Special Feature
Theory and Practice of Sharia Courts: between Universality and Localization

Preface

Islamic Law, the Sharia, has been applied as a universal law across different regions from the Maghreb to Southeast Asia, and was often described as a static system unable to change and develop. But the socio-economic conditions and local legal traditions varied considerably between the major regions of this vast territory.

This special feature is a result of the panel at the second International Conference of the NIHU Program Islamic Area Studies held in Cairo on December 12-13 2009 under the title of "New Horizon in Islamic Area Studies: Identities, Coexistence and Globalization". This panel was organized by the Toyo Bunko Unit which has continued the research of archival sources such as Sharia court records to analyze social institutions of the Islamic world from comparative viewpoints. It was chaired by Stefan Knost (Orient Institute in Beirut) and invited three paper presenters and one discussant. The featured articles raise the question about the relations between a common legal discourse and these local particularities. How were disputes settled taking into consideration legal theory, local customs and mutual agreements of the involved parties? Three papers discuss actual cases of disputes recorded in medieval Maghreb, Ottoman Turkey and Central Asia in a comparative perspective.

The first paper of Delfina Serrano Ruano discusses the ambiguous relation among chief qadis, local judges and governors in al-Andalus in the Almoravid period based on historical sources and legal texts. The second paper of Işık Tamdoğan reveals that two kinds of authorities, that is, the qadis and the military governors had the overlapping responsibilities in the application of justice, based on the court records of Üsküdar and Adana. The last paper of ISOGAI Ken’ichi examines seven fatwa documents relating to one lawsuit at the Sharia court in Samarqand at the beginning of the 20th century and shows that the muftis did issue contradicting fatwas even to both parties of the dispute choosing favorable legal opinions from the authoritative Hanafite texts.

These three case studies refute the concept of Qadi justice established by Max
Weber in which the qadi monopolizes legal court procedure to judge the dispute by his legal discretion, as Professor Nelly Hanna (American University in Cairo) commented at the conference panel. They succeed in describing Islamic Law not as static, but as a dynamic system in which legal norms and local customs are at a permanent dialogue that enables Islamic Law to respond to the necessities of its social environment. In addition, this issue is of great relevance to the current situation, in which the demand for application of the Sharia has become a political symbol often neglecting its legal aspects.

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