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REJOINDER

[*Editor's note*. It is the policy of the *Journal of Islamic Studies* not to publish rejoinders by authors to book reviews of their work. An exception has been made in this instance because both the *Journal* and the reviewer are associated with the same institution. The views expressed in the book review and this rejoinder to it are the sole responsibility of their respective authors.]

The Origins and Evolution of Islamic Law: A Response

By Wael B. Hallaq

If academic writing is to be used as a weapon, it must be used with care. It comes with a professional and moral responsibility. Book reviewers, in particular, owe their readers honesty and fair representation of the works they review, even when they are highly critical of these works. Unfortunately, neither of these qualities is found in Mohammad Akram Nadwi's review of my book *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005).[1] This long review indulges in a crude and blatant misrepresentation of my book and its arguments, and distorts them beyond recognition in a manner that is insulting not only to the work under review but also to its readership. It is therefore not only the review's misrepresentations that prompt this response, but also, and mainly, the unwarranted misconceptions that it could engender among those new to the discipline who may stop at Nadwi's review, instead of judging the book for themselves.

It is ironic that Nadwi criticizes the book for the same notions and misconceptions that the book itself attempts to correct. But in order to find fault with it, he had to reconstruct it, even to the point of ignoring whole paragraphs that run against his claims, and worse, to the extent of suppressing parts of paragraphs so that my arguments would look the way he wanted them to appear to readers.

Nadwi shies away from giving an account of the book's contents, an account whose usual place is the beginning paragraph or paragraphs of the review. Instead, the reader finds himself without context, without any information as to what subjects and periods the book covers, without even a sentence or two summarizing any of the chapters, etc. *There is absolutely no review of five out of the eight chapters making up the book*. He offers not a single word of commentary on my interpretations of the judicial system (ch. 4), Prophetic authority during the second and third centuries (ch. 5), legal theory (ch. 6), the legal schools (ch. 7), or the relationship between rulers and jurists (ch. 8). Instead, the reader is distracted at the outset by a list of about a dozen minor technical inaccuracies or inconsistencies, some to do with the names or

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geographical affiliation of early legists, and some with marginal names such as Jadʿān and Bakara for the correct forms Judʿān and Bakra. Nadwi allocates two-thirds of the first page to these minuscule technicalities, having combed the book to find them. He claims that I incorrectly identify (in the end section called *Short Biographies*) Yaḥyā b. Yaḥyā al-Laythī as a Madinan Mālikite jurist who 'introduced Mālikism to Andalusia'. Nadwi arbitrarily chose to dwell on a single line in the *Short Biographies*, ignoring my discussion of Yaḥyā in the body of the text (p. 175), where I speak of his important career in Andalusia. (In fact, there is nothing in my book that makes Yaḥyā' s geographical provenance an important or even relevant issue). Nadwi also picks on my reference to 'Umar b. al-Khaṭṭāb, quickly jumping on my error of ascribing to him a two-decade reign on p. 29. He does not mention that in the *Short Biographies* (p. 215) I give his reign as falling between 13 and 23 AH. He also faults me for the various ways I refer to Ibn Shihāb al-Zuhrī, intimating that I (or the reader) could be confusing him with his great-grandfather who was not even a Muslim, as Nadwi himself confirms. This is excessive criticism, since on the seven occasions Zuhrī appears in my book, there is not a single instance where he could be confused—even by beginners—with another Zuhrī, including his own ancestors. Furthermore, he claims that I rightly identified, on p. 65, ʿAṭāʾ b. Abī Rabāḥ and ʿAmr b. Dīnār as Makkans, 'but as Madinans on p. 64.' On the latter page, I do not say they were Madinans but merely state that in Madina they 'had their own circles of study in which there participated a number of legists who came to prominence during the next generation.' The point was not about their geographic affiliation but rather about teaching circles that produced the next rank of legal specialists. Madina, however inaccurate, is largely irrelevant.

Having presented the reader with these so-called 'slips,' Nadwi concludes, in a scientifically authoritative tone, that these are 'symptomatic of indifference to accuracy'. By this measure, it is ironic that the review itself, consisting of little more than six pages, should contain such a staggering number of errors. Nadwi misdates my earlier book, *A History of Islamic Legal Theories*. It was not published in 1995, as he says, but in 1997. There are at least five errors of transliteration on the first page alone, and on four different occasions he insists on calling *ṭilāʾ* '*ṭilāʿa*' (p. 112), confusing the *hamza* with the *ʿayn* and aggravating the mistake by adding what appears to be a *tāʾ marbūṭa*, which erroneously feminizes the word (p. 112). A similar mistake occurs in the title of Mālik's famous book, *al-Muwaṭṭaʾ*, which he at least thrice misquotes as *Muwaṭṭā* (pp. 110, 111, 112). Again on the first page, 'Laythī' should not appear in full citation without the definite article. He is, without a single exception, referred to as Yaḥyā b. Yaḥyā al-Laythī in every primary source. A further example, again on the first page, is a description of my *Origins* as a 'companion' to my earlier *History of Islamic Legal Theories*. Only one who has not read the latter (or not read both carefully—the more likely possibility in the case of Nadwi) can make such a statement. Are we then to conclude that these and other mistakes are symptomatic of Nadwi's indifference to accuracy?

There are ample and more serious grounds to take Nadwi to task than these minuscule slips. Consider his first major accusation (p. 111): 'Hallaq claims that

the Sunna of the Prophet became important only later, and was not important at the outset of Islam.' Typical in this review, no specific page reference is here provided for this—or any major—claim. Instead, Nadwi goes on to take my examples and sentences out of context to show that this is my position on the matter. On p. 43, I say that 'by the time of his death' the Prophet Muḥammad 'was the most important living figure the Arabs knew.' On p. 47, I explicitly state that the 'Prophet's *sīra*, *from the earliest period*, constituted a normative exemplary model, overlapping with notions of his Sunna' (emphasis added). On the same page I further say: 'In fact, evidence suggests that the Sunna of the Prophet emerged *immediately after his death*, which was to be expected given that many far less significant figures had been seen by the Arabs as having laid down *sunan*. It would be difficult to argue that Muhammad, the most influential person in the nascent Muslim community, was not regarded as a source of normative practice. In fact, the Quran itself explicitly and repeatedly enjoins believers to obey the Prophet and to emulate his actions' (emphasis added). Having cited in full three Qurʾānic verses to this effect, and referred to several others in a footnote (p. 48, n. 61), I conclude the paragraph by saying: 'In establishing his *modus operandi* as exemplary, the Prophet could hardly have received better support than that given to him *by the society in which he lived* and by the Deity that he was sent to serve' (emphasis added). Thereafter, I proceed to examine historical evidence, attempting to show instances of the use of Prophetic Sunna during the very early years of Islam (pp. 47–8). And taking the power and status of the Qurʾān from the beginning as a premise (a point to which I shall return later), I explicitly state, on p. 49, that the 'vitally important issues raised in the Quran represent a portrait of concrete Prophetic Sunna. It would be inconceivable that all these issues, many of which we enumerated in chapter 1, should have been confined to the Quran alone.' And finally, how could anyone miss such an unqualified statement as the one I make on p. 49: 'That the Prophet was associated with a *sunna* very soon after, if not upon, his death cannot be doubted'?

But this is not the only major argument of the book that Nadwi misrepresents. He boldly makes the statement (p. 111) that my 'thesis is that for several decades after the death of the Prophet, there was no Islamic law as such.' He further augments this charge, attributing to me the position that 'The Arabs, though Muslims, were not concerned about the laws of the Qurʾān' (his words, p. 111). It is more than ironic that Nadwi should criticize me on this point when I have spent the last three decades teaching and writing to the effect (and against the classical Orientalist paradigm) that Islamic law existed right from the beginning, at least as early as the middle of the Madinan career of the Prophet.[2] Not only do I explicitly posit the legal significance of the Qurʾān in the face of a plethora of writings (p. 55, n. 78), this general thesis foregrounds my book (as it does my other writings), and permeates it from beginning to end. For reasons that are entirely incomprehensible to me, Nadwi managed to misunderstand it, and to ignore such explicit statements as I make on p. 55: 'Islamic law as Quranic law

[2] See, for example, my 'The Quest for Origins or Doctrine? Islamic Legal Studies as Colonialist Discourse', *UCLA Journal of Islamic and Near Eastern Law*, 2/1 (2002–03): 1–31; and *A History of Islamic Legal Theories*, 3–15.

existed from the very beginning of Islam, during the Prophet's lifetime and after his death.'[3] How more unambiguous or simple does language need to be in order to avoid Nadwi's misunderstanding (or, dare I say, manipulating) the text?

That Islamic law existed from the very beginning does not mean that the ethos of the very new religion and law immediately appeared in the heart and mind of every Muslim on earth. The new religious values, as any reasonable historian could appreciate, would have taken some time to be instilled as universal ethic. Otherwise, there would have been no historical meaning to the apostasy wars, and even less to the continuous struggle, over the centuries, of established 'urban' religion towards effecting change in the nomadic Bedouin populations across the Middle East and elsewhere. In order to show these processes of acculturation to the new values, I have chosen to use the example of alcohol, which became a sensitive issue during and after the second/eighth century, but not significantly before. Nadwi waxes indignant over the report that Shurayḥ—one of the most important early judges—habitually consumed a type of strong alcoholic drink. Not only does Nadwi misspell the Arabic term for the drink, i.e., *ṭilāʾ*, but he has not bothered to look anywhere other than in his familiar and comfortable territory of *ḥadīth* for its definition (although even here he seems to be ignorant of important *ḥadīth* materials).[4] First, the three statements describing Shurayḥ's *ṭilāʾ*[5] variably speak of it as being *shadīd* (lit. strong) and *munaṣṣaf* (lit. halved), the former referring to what is nowadays called hard alcohol, not common wine (with an alcohol level ranging usually from 10 to 13 percent). *Munaṣṣaf* means that it was reduced by cooking to approximately half of the recipe's original quantity, while *shadīd* can hardly be used to describe any common juice. If *ṭilāʾ* meant a non-alcoholic drink, there would have been no sense whatsoever in describing it as *shadīd* or *munaṣṣaf*. 'Doubly-distilled,' 'triply distilled' and 'hard liquor'—the equivalent terms of art here—are universally used for alcohol, not, say, for the nectar of fruits.

Second, if *ṭilāʾ* was a common juice, why would it be singled out that Shurayḥ drank it? Why wasn't he also described as having liked to eat such ordinary foods as onions, parsley or beets?

Third, we have abundant textual evidence that Nadwi's objection is baseless. Ibn Manẓūr's highly authoritative *Lisān al-ʿarab* (xv. 11), among others,[6] expansively discusses the term *ṭilāʾ*, saying that the word is used for strong wines 'in order to improve wine's image, but it is in fact none other than wine itself.' He also cites, among others, the poet al-Abraṣ, who said in one verse: '*hiya al-khamru yukannūna-hā bi-l-ṭilāʾ*' (i.e., 'it is none other than wine, which they call by the term *ṭilāʾ*'). Furthermore, Ibn Manẓūr habitually and throughout his

[3] I also say on p. 24, having discussed many Qurʾānic legal provisions, that 'The Quran provided more or less detailed coverage in other areas of family law, as well as in ritual, commercial and pecuniary areas. Yet, although these rules surely did not constitute a system, *their fairly wide coverage, and their appearance within a short span of time, pointed clearly* toward the elaboration of a basic legal structure' (emphasis added).

[4] See n. 7, below.

[5] Wakīʿ, *Akhbār al-quḍāt* (Beirut: ʿĀlam al-Kutub, n.d., 3 vols.), ii. 212, 226, 270.

[6] E.g., al-Murtaḍā al-Zabīdī, *Tāj al-ʿarūs* (Beirut: Dār al-Fikr, 1414/1994, 20 vols.), xix. 639.

work cites *ḥadīth*, and does so here too. The Prophet himself is reported to have said, among other *ḥadīth*s:[7] 'Some people in my community will drink wine which they will give another name' ('*sa-yashrabu nāsun min ummatī al-khamra, yusammūna-hā bi-ghayri ismi-hā*'). This *ḥadīth* is immediately followed by the annotative statement: 'What is meant is that they will call it *ṭilāʾ*, out of embarrassment to call it *khamr*' ('*yurīdu anna-hum yusammūna-hu al-ṭilāʾ, taḥarrujan min an yusammū-hu khamran*).' What is more, every modern dictionary I have consulted equates *ṭilāʾ* with *khamr*,[8] and the standard *al-Mawsūʿa al-fiqhiyya* speaks of it as an intoxicant (*muskiran*), and therefore as a prohibited substance.[9] To say, as Nadwi does, that this 'drink was not allowed only in the early decades in Islam, but has been ever since' (p. 112) is plainly and wholly wrong. Nadwi is no less wrong about 'Umar's attitude to *ṭilāʾ*. He claims, citing Mālik's *Muwaṭṭaʾ*, that when this Caliph 'was asked about *ṭilāʿa* [sic],' he 'examined it and then allowed it' (p. 112). The relevant report in the *Muwaṭṭaʾ* in fact says that ʿUmar meted out 'the full extent of *ḥadd* punishment' (i.e., eighty lashes) to a man whom he encountered that had consumed *ṭilāʾ*.[10]

Fourth, and finally, drinking alcohol was not only Shurayḥ's indulgence; certainly its prohibition was not enshrined as a universal ethic even after Shurayḥ's time. For instance, biographical works identify the famous Kūfan judge Sharīk al-Nakhaʿī (d. 177/793) not only as a consumer of alcohol but also as one who deemed it permissible as a matter of law. Ibn Khallikān tells us the following: 'When Sharīk one day went out to meet *aṣḥāb al-ḥadīth* (traditionists), they smelled (on his breath) the odour of wine.'[11] And when a learned person once asked him: 'What opinion do you hold regarding wine? Sharīk replied: it is *ḥalāl* (permissible).' The man continued: 'What is better: drinking it or staying away from it? Sharīk said: Drinking it.'[12] Nadwi here confuses and conflates normative values with historical reality. The fact that '[e]arly and later generations of

[7] ʿAbd al-Razzāq al-Ṣanʿānī reports another version of the *ḥadīth*: '*la-yashrabanna ṭāʾifatun min ummatī al-khamra bismin yusammūna-hā iyyāh*;' and yet another *ḥadīth*: '*sa-yakūnu fī ākhiri ummatī nāsun yastaḥillūna al-khamrata bismin yusammūna-hā iyyāh*.' See his *al-Muṣannaf* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1421/2000, 12 vols.), ix. 145.

[8] See, for example, one of the most authoritative of such dictionaries: *al-Munjid* (Beirut: Dār al-Mashriq, 1992), 471.

[9] (Kuwait: Maṭābiʿ Dār al-Ṣafwa, 1992–), xxviii. 356.

[10] Mālik b. Anas, *al-Muwaṭṭaʾ* (Beirut: Dār al-Jīl, 1993), 735.

[11] Shams al-Dīn Ibn Khallikān, *Wafayāt al-aʿyān* (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, 1997, 4 vols.), i. 411: '*fa-shammū min-hu rāʾiḥat al-nabīdh*.'

[12] Ibid: '*Qāla Yaḥyā* [*b. ʿAbd Allāh b. al-Ḥasan al-Baṣrī] li-Sharīk: mā taqūlu fī l-nabīdh? Qāla: ḥalāl. Qāla: shurbuhu khayrun am tarku-hu? Qāla: bal shurbu-hu*.' With explicit reference to *nabīdh* as an intoxicant, the narrative continues: Yaḥyā asked: 'Is it better to drink a small quantity of it or a big quantity? Sharīk replied: a small quantity. Yaḥyā then [sarcastically] said: I have never seen a good thing (*khayr*) of which a small measure is better than a large one except your (kind of) *khayr*.' It must also be emphasized that the reference to consuming small *vs.* large quantities of a drink has invariably been associated with alcoholic beverages, as attested in the maxim: '*Mā askara kathīru-hu fa-qalīlu-hu ḥarām*.' Incidentally, in order to illustrate the workings of the *a fortiori* argument (*Origins*, 116), I deliberately reversed this famous maxim, but never said, as

Muslims have been consistently unanimous that drinking intoxicants is *ḥarām*' (Nadwi's words, p. 112) is no proof that Shurayḥ, Sharīk and a number of others, including early legists, did not drink them. More importantly, however, I use the Shurayḥ example merely to illustrate a point for beginners, namely, that certain values took time to be enshrined as universal norms, permeating the deeper textures of pious behaviour. Shurayḥ was, at the time, no worse a Muslim for drinking alcohol as for allowing the testimony of minors (which he did),[13] another—though less dramatic—example that I could have offered.

Nadwi makes a related, but no less serious, allegation. He has me take the position that 'in the early period it was not a requirement for a qāḍī to know the Qurʾān or the Sunna of the Prophet—*only knowledge of customary pre-Islamic law was required*' (p. 110, my emphasis). To show that this is my position on the matter, he engages in a lengthy and convoluted argument (one-sixth of his review) and, no less, in a deliberate distortion (and suppression) of my language. To begin with, I never held this position, here or in any other book or article I have written. Second, this position contradicts my own statements about the Sunna that I cited above, and everything I say in the book. In summing up my arguments about the matter, I say in the conclusion (p. 199) that the proto-*qāḍī*s 'exercised their considered opinion (*raʾy*), but not without due reliance on what they conceived to have been the model conduct, the *sunan*, of the forebears. *Raʾy*, therefore, was an extension of, and based upon, *ʿilm*, the knowledge of precedent. And as we have seen, the *sunan*, the corpus of model precedent, were . . . imbued with religious elements derived from the assumption that good conduct must now be in line with either the Quranic spirit, a Companion's behavior, or the conduct of any other personality associated with the emerging ethic of the new religion. Here, the Prophet and his immediate colleagues, especially the earliest caliphs, no doubt stood foremost.'

Third, Nadwi takes the example I use regarding the illiterate *qāḍī* ʿĀbis b. Saʿīd al-Murādī out of context, and furthermore distorts it in order to show that I hold the position he attributes to me. He inaccurately quotes me as follows:

> 'Despite the lack of formal legal education (which Islamic culture had not yet developed), and the patent illiteracy of some of them, *qāḍī*s were expected, if not required, at least to have a degree of religious knowledge . . . [note Nadwi's omission here]. When Marwān b. Ḥasan was appointed governor of Egypt in 65/684, he called on ʿĀbis b. Saʿīd, then *qāḍī* of Fusṭāṭ, with the intention of checking his credentials. Having heard that ʿĀbis was illiterate, Marwān was concerned about his competence. It is reported that the first question he asked him was whether he knew the Quran, especially its laws of inheritance' (*Origins*, pp. 38–9; Review, p. 110).

The reader will have noticed that Nadwi introduces an ellipsis after the first sentence in the quotation above. In fact, he deliberately omits no less than an

Nadwi attributes to me (Review, 114), that this is 'how the jurists put it.' This was *my* example, which, I believe, explained the structure of the argument successfully.

[13] Wakīʿ, *Akhbār*, ii. 308.

entire sentence, one that would have instantaneously undermined his claim had he not suppressed it. There, referring to, and explaining what I mean by, 'religious knowledge' I explicitly say: 'At that time this [i.e., religious knowledge] meant possessing a reasonable knowledge of the *legal stipulations of the Qurʾān* plus knowledge of the rudimentary *socio-religious values the new religion had developed*' (emphasis added). However, this is not the only instance of suppressing parts of my language that run against his allegations. He does the same, again, when he quotes from footnote 26, p. 39. I am at a loss as to why Nadwi would engage in distorting my ideas and language in this fashion.

Furthermore, and still in relation to this passage, Marwān's concern about ʿĀbis's knowledge of the Qurʾān was precisely the point of my discussion, which aimed to show that at least this type of *ʿilm* was a prerequisite. Nowhere in my book do I say or even intimate anything to the effect that '*only knowledge of customary pre-Islamic law was required*.' Nor do I say anywhere that ʿĀbis was 'really ignorant of the Qurʾān and Sunna' (Review, p. 110). These are entirely Nadwi's fabrications. Thus, his long foray (pp. 110–11) into ʿĀbis's religious credentials is entirely pointless.

These serious omissions and misrepresentations leave us little choice but to conclude that Nadwi's review amounts to little more than a hatchet job. Those who reviewed my book in good faith, such as Professor Anver Emon, could readily see my argument. Accurately summing up my position, he wrote: 'Relying on the Qur'an, oral traditions from the Prophet and his companions, and their judicial discretion, *qadi*s were the early government administrators who resolved disputes and managed the affairs of government in newly conquered regions.'[14] Among the many reviewers I have read, no one but Nadwi has managed to misunderstand my position on the matter, a position that I have made every effort to cast in a language that even beginners in the field can comprehend.

And since we are speaking of misrepresentation and irresponsible conveyance of language and ideas, we might as well turn to another point that provoked Nadwi's indignation. On the basis of the traditionist Ibn Ḥibbān and the biographer Ibn Khallikān, I do say that Qatāda b. Diʿāma, Ḥasan al-Baṣrī and Ḥabīb b. Abī Thābit were considered 'mendacious' by a number of later traditionists (*Origins*, pp. 73–74). Nadwi admits that 'these narrators' reports are charged with *tadlīs*' which involves 'always the omission of a source' (Review, p. 113). Nadwi also admits that *tadlīs* has several forms, but chooses to present only one of these, accusing me of not having made the effort to understand the technical terminology. He gives a very partial definition of *tadlīs*, namely, when 'A hears from B a matter (M) which B has heard from C, but A reports that he has M from C, not mentioning B.' This form of *tadlīs* falls under the category known as *tadlīs al-isnād*. A fuller definition of it (which Nadwi felt justified in omitting) includes 'a transmission [of M by A] from someone [B] whom he [A] has met but in fact did not hear [M] from him [B].'[15] Nadwi elects

[14] *University of Toronto Quarterly* 76/1 (Winter 2007): 343–4.

[15] Zayn al-Dīn al-ʿIrāqī, *al-Taqyīd wa-l-īḍāḥ: Sharḥ Muqaddimat Ibn al-Ṣalāḥ* (Beirut: Dār al-Fikr, 1401/1981), 95.

to ignore yet another form of *tadlīs*, known as *al-tadlīs fī l-shuyūkh*. This latter form occurs when a transmitter (A) narrates a report from someone (B) to whom he gives (usually deliberately) a name entirely different from his real one, so that he, B, cannot be identified.[16] It is in these senses, among others, that I used the general term 'mendacious.' And I am not alone in doing so. In his commentary on Ibn al-Ṣalāḥ' s famous *Muqaddima*, the traditionist Zayn al-Dīn al-ʿIrāqī reported the scholars' condemnation of *tadlīs*, citing the great Ibn Idrīs al-Shāfiʿī as saying that '*tadlīs* is the brother of lying.'[17] Shāfiʿī is also reported to have rhetorically declared: 'I would prefer to commit adultery (*zinā*) rather than engage in *tadlīs*.'[18] Yet, I was careful to state in the same paragraph that despite the problems in some *ḥadīth*s transmitted by such men of learning, these were generally deemed 'pious men whose contributions to religious learning were undeniable' (p. 74). But as usual, Nadwi focuses on narrow issues and takes specific examples I give out of context, and then turns around to accuse me of 'refusing the proper meaning of terms' (p. 113). The general point I was making on these pages (70–4) was that early Muslims faced a proliferation of Prophetic *ḥadīth*, some of which were spurious. The *ḥadīth* scholars were, at least most of the time, able to identify such forgeries. No reasonable scholar, western or eastern, would disagree with this characterization. This proliferation of *ḥadīth* goes to show my larger point: the emergence of Prophetic Sunna as both unequalled and unrivalled in authority. If the greatest names of *ḥadīth* were scrutinized, it was a testimony to the *muḥaddith*s' critical apparatus and the efficiency of their *jarḥ* and *taʿdīl* system. They insisted on accuracy of transmission and on honest reporting of other's statements—an art and an ethic from which Nadwi stands to learn.

Nadwi's misrepresentation of my positions is augmented by a shocking indecorum. Again, in a context where he wants me to say that 'the early qāḍīs did not follow any Islamic precedent or operate within an Islamic framework' (a point by now patently disproven), he levels the accusation, among many similar others, that I am unaware of the basic distinction between *ḥudūd* and *taʿzīr* (Review, p. 113). I find it difficult to engage anyone who discourses on this level. But if this goes to show anything, it is to point to Nadwi's lack of seriousness as a scholar, one who appears entirely ignorant of the work of specialists in the field. This ignorance leads him to question basic knowledge of others about Islamic law, construing even misprints for lack of knowledge. On p. 24 of my book, I say that 'if the marriage was consummated, the husband owed the wife half of the dowry.' On this Nadwi makes the comment that if 'he (Hallaq) looks up the Qurʾānic verses mentioned in his footnotes, he will find that in fact the whole dowry must then be returned' (Review, p. 113). In that footnote, I cite, among others, Qurʾān 2. 236, which is followed by Allah's statement: '*wa inṭallaqtumūhunna min qabli an tamassū-hunna wa qad faraḍtum la-hunna farīḍatan fa-niṣfu*

[16] ʿIrāqī, *Taqyīd*, 95–9; ʿAbd al-Nabī Aḥmadnagarī, *Jāmiʿ al-ʿulūm* (Beirut: Muʾassasat al-Aʿlamī li-l-Maṭbūʿāt, 1975, 4 vols.), i. 284.

[17] ʿIrāqī, *Taqyīd*, 98. See also Muḥammad b. ʿAbd al-Raḥmān al-Sakhāwī, *Fatḥ al-Mughīth* (Makka: Maktabat Nizār Muṣṭafā al-Bāz, 1420/1999, 4 vols.), i. 331–62, esp. at 351–2.

[18] Ibid.

mā faraḍtum.' That half of the dowry is to be returned if the marriage was not consummated is 'subject to the consensus of all scholars,'[19] a doctrine that any beginner knows, including the undergraduates I teach. It is in every single *fiqh* book the jurists wrote from the time they started writing books until classical *fiqh* books ceased to be written. But Nadwi's uncontrolled enthusiasm to level accusations could not allow him to consider the possibility that a misprint had occurred (where the negative 'not' before 'consummated' was dropped, and for which technical lapse I take full responsibility). How could anyone write, and what would have been the meaning and consequence of, a statement that says: 'a consummated marriage requires the return of half the dowry'? It is, by definition, a juristic impossibility that would wreak havoc on the entire law of, and reasoning about, *ṭalāq* and even *khulʿ*.

There are several other unfounded accusations in Nadwi's review that I cannot dignify with an answer. Nor can I deal with a number of unsupported claims that the reader can easily detect (e.g., Ibn Shubruma's acceptance of certain evidence; Review, p. 114). Instead, I shall be satisfied to raise one final issue, which Nadwi characterizes as 'the heart of the matter' (Review, 114). In a rambling commentary, irrelevant to my book and entirely beside the points it tries to make, he writes (and here I present, for the benefit of the reader, the less convoluted parts of his chaotic writing): 'Hallaq's thesis . . . makes of the Qurʾān an abstraction, a remote 'good idea,' floating above and outside history . . . It aims thereby to separate the Qurʾān from the Sunna, and to separate Islamic law from both insofar as that law, originally embedded in the practice of the region, only eventually accommodated distinctively Islamic elements or coloured them as distinctively Islamic. But the Qurʾān is not so. All of it was sent down upon a particular historical individual, the sending down witnessed over many years by many (the close Companions), all of whom were able clearly to distinguish what was sent down and what came, separately, from the man himself. Moreover, the Qurʾān was sent down in response to particular conjunctions of circumstances, even to particular individual's questions or actions. Those conjunctions of circumstances were thereby ennobled as exemplary for the Islamic community. The believers who lived with the Prophet were able to witness both *that* he responded in his actions and lifestyle to the guidance sent to him and *how* he responded [Nadwi's emphasis]. The Qurʾān was understood as requiring to be embodied—that was the whole point of the migration to Madina, the founding of a distinct Islamic jurisdiction. Also, *how* it could and should be embodied was experienced by those who witnessed the Prophet's *sīra* and his Sunna first hand' (p. 114).

Upon a tenth reading of these words, I still wonder about their connection to my work. Nowhere in my book do I treat the Qurʾān as 'an abstraction' or as a 'remote "good idea"'. On p. 21, I wrote that sūras revealed in the middle Madinan period 'mark the beginning of *substantive legislation* . . . above and beyond matters of ritual, such as prayer and pilgrimage' (emphasis added). This substantive legislation, I continued, constituted a 'distinct body of law exclusive

[19] Abū l-Fidāʾ Ibn Kathīr, *Tafsīr al-Qurʾān al-ʿaẓīm* (Cairo: Dār Iḥyāʾ al-Kutub al-ʿArabiyya, n.d., 4 vols.), i. 432.

to the Umma,' asserting 'the independence and uniqueness of the new religion' (p. 22) and pointing 'clearly toward the elaboration of a basic legal structure' (p. 24). I said furthermore that 'while maintaining continuity with past traditions and laws, Quranic Islam exhibited a tendency to articulate a distinct law for the Umma, a tendency that marked the beginning of a new process whereby *all events* befalling the nascent Muslim community henceforth were to be adjudicated according to God's law, *whose agent was none other than the Prophet*' (p. 24; emphasis added). When I speak of 'substantive legislation' and 'events' as having been adjudicated by the Qurʾān and the Sunna, it is only through impaired reasoning that my language can be construed as making the Qurʾān an abstraction. In light of these citations and many others pervading my work, it requires an even more impaired way of thinking to claim that my thesis 'aims thereby to separate the Qurʾān from the Sunna, and to separate Islamic law from both.' The book was conceived in good part to show that this 'separation'—an Orientalist thesis—is plainly wrong. For Nadwi to accuse me of holding this thesis is to misrepresent not just this work but, by implication, all that I have written on the subject to date.

The rest of his citation above, with regard to the Qurʾān having been 'sent down in response to particular conjunctions of circumstances,' is quite elementary. No reasonable scholar or student would dispute such facts. That the Qurʾān and the migration to Madina led to 'the founding of a distinct Islamic jurisdiction' cannot be a point of disagreement either, since, as I have shown above, I affirmed this point in a crystal clear fashion. Nor did Nadwi need to make the redundant statement that the Qurʾān 'could and should be embodied . . . by those who witnessed the Prophet's *sīra* and his Sunna first hand' (p. 114). That too was a major focus and the thrust of chapters 2 and 3 of my book. Nor do I disagree with Nadwi that 'Islamic law had its distinctiveness *from the outset*, and that distinctiveness was its being securely tethered to the Qurʾān understood in the framework of the Prophet's *sīra* and Sunna' (p. 115). As I quoted from my book above, I do explicitly say that from the beginning Qurʾānic legislation provided a 'distinct body of law exclusive to the Umma' (p. 22).

Nadwi concludes his review with yet another false accusation: 'The error of approaches like Hallaq's is (1) to confuse formal knowledge of a system of rules with a working knowledge of what is correct and incorrect sufficient to operate the system effectively and distinctively; and (2) to claim that in the absence of explicit, formal knowledge of the system, the system as such cannot exist, but is better identified as a proto-form, struggling out of undifferentiated background' (p. 115). I nowhere said or intimated that the system was less than effective or distinct. Its distinctiveness, in particular, was pointed out more than once (see above). And its effectiveness was never a point that I questioned in the least. In fact, one of the themes that I have steadfastly advocated in my writings over the years is that Islamic law was effective and—against the classical Orientalist thesis—had practical importance from earliest times until the beginning of the nineteenth century. Nor do I confuse 'formal knowledge' with 'working knowledge' of the system. Summing up my findings, I do in fact address this very point in the conclusion (pp. 199–200), clearly stating that 'the origins of

Islamic law – as a *religious* system – cannot be rigidly defined as exclusively limited to its direct (and formal) association with the Prophet.... Prophetic authority was substantively intermeshed with the authority of other *sunan*, including those of the Companions, which contributed much to the early formation of the law.... That the conception of Muslims living, say, during the 50s/670s, was not based on a definitive Prophetic, Muḥammadan authority does not make their belief or conduct less Islamic than, for example, those who flourished three or five centuries thereafter. We must therefore be wary of the fallacy (dominating much of modern scholarship) that law began to be *Islamic* only when Prophetic authority, *as formally exemplified by ḥadīth*, came into being' (italics in original). These lines fly in the face of Nadwi's allegations, contradicting them pointedly, and making of them complete nonsense.

However, I did say in my book, and continue to hold tenaciously to the view, that the system grew out of an ancient Near Eastern background and that it began as a proto-typical entity, meaning that it did not suddenly, with the break of daylight, appear on the scene as a full-fledged system. That is what Nadwi appears to be fuming about, for he seems to believe that there was no evolution, no change and no development in the system throughout its history. If this is really what Nadwi thinks (and I hope I am wrong), then he is a metaphysician who masquerades as a historian.

In the opening paragraph of his review, Nadwi expresses the 'hope' that the book will not 'have much influence.' He may therefore be disappointed and saddened to know that the book has gone into its fourth printing, with the fifth soon forthcoming. It is 'a Cambridge best seller',[20] and has been reviewed by knowledgeable experts in the field with great favour (as the jacket cover of the fourth printing attests). Like almost every book I have read (and like Nadwi's own review), the *Origins* is obviously not free of minor technical inaccuracies, and I will do my best to correct these in either the second edition or the next printing. I am grateful to Nadwi for pointing out some of these inaccuracies to me, however mean-spirited his approach. But I continue to stand firmly by every one of its major and even not-so-major arguments, as well as by the book's thesis on the whole. I would probably not have engaged in the present rebuttal had Nadwi's criticism been based on an accurate rendition of my arguments and ideas. But Nadwi must have been either half asleep when he read my book, or maliciously meant to distort its arguments and theses. Neither of these failings is excusable. Academic writing does come with a professional, ethical and moral responsibility. I look forward in the future to more of Nadwi's editing of minor technical inaccuracies, but, in the meantime, must encourage him to read the book again, carefully.

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[20] Marigold Acland, Senior Commissioning Editor, Cambridge University Press (e-mail: February 29, 2008).