Shattering Tradition: Custom, Law and the Individual in the Muslim Mediterranean.

The editors of this volume set out "to present a series of case studies on various aspects of customary law in the Muslim Mediterranean—studies that, taken together, open up a field of debate that has up to now been overly neglected in Islamic studies" (1-2). Five of the contributors are anthropologists, one an historian, one a specialist in Islamic studies, and one in African studies. Their contributions stem from papers presented at several conferences and workshops between 1996 and 2001. The two lead articles look at customary law in the pre-modern Arab world and in the early Ottoman empire. The remaining seven discuss the 20th century and are specific case studies on Saudi Arabia, Somalia, the Hadramawt, the Yemen, and Morocco.

Professor Dostal begins the introduction with reference to the work of the late R. B. Serjeant, whose speculative thoughts on the origins of Islamic law are summarily presented and rejected. My reading of Serjeant's extensive writings on the subject suggests that the problem is less with Serjeant's suggestions than the misreading of them. "There is no evidence to support the assumption of a uniform culture among the pre-Islamic Arabs. There are also no hints at a uniform system of law," argues Dostal (6) quite rightly. He continues, "In view of this, it is apparent that Serjeant's hypothesis of an ancient Arabian system of law cannot be substantiated." But Serjeant never assumed a "uniform system of law," an oxymoron for tribal customary practice, but instead presented multiple examples from the Qur’ān and early Islamic texts that are clearly connected with customary practice (e.g. "The Ḍaʿīf and the Mustaḍʿaf and the Status Accorded Them in the Qur’ān," Journal for Islamic Studies VII [1987] 32-47). The assumption that "the authority of the divine law never left much room for ʿurf" (9) is not true at the local level, as documented in numerous ethnographic studies, including the article by Kraus in this volume. The introduction then proceeds to do exactly what Serjeant is accused of doing, speaking of a generic system of tribal law independent of the case studies (10-12). It is a weak argument to claim the distinction between premeditated homicide and unintentional killing is a customary legal distinction borrowed from Islamic law, simply because this is assumed to contradict the law of talion (11). After this unsatisfying generic essentialization of customary law as a socially evolved product of societies with patrilineal kinship, Dostal summarizes the individual contributions.

Two of the articles focus on customary law of urban markets. Claudia Kickinger draws on earlier research by Haim Gerber (on 17th century Bursa) and Besim S. Hakim (whose Arabic-Islamic Cities, London, 1986 is not included in the bibliography) to survey the role of customary law in urban crafts and trade. She analyzes the 3rd century legal text of al-Mawardi on ḥisba in relation to market activities. In providing a succinct summary of the "guild controversy," she argues...
that “an all-embracing system which, however, cannot yet be called a guild system had already been in existence” before the Ottoman presence (35). The article covers a range of pre-modern urban contexts, from Yemen and Jerusalem to Morocco. Ronald Barghuti examines contemporary legal aspects of the silver market (ṣuq al-mukhlas) in Ṣanʿāʾ, Yemen based on a 1960 document setting out certain regulations for the silver market which had undergone a major change after the emigration of the Jewish silversmiths to Israel starting in 1949. The result was a shortage of skilled silversmiths that enhanced the value of the older Jewish work. This excellent article contains a translation of the document, followed by a detailed commentary, including the qualifications of the ʿaqil (head) of the market, regulations about raw materials, production, licensing and commissions. Barghuti concludes by noting that what were previously customary rules, either written or oral, acquired the status of written law (qanun) in the Zaydi imam’s government.

Tribal customary law is the emphasis of articles by Dostal on the Zahran confederation of southern Saudi Arabia and Wolfgang Kraus on the Moroccan High Atlas. Dostal provides a synopsis translation of and commentary on two documents from al-Makhwa province, dated 1919 and 1927 respectively. The first concentrates on offenses and crimes committed in the market, while the second outlines the requirements for a weekly market in a non-state society. Among Dostal’s observations is one that the documents record women as property holders (126). Of special interest is the discussion of slaves, the abolition of slavery not occurring in Saudi Arabia until a royal decree in 1962 (140-142). Dostal also provides an article on the so-called “saints” of the Hadramawt (extensively studied by R. B. Serjeant and A. Knysh) and contributes observations on the role of the mansib as mediator, from his ethnographic work. Kraus discusses Moroccan customary law based primarily on his ethnographic research among the Ayt Hdiddu in 1985 and between 1995 and 1997. His article examines the relation of custom to Islamic law, written Berber law codes, arbitration, sanction and other forms of social control, inheritance and the impact of the French, who in many respects supported the continuance of customary law.

Ixy Noever discusses legal aspects of gender relations based on fieldwork in the Moroccan High Atlas from 1995-97. She begins with the culturally significant notion of hshuma, a term which connotes both shame and modesty (189), a concept previously analyzed by Lila Abu-Lughod among the Awlad ‘Ali of western Egypt. Noever argues that women’s access to three sources of law (tribal customary, Islamic and modern Moroccan civil law) provides a new element of choice. The article treats female status, marriage and divorce, division of labor and freedom of movement. She argues that, contrary to Western assumptions about Muslim societies, women of the Ayt Hdiddu are free to choose their spouses and to initiate divorce without complications, as well as to obtain their inheritance.

Morocco is also the focus of Franz Kogelmann’s article in which he examines the legal aspects of the Islamic pious endowment (waqf), known as habous in