

Students of Islamic law sometimes observe that Islamic law is not law in the proper sense. This observation primarily refers to the distinction between 'jurists law' and 'judge-made law', the latter being the only proper law. The observation also reflects that our knowledge of Islamic law is derived more from studying the *fiqh* texts on legal doctrine than from the actual workings of the *qadi* courts. One may wish to research the actual *qadi* judgments, but will quickly notice that few critical studies of these judgments are available.

Historical studies of the administration of justice and accounts of the actual practice of the courts are also lacking. The time has come for serious study of the application of Islamic law in Muslim courts.

It is for this reason that the ISIM and Cornell University are co-organizing a workshop on 'The Application of Islamic Law in Muslim Courts', to take place in October 2001. The workshop is to be convened by Muhammad Khalid Masud and David S. Powers.

#### Call for papers

The papers are expected to focus on selected court judgements. Although the workshop is not limited to any one particular country or period, the more readily available judgements mostly belong to the modern period. Nonetheless, papers dealing with court judgements in the pre-modern period are also welcome. Papers should briefly describe the background (namely the case, the parties involved, the *qadi*, his training and appointment) and the application of Islamic law with

# The Application of Islamic Law in Muslim Courts

reference to actual judgements and cases. Some of the questions and themes are outlined below, but contributors are free to develop their own approach to dealing with these issues.

The papers should be approximately 30 pages in length (9000 words), including notes. Where possible, each essay should present a translation of a relevant and exemplary document or documents (e.g. court judgment, appointment of a *qadi*, text of a contract).

#### Themes and questions

The following is a suggested list of themes, the treatment of details being left to the authors. Although the list is open to discussion, actual court documents must be used in discussing the chosen theme.

##### The themes are as follows:

- *Qada*: What are the nature, authority and the jurisdiction of a *qadi*? How does his training and affiliation to a *madhhab* influence his judgement? What is his relationship to the state? How is he appointed? What is the nature of his relationship with other legal authorities like the *muhtasib*?
- *Procedural Law*: What constitutes proof? What are the court

*procedures*? Is there a distinction in procedure with reference to different cases (e.g. criminal, obligation, inheritance, etc.)? What constitutes evidence? Witnesses? Oath? Written documents? Circumstantial evidence? Medical findings? What are the requirements relating to the qualifications of witnesses? Is cross-examination allowed? What constitutes *idhar* and *iqrar*? Is the court bound by a certain procedure?

- *Composition of the courts*: Is it a single judge court or more than one judge? Who are the judicial officers: advisors, *mushawars*, *muftis*, Clerks, police, executionists? Is there a plurality of courts? Are there different types of courts? How are they distinguished? Is the distinction based on jurisdiction, procedure, laws, or persons? How are they related with each other?
- *The court case*: How does the development of the litigation (*khusuma*) take place? How the claim is defined in the court? Is there a legal representation of the litigant? What is the process of summons? How and on what basis the parties are defined as claimant and defendant?

– *Judgement (hukm)*: Is the judgement written? Dictated to someone? How is it preserved and delivered to the parties? What are the form, contents and structure of the *qadi* judgment? Does the judgement explain the reasons for the judgement? Does it mention any sources? Are they scriptural texts, *fiqh* texts, local customs?

Abstracts should be sent as soon as possible to the ISIM, the final deadline being 20 January 2001, to which a reply will be sent by the end of April. The full papers of participants will be expected by 15 September 2001. The precise date (in October) and venue (in The Netherlands) will be announced on the ISIM website: [www.isim.nl](http://www.isim.nl)

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