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CONTRACTS IN ISLAMIC LAW: THE PRINCIPLES OF COMMUTATIVE JUSTICE AND LIBERALITY

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I. INTRODUCTION: OBLIGATION AND CONTRACT

In the classic manuals of Islamic law the term '*aqd* (contract) is most frequently used for two-party transactions, concluded by offer on one side, acceptance on the other. However, it is also used for transactions (guarantees, gifts, bequests) concluded by an offer only. Again, for acts merely juristic in nature (divorce, release, manumission of debts), the term is still '*aqd*. In fact, the term covers obligation in every field: one's religious obligations to God, the interpersonal obligations of marriage, the political obligations expressed in treaties, and the commercial obligations of the involved parties in a range of particular contracts.¹ It would seem that '*aqd* is used in its etymological sense ('tying up', reflected, as it happens, also in the root of 'obligation') rather than as a technical term.²

The jurists did not attempt a formal definition of the term, nor an explicit general theory of contract.³ The presentation, by some of them, of sale as the archetype to which other contracts were expected to conform, did not provide enough premises for analogical generalization: there were so many other different contracts that exceptions were bound to overshadow the theory. Arguably, a general theory of contract might have been derived from the Qur'ān: 'You who believe, fulfil contracts (*awfū bi-l-'uqūd*)' (5. 1); 'You who believe, be faithful

¹ N. Mohammed, 'Principles of Islamic Contract Law', *Journal of Law and Religion* 6 (1988), 115–16.

² M. E. Hamid, 'Islamic Law of Contract or Contracts', *Journal of Islamic and Comparative Law* 3 (1969), 1–11, esp. 1.

³ Even as late as the *Majalla*—the 'modernizing' civil code introduced in the Ottoman empire between 1869 and 1876—the authors did not provide an explicit general theory governing contracts.

cultural, intellectual, and economic activities during shorter phases of the city's history. All the contributions maintain a consistently high quality, and the extensive bibliography provides an ideal starting point for any student of the Ottoman period in Jerusalem. Inevitably, the scholars involved in the project adopt different approaches, and there are divergences of opinion in the interpretation of specific monuments or historical events. In areas where there is considerable overlap in the material covered—for instance, the three surveys of the architectural history of Ottoman Jerusalem found in the introduction and chapters 23 and 36—it is advisable to read all the contributions and form a personal opinion. In all, *Ottoman Jerusalem* represents a truly impressive piece of scholarship, and one that is likely to stimulate considerable academic debate.

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Ceramics of the Islamic World in the Tareq Rajab Museum

By GÉZA FEHÉRVÁRI (London and New York: I. B. Tauris, 2000), 300 pp. Price HB £65.00. ISBN 1-86064-430-9.

Given the large number of well-illustrated catalogues already available, any new publication must justify its existence on three counts: the quality and range of the collection itself, the presentation of the objects, and the scholarly insights provided by the author. Addressing the first of these issues, it is apparent that—like most private collections—this one possesses an uneven distribution resulting from the vagaries of the antiquities market and the personal tastes of the collector. That said, the Tareq Rajab collection is unusual for its geographical range, taking in examples of Spanish lustre (Chapter 12) in the west and a variety of glazed and unglazed wares from Afghanistan and Central Asia in the east (Chapters 2, 7, 9, and 10). The chronological sweep encompasses glazed vessels dating perhaps as early as the second or third century CE through to the work of nineteenth-century potters in Iran, Turkey, and Morocco (Chapters 13–15). Importantly, there are also categories of pottery often under-represented in private collections, including an interesting assemblage of unglazed wares (Chapter 9) and ceramic moulds used in the production of relief-moulded bowls, jugs, and canteens (Chapter 16).

The presentation of the pottery in this catalogue follows the recent trend for full-colour illustration, but the value of this feature is vitiated by the lack of thought concerning the requirements of an art-historical or archaeological readership. While the dimensions of each object are given in the captions, the lack of consistent scale in the reproductions leads the reader into misleading comparisons. An extreme example is provided on p. 160, where two bowls are reproduced the same size despite the fact that one has a diameter of 17.5 cm and the other 47 cm. Far more serious, however, is the absence of profile drawings and photographs of the undersides of the

bowls (the latter increasingly recognized by scholars as important in the identification of date and provenance). In many cases, it is impossible to guess at the shape of the bowls because they have been photographed directly from above. The brief written descriptions of the shapes of vessels provided in the text are not an adequate substitute for measured profile drawings.

The book arranges the collection into a series of conventional chronological and geographical categories. The descriptions of each object are concerned mainly with the visual characteristics of the glaze and decoration although, commendably, the author also provides readings for the legible inscriptions. These chapters are preceded by an introduction that aims to provide a general overview of the study of pottery in different regions of the Islamic world. The introduction assumes a considerable knowledge of long-lasting academic disputes concerning the location of certain manufacturing centres and the origins of the lustre technique, but it does not explain the wider significance of these issues for the understanding of the development of Islamic pottery as a whole. Relatively little use is made of recent scientific research concerning issues of provenance and the evolution of the technologies of glazes and the stonepaste (also known as fritware) body. It is also strange that there is no attempt to integrate the ceramic traditions of Turkey, Morocco, and Spain into the introduction despite the fact that several chapters of the book are devoted to these areas.

Occasionally, there are flights of fancy in the interpretation of individual pieces. For instance, on p. 181 Fehérvári asks whether the 'restricted design and colour scheme' of one bowl may be due to the destructive impact of the Mongol invasion of Raqqa in 658/1259. This is an ambitious piece of speculation, particularly when applied to an artefact with no apparent provenance. Further, his assertion on the same page that there is 'ample evidence to show that artistic activity continued in the area, although not on the same scale as previously' is supported by neither the historical sources nor the recent archaeological work at Raqqa conducted in the city by German, Syrian, and British teams. In summary, while this catalogue does include some fine and unusual objects that will be of interest to specialists, the overall value of this study is compromised by the poor presentation of the ceramics in the catalogue and the uneven quality of the accompanying text.

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Scents in the Islamic Garden: A Study of Deccani Urdu Literary Sources

By ALI AKBAR HUSAIN (Karachi: Oxford University Press, 2000), 298 pp. Price HB £11.99. ISBN 0-19-579334-X.

The nostalgia of Muslims of the Indian subcontinent for their glorious past is one of the striking features encountered by those interested in Indo-Islamic civilization. This book, as the first part of its title suggests, attempts to revive

the long-faded universe of the Islamic garden on the Deccan plateau of Central India. The author, an Indian-born but Western-educated Muslim whose family migrated to Pakistan after the Partition, tries to delineate general and specific aspects of the medieval Muslim garden as typified in the capitals of the rulers of Golkonda/Hyderabad and Bijapur.

After a short introductory chapter outlining the topographical, historical, and cultural context for the development of a distinct Deccani Muslim culture, Dr Husain proceeds to depict the multifaceted environment of his native city Hyderabad in the seventeenth century. In this he relies on the descriptions of the *Ḥaḍīqat al-salāṭīn*, a work by the contemporary court poet Ḥakīm Gilānī, to provide the basis for his vivid accounts of the Muḥarram celebrations organized in the city; he also draws inspiration from the poetical compositions of the time.

Through an account of the architectural and literary features of the new Quṭb Shāhī capital, the second chapter ventures into different aspects of the composite culture that developed around the court of Muḥammad Qūlī and his successors, again with special focus on the numerous religious festivities celebrated with great pomp at court and in the city. The important role played in this context by the many gardens in and around the traditional urban development, as reflected in their layout and specific function, shows them to have been an integral part of the traditional aristocracy's way of life. As the concluding pages of the chapter remind us, these two aspects are impressively documented by the emergence of the hybrid linguistic vehicle now called Urdu as a means for sophisticated literary expression at the royal court, the most renowned ruler of which is the author of numerous verses that depict the beauty of the local garden in a mixture of a typical Hindustani *mizāj* (temper) and the classical Persian *pirāya* (style).

With varying degrees of success, Husain then leads us deeper into the main topic of his work, with a chapter each on architectural, botanical, medical-therapeutic, and literary aspects of the garden. The fundamental importance of water, especially in the often drought-stricken Deccan plateau, is evident from the variety of storage and irrigation systems (cisterns, tanks, and underground channels) which date to antiquity and which were further developed by the Muslim rulers. The fascination with this most primordial of all elements and its life-generating quality emerges from the layout of the Deccani Muslim pleasure-garden, which evokes, even more than does the North Indian Mughal pattern, memories of the Khusraw garden in the largely deserted landscape of Sassanid Persia. It thereby re-creates the image of an earthly paradise in which the abundance of fresh water nourishes the human senses as well as the plants and trees. And the sensory delight is not only for those dwelling in this world but also for the deceased, as the many tomb complexes erected for the powerful and the important, locally known as *rawḍa* or *gumbād*, impressively demonstrate.

Unfortunately for the uninitiated reader, the description of the botanical variety encountered in medieval Arab sources as well as in later, local

treatises (like the *Khazā'in al-adwiyā*, published in 1926) is very technical and scientific. This results in a rather dry exposition that temporarily dispels the fascination for the topic aroused in earlier passages. However, those who persevere in its reading (ch. 4, pp. 89–123) are given an idea of the aesthetic and practical role played by plants in the traditional concept of the Muslim garden, which has its inspiration in the Qur'ān and in the Hadith.

Thus it emerges that the once lush vegetation of the Islamic gardens in Bijapur, Golkonda, and Hyderabad, far from being a spontaneous flourishing of native flowers, shrubs and trees, is the result of a subtly balanced design planned according to the theories of a sort of horticultural *islāh*. This, among much else, teaches how and when to plant different botanical species in what temper (*mizāj*) of soil, in accordance with the seasons. In perhaps the book's most original chapters, Husain elaborates on the significance of fragrance in the Islamic garden taking as a starting point Abū 'Alī Ibn Sīna's works, namely the *Al-Qānūn fī'l-ṭibb* and the *al-Adwiyā al-qalbiyya*, which deal with the therapeutic effects of aromatic substances on the human temper, especially with regard to the proper functioning of the heart (*qalb*). These theories, which represent the fundamental of the Yūnānī (Greek) medicine (as traditional Muslim medicine is known in India), emphasize the utmost importance of the heart as the source of well-being or ailment of the *nafs* or psychical aggregate, hinted at in the Tradition of the Prophet: 'Scent is the food for the soul ...'

After prolonging his excursions on perfumery and the importance of incense in Indian culture (somewhat superfluously) in relation to modern psychological theories, the author concludes that the Deccani garden must be interpreted as a bouquet of colours, shades, and exhilarating fragrances, a universe the *rasa* (note the essentially Indian concept implied in this Sanskrit term!) of which tries to imitate, in the fashion typical for its hybrid cultural heritage, the 'breath of the Merciful' (*nafas al-Raḥmān*) and the 'odour of Kāmā', the Hindu god of love, who strikes the hearts he targets with arrows of perfumed flowers.

This concept is taken up again in the last chapter, the only one entirely dedicated to Deccani Urdu literary sources. (In light of the subtitle of the book, one would expect this to have been given much more prominence.) Husain points out the intention of many authors to lay out the plan for their poetic compositions—the *mathnawī* was by far the preferred literary genre on the Deccan during the sixteenth and seventeenth centuries—according to the spatial arrangement of a garden. This is often clearly suggested in the very title—following, perhaps, a Persian tradition exemplified by the renowned Persian poet Sa'dī's *Gulistān*, and picked up again in Mulla Nusrati's *Gulshān-i 'Ishq*. The reader is then led into the imaginary world of Indian narrative in which each page is transformed into a leaf of the many and varied plants in the *bustān*, permeated with the scents of innumerable flowers and fruits. The style and content of early Urdu *mathnawīs* developed by the court poets in the Deccan kingdoms of

Golkonda and Bijapur reveal in their Indian flavouring and refined Persian style an almost mirror-like reflection of the gardens, which were created by their patrons as a perfect setting to highlight the unfolding of love with its expectations and disappointments, the pain of separation, and the consequent longing to be reunited. The uniqueness of the culture of the Deccan during those days, which appears so clearly in the integration of the Arabic, Persian, and Indian (Hindu) themes of its poets, seems to find its natural environment in the gardens of its cities. It is in this context that the nostalgic feelings that shine through many contemporary Muslims' works today can be shared by others too.

The quality of the colour photographs and of the numerous black and white maps, figures, and sketches is regrettable, to the extent that some of the latter are illegible and therefore useless. Husain's book nevertheless can be recommended to all those who want to catch a glimpse of a fascinating culture long gone by.

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Orientalism: A Reader

Edited by A. L. MACFIE (Edinburgh: Edinburgh University Press, 2000), 382 pp. Price PB £16.95. ISBN 0-7486-14419.

This is a major contribution to a highly controversial but important subject that preoccupies students interested in the intellectual relations between East and West over the past centuries. Though written years ago, these criticisms of Orientalism—and the counter-criticisms to which they gave rise—have been given a fresh appeal through the way in which they have been juxtaposed, producing the effect of a lively current debate. Both the Orientalist and the anti-Orientalist camps make valid points. *Orientalism*, made up of fourteen parts and thirty-seven extracts, contains fascinating discussions on the fortunes of the term 'Orientalism' from Bernard Lewis (extract no. 26) and Francesco Gabrieli (no. 11). Despite the predictions of the two Orientalists, the demise of 'Orientalism' seems premature, judging by the title of the volume and the vigorous arguments it offers. (A book published in 2002, and to be reviewed by me in *French Studies*, is called *Orientalist Poetics*.)

The authors selected represent nearly every shade of opinion—that of neutral observers, anti- and pro-Western critics, Muslims and Marxists. The majority of them are well known in the field. Edward Said is given the lion's share with six extracts from his works and a further six extracts composed of reviews and review articles dealing with them. A. L. Tibawi comes next with three extracts. The editor, who guides the reader with a useful preface to each extract, pays a unique homage to the pioneer Pierre Martino in the extract on the beginnings of Orientalism (no. 4), based on his famous book, *L'Orient dans la littérature française* (1906): the French

original is followed by an English translation. In view of the wealth of material made available, it is difficult to do justice to every single author. Ernest J. Wilson's 'Orientalism: A Black Perspective' (no. 25) sits uncomfortably with the rest. One should not see Orientalism everywhere, even when it is not present. If Flaubert is to be described as an Orientalist because he went to Egypt in 1849 to seek the sexual experience unobtainable in Europe (no. 15), then women travellers such as Isabelle Eberhardt, who went to the Orient for the same reason, must be dubbed Orientalists as well! In 'Humanising the Arabs' (no. 34) Billie Melman's traveller, Anne Blunt, who does not belong to this category, helps to widen the perspective by offering a female view on a debate which has often been too male-dominated.

Only one part of the book (Part 5) is described as an 'Apology for Orientalism', perhaps because it is the title of F. Gabrieli's article (no. 11). Yet the article by David Kopf, 'Hermeneutics versus History' (no. 22), 'Three Arab Critiques of Orientalism' (no. 18) by Donald Little, and 'The Question of Orientalism' (26) by B. Lewis may, with some justification, be described equally as apologies. These champions of Orientalism convincingly argue that Oriental studies do not date from the time of French and British colonial expansion into the Middle East in the nineteenth century. Indeed, the seventeenth-century Chairs of Arabic in Britain (not to mention earlier Chairs founded on the continent), the Sir Thomas Adams Chair at Cambridge, and the Laudian Chair at Oxford, were founded with aims more religious than political or economic. There is no doubt that Orientalists contributed much to our knowledge of civilizations and cultures of the East. Both Gabrieli and Little are persuasive, for not every Orientalist outside the former Soviet Union could be regarded as a colonialist agent. Sylvestre de Sacy, for instance, served the French government at the time of its invasion of Algeria in 1830, but his wide-ranging work for the diffusion of Arabic culture had nothing to do with colonialism. The colonialist agenda may be better established by quoting Alexis de Tocqueville, who was no Orientalist but who tried to study Islam and Muslims in order to submit them better to imperialist control in Algeria. However, it may be agreed that Orientalism has been used as a scapegoat for all the problems affecting Eastern nations. Who could legitimately maintain that the British created the caste system in India, even if they exacerbated the problem in their policy of divide and rule? Little manages to rebut the charge that the interest of most Orientalists was confined to the distant past by pointing to studies by Western anthropologists regarding aspects of modern Arab society limited in time and place. Yet he sounds patronizing when he quotes von Grunbaum approvingly for suggesting that non-Arab Muslims are incapable of interpreting their culture to themselves and the West.

Mustering support from Nirad Chaudhury, Kopf stresses the role of British Orientalism in helping the Bengal Renaissance and discovering Sanskrit civilization. He distinguishes clearly between Orientalism in South Asia, which he finds the opposite of Eurocentric imperialism, and 'Anglicism'. There is a certain amount of exaggeration in the article 'Orientalism at the

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