The Origins of Islamic Law: The Qur'an, the Muwatta' and Madinan 'Amal by Yasin Dutton
Review by: Harald Motzki
Published by: Journal of Law and Religion, Inc.
Stable URL: http://www.jstor.org/stable/1051526
Accessed: 24/07/2012 08:04

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For half a century, Western scholars of Islam usually imagined the origins of Islamic law and jurisprudence in terms of Joseph Schacht. In his study The Origins of Muhammadan Jurisprudence, published in 1950, he claimed that the Qur’an had played only a marginal role in the development of Islamic law, whose beginnings he dated not earlier than towards the end of the first century A.H. Schacht considered all traditions about Islamic legal practices and discussions in the first century and many reports on legal doctrines ascribed to scholars of the first half of the second century A.H. as later fictions. Muslim scholars, by contrast, are used to thinking that Islamic law and jurisprudence grew continuously on the basis of the Qur’an and the transmitted practice (sunna) of the Prophet Muhammad and was fixed by the consensus (ijma’) of scholars and developed further by analogical reasoning (qiyas). In the study under review, Dutton suggests a third view concerning the beginnings of Islamic law and jurisprudence. He finds this view embodied in the Muwatta’ of Malik b. Anas (d. 179A.H./795 C.E.), one of the earliest Islamic legal works preserved. Dutton’s study focuses on a analysis of Malik’s methods to derive judgments (legal rulings) from the Qur’an and the factors which influence the application of his methods. On the basis of Malik’s methodology, Dutton intends to reconstruct the early history of Islamic law in Medina.

The study is divided into three parts (1) “The Madinan Background,” (2) Malik’s Use of the Qur’an in the Muwatta’, and (3) “Implications.” The first chapter compiles the traditions about Malik (family, study, teachers, scholarly career). Strikingly his study and scholarly activity focused almost exclusively on Medina which finds expression in the authorities he refers to in the Muwatta’. With few exceptions, they are Medinans. The second chapter presents the Muwatta’ and lists the nine transmissions of it which are preserved more or less completely. Dutton defends Malik’s authorship against the claim of N. Calder that the Muwatta’ was compiled in Cordoba hundred years after Malik’s death. He offers several arguments for his conclusion that it was composed by Malik before 150 A.H. and underwent only marginal changes until his death. Finally, the structure of the book and
the reasons for its compilation are explained. The third chapter is
dedicated to the concept of ‘amal (practice) of Medina which plays a
crucial role in Malik’s legal scholarship. Dutton describes the concept
as following: “Its basic constituents are kitâb’ and ‘sunna’, dating from
the time of the Prophet, but there is also the additional element of the
ra’y of later authorities as this ra’y, in turn, becomes incorporated into
the existing ‘amal.” (35)1 A few examples illustrate that the ‘amal of
Medina has an overruling authority for Malik. In cases of conflict
between the legal practice of the Medinans and hadîths or possible
interpretations of a Qur’anic verse, Malik always prefers the ‘amal of
Medina.

The four chapters of the second part are the core of the study. The
fourth chapter is concerned with the questions of which reading (qira’a)
of the Qur’an Malik followed and what he thought of variants which did
not tally with the mushaf (codex) of ‘Uthman. The fifth chapter
describes the different types of reference to the Qur’an (quotations,
direct and indirect references) which are found in the Muwatta’ and
explains the problems of interpretation which can arise “even in the
most seemingly straightforward texts.” (77) The sixth chapter is
dedicated to the techniques of Qur’anic exegesis in the Muwatta’.
Dutton illustrates with several examples Malik’s general principles of
interpretation; the exceptions and extensions which he allows; and the
forms of intratextual interpretation he handles. In his description of
these methods, Dutton relies on categories and terms which became
established in the usul al-fiqh (juridical theory) only much later, such as
assumption of inclusion (‘umum); literal meaning (zahir) of terms and
grammatical forms; different types of special meaning (tahkis al-
‘umum) etc. The examples show that Malik’s methods of exegesis are
guided by a higher principle, the ‘amal (traditional practice) of the
Medinan scholars. In the seventh chapter, Dutton discusses the
chronological aspects of Malik’s legal thinking, firstly, judgments going
back to the time of the Prophet, as naskh (abrogation) and asbab al-
nuzul (circumstances of revelation) of Qur’anic verses, and, secondly,
judgments of caliphs and governors of the Umayyad period. Dutton
takes the last mentioned topic as an opportunity to criticize the theories
which Schacht and Crone/Hinds have put forward concerning the
relation between the sunna of the Prophet and Umayyad administrative
pratice.

1. All citations in the text refer to the book under review.
The third part of the study develops the conclusions. The eighth chapter emphasizes the essential importance which the Qur’an had for the old legal school of Medina, i.e., for Malik and his predecessors, according to the Muwatta’. Dutton refutes the claim made by Schacht, Crone, Wansbrough and others that the Qur’an played only a marginal role in the early development of Islamic law and jurisprudence. Dutton stresses the impact of the Prophet’s sunna for Malik’s understanding of the Qur’an is stressed: “The sunna is, as it were, the living embodiment of the Qur’anic message.” (163) The last chapter is concerned with the issue in which form this sunna was transmitted in Medina. Dutton stresses that Malik distinguishes between sunna and hadiths and that the latter have a different function in Malik’s methodology as compared to that of al-Shafi’i. For Malik hadiths only have normative value if they agree with the sunna preserved in the practice (‘amal) of the Medinan scholars. That is why he sometimes ignores hadiths that he nevertheless considers reliable and transmits in his Muwatta’. Dutton thinks that the equation of the sunna (of the Prophet) with hadiths which was introduced by al-Shafi’i was one of the reasons why Schacht came to his erroneous assumption that the hadiths in general belong only to a later stage of legal development and have, therefore, to be considered as fictitious.

Dutton concludes his study with the statement that for Malik at least, and at least before the year 150 A.H. . . ., Islamic law was quite definitely based on the two-fold source of Qur’an and sunna (i.e., the sunna of the Prophet) and quite naturally included the additional element of later ijtihād, and that all three elements were subsumed under the umbrella of ‘amal. (180)

The development of this ‘amal as described in the Muwatta’ is, according to Dutton, a reflection of the real historical development of Islamic law and jurisprudence in Medina.

Dutton’s excellent study grew out of a doctoral dissertation at Oxford. The author knows how to present even rather difficult subjects very clearly. His statements are generally accompanied by proofs or illustrated by examples. Frequent cross-references, a glossary of Arabic terms, biographical notes of the individuals mentioned, and indices make it easy for the reader, even for someone who is not acquainted with the subject, to grasp the argument. The book is based on a wide range of sources and takes most of the relevant secondary literature into account. Research published in German, however, is only sparingly cited.
Followers of Schacht’s ideas and other skeptics who generally distrust Muslim traditions on the first two centuries of Islamic history will certainly like Dutton’s confidence in those traditions, be it reports on Malik himself or on judgments of individuals flourishing in the first century A.H. Sometimes the author’s confidence in reports is provocative. For example, his admiration of Malik (“one of the greatest hadith-scholars of his day—indeed of all time” 55) leads him to present reports that extol Malik’s scholarship without further comment (e.g., 15, early teaching activity, huge amount of pupils). To take the wind out of the skeptics’ sails, the author could have been more cautious in some places. In others, he could have explained why he thinks that certain reports deserve confidence. For example, in presenting the biographical information on Malik that is partly is derived from late sources, it would have been helpful to mention the origin of the reports (if given) or to give arguments for their reliability derived from their content. Dutton follows the principle that Muslim traditions concerning the first two centuries are to be trusted as long there are no indications are absent which suggest the contrary. Skeptics in the wake of Schacht’s ideas, however, consider those traditions as unreliable until the contrary is proven. Dutton can argue in favor his approach. First, his study of Malik’s Muwatta’ shows that Schacht’s claim that the hadith emerged only late as a secondary phenomenon is wrong. Second, this result is independent of his appreciation of the traditions. Third, the main reason for the radical skepticism against the Muslim tradition collapses.

Finally, I would like to point out that my own work on the development of early jurisprudence in Makkah and Medina corroborate Dutton’s conviction

that Medinan ‘amal as depicted in the Muwatta’ represents a continuous development of the ‘practice’ of Islam from its initial origin in the Qur’an, via the sunna of the Prophet ... and the efforts (ijtihad) of the Rightly-Guided Caliphs and the other Companions, right through the time of the early Umayyad caliphs and governors and other authorities among the Successors and the Successors of the Successors up to ... Malik.” (180)²

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Reviewed by Harald Motzki †

† Professor of Islamic Studies, University of Nijmegen, Institute for Languages and Cultures of the Middle-East, NL-6500 HD Nijmegen, The Netherlands.