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1 An ongoing debate in African and Islamic studies has been centered on the role played by Islam, and particularly "normative" Islam, in the remote regions of the Sahara. Some consider that Islamization must have been shallow, a thin cover over practices that reflected local custom, not "Islam proper." Others point to the great production of religious and legal texts from a wide class of scholars in many of the desert oases and the desert edge, from M'zab in the north to Timbuktu in the south. But that, say the critics, may just have been intellectual exercises divorced from reality, scholars sitting in "ivory towers" while local custom dictated social practices.

2 One way of testing this is to look at the legal history of these regions. The desert oases were on the margins or outside the reach of the states surrounding the desert, so legal disputes would have to have been settled locally. This explains why many of the manuscripts that we find in the region deal with *fiqh,* the jurisprudence of Islamic law. But does this literature reflect a local reality, or were they only just parts of, and

perhaps just copies of, theoretical discussions that took place in the central Muslim lands?

3 In this monograph, I. Warscheid begins to answer these questions by studying a body of pre-modern legal literature from the Tuwat (Touat) oases, today in southwestern Algeria.

4 Until now, existing studies on this region have focused on Berberophone oral sources, which were seen as "internal" to the oases, while the written texts were considered "external." The scholars who wrote them were assumed to have been outsiders that had settled in the oases, but with little interaction with or impact on the customary law it was assumed was practiced there. However, Warscheid convincingly demonstrates that this was not the case. The literature preserved from Tuwat shows the existence of a continuous and vibrant intellectual tradition of Islamic scholarship going back to the thirteenth or fourteenth centuries. The scholars were indigenous to the region, and appear as deeply embedded into its social fabric.

5 Tuwat is not a single oasis, but an oasis region with more than a dozen villages or towns *(quṣūr, ksour).* Most of these had established Islamic Sharia courts that worked independently from each other, each with its own judge *(qāḍī),* but also structured with a "high judge" *(qāḍī al-jamāʿa)* as supreme. This is in accordance with the standard structure of Islamic courts. More interesting is to what degree the regular pre-modern duality of the Islamic legal institution could also be found. In the Shari'a court system, the judge, *qāḍī,* and the jurisconsult or legal scholar, *muftī,* had complementary roles. The judge decided the verdict for any individual case, while the jurisconsult advised on the content of the law. Any party to a case, or a judge in doubt, could approach the jurisconsult for an opinion on the correct interpretation of a rule a law, while only the judge could apply it. Earlier scholars assumed that this *muftī* institution was weak or absent in the desert regions, as they would have little use for it if local custom was the basis for legal practice.

6 Again, Warscheid finds that this was not the case, and it is these legal opinions that are the source and basis for his research. We do not have access to court records, the actual decisions of the courts, before the modern period. Nevertheless, legal opinions were preserved. Such opinions were always in writing and responses to specific questions in individual court cases or disputes. However, the written opinions of particularly well-renowned jurisconsults were preserved, and in many cases collected and reproduced, often by their sons or other family members. Many of these have been preserved to this day; Warscheid suggests that about one hundred such collections have been found in the Sahara. For Tuwat, he bases his research on about a dozen collections spanning from about 1700 until 1830, although some of the cases described also stem from the seventeenth century.

7 Technically, there is a distinction between two genres of such texts. One is the *fatwā,* a normative statement given by a *muftī* to clarify an obscure legal point. Another is the more general report on a legal case, with the jurisconsult's comments and views, *nāzila* (pl. *nawāzil*), or answer to a query (*jawāb,* pl. *awjiba*). The *fatwā* has a stricter form, thus the query should in theory, at least, be anonymized and generalized: if A does B in circumstance C, what is the law? The *nāzila,* on the other hand, would be a more detailed description of the facts surrounding the actual case. In the Sahara, however, Warscheid finds that this distinction is not made. The works are generally known as *nawāzil* or *awjiba*, but clearly functioned as *fatwās*, for example in that a party that was

dissatisfied with a court's decision could raise the issue with the jurisconsult, as a form of appeal.

8 There is also some anonymization of the parties, but only sparingly when there is need to avoid further conflict or the like; the editor will say then that "the jurisconsult mentioned the name which we omit here." Thus, the collections we have did go through some editing and selection, we cannot say that these were the totality of *nawāzil* from the particular jurisconsult, only that it was what the collector found worthy of preserving. But they do not otherwise appear to have gone through the kind of abstraction we can find in later *fatwā* compendia, where only the "legally relevant" points are preserved. Here we most often find a detailed presentation of the history that led up to the conflict: *i.e.,* a man owed his neighbour a sum of money, but left the oasis without paying up. After some years, the neighbour went to the judge and claimed some of the debtor's garden as recompense. The neighbour's sons and heirs protest, but the judge decides: the creditor can take the disputed garden. A while later, a relative of the debtor goes to the jurisconsult and asks his opinion about the legality of this procedure.

9 The jurisconsult was thus an independent scholar, while the judge was an officer of the court, which means that the judge had the weight of the state to back him up and implement his decisions. However, while Tuwat was at this time theoretically within the area ruled by the Moroccan sultan, state power was light if at all present. The judges collected some taxes, and there were occasions where the sultan made his opinions known by letter but, by and large, the oasis ruled itself. So, what was then the basis for the judge's authority? Who appointed him in the first place?

10 It appears that the position of judge was largely hereditary and passed automatically from father to son. The sultan could formally appoint a member of the family early on, or such appointment could be made long after the fact. The sultan encouraged such arrangements, and it would appear that the oasis dwellers also accepted the authority of the judge-families, although there may have been disagreements as to *which* village-judge a case belonged, thus reflecting some rivalries between judges and villages.

11 Tuwat, while far into the desert, was also not at all isolated as trans-Saharan trade was one of the main economic bases for the oasis. Many of its religious scholars had also studied in Fez or other scholarly centres and gained scholarly legitimacy through this. The scholarly families thus represented an intellectual class, and they cooperated in scholarly "councils" *(shura),* but also frequently bickered between families or scholars.

12 In addition, each village also had a council of local notables, the *jama'a* that could make decisions. They did not have authority to try cases, but could, if necessary, take over a judge's functions if there was no judge present in the village. If so, the *muftī* or legal scholar, often then sitting in another town, could function as an instance of appeal.

13 As for the types of cases that were included in the *nawāzil* collections, they are mostly about property; inheritance disputes, conflicts over sale and similar, and very often connected to family disputes. Penal law, crimes and such seldom appear, nor do disputes concerning the division of natural resources or agricultural land. As many cases concern family property, it is natural that women also play a significant part. They go to court to sue their husbands, or their families, or others for their rights. Mostly, they also appear in person, although a few women did approach the court through family members or other representatives, which opens the question of whether there was conflict between husband and wife, or their families behind them.

Mostly, however, the court cases show clearly that the courts were arenas of women's agency in the pre-modern Islamic world of Tuwat.

14 The *nawāzil* show that the legal scholars were closely integrated into their community. That opens up another long-standing discussion: does the judge (and the *muftī*) try to impose an "imported" set of Islamic legal rules, or does he work more as a social agent; seeking out whichever solution does most good to the community and he finds fair for the parties, irrespective of what the "books" say. Both positions are found among scholars of Islamic law in the Maghreb.

15 Warscheid takes somewhat of a middle position between the two. It is clear, he says, that the legal scholars work on the basis of the established rules of Islamic jurisprudence as they always argue from and justify their opinions within the same system of Islamic legal discussion you can find anywhere in the Islamic world. At the same time, they make an effort to use the concept of custom, *'urf,* to make these general laws fit the social reality in the region. In Islamic legal scholarship, the rules of *fiqh* are universal, but their application can or must, under some circumstances, be adapted to local conditions. An employer must give a worker "fair wages," and a landlord claim only "fair rent" from his tenants. But what "fair wage" and "fair rent" mean is not settled absolutely since these must be decided on the basis of local practice and circumstance. This kind of opening is clearly used actively by the jurisconsults of Tuwat. They are not indiscriminate in their distinction between *'urf* custom, which is what conforms to the principles of Islamic law, and *'āda* custom, which are local customs that cannot be integrated into the legal argument.

16 For Warscheid, this adaptation of custom to Islamic law, or even more, adaptation of Islamic law to social reality, is the core function of the *nawāzil*. What they do is to "déchiffrer le social pour le convertir en normatif" (p. 267). This is a central conclusion to his work, and if one could make one further wish for this outstanding book, it would be that the author develop the concepts of *'urf* as used in the Tuwat *nawāzil* a bit more comparatively, including the wider discussion of the role of *'urf* (and *'āda*) in Islamic law. He touches upon it, but it is a far-reaching and very important issue, also outside of the Maghreb.

17 This work is a fascinating study that at the same time addresses a number of important, and controversial, topics such as how a peripheral desert community represented strictly codified structures, for example, an Islamic court and the nature of "state authority" (the court) in a non-state society; and the relation between Islamic norms and social reality on the margins of the Muslim world. There are few if any studies of pre-modern Saharan society that have in this way combined Islamic scholarship and social history. Warscheid's book will become required reading for anyone interested in the history of the Sahara, and should also be central as a comparative case study for those working on Islamic law, scholarship and society south of the desert.