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Anthropology of Islamic Law

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Anthropology of Islamic Law

The point of departure for the conveners of the workshop 'Anthropology of Islamic Law' was the debate in the field of Islamic law, which centres on the relations between legal discourses produced by Muslim scholars and people's daily lives. Some earlier scholars propagated the point of view that legal texts had a major, if not determining, impact on the lives of the people, whereas others argued that legal texts have been comparatively irrelevant. Simultaneously, attention has also been drawn to the other side of the equation, that is the ways in which local practices have influenced legal discourse. Often these questions have been presented in terms of dichotomies such as universal versus local, text versus action, and theory versus practice. This workshop intended to shift the focus from dichotomies to relations. The aim was to point to the intricacies of these relations and to develop a more subtle approach by situating the discourses and practices of all participants in the field of Islamic law.

In doing so, the workshop envisaged building on the renewed interest in Islamic law witnessed during the last decades among anthropologists and historians. Whereas also during the colonial period those involved in the study of Islamic law had used ethnographic fieldwork in order to gain insight into actual legal practices, these anthropologists and historians have placed the relations between legal discourse and social processes at the centre of debate. They have done so by employing a greater variety of sources (such as court cases, fatwas, narratives) and methodologies (observation, oral history, discourse analysis) and by bringing other questions and new perspectives to the fore (such as those on gender). Their work has also influenced those working on Islamic law from other disciplinary backgrounds.

The conference opened with the inaugural lecture by Annelies Moors at the University of Amsterdam, in which she showed how an anthropological approach to Islamic law that includes the ways in which people deal with legal institutions in their everyday lives is part of her general research programme on Muslim cultural politics (see p. 7).

The papers in the workshop explored four general issues. The first issue pertained to the method of studying the normativity of Islamic law. For Baudouin Dupret, an anthropological approach to Islamic law should be praxiological; Islamic law is found in the practices of Muslims. The researcher should avoid bringing any pre-conceived ideas about what Islamic law should be. The study of normative legal texts and historical traditions is only justified if the actors themselves explicitly refer to them as such. Dupret advocated an actor-oriented approach rooted in ethno-methodology. Several other participants contested this view. John Bowen presented a different approach to the issue of normativity in Islamic law. His focus was on diversity in the intellectual debates, which he characterized as pluralism from several perspectives. The recent debates about Islamic norms among immigrants in France show that we can only understand the plurality of views by taking into account the differences in backgrounds, of local contexts, and in traditions.

A second theme was the focus on legal practice of the courts. The papers by Dupret, Stiles, Dahlgren, Kapteijns, and Rosen represented the varying ethnographic styles in studying the working of the courts. Next to an action-oriented approach focusing on actors and speech acts, attention was paid to a more conceptual approach, linking the courts to culture in general. Erin Stiles compared the working of two judges in Zanzibar, showing the existence of differing personal approaches at one time and place. Dahlgren and Kapteijns both studied the workings of colonial courts in South Yemen, arriving at very differing interpretations.

A third theme was legal writing. Houari Touati analysed the coming into being of the use of writing in legal proceedings and the creation of legal

In collaboration with Utrecht University, Leiden University, and the University of Amsterdam, the ISIM organized a workshop on the anthropology of Islamic law in Leiden from 14 to 15 March 2003. Convened by L on Buskens, Khalid Masud, and Annelies Moors, the workshop brought together a group of scholars working on Islamic law and practice in different parts of the world, in the fields of anthropology, history, and legal scholarship.

proof in early Islam. Brinkley Messick discussed the keeping of archives and legal papers in contemporary Yemen as an ethnographic phenomenon. Léon Buskens examined the collecting and trading of legal documents in present-day Morocco and the ways these materials become available in decontextualized collections in the West. Ruud Peters reviewed another aspect of legal writing: the codification of Islamic legal norms.

A fourth theme was the ethnography of the legal debate. Both Judy Tucker and Martha Mundy showed how new conceptualizations of legal norms arose out of social conflicts in the 18th and 19th centuries in Egypt and greater Syria. Masud and Bowen both analysed contemporary discussions about Islamic law in Pakistan and France. In Pakistan, a critique of Islamic law in popular poetry recitals, particularly about the sense of obligation, rights of women, and music, attracted the masses and the urban élite alike.

In the final discussion, most participants were hesitant about defining an anthropological approach to Islamic law. For some, ethnography meant nothing more than putting Islamic law in its context. For others, this focus in research was too narrow to include all the important aspects of legal activity. In their view, the people they were studying were much more engaged in conflict resolution and winning conflicts than the application of Islamic norms. Some participants stressed that legal practice should not be narrowed down to the activities of judges and muftis, since other actors and activities also deal with Islamic law. Several participants felt that more attention should be devoted to the role of the processes of state formation and colonial policies in the transformation of contemporary Muslim legal systems.

The conveners are considering the publication of a selection of the papers from the present workshop. They also hope that the debate initiated in this workshop will continue at the forthcoming conference "What happened?" Telling Stories about Law in Muslim Societies' in October 2003 in Cairo, organized together with CEDEJ and IFAO.

MUHAMMAD KHALID MASUD

Muhammad Khalid Masud is academic director of the ISIM until September 2003.

PARTICIPANTS

- **John R. Bowen (Washington University, St. Louis):** 'Shari'a without Fiqh: The Anthropology of Law without Law? Reflections from France'
- **L on Buskens (Leiden University/Utrecht University):** 'Documents without People. Attempts at a Codicological Ethnography of Legal Fragments from Morocco'
- **Susanne Dahlgren (University of Helsinki):** 'Court of Practice, Social Context, and Justice to Women: A Case from Aden'
- **Baudouin Dupret (CNRS/CEDEJ, Cairo):** 'Accounting for the Causes of Action: A Praxiological Grammar of Causal Concepts in the Egyptian Criminal Law Treatment of Moral Issues'
- **Lidwien Kapteijns (Wellesley College):** 'The Government Qadis of Aden: Ethnography in the Aden Archives'
- **Muhammad Khalid Masud (Leiden University/ISIM):** 'Popular Criticism of Islamic Law in Panjabi Folk Literature: Abida Parween Recital of Bullhe Shah' (video presentation)
- **Brinkley Messick (Columbia University, New York):** 'Reading Shari'a Texts'
- **Martha Mundy (London School of Economics):** 'Islamic Law and the Order of State'
- **Ruud Peters (University of Amsterdam):** 'Public Justice, Private Justice, and Legal Pluralism: The Westernization of Criminal Law in the Middle East'
- **Lawrence Rosen (Princeton University):** 'On the Meaning of Ownership: The Problematic of Property in Moroccan Culture'
- **Erin Stiles (Columbia University, New York):** 'Kadhis and Courts: Zanzibaris Islamic Judges between State and Community'
- **Houari Touati (EHHS, Paris):** 'Droit musulman et écriture: histoire d'une tension'
- **Judith E. Tucker (Georgetown University, Washington D.C.):** 'Tracking the Woman's Divorce: Khul' in Historical Context'