

The Justice of Islam by Lawrence Rosen (New York: Oxford University Press, 2000) pages i–xiii, 1–234. Price \$80.00 (hard-cover). ISBN 0 19 829884 6.

Professor Rosen holds the chair of anthropology at Princeton University and is also an Adjunct Professor of Law at Columbia University. He clearly has an impressive academic reputation. His book has a fine title — *The Justice of Islam* — which holds out promise of the opportunity for readers to gain knowledge and develop an understanding of the world of Islam and concepts of justice as practised therein. Unfortunately, for me, this promise was not fulfilled.

The introduction is encouraging. Professor Rosen points out that in the present day one in every five people throughout the world is a Muslim, and each of them has some attachment to Islamic law, whether through personal religious belief or because Islamic law is administered in the country in which he or she lives.¹ Despite some local differences and particular interpretations, the Sharia is a common thread linking Muslim societies in many parts of the world.²

These observations are indisputable. Islam is the religion of more than one billion people worldwide.³ Like its sister religions, Christianity and Judaism, Islam began in the Middle East, but today only about one sixth of the global Muslim population is Arab.⁴ The world's largest Muslim nation is Indonesia, which has a population of about 200 million people.⁵ Even among Muslim minority countries such as the Indian subcontinent, China, the former Soviet Union and sub-Saharan Africa, there are very large Muslim populations.⁶ There are approximately six million Muslims in the United States⁷ and more than that number in Europe, where a significant number of Bosnians and Albanians have for many years constituted a local Muslim presence.⁸ All of these people, to some extent, maintain some connection with Islamic law, whether it be merely in personal and devotional life in Western countries, or because Islamic law is the law of the land they live in.

Islamic family law is almost universally applied in Muslim countries, with Turkey being the exception.⁹ A few Muslim countries — Iran, Sudan, Saudi Arabia and Pakistan — strive to establish or maintain a pure Islamic legal system, with varying degrees of success.¹⁰ In other countries, only some of the laws imposed by colonial rulers are being modified or replaced by new laws

¹ Lawrence Rosen, *The Justice of Islam* (2000) ix–xiii.

² Ibid.

³ Encyclopaedia Britannica, *2001 Britannica Book of the Year* (2000) 302.

⁴ See generally Richard Tames, *The Muslim World* (1982) 8–9.

⁵ Europa Publications, *Regional Surveys of the World: The Far East and Australasia 2001* (32nd ed, 2000) 499.

⁶ See generally Minority Rights Group (ed), *World Directory of Minorities* (1997) 557, 593, 206.

⁷ Rosen, above n 1, 200.

⁸ Encyclopaedia Britannica, above n 3, 302–3.

⁹ Rosen, above n 1, 168.

¹⁰ Ibid 168, 170.

which are intended to reflect Islamic values.¹¹ In some places, Islamic systems have been developed to coexist with existing secular systems.¹² In almost all Muslim societies, following the Islamic revival of the latter half of the 20th century, academics, government policy-makers and ordinary people are devoting much time and thought to the possibilities of implementing Islamic law and justice in their own diverse societies.

The concept of justice in Islam is wide. The basic principles are found in the primary source of Islamic law, the Qur'an. To gain an understanding of justice in Islam, Muslim scholars would first consider these verses, which lay down universal guidelines for Muslims to follow. Some of the verses deal with the principles of administration of justice in courts; others show that justice in Islam is a broad and limitless concept which must also be observed in all aspects of life.

In the second of the primary sources, the Sunna — the sayings and practices of the Prophet — there are also many examples of the application of justice in theory and practice. Some *ahadith*¹³ amplify the Qur'an teachings concerning the proper conduct of judges, for example, to give litigants a fair and equal opportunity to state their case, to be impartial and not to be influenced by personal feelings. There are many examples from Islamic history of the ways in which justice has been administered in accordance with the Qur'an and Sunna at the time of the Prophet, under the rule of the rightly-guided caliphs, and also in later times.¹⁴

Over the years, scholars of Islam have concerned themselves not only with justice as an abstract concept, but also with its practical applications in many fields — in the law and judicial system, in politics, in economics and business, and in implementing social reforms with the aim of building a fair and equitable society.¹⁵ Scholars from many different areas of the Muslim world are still concerning themselves with these issues today.¹⁶ There are also many accounts of the application of Islamic law — not necessarily the same as Islamic justice — in different Muslim societies at various times throughout history. On this view, the 'justice of Islam' is very wide, encompassing broad areas of thought and many facets of life.

Professor Rosen spent some years, beginning in 1967, researching Islamic law and the administration of justice in the town of Sefrou in Morocco.¹⁷ Sefrou is situated south of Fez and is not one of the major cities of Morocco, having only about 25 000 inhabitants when Professor Rosen first arrived there, and having grown to about 70 000 persons today, according to his account.¹⁸ The population

¹¹ Ibid 168.

¹² Ibid.

¹³ The *hadith* (plural *ahadith*) are the collected sayings of the Prophet Muhammad.

¹⁴ See Ahmad Mohamed Ibrahim, 'Justice in the Shari'ah Court' in Aidit Bin Hj Ghazali (ed), *Islam and Justice* (1993) 89.

¹⁵ See generally Aidit Bin Hj Ghazali (ed), *Islam and Justice* (1993); Ahmad Mohamed Ibrahim and Abdul Monir Yaacob, *The Administration of Islamic Laws* (1997).

¹⁶ See generally, Ghazali, above n 15.

¹⁷ Rosen, above n 1, 100.

¹⁸ Ibid.

of Morocco is made up of both Arabs and Berbers, and generally follows the Maliki school of Islamic law. Morocco is not a wealthy country. It has considerable unemployment and, outside major cities, a lack of services and facilities which Americans and Australians take for granted. In this context, it might be expected that the everyday implementation of justice might fall short of the noblest of Islamic ideals.

Professor Rosen is at his best as an anthropologist describing the workings of the local justice system in Sefrou.¹⁹ In this particular situation, he is a meticulous observer of local practices and custom, and offers the reader much that is of interest. However, in spite of his introduction, he tends to assume that whatever is practised in Morocco is true of the Arab world generally, and that what is practised in the Arab world is true of the whole Muslim world.

Thus, he does not make a clear distinction between the basic concepts of justice which are a common thread throughout the Muslim world, and the particular methods of implementing justice in the different societies. Like many American and European writers on Islamic matters, he seems to equate 'Islamic' with 'Arab' and frequently mentions 'Arab customs', as if Arab customs are interchangeable with Islamic practices everywhere. He scarcely mentions the considerable developments in Islamic thought and law which have taken place in the Muslim world outside the Middle East.

Malaysia, for example, has experienced a strong Islamic revival in recent years.²⁰ This has resulted in a strengthening of the Sharia courts, the rewriting of legislation in accordance with Islamic norms, and reforms in the administration of Islamic justice. The important aspects of economic and social justice have been addressed by the setting up of an Islamic bank and other financial institutions which have set an example followed by other countries in the region. These developments receive only a passing mention by Professor Rosen when he notes that an Islamic bank has begun operations in Malaysia and is proving highly successful.²¹ This is correct, but his statement that fundamentalist regimes have taken power in several Malaysian states²² is not accurate, since only two of the 13 Malaysian states and territories are ruled by the Islamist Pan Malaysian Islamic Party which possibly does not deserve being described as 'fundamentalist'.²³

This book is difficult to read, even for a person with a keen interest in Islam. Clearly, Professor Rosen writes for an academic readership. He uses long sentences and words which are not in common usage. He makes extensive reference to the works of other Western (non-Muslim) academics, and only rarely refers to the works of Muslim scholars who might be expected to be authorities on the topic. It is sometimes quite difficult to understand the point of what he is saying. Meaning is often obscured beneath philosophical diversions.

¹⁹ See *ibid* ch 7 ('Local Justice: A Day in an Alternative Court').

²⁰ See Donald Horowitz, 'The Qur'an and the Common Law: Islamic Law Reform and the Theory of Legal Change' (1994) 42 *American Journal of Comparative Law* 233, 236.

²¹ Rosen, above n 1, 170.

²² *Ibid*.

²³ For a discussion of the labelling of Islamic organisations and regimes as 'fundamentalist', see Asme Wood, 'Are Muslims Predisposed to Violence?' *Insight* (Sydney), February 1995, 17-19.

His approach to the subject is unfortunately quite orientalist, although he does take well-known orientalists such as Schacht to task for mistaken assumptions.²⁴

The book is divided into three parts and includes a number of chapters revised from Professor Rosen's previous works.²⁵ An interesting chapter in part I is concerned with similarities between Islamic law and the common law.²⁶ These similarities have been noted elsewhere by John Makdisi, who has theorised that the common law owes some of its origins to Islamic law through the close connection between the Norman kingdoms of Roger II in Sicily — ruling over a conquered Islamic administration — and Henry II in England.²⁷

Another interesting chapter is the final chapter 'Islam and Islamic Culture in the Courts of the United States'.²⁸ Professor Rosen includes a discussion of 'Black Muslims' and orthodox Muslims. As in Australia, there is potential for cultural differences between Muslim immigrants and the mainstream society in the understanding of legal issues and in the application of law in the courts. These issues include: the extent of civil rights of Muslims in American society, the recognition of the cultural defence in criminal cases, different approaches to family law issues, and claims of discrimination in employment. It seems that US courts are even less likely than Australian courts to show sensitivity to cultural issues. Discrimination is hard to prove, the cultural defence is not necessarily accepted by the judiciary, and in family law there is a reluctance to honour marriage and family agreements which differ from accepted American practice.

JAMILA HUSSAIN*

²⁴ Rosen, above n 1, 33, 176–8. See, eg, Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (1950); Joseph Schacht, *An Introduction to Islamic Law* (1964); Joseph Schacht, 'Islamic Religious Law' in Joseph Schacht and C E Bosworth (eds), *The Legacy of Islam* (1974) 392.

²⁵ See generally, Rosen, above n 1, xii, 227–8.

²⁶ *Ibid* ch 3.

²⁷ John Makdisi, 'The Islamic Origins of the Common Law' (1999) 77 *North Carolina Law Review* 1635, 1727–31.

²⁸ Rosen, above n 1, ch 12.

* BA, LLB (Syd), DipEd (UNE), Dip Shariah Law and Practice, MCL (International Islamic University, Malaysia); Lecturer, Law School, University of Technology, Sydney.