Special Feature
Shari‘a Courts and the Imperial Ruling System

Introductory Essay

Although the observance of shari‘a is considered essential among Muslims, its implementation has always varied according to region and period. This is clearly apparent after the nineteenth century when modern, or Western, legal and court systems were imported to Muslim regions, which necessitated changes to the shari‘a court system. Particularly in regions under imperial rule, legal and court systems were directly reorganized by the colonial rulers. This resulted in drastic changes in the shari‘a court. This special feature focuses on such changes and transformations in the legal and court systems under imperial rule. The scope of our study also includes the Ottoman Empire because it extended over a vast region, and its Western-inspired reforms made a huge impact on the shari‘a court system.

The attitude of the colonial rulers toward the shari‘a court varied by region and empire. For example, shari‘a courts were abolished in British India, but shari‘a remained as law for Muslims and was implemented under imperial authority. On the contrary, shari‘a courts were maintained as courts for Muslims by the Russians in Central Asia. Even in the early Soviet period, the shari‘a court prevailed: the qadis, chosen by the inhabitants through elections, continued to be the judges of Soviet people’s courts.(1)

This topic brings forth a number of questions. How did imperial rule change the shari‘a court? Which elements of the shari‘a court actually continued after such changes and transformations? What are the reasons for variations in the legal policies toward shari‘a courts? What are the imperial legacies that have affected the existing legal and court systems? There are a few overviews on this issue,(2) but more in-depth case studies are necessary.

In this special feature, three cases from three different regions – Egypt, the Caucasus, and Central Asia – will be examined based on archival sources and others. Egypt was under Ottoman rule, while the Caucasus and Central Asia were ruled by the Russians. Even under the same imperial rule, changes to the court systems were
different in different regions because of the differences in their historical traditions or in
the imperial policy toward them.

The first article, “Claiming Heirship: A Litigant Strategy in the Sharia Courts
of Nineteenth-Century Egypt” by Kenneth M. Cuno, concerns curious litigations in
nineteenth-century Egypt. At the shari’a courts, there were cases filed against people
for very small amounts of debt that these defendants owed the ancestors of the plaintiffs.
Although the defendants acknowledged the debt but denied the rest, the litigations were
useful for the plaintiffs to confirm their heirship based on the testimony of the witnesses.
This strategy was not a traditional one. Cuno sees two elements behind this strategy:
Hanafization and reform of the court procedure influenced by Ottoman legal reform and
French Codes in the latter half of the nineteenth century. In other words, people adjusted
well to the Ottoman and modern reforms of the judicature and tried to benefit from them.
One can understand here how the imperial rule affected shari’a courts.

The second article, “Russian Supervision over Islamic Courts in Early Twentieth-
Century Samarqand” by Yoichi Yajima, deals with cases from Samarqand in 1901
and 1907. Although the shari’a court prevailed and qadis continued to act as people’s
judges, their judgments could be reversed by the Russian legal system. Based on the
court records of the Samarqand district, Yajima finds that the people of Samarqand did
not understand the Russian system in 1901, but they became accustomed to it by 1907
and used it to further their own interests. The Russian impact on the shari’a courts is
clearly revealed in Yajima’s article. People began to gradually understand the non-
shari’a judicial system and, according to Yajima, this made it easier for them to accept
the Soviet system after the Russian Revolution.

The third article “Shari’a vs. ‘Adat in Post-Imperial Law making: Political
Discourse on Shari’a Courts in Daghestan, 1917-1927,” by Vladimir Bobrovnikov
discusses shari’a court debates in post-revolutionary reform under the early Soviet
rule. After the Russian Revolution, the Bolsheviks considered ‘adat as a colonial law
benefiting khans and beks and claimed that the shari’a was the only legal indigenous
law of the people. In this context, the shari’a was key to liberation from the colonial past
to national liberation. In 1917, the majority of Daghestanis voted for settling all civil
lawsuits according to the shari’a. Even the liberal Muslim elite, which regarded shari’a
as anachronistic, wanted some of the norms of Islamic law to be retained because most
Daghestanis supported the shari’a court. For this purpose, a network of shari’a courts
were introduced all over Daghestan. However, by 1927, when the Soviet policy toward
the shari‘a changed, all these shari‘a courts were closed down. In this article, we are able to see the legacy of the Russian imperial rule as well as the complicated relations among the shari‘a, local politics, and the early Soviet policy.

These three articles represent the different aspects of how the imperial system affected Islamic law and shari‘a courts. Moreover, the legal practices under the imperial rule became an indispensable part of the history of Islamic law and shari‘a courts. Today, the implementation of Islamic law is one of the most difficult problems in Muslim countries: the Islamists sometimes demand that their version of Islamic law be introduced. These articles will contribute to further research on the complicated relationship between Islam and modernity.

Notes

(1) Our knowledge about the shari‘a courts under Soviet rule was acquired through the annual Central Asian Old Documents Seminar held from 2003 to 2015 at Kyoto University of Foreign Studies. We thank Kenichi Isogai and Yoichi Yajima for sharing with me their excellent knowledge on the topic. One of the results of their project was Horikawa et al.[2014]. See also Sartori [2010].

(2) For example, Masud [2006: 34-44]; Akiba [2015].

References


Horikawa, Toru et al. ed. 2014. Sharia to Roshia Teikoku: Kindai Chuo Yurashia-no Hou to Shakai (Sharia and Russian Empire: Law and Society in Modern Central Eurasia). Kyoto: Rinsen Shoten.


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