Muslim Family Law in Sub-Saharan Africa: Colonial Legacies and Post-Colonial Challenges. Eds. Shamil Jeppie, Ebrahim Moosa and Richard Roberts. ISIM Series on Contemporary Muslim Societies. Amsterdam: Amsterdam University Press, 2010. Pp. 388. Paperback. ISBN: 978 90 8964 172 4. $59.00.

The role of Muslim law in colonial and post-colonial Africa has until recently not attracted much scholarly attention from either Africanists or Islamic legal scholars. Earlier works are J.N.D. Anderson's classical survey, *Islamic Law in Africa* (1954), primarily on the British colonies, as well as a few short articles by Schacht. Beyond these, Sharīʿa scholars have hardly ventured south of the desert, while scholars of African Islam have been more concerned with the transmission of Islamic doctrine, the politics of *jihād* and Muslim politics in general. This is understandable as the pre-colonial history of Islam in Africa was so little studied before the last few decades, and pre-modern legal sources from Africa have tended to be normative and discursive rather than informing us how the Sharīʿa was actually implemented.

However, as a new generation of scholars of Muslim Africa has increasingly turned to anthropological methods, or put more emphasis on the colonial and post-colonial periods, this picture is changing. There is an increasing number of studies on the details of Islamic practices, and thus also of legal practices, in sub-Saharan Africa. The present volume on Muslim family law places itself into this research context. It draws together a number of studies of the ways in which colonialism and independence affected the law. The volume is divided into two main sections, one on "colonizing Muslim law," with contributions on South Africa, Kenya, Sudan, Niger, French Soudan [Mali], and Senegal; and a second on the post-colonial state and constitutionalism, covering Nigeria, Kenya, Tanzania and South Africa. These cases will be of interest to all concerned with the nuances and developments of the ways in which Sharīʿa is actually put into practice.

Most of these studies deal with the relations between Muslim law and a state that is not Muslim, but either tolerates or actively promotes some application of Islamic law for its Muslim subjects. In many cases, such toleration or promotion profoundly affects the nature and practice of the Sharīʿa, and it is this effect that is the main concern of most of the articles in this collection.

It may be surprising that the imposition of foreign, non-Muslim rule often led to the Sharīʿa having more impact in African regions than it had before. This is related to the fact that the Islamization of the East African mainland only really began in the 1880s, after the imposition of British and German rule. Previously, Muslims had been found mainly along the coast, as well as on nearby coastal islands such as Zanzibar and Lamu. Muslims and Islam followed the European penetration inland, and the social transformations of urbanization and modernization favored conversions to Islam as often as to Christianity. Even in West Africa, where Islam had grown firm roots over earlier centuries, the imposition of European rule in many places opened a period of the conversion of non-Muslim minority groups to Islam.

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For Europeans, the role of Islamic law was often closely connected to the role they accorded "traditional" leadership. For example, both the French and the British initially had to rely on accommodation with existing power structures, as they understood them, with heavy emphasis on local rulers. The assumption was that when local rulers were Muslims, the law that they and thus the colonial state practiced, was Sharīʿa law.

However, this still left the colonialists with the question of how to categorize the Sharīʿa. Was it to be seen as one of several "customary laws" of the region, or as a single fixed legal system? There was no unanimity on this: in some regions the colonialists considered the Muslims' law as customary law, in others, they assumed it was a fixed and immutable divine law, as expressed in the Muslim law books. In Mālikī West Africa, they would therefore refer to the *Risāla* of Ibn Abī Zayd for answers, while in other areas they might rely on the interpretations of local Muslim scholars. As a customary law, the Sharīʿa was malleable and allowed for considerable local variation. However, it was simpler for colonial administrators to relate to a fixed, known law, so they tended to consider the Sharīʿa as uniform and immutable, regardless of the flexibility that may have been practiced in pre-colonial times. Thus, the editors of the volume note that through colonialism, the Sharīʿa was transformed from norm into law.

The chapters cover most Muslim regions in Africa, both francophone and anglophone. Reading them makes it clear that there can be no uniformity in the legal position of Muslim communities, which vary from a preponderant majority in Senegal to a minority in South Africa. For the latter country, which has had a notable Muslim community since the 17th century, the articles by Shouket Allie and Ebrahim Moosa put the apartheid and post-apartheid era in focus. Muslim religious marriages took place but had no legal status, making the children illegitimate in the eyes of the South African government. Even today, the debate about finally introducing a Muslim personal law has opened up divergences in the Muslim community; scholars of Deobandi inspiration prefer to keep Muslim marriages private and unregistered rather than accepting the limitations on polygamous marriages and other amendments, e.g. to the division of property after divorce, that the law proposed.

In East Africa, it is the nature of the courts that differs. While Kenya, discussed by Abdulkader Hashim and Susan F. Hirsch, allows a separate Muslim court (in the local spelling, a "kadhi court") to handle family matters for Muslims, mainland Tanzania (Robert V. Makarumba) does not, in spite of its significantly larger Muslim minority. Only Zanzibar has Muslim courts. On the mainland, Muslims must use state courts, which means that these are often less utilized by Muslim parties. The court uses a council of shaykhs, "Bakwata," for opinions, and often also refers to them to mediate and settle cases involving Muslims. As the Bakwata is not a state, but a civil society body, it has often imposed conservative interpretations that are then accepted by the state. In Kenya, on the other hand, the Muslim qāḍīs who are civil servants with secular training tend to favor women's claims rather more than is the case in Tanzania.

The articles on francophone Africa (by Richard Roberts, Ghislaine Lydon and Barbara M. Cooper) all deal with the colonial period, when the French-instituted

Muslim tribunal practiced what Lydon calls "colonial *Kadijustiz*". The tribunal was much used by women, because there, particularly in cases of abandonment, they could obtain a divorce from absent husbands. This became the primary type of case before these tribunals, reflecting important socio-economic changes in colonial Senegal.

The articles in this collection give only snapshots of situations that vary greatly, not only over the time period covered, but also from country to country, and even within countries. Thus, they all open avenues for further research on individual cases and countries. The fact that the authors' preponderant interest is on the relationship between state and legal institution leaves further room for more detailed studies on processes in the courtroom or on the relations between the wider Muslim communities and the courts, not to mention between Muslims and non-Muslims.

Some aspects of the study of Muslim law in Africa will be unfamiliar to students of the Muslim heartland. The marginal position of Muslim groups, as minority or majority, may be specific to Africa or to each case. That the colonial states favored a law they did not understand or fully condone perhaps led to internal changes that have parallels elsewhere. While Muslims minorities in modern states is not specific to Africa, some of the implementations of Muslim family law in African states may be. Nonetheless, the underlying problems should be recognizable for any student of the Sharīʿa, and the dynamism of the kinds of development highlighted in this collection shows Islamic law in Africa to be a fertile field for further study that should not be confined to Africanists alone.

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