Book Review

Shamil Jeppie, Ebrahim Moosa and Richard Roberts (Eds.), *Muslim Personal Law in Sub-Saharan Africa: Colonial Legacies and Post-Colonial Challenges*. Amsterdam: Amsterdam University Press, 2010. ISBN: 978 90 8964 172 4, 388 pp.

Shamil Jeppie (University of Cape Town) and his co-editors, namely Ebrahim Moosa (Duke University) and Richard Roberts (Stanford University), produced a timely text that focused on the application of Muslim Personal Law on the African continent. Their jointly edited text, however, consists of a set of revised papers that were presented at one of the four 'Ford Foundation' funded 'Islamic Law in Africa' seminars that were held in Dar us-Salam, Stanford, Dakar and Cape Town between 2000 and 2002. Their work is the fourth publication that appears as part of the joint University of Amsterdam Press and the International Institute for the Study of Islam in the Modern World (ISIM) series on Contemporary Muslim Societies.

The editors have divided their text into two broad sections; the first, which contains 6 chapters, addresses 'Colonizing Family Law in Africa' and the second, which includes 5 chapters, tackles 'Muslim Personal Law (MPL), The Post-Colonial State and Constitutionalism in Africa'. In their jointly penned preface (pp. 9–11) they mention how this project came into fruition and admitted that the title of this text does not do justice to the topic as such. They conveniently have used the title of their book *Muslim Family Law in Sub-Saharan Africa: Colonial Legacies and Post-Colonial Challenges* as the title for their introductory essay (pp. 13–62) in which they contextualize the volume's contributions. Their volume includes a set of 'Notes on the Contributors' (pp. 355–358) as well as a useful 'Consolidated Bibliography' (pp. 359–376) and a user-friendly Index (pp. 377–388).

In their fairly lengthy introductory essay they have dealt with a number of interconnected issues that relate to the rich discourses and function of MPL in the sub-Saharan region of the continent. Among other things, they have shared their thoughts about Islam in Africa, given a synopsis of *Shari'a*, discussed 'Islamic law and colonial encounters,' assessed MPL, and they have also analyzed 'Colonialism, Muslim Societies and the Protectorate.' In addition, they provided their understanding of 'the British Empire and Islamic Law' and 'Roots of French Colonial Protectorates and Islamic Policy,' on the one hand, and 'Colonialism, Legal Pluralism, and MPL' and 'Colonial Muslim Policy in Sub-Saharan Africa,'

on the other. Towards the end, they have commented on 'this Collection and (the) Directions for Future Research.' They argued that since this edited volume's essays have laid the foundation for further research, potential researchers should, *inter alia*, examine and explore colonial court cases that would offer a good insight into the legal matters that have affected and influenced developments between the colonial authorities and the Muslim communities.

In the first section of this volume, the editors slotted in chapters that underscored the influence of the process of colonization on *shari'a*, on the one hand, and the interaction between the colonial state and this legal system, on the other. And in the second section they show-cased the status and operations of this religious legal system in post-colonial Africa. One positive outcome of this volume was that when one reads each and every chapter, one observes that each contributor made reference to each other's chapters to show the close connections that exist between the themes and issues that were discussed.

Shouket Allie's (High Court Advocate, South Africa) opened the discussion with 'A Legal and Historical Excursus of Muslim Personal Law in the Colonial Cape, South Africa, Eighteenth to Twentieth Century' (pp. 63–84). Allie covered a reasonably broad time-frame; however, when trying to deal with three centuries it is almost impossible to do justice to the topic. Nonetheless, Allie succeeded in reflecting upon some of the historic-legal developments but missed out on one important source.¹ Richard Roberts reflected upon the tensions that emerged as a result of French colonial legal policy in his chapter that concentrated on 'Custom and Muslim Family Law in the Native Courts of the French Soudan, 1905–1912' (pp. 85–108).

Roberts interestingly examined specific MPL issues such as the 'abandonment and neglect cases' that took place within a seven year period. Over this period he identified 554 cases and specified the causes for divorce in each case as they were recorded in the eight district tribunals. Roberts, unlike Ghislaine Lydon, did not record reasons for women having been abandoned by their spouses but showed how the local community employed the new legal system to their advantage. Roberts, who gave particular attention to the district of Segu (Mali), examined the tension that developed between customary practices and Muslim family law in the new courts. Hassan Mwakimako (University of Nairobi), who also addressed the tensions that emerged, analyzed the 'Conflicts and Tensions in the Appointment of Chief Kadhi in Colonial Kenya 1898–1960s' (pp. 109–134). Mwakimako undertook a chronological study of the respective offices of the Shaykh ul-Islam and the Chief Kadhi that the British colonialists desperately tried to abolish. He showed in this informative chapter how these two posts were marred by ethnic enmity and British colonial compliance.

¹ The missing source is namely namely 'Mohamedan Law in South Africa' which appeared in the *South African Law Journal* (24: 176–186, 1907) that was written by J. de Villiers Roos.

Ghislaine Lydon (University of California, Los Angeles) discussed the idea of ‘Obtaining Freedom at the Muslims’ Tribunal: Colonial Kadijustiz and Women’s Divorce Litigation in Ndar (Saint-Louis)’ (pp. 135–164). Lydon, whose contribution ties in with Roberts’ chapter, based herself on a sampling of the Muslims’ Tribunal court records over about 45 years and she examined the judicial processes as well as the patterns of the civil litigation cases in the Ndar district of Senegal. She offered an understanding of, among others, the methodological problems that one faces when trying to interpret justice within a French colonial setting. According to Lydon’s observations since the French imposed their linguistic policy by banning the use of Arabic, they effectively disempowered Ndar women when some of these women sought to obtain a rightful divorce. On a different but related theme, Shamil Jeppie deliberated over, ‘The Making and Unmaking of Colonial Shari’a in the Sudan’ (pp. 165–182). Apart from having demonstrated how native courts replaced *shari’a* courts, Jeppie looked at the period of the 1920s and the 1930s during which there was a show-down between the British colonialists and the Mohammedan law courts’ representatives. Jeppie perceptively illustrated to what extent the British colonial authorities intervened and influenced the relationship between the *qadis* and the native *shaykhs*. Since the latter were custom-orientated and the former text-oriented, Jeppie opined and concluded that ‘the gap between these two groups was unbridgeable’.

Barbara M. Cooper (Rutgers University) critically appraised ‘(France’s) Injudicious Intrusions: (by) Chiefly Authority and (through) Islamic Judicial Practice in Maradi, Niger’ (pp. 183–220). Cooper’s incisive study examined how French chauvinism blinded them when they foolishly intruded upon the heterogeneous Maradi community. She suggested that since an impasse was reached because of the various authorities such as the politicians, chiefs, and religious leaders who were vying for power and resources, attempts have to be made to overcome the tribalized discourses that have damaged the image of African politics. This has also led to a search for strategies to resolve the complex conflicts that pervade Niger’s socio-legal life. Abdulkadir Hashim (University of Nairobi) analyzed ‘Coping with Conflicts: Colonial Policy towards Muslim Personal Law in Kenya and Post-Colonial Court Practice’ (pp. 221–246). Hashim did not only outline the application of MPL from the beginning of the British colonial period – a period during which Kadhi courts were set up, but he went on to examine its application throughout the post-independence era – a period during which these courts were integrated into the national judicial system resulting in a complex hybrid legal system; a system that gave rise to numerous challenges and problems.

Allan Christelow (Idaho State University) explored the ‘Persistence and Transformation in the Politics of Shari’a, Nigeria, 1947–2003: In Search of an Explanatory Framework’ (pp. 247–272). Christelow has presented a discourse on the assumptions that govern the academic debates of shari’a, provided a synopsis of (Northern) Nigeria’s Islamic legal policy and commented on a variety of issues

that came onto the agenda of the new Islamic courts, which came about because of the process of Islamic resurgence. He essentially highlighted the complex nature of Northern Nigeria's legal system and argued against the reductionist approach adopted by some towards the socio-legal developments in this nation-state; the adultery case was a classical case in point. Robert V. Makaramba (High Court Judge, Tanzania) was concerned with the interplay between 'The Secular State and the State of Islamic Law in Tanzania' (pp. 273–304). Makaramba, who examined Tanzania's Constitution's influence on general Muslim legal practices, relied on court decisions for his assessment. Before Makaramba assessed the politics of Muslim Family Law in Tanzania, he for some strange reason argued with support from J.N.D. Anderson's 1965 chapter that 'the role of Islam(ic law) in the lives of... Muslims has declined' (see p. 279). Makaramba, however, took a special interest in how gender equality, as spelt out and supported by the Tanzanian Constitution, was interpreted by the shari'a.

The issue of gender was further taken up by Susan F. Hirsch (George Mason University), who assessed 'State Intervention in Muslim Family Law in Kenya and Tanzania: Applications of the Gender Concept' (pp. 305–330). Hirsch argued in her comparative study that there were (and are) implications for gender relations when the secular state such as Kenya or Tanzania intervenes and influences the interpretation and application of MPL. In her chapter, she challenged certain flawed perceptions of Islamic law and undergirded her arguments by stating that one cannot ignore the fact that there are multiple readings of gender relations when trying to comprehend and apply Islamic law. Ebrahim Moosa, who also touched upon the issue of gender, thoughtfully evaluated 'Muslim Family Law in South Africa: (highlighting its) Paradoxes and Ironies' (pp. 331–354) during the apartheid era as well as the post-apartheid period. He argued that the end result of the various government petitions resulted in the construction of a reformist MPL proposal; a proposal that was in his opinion the best option in the circumstances. Unfortunately, internal Muslim politics as witnessed elsewhere on the continent has hindered progress and it is unlikely that it will be approved by all stakeholders.

By way of critique, in scanning this volume's content page, it seems clear that the editors neglected to include the application of MPL in one of Africa's Lusophone countries. Whilst we are aware that it was almost impossible to deal with all African nation-states, it would have been instructive if the editors included at least one case study from this group of countries. This would have demonstrated to what extent Portuguese colonial rule differed qualitatively from the British and French colonial empires, and to what degree the Muslim communities grappled with MPL in countries such as Guinea-Bissau and (Northern) Mozambique where Muslims encountered Portuguese colonialism. We assume that the editors might do so if they decide to produce a second volume on this subject.

In conclusion, this volume undoubtedly makes an invaluable and positive contribution to the study of MPL in Africa. And as a result of their collective contribution, the editors and authors have filled a gap that was neglected for quite a while. Their volume has effectively added to the field of Islamic Studies in general and to the area of African legal studies in particular. In fact, anyone from within the social sciences, humanities, or legal studies will find this volume informative and educational. I therefore highly recommend this text for any undergraduate or post-graduate study course that focuses on Islamic Law in general and MPL in particular.

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