



BRILL

Book Reviews



Khaled Fahmy, *In Quest of Justice: Islamic Law and Forensic Medicine in Modern Egypt* (Oakland: University of California Press, 2018), pp. xiii, 377, ISBN 9780520279032.

The historiography of khedival Egypt, which began to be written professionally after World War I, has long been concerned with the creation of the modern state and society. King Fu'ad organized what became the National Archives, initially housed in Abdin Palace. He and his son Faruq patronized a group of Egyptian and European scholars who produced studies that highlighted the role of the kings' direct ancestors, Mehmed (Muhammad) Ali Pasha, his son and successor, Ibrahim, and the latter's son Ismail (father of Fu'ad), as enlightened rulers who guided the emergence of a modern and independent state. Others, working independently of the Palace, gave more credit to the cultural and political elite in the project of Egyptian modernity, but the latter shared with the monarchist historians an assumption that pre-nineteenth-century Egypt was in a state of stagnation, supposedly isolated by Ottoman rule from advances made in early modern Europe, and that this isolation was shattered by the French invasion, which introduced an utterly alien civilization—that of Enlightenment France. The history of Egyptian modernization was conceived of as beginning with rupture.

As Khaled Fahmy points out in the introduction to this stimulating book, historical studies after the overthrow of the monarchy and until the 1970s continued to regard the modernization process as involving secularization, and the wholesale adoption of European knowledge, laws, and institutions. Fahmy criticizes this dichotomous view throughout five chapters that discuss the development of modern medicine and medical services, the organization of a new judicial system, the implementation of policies to improve public hygiene, the use of forensic chemistry to investigate spoilage and adulteration in the food markets, and the reform of criminal law to emphasize incarceration over corporal and capital punishment. Fahmy also engages two other sets of scholars who, though quite different in orientation, also adhere to the paradigm of

modernization as rupture. There is on one hand the Islamist historiography, which idealizes Sharia, and attributes the ills of modern government and society to its replacement by secular law (largely derived from French law). On the other hand, Fahmy describes the anthropologists Talal Asad and Hussein Ali Agrama along with the legal scholar Wael Hallaq as holding to a view of pre-modern society as it was constructed in the writings of juridical scholars, rather than the messy reality revealed in the registers of the law courts. Thus, they argue that in modern times, law and morality became separated, a view that Fahmy is concerned to refute. Otherwise, he does not engage with historical scholarship since 1970, which presumably informed his work. This is unfortunate, because readers would benefit even more from this book if, in addition to the scholarship he addresses, Fahmy were also in conversation with some of the historians of the past fifty years.

In Quest of Justice aims to re-frame the assumptions of rupture and dichotomy between Western and Arab/Ottoman/Islamic culture that have informed much of modern Egyptian and Ottoman historiography by examining how ordinary Egyptians experienced and responded to the modernizing project of the khedives. It does so through a study of the systems of law and of public health and hygiene that the khedives established in the middle decades of the nineteenth century—the 1840s through the 1870s. Rather than providing a continuous narrative throughout, the book consists of chapters presenting discrete arguments and interventions, albeit related. I will take them one at a time. The first chapter examines the creation of a modern medical establishment, originally to serve the army the Pasha created to solidify his position in Egypt. European reports, including those of A.-B. Clot Bey, the first head of the Pasha's medical service and director of the Qasr al-Aini hospital, presented this as a triumph of Enlightenment science over Muslim fatalism and ignorance, if not fanaticism, a narrative that cannot be sustained in light of the public's reception and negotiation of a policy of medical quarantine and postmortem examinations. The ulama approached the question of quarantine not out of ignorance but by voicing concern with the way it could prevent people from pursuing their livelihoods and interfere with the proper burial of the dead. Families failed to cooperate with quarantine to avoid being sent to a lazaretto and to continue working, and to observe customs like visiting graves. Fahmy produces a fatwa issued by the Mufti of Alexandria supporting quarantine so long as proper burial practices could be observed.

Fahmy delves into Muslim jurisprudence to show a lack of opposition historically to dissection and autopsy, which was also absent among the ulama of the time as well as the Azhar graduates who studied medicine under Clot

Bey. In this and subsequent chapters, Fahmy produces examples of common people desiring to have the corpse of a family member examined when they suspected foul play. The myth that Muslims opposed dissection out of religious fanaticism parallels and likely originated in a similar myth about religious opposition to dissection in Christian Europe.

Chapter two addresses the commonplace notion that, during the nineteenth century, secular law largely replaced religious law. Indeed, by the end of the century, there was a system of National Courts (*Mahakim Ahliyya*) that dealt with criminal, civil, and commercial law, while the jurisdiction of the longstanding Qadi Courts (Sharia Courts, *Mahakim Shar'iyya*) was limited to religious and family law. However, the National Courts were created in 1883, the year after Britain invaded and occupied Egypt. Fahmy's concern is with pre-occupation khedival Egypt which saw the organization of a system of judicial councils called Siyasa Councils (*Majalis Siyasiyya*) headed by a supreme council, Majlis al-Ahkam, established in 1849. Majlis al-Ahkam and the Siyasa Councils emulated the Ottoman example, newly established about a decade earlier. Until recently, conventional modern legal history focused nearly exclusively on the creation of the Mixed Courts (1876, with jurisdiction in cases involving non-Egyptians) and National Courts and the issuance of law codes largely derived from French civil law. Along with Rudolph Peters, Fahmy has pioneered in the study of the Siyasa Councils, which worked in tandem with the Qadi Courts rather than infringing on their jurisdiction. The Siyasa Councils referred cases to the Qadi Courts, and reviewed Qadi Court cases after they were decided, especially in cases of homicide. Unlike the Qadi Courts, which relied on oral testimony, the Siyasa Councils used a process of interrogation, relied on documents, accepted circumstantial evidence, including the new techniques of forensic medicine, and ruled on probability if no witnesses could be found. The discussion of the Siyasa Councils highlights a neglected yet important stage in the reorganization of the legal system in khedival Egypt, prior to the adoption of a Civil Law system, which deserves further study. The archived records of these councils are a rich source, which have only begun to be exploited by social historians. The reorganization of the legal system in this period extended to the Qadi Courts as well.¹

The combined *shar'i* and *siyasi* legal system had earlier Ottoman and pre-Ottoman precedents, such as the *mazalim* courts of the Mamluk Sultanate, and it was in accordance with the jurisprudential literature. Hence, Fahmy describes it as *shar'i*, that is, in keeping with the Sharia. In

1 Cuno, Kenneth M., *Modernizing Marriage: Family, Ideology, and Law in Nineteenth- and Early Twentieth-Century Egypt* (Syracuse: Syracuse University Press, 2015), chapters 4 and 5.

his view, Islamist nostalgia for a time when the Sharia was the sole law applied is doubly misplaced, since the jurists who constructed Islamic law accepted the coupling of Sharia and *siyasa*, and that was the way the legal system worked historically. However, the Islamist critique, albeit misguided, is focused on the current National Court system, which not only replaced the Siyasa Councils but resulted in restricting the jurisdiction of the Qadi Courts as mentioned above.

Chapter three re-examines the history of Cairo's modern development from the perspective of sanitation. Mehmed Ali and his successors took steps to improve the sanitation of the capital city and other towns beginning in the 1840s. Under the influence of miasmatic theory, urban streets were policed to enforce the removal of rubble from demolition and construction, to prevent the encroachment of construction on them, and to stop people from using them as latrines. The authorities put an end to intramural burial and removed slaughterhouses and tanneries to the outskirts of towns. Cairo's many ponds, filled with stagnant water for much of the year and used by residents for the dumping of refuse, began to be filled in during the 1840s, although the *khalij*—the canal running from the Nile to the west of the Ottoman city—was filled in only in 1898 due to local opposition. This account of relatively early efforts to improve urban sanitation revises the standard narrative by showing that Cairo and other towns were not neglected by the khedives until Ismail launched the development of a new urban quarter between the Ottoman city and the Nile, supposedly inspired by the re-design of Paris under Napoleon III. Fahmy's contention that the miasmaticists' concern with sanitation informed the reorganization of Cairo to a greater extent than the model of Paris is not as convincing, however. One could regard improved sanitation and the construction of new urban quarters with wide, straight streets as stages in a modernizing project carried out in some cases by the same officials. His argument that Cairo did not become a divided, colonial city like those of North Africa misses the point that the 'two cities' thesis, like the secularization of law thesis, refers especially to developments during the Occupation. The newly built parts of Cairo had modern accouterments such as gas lighting, piped water, and sewers, while the provision of those services in the old Ottoman city was inadequate or incomplete.

The fourth chapter is addressed, again, to the Islamists' nostalgia—here, for the defunct office of the *muhtasib*, a market inspector and enforcer of public morals. The term derives from *hisba*, the obligation to command good and forbid evil. Islamist authors, along with Asad and Hallaq, understand *hisba* to have been something performed by individuals. Yet as Fahmy points out, the *muhtasib* was a state official who used coercion and violence to enforce

standards, in accordance with jurisprudence. The *muhtasib* was replaced by health officers who made the rounds of the city and especially the markets, accompanied by police, to enforce standards. Foods suspected of spoilage or adulteration were sent to the chemistry lab in Qasr al-Aini hospital for testing. The *muhtasib* was not a victim of secularization. Rather, the concern of the state shifted from the enforcement of public morals and honest trade to public hygiene. Ironically, the retreat of the Pasha's army from Syria in 1841 freed up the physicians necessary to set up the new public health regime.

A final chapter outlines and explains the transition from a legal regime relying on corporal and capital punishment to one relying primarily on imprisonment. This was a gradual process in the middle decades, but in 1861, in a milestone of sorts, Said Pasha decreed the replacement of whipping and other corporal punishment with incarceration. Why? There was greater security in the country by then, and it was in the state's interest to monopolize violence, taking that option out of the hands of the elite. I am less persuaded by the argument that with the end of Mehmed Ali's monopoly system, there was less concern with the labor supply, hence a willingness to enlarge the imprisoned population. The chapter opens with a fascinating case in which a group of African slaves brought the excessive cruelty of their overseer, who held the rank of bey, to the attention of the authorities, ultimately resulting in his punishment by banishment. The incident amplifies other examples of the common people approaching the government in the belief that it would render them justice, by insisting on forensic examination of bodies in cases of suspected murder. Remarkably, slaves shared that belief and acted on it. The incident also illustrates how justice was related to class. As Fahmy notes, the ruling class was treated more leniently: the bey was merely exiled despite having beaten three slaves to death.

Despite my minor dissents, this book is an important accomplishment. One comes away from reading it with a new view of the middle decades of nineteenth-century Egypt, which have tended to be neglected. This is especially true of the reigns of Abbas (1848–54) and Said (1854–63), who were not direct ancestors of the kings and whom the monarchist historians neglected, along with most subsequent historians. The operation of the Siyasa Councils in conjunction with the Qadi Courts as well as the development of health and sanitation policies through their reigns does not support the common view of an interregnum of inconsistent and feckless rule between Mehmed Ali and Ismail. The khedives' concern with public health was also signaled by James Heyworth-Dunne, who noted that most of the students whom Abbas and Said sent to Europe studied medicine. As this book suggests, the old notion of West/Arab-Islamic dichotomy ought to be discarded in favor of a model of hybridity,

for the acquisition of European medical knowledge and practice was not fraught but accepted by those with religious training as well as the common folk. Khedival state- and institution-building was not a process of 'secularization'—at least before 1882—but one that drew in large measure on pre-existing practice.

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