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CONGRESS

Middle East and Muslim Worlds
Studies

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Panel 26

Fiqh and normative practices in the medieval and modern Muslim world

Muslim jurists (fuqahā') of medieval and modern times, by establishing a legal doctrine in line with the hermeneutics of their madhhab, elaborate a legal corpus to organize according to their vision the society or community of believers from which they come or with which they have links of geographical proximity. In order to do so, they sanction and repeal certain rules in force, but also formulate new ones according to the needs or fears of the moment. Hence the existence, in Islam, of Regional Schools of Law, whose members speak the law and theorize the conditions and means of its application about the local cultural context, whether in metropolises, peripheral towns or rural areas. By questioning the role of normative practices in the elaboration of a corpus of fiqh, this workshop seeks to address the development of Islamic law and legal institutions in an anthropological approach. The objective is to examine how the customs and habits of communities, be they family, tribal, religious or political, relate to normativity in the Muslim East and West at different periods.

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Program

Pfeiffer Athina (Highschool Galilée)

Local customs and Ismaili law in Ifrīqiya

Studies on the formation of Ismaili law in Ifrīqiya mainly rely on Da'ā'im al-Islām, a major work constituting the culmination of a long process of legal systematization carried out by the Qāḍī l-Nu'mān under the aegis of the Fatimid caliphate. This paper aims to address one aspect of this process based on an unpublished legal text, the Aḡwibat al-Qāḍī l-Nu'mān (Answers or fatwas of the qadi al-Nu'mān), preserved in recent Ismaili manuscripts. The Aḡwibat report exchanges and consultations between al-Nu'mān, Fatimid head of justice in Ifrīqiya, and the representative of a Berber tribe from the mountains of Great Kabylia converted to Ismailism. Al-Nu'mān's legal opinions in this text sometimes contrast with the legal phraseology of the Da'ā'im and question the extent to which local customs in the Ifrīqiyān rural milieu influenced the Fatimid legal production.

Rapoport Yossef (Queen Mary University)

Was there a tribal customary law in pre-modern Islam? The case of the disinheritance of women

Our knowledge of customary tribal laws in the Middle East is almost solely derived from modern observations. Despite that, the supposition that modern customary law is frozen in time, weathering centuries upon centuries of Islamization, hasn't been questioned by historians of pre-modern Islam. Taking as a case study of the disinheritance of women, this paper will demonstrate that references to

customary disinheritance of women are not common in medieval sources, and do not appear at all before the thirteenth century. The absence of references to the disinheritance of women in Islamic sources up to the thirteenth century raises the possibility that it was not a remnant of a pre-Islamic, 'Jāhili' past, but (re-)emerged only in the later Middle Ages, at least in some social contexts. Moreover, the concept of 'Bedouin customary law' was itself an innovation that occurred under Islam, intrinsically linked to the legal order of Islamic states.

Halawi H. Wissam (University of Lausanne)

Druze intra-community marriage: religious law or rural practice?

The Druze marriage law establishes the strict obligation of intra-community marriage, in other words, only the marital union between two Druze people is authorized by both pre-modern and current jurists; mixed marriages are therefore strictly prohibited. Druze historiography has always attributed this legal doctrine to the founders of the movement in the 5th / 11th century, while it first appeared in juridical treatises in the 9th / 15th century. In this paper, I show the close link between the development of substantive Druze law and the elite sunna (good practice) of emiral families, then constituted in clans within the Syrian mountains. The legal prohibition of mixed marriage took a new turn in the 11th / 17th century when Druze jurists authorized the law of retaliation against women, which resulted in the legalization of their killing. Under the new influence of rural customs, jurists sanctioned a social practice in contradiction with their sole source of law, i.e. the legal Druze corpus of the 9th / 15th century.

Voguet Élise (IRHT-CNRS)

The rights of women in the bādiya: the case of interaction between Bedouin customs and Māliki law in the rural Maghreb (14th-16th century)

The collections of Māliki fatwas from the late Middle Ages (al-Wansharīsī, al-Māzūnī, al-Sijilmāsī) contain several cases concerning Bedouin women and their claimed rights: that of inheritance, the right to have their own income, the right to access to land property, their rights in family law ... These cases show that a permanent dialogue existed between Bedouin usages - or those described as such by jurists (al-'urf wa-l-'āda fī l- bawādī, 'ādat nisā' al-bādiya) - and the Māliki fiqh they elaborated between the fourteenth and sixteenth century. What was the attitude of these jurists to the claims of women, which were in harmony with practices rooted in community affairs? How were these practices and claims considered in Maliki legal jurisprudence? What was the influence of these interactions on the normative framework establishing the rights of women in rural areas?