

Dispensing Justice in Islam: Qadis and Their Judgements, edited by Muhammad Khalid Masud, Rudolph Peters, and David S. Powers (Studies in Islamic Law and Society, 22), (Leiden & Boston: Brill, 2012), xiv + 591 pp., ISBN: 978-90-04-22683-8, €37.5 / \$49.50 (pb)

The volume at hand is a treasure trove of available knowledge of two kinds, the field's accumulated wisdom as well as new research over the last few decades. Published a decade later, the volume is based on a conference organized by M. Khalid Masud as the director of the International Institute for the Study of Islam in the Modern World (ISIM) in 2001. The editors hope, quite justifiably, that the chapters thus brought together here "will serve as a sourcebook of Islamic legal practice and *qāḍī* judgments." Given that no comparable volume exists on subject, the significance of this volume for the scholars of Islamic law, history, and politics cannot be overstated. The twenty one chapters, not including the introduction, are grouped in four sections, the first addressing the nature and function of Islamic judgeship; second, judicial apparatus; third, juristic doctrines in practice, and fourth, judicial procedure. All chapters, as required judiciously by the organizer, are constructed around "one or more court judgments" and include "a translation of an exemplary legal document" or focus on the judge's application of legal doctrine in practice. The chapters cover a broad range in both time and space, but, limited perhaps by the contingencies of such collective endeavors and areas of active research, do not cover some important times and places, such as the Mughal and Ṣafavid empires, and contemporary Iran and Saudi Arabia.

The volume opens with an excellent and comprehensive historical survey of the field of Islamic court studies along with bibliographical references to key primary and secondary sources. The survey treats its subject diachronically, chronicling developments in the Umayyad, ʿAbbāsīd, Ottoman, and modern periods, as well as synchronically. The first section opens with Christian Muller's contribution, which exploits the collection of Mamlūk documents discovered at the al-Ḥaram al-Sharīf in Jerusalem in 1970s to explore the precise role of the *qāḍī*. He concludes that this role was not limited to notarizing on the basis of plain legal facts but indeed extended to deciding litiga-

tions and issuing certifications and hence exercising social influence even without issuing a formal judgment (*ḥukm*). Leslie Peirce's piece looks at the Ottoman legal records to depict the shifting legal environment of a sixteenth-century Ottoman court in Aintab, a town of moderate significance in Southeastern Anatolia, and finds that the new Ottoman government used the court to invigorating its legal system, consolidating central control and achieving local order, but the court accomplished these aims in a flexible and adaptable manner. Erin Stiles combines ethnography and legal interpretation in his examination of two cases from an Islamic court in rural Zanzibar and highlights the significance of the judges' cultural and moral authority and sensitivity. John Bowen similarly highlights the *sharīʿa* judge's role in a flexible Islamic legal framework and the significance of his notions of fairness that draw on lived custom, *ʿādāt*, in determining the decisions. Anthropologist Baudouin Dupret, in his study of the notion of harm as a grounds for divorce in the 1920 and 1929 codifications of personal status law in Egypt, mobilizes Hart's version of legal positivism to shift the question of the nature of Islamic law to the question of what people do when referring to Islamic law. The next two contributions seem to suggest the opposite. Baber Johansen turns to a more conventional but nuanced analysis of the consequences of codification of law in Egypt, where he argues that unlike traditional *fiqh*, it is the legislature, political authorities, expert (secular) jurists, and of course, the judges of the SCC that have been empowered to rethinking and reformulate Islamic law and normativity. Brinkley Messick's account of a mid-twentieth-century commercial litigation in a Yemenī *sharīʿa* court and observes that the substantive technical language adheres closely to Zaydī doctrine on the rescission of contracts and that the court bases its analysis on its assessment of intent and consent. Rudolph Peters investigates the re-Islamization of the penal code in Northern Nigeria, noting how the *Sharīʿa* Court of Appeal has more than once overturned lower *Sharīʿa* courts' sentences to stone women convicted of adultery on the basis of pregnancy – evidence acceptable in classical Mālikī law – motivated in part the desire to avoid constitutional challenges to the application of *Sharīʿa* law.

The second section, on organizing law, opens with Engin Akarlı's contribution, which looks at litigation among artisans and traders the eighteenth-century Ottoman world and suggests that judges acted as moderators in reconciling actual or potential conflicts in an effort to

maintain harmony and order in the marketplace. Rossitsa Gradeva shows, nuancing the prevailing wisdom on the absence of judicial hierarchy and review in Islamic law, that in the seventeenth-century Ottoman province of Sofia we find both an embryonic hierarchy among the provincial *qāḍīs* as well as appellate function of the provincial *dīwān*. Allad Christelow's account of the replacement of two Islamic judicial councils, one in nineteenth-century Algeria by the French and the other in twentieth-century Nigeria by the military regime, with centralized legal systems recalls more clearly the sense of loss implicit in some other contributions: "Locally based jurisdictions with flexible procedures, guided by the rich and subtle tradition of *fiqh*, were displaced by centralized systems that operated on the assumption that human acts can be objectively described and fit into rigorously defined patterns that must be imposed throughout a sovereign territory" (p. 319).

The third section, on applying doctrines, contains six thought-provoking contributions. Maribel Fierro sheds light on the Mālikī jurists' adjustment of Islamic legal norms to local practice concerning ill-treated women. Muhammad Masud's substantial piece points out an interesting difference in the practice of Umayyad *qāḍīs* and the post-formative jurisprudence concerning the *matā'* (goods) mentioned in the Qur'ān as due to the woman upon divorce. This contribution also has implications for the historical studies on early Islamic legal doctrine and practice, as it questions the post-formative bias against the work of Umayyad period *qāḍīs* as irregular, baseless, and mere personal opinion, inaugurated by, most importantly, Schacht (p. 352). David Power's contribution, especially pedagogically helpful, analyses four fifteenth-century *fatwās* from Islamic Spain and North Africa that shed light on the judicial process. In contrast with scholars who see Islamic law as informal and distinct in every way from modern law, such as anthropologist Lawrence Rosen (1989), he notes that the *qāḍī* in these cases appears as a third, neutral party, not afraid to give decision that resulted in a zero-sum game, making use of written documents liberally, and working with the *muftīs* on hard cases. Notably also, he confirms the familiar theme that women were active agents who used their wit and knowledge of the law to overcome the asymmetries of the rules of marriage and divorce (p. 409). Abdul-Karim Rafeq's contribution looks at inter-madhhab dynamics in Ottoman Damascus over the centuries and concludes that the manipulation of legal doctrine in matters related to *waqf* property benefitted

influential groups at the expense of *waqf* beneficiaries (p. 425). Through his study of Ottoman Aleppo, Stefan Knost, concludes, in agreement with some other contributors, the untenability of the Weberian notion of *Kadijustiz* and Rosen's (1989) similar conclusions, that these judges were "neither automatons who applies procedural rules in a mechanical manner nor Weberian Kadis who decided cases arbitrarily without reference to any legal rules and principles" (p. 444). Ron Shaham studies modern Egyptian Christians who, influenced by the majority culture of shopping for *fatwās* between various Sunnī madhhabs, maneuver between their own religious family laws and those of the Islamic majority.

The fourth section, which tackles procedure and evidence, begins with Delfina Serrano's Almoravid rule during the late eleventh and late twelfth centuries, based on two texts authored by the son of the famous Qāḍī 'Iyāḍ, on the legal practice of the Qāḍī and the *fatwās* pertinent to it. Serrano concludes the *qāḍīs* enjoyed considerable freedom to apply *adab* and *ta'zīr* punishments, and to some degree, *ḥadd* punishments, without being arbitrary. The application of *ḥadd* was pulled in two directions, the strictness of formal procedures threatened letting criminals go unpunished whereas the legal weight given to suspicion made meting out such punishments difficult. Aharon Layish's contribution asserts the importance of written documents in the pre-codified Mālikī fiqh in Libya before 1970s. Lucy Carroll examines the controversies surrounding the Evidence Act of Pakistan as part of what she dubs General Zia's "anti-Islamization coup."

The volume is thoughtfully put together, reasonably complete, rich, and suggestive, corrective of any number of misinformed assumptions about Islamic law in modern literature that had been based on a thin reading of formal-theoretical texts on legal doctrine, and a welcome first step in the passage of the field of Islamic legal practice to the age of maturity.

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