevertheless, Fahmy is ambiguous in stating this binary and does talk about a "*siyasī* morality" reflecting *sharīʿa*'s "communal values" (26, 279).

ISLAMIC STUDIES

As a final note, I would like to draw attention to the way the book's historical illustration of a plurality of discursive traditions within *sharīʿa* contributes to Shahab Ahmed's project of reconceiving Islam in terms that avoid its reduction to religion and piety defined in opposition to a secular profane realm. Ahmed argues that Islam, on account of the multidimensionality or "spatiality" of its concept of revelation, offers a hermeneutics and idiom of meaning-making in which many apparently contradictory discourses—Sufism, *kalām*, *fiqh*—can be sustained in a state of meaningful coherence.[7] This meaning-making is not limited to an exclusive sphere of piety, but exists as a historical human agency that lives in all spheres of life and so makes sense of these many spheres in terms of the *sharīʿa* and Islam. Ahmed likewise claims that the realm of *siyāsa* was always theoretically conceived in *sharīʿa* terms, despite being different from *fiqh*—what he calls ruler's law in contrast to jurist's law. He gives a close-textual analysis of widely disseminated political-ethical tracts of celebrated Muslim polymaths like Nasīr al-Dīn Tūsī (d. 1274) and Jalal al-Dīn Davvāni (1422–1506) that present the ruler as a wise leader who upholds the universals *(kulliyāt)* of *sharīʾa*.[8] The end of the caliphal period under the Abbasids and rise of non-Arab Sultanic power did not, he argues, engender, as the traditional historical narrative goes, a paradigmatic idea of the separation of Islam and the sphere of the state as though Islam were a "religion" in opposition to a "secular" realm of worldly power. Fahmy's depiction of *sharīʿa* in early nineteenth-century Egypt as encompassing *fiqh* and *siyāsa* supports this argument against reducing *sharīʿa* to the modern Western meaning of religion or just one type of discourse. The book not only shows that *sharīʿa* had many meanings and logics, but also that Muslims, in the complex reality of human history, have sustained these logics in a coherent and complementary state of contradiction and plurality to the point of active cooperation. It therefore

7. Shahab Ahmed, *What Is Islam? The Importance of Being Islamic* (Princeton, NJ: Princeton University Press, 2016), 343–68.
8. Ibid., 456–82.

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also supports Ahmed's positive definition of Islam in terms of the human historical coherence of contradiction and paradox.

Such is the benefit of Fahmy's attention to the actual practice of law at the expense of neat theoretical models of clear identities and types. This book should open our eyes to what is possible—that difference does not mechanically imply division—and the complexity of the subjects we study. We have to learn *from* these subjects so that we can avoid slotting them into large-scale explanatory "structures" and sweeping grand schemes of history. The question then arises as to what we can constructively build out of this complexity. It seems that Fahmy's answer is hinted at in the title of the book (and the acknowledgments): certain quite basic and simple things bind together the overwhelming diversity and contingency of history, one of which is the courage of people to pursue justice for their loved ones, whatever the means and the costs.

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