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Review of Messick, B. (2018) Shari'a Scripts: a historical anthropology

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could themselves own slaves, including white slaves, and at the height of their power they were able to make and break the highest officers of state, regardless of their ethnic origin or color.

The actual demise of the office of Chief Harem Eunuch occurred in the twentieth century in the aftermath of the failed Hamidian counter-coup against the Young Turks in 1909. Hathaway's consideration of the post-eighteenth-century years of the office and of the eunuch institution as a whole puts final touches on a story that has often begun and ended with the sixteenth and seventeenth centuries. She argues that the Chief Harem Eunuch and the network over which he presided were basically "reformed out of existence" thanks to the institutional transformations of the nineteenth century. The main causes of the decline in the Chief Harem Eunuch's roles in palace politics and *waqf* management were structural. The power and posts that were once concentrated in the harem quarters and the sultan's personal household came to be dispersed over a wider political field, with the grand viziers and bureaucratic specialists newly predominating.

Hathaway's previous publications—e.g., on el-Hajj Beshir Agha and Egypt's Mamluk politics—have dealt with many of the topics and contexts featured in this volume. Nevertheless, there is interesting new material here—for example, on the harem eunuchs' social universe, including the retired eunuchs' enclave on the banks of the Nile, and their visual and textual representation in Ottoman manuscripts. Despite Hathaway's sound scholarship and clear writing style, however, the lack of a strong central argument makes for an uneven narrative, not without interest, to be sure, but rather more encyclopedic than monographic, and thus more likely to be consulted than read cover to cover.

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Shari'a Scripts: A Historical Anthropology. By BRINKLEY MESSICK. New York: COLUMBIA UNIVERSITY PRESS, 2018. Pp. ix + 519. \$70, £58.95.

The term "Sharia" has become trendy in the West. Until just over a decade ago, Western scholarship would speak of Islamic law, but today "Sharia," with its ominous references to practices of the Taliban and ISIS, is common parlance among politicians, policymakers, and the general public. What has prompted academics to take up this term as well? For one, the term serves commercial goals, such as selling books or obtaining research grants. But some scholars find that "Sharia" is more fitting than "Islamic law" because the latter is a term confined to typical positivist legal matters called *fiqh*, while Sharia encompasses the wider domain of divine commandments and all its judicial elaborations, of which its rules are only a part.

Brinkley Messick's *Shari'a Scripts*, a detailed study of the production, transmission, and transformation of scriptural judicial knowledge among Yemeni scholars, judges, and other legal figures, is situated in this larger framework of Sharia. The title is therefore an apt summary of the book's contents. This study will not directly appeal to lawyers interested in the mechanism of making and applying Islamic rules, as it digs deeper into the mechanisms at work within the enormous corpus of Sharia itself. But, despite my quibble below, this unique undertaking is important for the student of Sharia in the broader sense of the word, whether a lawyer, historian, social scientist, or linguist.

Messick situates himself squarely in the Western scholarly tradition of Sharia, which adopted as its main challenge the relation between theory and practice. The tradition of nineteenth- and early twentieth-century scholarship assumed, in the words of Joseph Schacht, "discordance between the sacred law and actual practice" and it focused its attention on the doctrinal legal literature. From the second half of the twentieth century, social historians began paying attention to court records, land titles, administrative registries, and other legal documents; and since the 1990s scholars such as Wael Hallaq and Baber Johansen have combined the two by studying the interaction between these different legal materials.

To begin with, the field was dominated by philologists. Then came anthropologists, who studied the contemporary practices of Sharia. With scholars like Messick, however, a cross-breed of academics

entered the field: anthropologists who also made use of texts. Messick calls this “literate anthropology,” a result of which is his *The Calligraphic State* in 1993. With his new book he is expanding this approach into what he calls “a text-focused anthropological history of the past” (p. 39). According to Messick, “a maturing historical anthropology of the sharīʿa must attend to its complex textual manifestations.” He is quite condemning of the fact that his fellow anthropologists had little eye for the importance of the scriptural: “I thus confront the fact that, due to its long-standing and deeply engrained reliance on the colloquial and the observational, anthropology lacks a developed disciplinary capacity in the use of written sources and in the requisite reading techniques” (p. 34).

One might wonder why Messick clings so stubbornly to the anthropological dimension of his new approach. If anthropologists should pay attention to texts, why still keep using the anthropological disciplinary toolkit if one is going to undertake another approach entirely? But in combining both, Messick does something interesting: he approaches the vast textual corpus of Sharia as a living organism. He shows how “higher” and “lower” texts interact, how they develop in time, how the sacred and sacral struggle for dominance, and how the modern adjusts to the traditional, and in all these processes he looks at the roles of the variety of people involved (teachers, students, judges, clerks, interpreters, scholars). By taking this approach, the large corpus of Sharia is no longer a static body of texts but becomes an entity that is vibrant and alive. This is an ambitious endeavor and Messick’s book is mostly a description of the methodology he developed for this approach.

Messick’s study is located in the Yemeni highlands and covers the eighteenth to the late twentieth century. The Zaydi school of law is dominant, but while theologically categorized as Shiʿi, it maintained physical and discursive connections with the Sunni rather than the Shiʿi schools of law. With the exception of a Yemeni scholar such as al-Shawkānī, Yemen stood largely apart from the Sharia reforms that took place in the Muslim—especially Arab—world from the nineteenth century on. However, the replacement in 1962 of the century-old imamate by a modern nation-state going by the name of Yemen Arab Republic was a distinct political rupture that also affected the legal doctrine and practice in the country.

The particular timeframe chosen for this study is explained by Messick to be the result of a conversation he had with two Zaydi scholars who had lived and worked in both imamate and post-imamate times, and who described their latest books to have been written to be read “without a teacher,” that is, without instruction from or discussion with a teacher. This led Messick to question earlier writings on the same subject-matter, which were ostensibly written with a different intention regarding the way they were to be “read”: “Ethnographic work in the present thus led me to questions concerning the past of the sharīʿa book” (pp. 60–61). Readers should be aware that this is as much ethnography as they will encounter in this book: the “anthropological history of the past” is indeed “text-focused.”

This grand enterprise is dominated by the question “What sorts of writings are these, and, by extension, what kind of law was this?” (p. 217). While the book provides a host of information and insights, this question is not conclusively settled. The first part—What sorts of writings are these?—is more or less answered in the many observations made by Messick during his multifaceted analyses, but the second part—What kind of law was this?—is still hanging in the air when the last page of the book is turned.

Within the discussion about the relation between theory and practice there is also the realization that the practice is different in time and place. Messick refers approvingly to Hallaq, who recognizes the significance of local variations in the practice of Sharia and who gives examples thereof in his authoritative *Sharia: Theory, Practice, Transformations* (2009). But to get an in-depth understanding of these contingent forms of Sharia, Messick argues, is quite “an analytical problem” because to properly understand the patterns of these practices, one needs to have access to archival source materials (which are mostly in private hands) and read these materials in conjunction with doctrinal sources (which is a nascent field of study). Messick sets out to do both.

The first part of his research project is to find the archival materials. This is painstaking and laborious work that Messick calls “ethnographic sourcing” (pp. 227–29). With his collection of family and court archives he then sets out to develop a methodology so as to read these materials in conjunction with other, more readily available texts of Sharia doctrine. For this particular kind of reading Messick relies for a large part on Talal Asad’s concept of discursive tradition, or the importance of founding texts in teaching, transferring, learning, and living Islam. How is one to approach

such a discursive tradition? Talal Asad underscores the need to approach it as a composite whole, but historically situated.

This composite whole is what Messick takes as his starting point, whereby he distinguishes between two kinds of textual corpora: the Sharia doctrinal literature of manuals and handbooks (which Messick calls “the Library”) and the multitude of documents and records from family-held or court archives (“the Archive”). To Messick, these two textual bodies, Library and Archive, represent the dichotomy between the doctrinal theory and everyday practice. The questions to be answered are how the textual formation took place *within* both the Library and Archive, and how these two bodies interact. Messick is particularly interested in whether the Library can be regarded as a model of the Archive, hence representing a theory put into practice, or whether that dynamic might work vice versa. In the case of Yemen it appears that practice (Archive) has a substantial influence on doctrine (Library).

In applying this model Messick resorts to a number of techniques that he largely derives from linguistic theories and language studies, focusing on conceptions like narrative and composition, implicit patterns and logics (“textual habitus”), synchronic or diachronic connections (“temporality”), the often formal representation of the actual spoken language (“paper language”), etc. This approach converges with the latest trend of applying such approach to quranic studies. Messick carefully puts together his methodological approach. The result is a system that is impressive, but at times also over-complex and not easy to follow.

By applying his methodological approach to the Library and Archive texts, an image emerges of a system of law—confined to that of the Yemeni highlands—that is indeed organic, developing in time and adapting to circumstances. The richness in detail that Messick presents in analyzing the various texts is overwhelming. There is little physical interaction between the author and the various actors involved in Sharia, as most of the detail is derived from textual reading. One of the delightful exceptions is the author’s conversation with the mufti Aḥmad Zabāra during which they speak about some judges whom the mufti had worked with when he was judge under Imam Aḥmad, that is, before the Republic was established in 1962. The mufti relates that a published biographical work that Messick relied on in his research had been “crudely censored” by Republican authorities after the overthrow of the imamate. Since that manual was originally written by the mufti’s father, the mufti had rewritten the original by hand. Moreover, he had added new material and more biographies based on his own study and inquiries. The result was “four thick handwritten volumes” that Messick was allowed to photocopy.

I end my largely laudatory review with a minor note of criticism, or perhaps more of a question to the author. For the tailor-made methodology designed by Messick for the specific research at hand, namely, the study of Sharia, he made use of a variety of theories and disciplines. It is therefore surprising that he appears to have overlooked or discarded two disciplines that would seem perfectly suited for this kind of methodology. The first is the new discipline of “discourse analysis,” which is explicitly guided by the study of such matters. The second discipline is law. While Messick may well have constructed his own discourse analysis and therefore had no need of these disciplines, he might have benefited from them, especially with regard to the legal discipline. Granted, Western legal concepts are not always helpful when describing or analyzing Islamic legal concepts, but law is by definition a construct with an inner logic and taxonomy, put to work to solve conflicts between human beings. In this there is little difference between Sharia and Western law.

An example of how Western legal theories and methods might have been of assistance is Messick’s elaborate discussion about the status of and interaction between oral and written statements in court. He describes the transmission from oral to written as the transmission from “authentic but fleeting speech and questionably authentic but more permanent writing” (p. 139). However, the mechanisms and problems of the legal instrument of testimony are not much different from what is taught, for example, at any modern police academy about the intricacies of an affidavit that needs to be both reflective of the oral statement and usable as a legal document in court. Of course, Sharia texts must be read against the timeline of Islamic historiography, transitioning from an era of general illiteracy and oral tradition to an era of literacy with an emphasis on written documentation. But its discussions on the subject are essentially not much different from what secular modern courts and police officers face.

This plea for a lawyer's perspective of Sharia may sound tautological, since Sharia is mostly about legal matters. But the interesting characteristic of the Western study of Sharia is that it is dominated by philologists and anthropologists. Law is the discipline that is often missing. And while anthropologists have developed the discipline of legal anthropology, the lack of legal training—that is, into a comprehensive system of law, with its own logic, goals, and taxonomy—may pose shortcomings when studying a system of law. Why not, then, make grateful use of anthropology as an emerging field within the study of law (the “lawyer as anthropologist”) and the recent initiatives to study law through the perspective of linguistics and literature studies (the “lawyer as a reader”). These are all disciplinary insights that may be of much use to all scholars of Sharia. If there is one thing that Messick's *Sharīʿa Scripts* makes abundantly clear, it is that the study of Sharia can only benefit from a truly interdisciplinary approach.

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L'invention du cadī: La justice des musulmans, des juifs et des chrétiens aux premiers siècles de l'Islam. By MATHIEU TILLIER. Bibliothèque historique des pays d'Islam, vol. 10. Paris : PUBLICATIONS DE LA SORBONNE, 2017. Pp. 704. €45 (paper).

Cet ouvrage traitant de la judicature musulmane dans l'Orient islamique aux deux premiers siècles de l'hégire se situe dans la continuité d'un autre ouvrage du même auteur, *Les cadis d'Iraq et l'Etat abbasside (132/750–334/945)* (Damascus : Institut français du Proche Orient, 2009). Présenté sous la forme d'un mémoire d'habilitation à diriger des recherches, soutenu en 2013, il comporte trois études indépendantes faites à des périodes échelonnées, c'est ce qui explique la nature de son plan qui n'est ni chronologique ni thématique. L'auteur y procède par types de sources : documentation papyrologique (une trentaine éditée)—elle concerne particulièrement la justice en Egypte (première partie); sources littéraires—récits narratifs et littérature juridique d'où est étudiée la justice du cadī sous les Omeyyades et les premiers Abbassides (deuxième partie); et références secondaires—d'où le système judiciaire juif est abordé—et sources canoniques syriaques—à partir desquelles principalement le système judiciaire chrétien est étudié (troisième partie). Un essai de synthèse intitulé «La fabrique de la judicature musulmane» boucle l'ouvrage. L'auteur se démarque des autres chercheurs par sa documentation (papyrus et recueils de hadith) et par la comparaison systématique des systèmes judiciaires régionaux en Orient musulman (pp. 20–23).

Dans la première partie, intitulée «La justice au regard des sources documentaires», c'est-à-dire au regard de la littérature papyrologique, Tillier montre que la principale autorité judiciaire en Haute Egypte après la conquête musulmane demeurait le pagarque. Fonctionnaire de province (*kūra*), représentant «la basse justice», chrétien, il usait, comme à l'époque byzantine tardive, de la procédure par rescrit : Saisi par un demandeur, le pagarque écrit au gouverneur de Fustāt en lui exposant l'affaire, et en retour, le gouverneur lui envoie un rescrit l'autorisant à trancher l'affaire sur la base de preuve produite par le demandeur (p. 75, 143).

Ce sont les papyrus du gouverneur de Fustāt, Qurra b. Sharīk (r. 90–96/709–714), à l'époque marwānide, qui décrivent cette procédure. Le pagarque est considéré aussi comme une phase transitoire entre la justice byzantine et la justice islamique, puisque Qurra, dans ses injonctions, insiste sur la prise en compte de la *bayyina*, preuve à connotation coranique. Le pagarque apparaît dans la littérature arabe, dans un premier temps, sous le nom de *ṣāhib* puis *amīr*, ce qui correspond à sous-gouverneur (p. 92). Tillier suppose l'existence d'un lien entre la procédure par rescrit et la *qiṣṣa* (pétition), d'une part (p. 223), et l'interdiction au cadī édictée par al-Khaṣṣāf (m. 261/874) de recevoir des lettres judiciaires (p. 143), d'autre part. Mais cette supposition nous paraît improbable.

Tillier signale l'absence du cadī dans les papyrus omeyyades (p. 114), contrairement aux papyrus abbassides (p. 117). Si Fred Donner constate de ces données que le cadī est «une création du 8^{ème}

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