

PITT LAW

UNIVERSITY OF PITTSBURGH

Legal Studies Research Paper Series

Working Paper No. 2012-34

December 2012

**Book Review:
Islamic Law in Action, Authority, Discretion and Everyday
Experiences in Mamluk Egypt, by Kristen Stilt**

Haider Ala Hamoudi

University of Pittsburgh School of Law

3900 Forbes Avenue

Pittsburgh, Pennsylvania 15260-6900

www.law.pitt.edu

Direct: 412.648.1490

E-mail: Hamoudi@pitt.edu

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ISLAMIC LAW IN ACTION: AUTHORITY, DISCRETION, AND EVERYDAY EXPERIENCES IN MAMLUK EGYPT. By Kristen Stilt. Oxford University Press 2012. Pp. 238. \$85.44. ISBN: 0-199-60243-3.

Kristen Stilt has written a splendid work in *Islamic Law in Action*, one whose influence is certain to resonate in years to come. Increasing numbers of us in the American law academy are interested in applying some of the lessons of American legal realism to the study of Islamic law and in understanding, as Stilt would put it, how Islamic law works “in action.” (10) Yet Stilt brings a new perspective, one of a practiced historian *and* a lawyer. There is some irony in the fact that much, though assuredly not all, of the historical work on Islamic law undertaken by historians and Islamic studies specialists focuses on *doctrine*, while most of us in the legal academy who address Islamic law in our times try to understand its operation in action. After all, Islamic law was far more relevant to governing a social polity in earlier times than in modernity. Thus, a careful and scholarly *legal* approach to the application of Islamic law in earlier eras would be warranted to understand the relationship of jurists’ law, the sultan’s command, and social, political and economic reality. This is precisely what Stilt has offered, in commendable fashion.

Stilt’s focus is Mamluk Egypt, and specifically the cities of Cairo and Fustat between 1250 and 1517 C.E. (14) She is interested in the actions taken, and not taken, by that appointed agent of the sultan responsible for commanding the right and forbidding the wrong in public spaces, the *muhtasib*. (43) The position of the *muhtasib* is particularly interesting, Stilt points out, because he is responsible for enforcing not only Islamic law as laid out by the jurists, commonly referred to as *fiqh*, but also the positive policy-based prescriptions of the Mamluk sultan, referred to historically as *siyasa*. (42) The *muhtasib* is also more keenly sensitive to public pressures and economic distress than a judge would be, given his role as general enforcer of market discipline (including monitoring coinage and the accuracy of weights and measures) and from Stilt’s reports, the apparent tendency of the general populace to throw stones at him or at his door in times of severe economic distress. (70, 159)

Having thus introduced the role of the *muhtasib*, Stilt then goes on in successive chapters to lay out the decisions of particular *muhtasibin* in

specific areas of concern. These chapters deal, respectively, with regulation of acts of devotion (such as prayer), punishment for crime, relations with Christians and Jews, the market generally, the purchase and sale of bread, currency and taxes, and the maintenance of public order. In each case, Stilt offers an example of *muhtasib* conduct and attempts to explain the causes of and justifications for the action taken through references to various influences, including but by no means limited to Islamic legal doctrine. What she highlights most effectively through these examples is that the obsession of so much scholarship over whether or not Islamic law was actually applied in practice is, as she describes it at the outset of her work, unduly narrowing. (1-2) In writing that is fluid, clear and compelling, she persuasively demonstrates that the more appropriate question to ask is *how* it was applied, and what countervailing forces might have existed to limit, qualify or even marginalize its application in given circumstances. Her achievement is remarkable.

To take one of the most salient of many scintillating examples offered in the work, in 1438, the *muhtasib* of Cairo was responsible for carrying out a sultan's order to ban women from the public streets during a particularly severe bout of plague. (103-04) Was Islamic law involved in this sultan's decision? Absolutely, in the sense that the sultan appeared to be acting after consulting with the jurists in an effort to limit incidences of *zina*, or fornication, which is strictly prohibited in Islamic law. (106) There is also ample juristic justification for "blocking the means" to an act of fornication by limiting the ability of the sexes to interact with one another. (102) However, law alone hardly provides a complete basis for the decision made. Other considerations well beyond religious doctrine proved relevant as well, including the sultan's need to demonstrate that he was doing *something* to deal with the plague and the underlying belief that a plague could actually be stopped by limiting acts of fornication. There is also what I might describe as an extreme lack of concern on the part of ruling authorities with the plight of women, and particularly poor women, who would naturally be most devastated by an order effectively preventing them from working.

Somewhat disconcertingly, Stilt charitably describes the authorities' attitude as simply a presumption that "households can survive without women shopping or working outside the home." (106) Perhaps it was that, though certainly the reports Stilt offers as to two specific women suggest otherwise. One left the home for a necessity, and was seized upon by the *muhtasib* and his assistants, who proceeded

to severely beat and injure her. She was only released after others intervened on her behalf. (104) Another woman was prevented from attending the funeral of her only son and was thereby induced to commit suicide. (104) These do not appear to be the stories of men who are unaware of the consequences of their actions, but rather of men who do not much care about those consequences.

Were this the only case in this book in which the sultan or the *muhtasib* sought to deflect a matter of public concern by targeting society's most vulnerable elements and showing scant concern for their welfare, then perhaps the incident could be explained away. But a subsequent plague seems to have resulted in the enforcement of strict and humiliating dress rules on Jews and Christians, including a requirement that they wear bells around their necks when entering the public bathhouses. (116) Yet another time, public resentment against Christians in the employ of the sultan resulted in the sultan stripping *his own Christian employee* naked and parading him through the streets in ignominious fashion, then throwing him in jail, all presumably for the offense of having accepted the employment offered by his punisher. (119) Stilt's account vests women and religious minorities with agency to defy bans at times, though this passive resistance is at the sufferance of the state. (118) As the example banning women from leaving their homes, and another excellent example respecting payment of a tax by religious minorities both demonstrate, when the state chose to enforce its edicts with rigor against its most vulnerable subjects, resistance was all but futile. (124)

Thus, for all of her laudable and effective focus on law "in action," Stilt might have benefited from the lessons of the critical legal scholars of the past half century to more fully explore how law helps to preserve particular structural inequalities.

An especially startling example is offered in one of the reports of a crisis over the price of bread, the main staple of the Egyptian masses at the time. After the price of bread grew more than threefold, the sultan dispatched the *wali*, or governor, of Cairo to the markets, who proceeded to whip bakers and millers of grain. Unsurprisingly, this made matters worse, and the sultan then responded by setting a price twice the original market rate before the crisis began, but well below the going price at the time it was set. The market reaction was to hoard the grain, leading to a serious shortage and market disturbances. (150-52)

As Stilt tells this story, "[t]he sultan was distressed by the people's suffering," but he was limited in his ability to do anything about it because the commanders of the military, the so-called *amirs*, controlled

the grain supply and were responsible for most of the hoarding. (151) He dispatched a reliable *muhtasib* to the merchant capital Fustat, and the *muhtasib* took account of the existing grain supplies and attempted to control the supply of grain in a centralized, planned, and orderly fashion. Brokers of two of the *amirs* tried to sell the grain surreptitiously at an above-market price. The *muhtasib* brought them before a particularly influential *amir*, who had them beaten severely and paraded ignominiously through the streets. At this point, the story appears incongruous, in that Stilt indicates both that “[a]fter that, no *amir* dared open his storehouse without the *muhtasib*’s permission” and, two sentences later “some *amirs* were still hoarding their grain or selling outside of the established market.” (151) In any event, the methods were unsuccessful in stopping the hoarding until, finally, shipments of grain arrived from Damascus and Upper Egypt. (151) Stilt follows this story with a careful, nuanced, and deeply relevant reflection of Islamic legal doctrine on hoarding and price setting and the extent to which it played a role in the sultan’s management of the crisis. (152-55)

One feels some sense of sympathy for the sultan in Stilt’s retelling. He feels the suffering of the people, yet he is constrained in taking particular actions against the *amirs*, partly for doctrinal reasons limiting state actions against importers of grain, but partly because of their power and influence. Yet, he does take “decisive measures to improve the situation.” (156) “Most importantly, the sultan was able to draw in new grain supplies from the provinces,” thereby ending the crisis. (156)

Yet questions abound in this almost romantic tale of crisis and effective sultanic involvement through the navigation of Islamic legal doctrine, popular demands, and economic necessities. Were Mamluk executive officials, whether sultan, *wali* or *muhtasib*, truly unaware by 1336 C.E., after over a century’s experience ruling the state, that beating bakers and millers would not resolve a bread crisis? Did the sultan really use his “full efforts” to deal with the problem? Are “full efforts” reflected in having abusive commanders beat their own subordinates for carrying out commands related to hoarding and selling no doubt given by the commanders themselves? Why would those commanders not act as any economically rational actor would and ignore the sultan, given the prospect of profit and given that the sole punishment for defiance was the imposition of an obligation to beat their own subordinates?

And most importantly, it might behoove us to look more closely at the true source of the abatement of the crisis—the grain from the provinces. Are the peasants of Upper Egypt truly like the inhabitants of Shakespeare’s Forest of Arden, delightful in their unwashed simplicity,

lacking pretension and overflowing in the bounty of the earth, ready to share it with any hungry fellow that happened by?¹ In the midst of an urban bread crisis? Or might they be suffering from a food crisis themselves?

Another version of this story would then proceed as follows. A sultan dramatically unconcerned with the people of Cairo and Fustat but wanting to retain ruling legitimacy in their eyes was confronted with a bread crisis. He resorted to the usual technique of appearing to do something while hoping the crisis would disappear—beating a few bakers and millers and setting a price. Unfortunately the crisis remained. Meanwhile, the sultan's *muhtasib*, aware that resentment might be growing against the *amirs* whose support he needed to continue in his position, resorted to another technique, in league with the *amirs*. He detained a few of their brokers, and had the *amirs* beat them, thereby demonstrating the *amirs*' support for the sultan's policy, even as they undermined it by continuing to hoard and sell outside the established market. When the crisis still did not abate, the sultan decided to anticipate Stalin's planned famines. He strategically denied the provinces food while forcing the abatement the crisis nearer to home in the cities. In the end, it all worked out—for the *amirs*, the *wali*, the *muhtasib* and the sultan, that is. The result was not quite so sanguine for the whipped bakers and millers, the brokers paraded ignominiously through the streets, the urban population subjected to a bread crisis and the peasantry in famine.

Of course, when prices reverse themselves, and bread proves cheap, a different result might well be expected. Hence only a year after the rise in prices came a dramatic drop, and the *amirs* immediately took action to change this. Stilt indicates that the powerful *amir* al-Nashw, who led the effort to raise the prices, "did not call for prices of wheat to be set at a higher point—he called for a negotiation between the *muhtasib* and the millers with the goal of getting the millers to agree to pay more for wheat." (157) The latter, it seems, is juristically permissible, the former is not, or at least is more problematic. This is interesting, and Stilt ably as always leads us through the folds of doctrine on the point. (157-58) Yet she misses an opportunity by removing the focus from structural maldistributions of influence and power, which are as obvious as can be imagined in this instance, where a market actor is forcing the sultan's representative to take particular actions in his favor as part of a supposedly public duty to command right

1. WILLIAM SHAKESPEARE, AS YOU LIKE IT, act II, sc 7.

and forbid wrong.

Specifically, two possibilities exist as to how religious doctrine respecting price setting is being used. The first is that the millers, the first ones beaten in a bread crisis, do not have much bargaining power to “negotiate” and the *amir* is merely using a doctrinal nicety to get the captured state actor, the *muhtasib*, to impose a price. In this case, doctrine is a ruse, employed as a cover in order to excuse what is at its core an illegal act. The other possibility is that the millers are involved to some extent in a genuine negotiation, or benefit from it, because it permits them to collude and raise their own profits. This specific doctrinal permission thereby permits these commercial actors to engage in a massive wealth transfer *from* those forced to purchase bread for basic sustenance *to* the merchant class millers and, to a much greater extent, the powerful *amir*. Here the doctrinal rule would not so much be cover for illegality, but rather the *source* of the justification for what otherwise appears to be an unconscionable exacerbation of existing maldistributions of wealth. Either is a fascinating example of the manner in which legal doctrine was used, or abused, by powerful forces to sustain structures of wealth inequality.

Unfortunately, this question is not pursued. Stilt does point out that al-Nashw was a particularly fearsome *amir* and to obey his command was the wiser move on the part of the millers, though she also points out they might have benefited themselves. Less congenially, she indicates the *muhtasib* might have served the greater social good by hammering out this agreement, thereby preventing a crisis that could have developed between al-Nashw and the millers. (158) I suppose this is so, as much as it serves the greater social good for the police to assist an armed thief in acquiring my wallet, because to challenge the thief will certainly result in an armed confrontation between the police and the thief. The position requires a presumption that there is something legitimate in the thief’s initial action, or at least that his right to my property is equal to, if not greater than, my own. Remove the presumption, and the police are merely acting as agents of theft, a corruption of the social good, not its faithful stewards.

The problem is not that Stilt is unaware of material considerations; in fact, she discusses them to explain, at least in part, lax enforcement of vice laws despite quite strict doctrinal prohibitions in some cases (99), and curious rules respecting the teaching of prayer to those who would be presumed to know how to pray. (75-76) The problem, rather, is that she has failed to question seriously whether or not the chief function of the *muhtasib* during the Mamluk era was to preserve structural

inequalities and material imbalances of power, and that doctrine was used, abused and ignored in various interesting and noteworthy ways to achieve this goal, with all else being a distracting sideshow. Hence, for example, the book does not deal at length with commercial matters until its final chapters, where this effect is most obvious, despite the fact that as Stilt acknowledges, the sultan's charge to the *muhtasib* included most explicitly reference to commercial and market regulation. (51-53)

That the *muhtasib*, particularly in the latter part of Mamluk rule, *paid* for the privilege of occupying the position is even more telling. Stilt points it out more than once and discusses its effects in brief (63, 75-76), but does not fully explore the consequences of such a manner of appointment. It is hard to take seriously the idea of an agent acting for the public interest and the greater social good while having to extract rents from the relevant communities he polices or suffer physical reprimand from the sultan himself for failing to pay back the sums he promised to raise, as happened at least once. (75) Vice taxes, bribery to avoid enforcement of rules against, for example, the sale of rotten meat and, most of all, capture of the agent by the most powerful market players, are practices almost inevitable under such a system.

I should also note that in the closing pages of the book, Stilt falters in attempting to link the lessons from this era to the use of Islamic law in modernity. She points out that "some modern nations" have a *muhtasib* or one fulfilling the same functions. (208) However, her citation is to a page in the substantial work of Frank Vogel, who mentions only one, Saudi Arabia, a state that she correctly describes on the next page as "exceptional." (208-09) Surely she is aware that the last thing that the Muslim Brotherhood of Egypt, the Islamist Ennahda Party of Tunisia, or the Syrian Islamist elements in opposition want to do is to even hint at the creation of a state office that would involve an individual with a whip in his hand empowered to patrol the streets in order to command the good and forbid the wrong. This is precisely the caricature that their secular opponents wish to impute to them, as a stern moral police whose medieval notions stand in stark contrast to those of liberal democracy.² By contrast, the Islamist parties attempt to describe themselves as moderate and modern, emphasizing anticorruption and economic development and in many cases specifically disclaiming any desire to

2. See, e.g., *Shafiq: Under Muslim Brotherhood, Egypt Will Return to Middle Ages*, AL BAWABA (June 4, 2012), <http://www.albawaba.com/news/shafiq-under-muslim-brotherhood-egypt-will-return-middle-ages-428084> (quoting secular Egyptian presidential candidate Ahmed Shafiq respecting allegedly medieval tendencies of Muslim Brotherhood).

engage in moral policing.³

The remainder of her ruminations respecting law and authority in the Islamic context, in particular concerning the distinction between *fiqh* and *siyasa* as applied to modernity, are not, in the absence of a *muhtasib*, directly relevant to her pathbreaking work. In any event, they seem misplaced. This is most obvious in the fact that the term *siyasa*, if it referred to sultan's policy-based edicts in the Mamluk era, certainly does not mean that now. Rather, it is the modern Arabic word for "politics" and to suggest to a group of modern Arab lawyers that a legislature's enactments, like those of a sultan, should be understood and interpreted within the framework of *siyasa* would be considered abhorrent, as it would seem to suggest in modern parlance that the interpretation of law is a political exercise, a notion resisted quite strongly in the Arab legal community, where formalism reigns. This is not, let me emphasize, merely a question of nomenclature. It is about a fundamentally modern set of assumptions respecting how law is made (by a legislature, through the exercise of politics, or *siyasa*) and then interpreted (by judges, through the exercise of legal reasoning quite divorced from *siyasa*). The transposition of ideas from Mamluk Egypt hardly seems possible, except at such a high level of abstraction it would necessarily have to be dismissed as more symbolic than real.

In any event, there is no need for these final few pages. Stilt's account of Mamluk Egypt stands on its own as a thorough, original and scholarly description of the historic interplay of Islamic law, sultan's policy and social forces in the application of law in one setting. It would be a mistake to demand that it tell us something about Islam, or Islamic law, in our times. Perhaps it would be better if it did not. After all, the reports Stilt so vividly brings to light are of Jewish women forced to wear yellow buttons (116), of a Christian man whipped and made to walk naked in the streets by his employer for daring to accept the employment offered to him (119), of women barred from public view despite extreme hardship (104), and, most of all, of a supposedly public official responsible for "commanding right and forbidding wrong" so in need of money to continue in his position that he acts as agent for

3. See Charles Levinson, *Muslim Brotherhood Looks West in Bid to Revive Egyptian Economy*, WALL ST. J., Feb. 17, 2012, <http://online.wsj.com/article/SB10001424052970204062704577220454030969184.html> (describing efforts by Egyptian Muslim Brotherhood to avoid discussions of moral issues in favor of more pressing economic concerns); David. D. Kirkpatrick, *Islamists Head Toward Victory in Tunisia Vote*, N.Y. TIMES, Oct. 25, 2011, at A1 (indicating preference of Tunisian Islamist party Ennahda to focus on economic issues and specifically disclaiming any effort to make morals issues part of the party's political agenda).

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society's wealthiest elements to preserve and indeed extend their wealth at the expense of the poor. (63, 157) Given this, consigning that approach of Islam and law to magnificent works of history such as this one seems not such a bad idea.

*Haider Ala Hamoudi**

* Haider Ala Hamoudi is an Associate Professor of Law at the University of Pittsburgh School of Law, Pittsburgh, Pennsylvania and the author of a number of law review articles respecting the role of Islamic law in the modern state. His upcoming book on the drafting and subsequent evolution of the Iraq Constitution of 2005 will be published by the University of Chicago Press at the end of 2013.