

Law in Muslim Contexts

November 17-18, 2005

AKU-ISMC

Post-Workshop Report

Introduction

The Aga Khan University-Institute for the Study of Muslim Civilisations (AKU-ISMC) held a two-day international workshop titled *Law in Muslim Contexts* on 17-18 November 2005, in London. Its aim was to explore the themes of law in Muslim context as a possible start of its research programme.

The workshop was attended by scholars working on various aspects of law in Muslim contexts. Participants came from a number of countries including: Canada, France, Germany, Indonesia, Iran, Malaysia, Morocco, Norway, UK, USA, and Yemen. The workshop consisted of a keynote address, papers and discussions on three topics, as well as a plenary discussion on AKU-ISMC's research programme on law in Muslim contexts.

Proceedings

The views contained in this report are of individual workshop participants, and may not in all cases reflect the view of AKU-ISMC.

AKU-ISMC's Director, Dr. Abdou Filali-Ansary welcomed the participants and introduced the aims of the workshop. He discussed the centrality that law has had in Muslim history. He also noted that in the contemporary world law in many instances has become the face of Islam to non-Muslims. However, despite the importance of law in Muslim contexts there are many areas about which we have very little information. In particular he noted the dearth of research on the practice of law. The lack of an empirical approach, he suggested, was one of the contributors to the reification of Islamic law. The workshop, he said, was thus an important step forward in identifying areas of future research.

The plenary lecture was delivered by Professor John Bowen of Washington University in St Louis. He spoke on 'Islamic norms, pluralism, and principles: a challenge for political theory and legal change,' stating that there was an insufficient political theorising about normative pluralism with respect to religious traditions generally, including in Islamic contexts. Dr. Bowen explored the interconnections among Muslim debates on three topics: justification for normative pluralism; recourse to distinct levels of normativity; and, responses to 'extra-Islamic' challenges such as gender equality. One of his insights that continued to reverberate during the workshop was that many conflicts are between normative systems and within and amongst individuals rather than between groups.

Dr. Filali-Ansary chaired the session on *Co-existence, conversations and conflict – fundamental issues of legal plurality*. Papers were presented by: Dr. Norani Othman from Malaysia on 'Islam, Islamic laws and the state in Malaysia'; by Dr. Syafi'i Anwar from Indonesia on 'The implementation of Sharia in a pluralist society: the case of Indonesia'; and, by Saeed Edalatnejad of Iran on 'The status of non-Muslims in Shiite tradition and Iranian law: a comparative study'.

Norani's paper explored the uneasy co-existence between common law and Sharia law in Malaysia through her focus on freedom, gender rights and the rights of non-Muslims. Malaysia provides an interesting case for understanding the genesis of the Islamist movement as it gained prominence during the successful economic development policies under Mahathir Mohammad. She drew parallels between the Islamic fundamentalists or political Islamist movements in Malaysia and those in Arab and other Muslim contexts.

Syafi in his presentation noted that given the pluralistic historical context in Indonesia, the strong demand for imposing Sharia has raised serious concerns. Unlike, Malaysia, the rise of radical Islam in Indonesia has coincided with ongoing economic turbulence, a weak state and an uncertain political condition. He argued that two distinct paradigms of approaching political Islam are visible: legal-exclusive and substantive-inclusive. The former considers Islam to be a universal ideology and thus applicable to all aspects of life, including politics. The latter asserts that Sharia should remain in the realm of beliefs and not interfere with the political system. Dr. Syafi suggested that Islamic political concepts could be understood as 'theories' of implementing Islamic virtues. He concluded that while the voice of intolerance is present in Indonesia, the nation's strong pluralistic character, history and peaceful disposition will eventually marginalise it.

Saeed Edaltnejad in his paper explored the relationship between traditional Shii fiqh and modern legal codes as they have interacted in Iran since the early part of the twentieth century. He noted some key philosophical differences between the two: for instance, in fiqh the divide is between Muslims and non-Muslims while in modern law the difference is between citizen and foreigners. He argued that one of the challenges in the Iranian legal structure is the incongruent communications across groups holding these two approaches. In his view this hybridity is being discussed in Iran today and the outcome of this debate is likely to have long term legal, political and social implications.

An important point made during the discussion on the above papers was that the modern and traditional legal frameworks are increasingly at loggerheads in many Muslim contexts. It was argued that unless a rethinking of the entire paradigm is attempted, the battle is likely to continue with no one approach achieving decisive victory.

The second thematic session was on *Law, legal practice and gender* and was chaired by Norani Othman. Papers were presented by Professor Baudouin Dupret from France on 'The practice of judging: The Egyptian judiciary at work in a personal status case'; by Dr. Musdah Mulia from Indonesia on 'Counter legal draft of the compilation of Islamic law'; and, by Natach Thys from USA on 'Trade is a women's issue'.

Dupret's talk portrayed law at work in the Egyptian parliament. Through an incisive analysis of the legislation process on personal status law – on *Kbula* – he argued that terms such as Islamic versus modern law or secular versus religious are often unable to capture the reality on the ground where people cross boundaries signalled by these terms with ease. The operation of legal concepts in practical and situated contexts is far from the neatness conveyed by generalised terms such as Islamic law. He argued that the question 'what is Islamic law?' should be substituted by 'what do people do when referring to Islamic law?'

Mulia's presentation showed the conceptual background and the process of the drafting of the marriage law in Indonesia. She stated that Indonesian law on marriage

systematically discriminated against women, a concern to many people, particularly women. In order to review the law and propose an alternative, a Counter Legal Draft was developed based on the idea of equality of genders as understood through a fresh reading of Islamic sacred sources and history. This attempt was presented as a case study of new Islamic legal interpretations emerging in the Muslim contexts today.

Thys's presentation demonstrated the impact of legal structures on the lives of working women through a case study of the agricultural industry in Kenya. After discussing the harassment and discriminations faced by women, she narrated the efforts being made to change the situation through creating alternative legislations to protect women. She noted that cultural traditions play an important role since the situations that are viewed in one culture as harassment are often accepted in another culture as acceptable. Thys stressed the role that international trade agreements could play in providing better working environments for women.

The third thematic session was on *Law, legal practice and poverty*. Chaired by Baudouin Dupret, the session consisted of presentations by Professor Ulrick Rebestock from Germany on 'The instrumentalisation of zakat for development goals: A Mauritanian experiment'; by Dr. Driss Khrouz from Morocco on 'What can law do to fight against poverty?'; and by Dr. John Veit-Wilson from Norway on 'An Introduction to CROP (Comparative Research Programme on Poverty)'; and, a book review by Dr. Sonja Brentjes from AKU-ISMC.

Rebestock focused on the Mauritian state's attempt to employ a traditional Islamic charitable practice to combat poverty in its modern form. His conclusion was that while the experiment cannot serve as a model, it must be appreciated as a serious joint attempt of a state, Muslim jurists and international development agencies to fulfil the requirements of one of the most impoverished countries. In his opinion, though this particular attempt may not have been successful, it showed the possibility of bringing various practices and institutions together to fight against poverty.

In his presentation, Khrouz's noted an attitudinal shift towards poverty. Poverty conceived for centuries as a natural phenomenon is less and less accepted today. It is now seen as an eradicable phenomenon. He discussed various legal steps taken in Morocco to alleviate poverty as well as the shortcomings of these endeavours. In his opinion, a major problem was the lack of follow-up and assessment of actions.

Veit-Wilson's presentation introduced the work of a Norwegian NGO called CROP, an extensive international and multi-disciplinary research network. It can be seen as a response of the academic community to poverty. Among its main objectives are the use of the social sciences to better understand poverty in a global context and the comparison of various theoretical models.

Brentjes's review of 'Poverty and the Law' edited by Asbjorn Kjonstad and Peter Robson discussed poverty as a global issue and showed various research approaches being adopted. Her overall assessment was that the field of law and poverty is still in embryonic stage.

AKU-ISMC and research on law in Muslim contexts

While all the above sessions discussed new research on law in Muslim contexts and pointed to the lacunas, the last session of the workshop was dedicated to discuss research areas and pathways for AKU-ISMC's contribution to this subject.

The session was chaired by Dr. Moncef Ben Abdeljelil. Participants came up with a large number of ideas that can be broadly classified under the following headings: research aim and methods; organisation and operational aspect of research; and, possible programmes and projects. (Please note that the discussion did not proceed under these headings. They have been generated later to organise ideas expressed in the session.)

Research aims and methods

There was a discussion about the overall aim of research in the area of law in Muslim contexts by AKU-ISMC. Some participants divided research into academic and activist/advocacy types where the former was seen as basic research with an aim to better describe and/or understand of the subject matter while the latter was seen as research with an emancipatory/critical outlook. While there was a general consensus that some distinction can be made between these two types of research, it was also argued that academic rigour should be the hallmark of both. Many felt that as a university, AKU-ISMC must adhere to scholarly standards in its research. If the outcomes serve the purposes of advocates/activist then this could be seen as a by-product.

While both empirical/casework as well as theoretical analysis were proposed as methods that AKU-ISMC should consider, some participants had preferences for one or the other method. Others were of the view that such a divide was unhelpful since theory and practice cannot be approached compartmentally. They argued that the process of theoretical refinement through empirical findings and a more nuanced understanding of the practice through conceptual analysis must go hand-in hand.

The need for applying methodologies of social sciences, both to past and present legal contexts was stressed. It was felt that there is a dearth of anthropological and sociological works on law in Muslim contexts. In this regard an overall inter-disciplinary orientation was suggested.

Some participants noted that while the workshop was on law in Muslim contexts, almost all the presentations and discussions focused on areas that are conventionally associated with 'Islamic law': this included personal law and elements such as charity. This stress was seen as an indication of how the field is generally understood even among scholars. It was thus argued that the idea of law in Muslim contexts rather than Islamic law should be considered as an overall framework for promoting research. This perspective might help promote studies into commercial, criminal, international and other branches of law within Muslim contexts.

Finally, the need for adopting a comparative approach was emphasised, including across various Muslim contexts, different time periods, as well as across Muslim and non-Muslim contexts.

Possible programmes and project

It was suggested that the two topics included in the workshop – law and gender, and law and poverty - could serve as programmes for engagement with law in Muslim contexts. A

definite number of projects could be developed under each of these themes. It was felt that the choice of these two topics would have the additional advantage of being related to each other, as the connection between poverty and gender was noted in many places.

Several projects related to law and poverty were suggested. These included the study of enforced labour across various Muslim contexts; case studies of law's impact on poverty alleviation programmes; the impact on poverty of legal frameworks that promote privatisation; biases of legislations in favour of or against various economic classes.

Similarly, many projects concerning law and gender were proposed. These included the comparative study of law and gender across various Muslim contexts; construction of gender in various legal systems; co-existence of 'Islamic' personal laws and secularised laws with regard to gender; law and gender in specific areas such as public health, education and employment.

The question of legal pluralism was seen as needing further study. In this regard the plurality within Muslim legal traditions as well within national boundaries was seen as possible area of study. The issues of compatibility as well as tension generated as different legal systems sought to co-exist could be an area of fruitful research. Study of historical periods where legal plurality could be found was also recommended. Tensions between the *Ulema* and legal scholars working within modern frameworks was also suggested.

It was proposed that the study of the success of the *Ulema* in giving legality a central place in Muslim religious discourses, in the past as well as today should be explored. This was linked to the possible study of systems of legal education. These include traditional institutions such as madrasas, law schools, as well specific initiatives in the training of legal scholars (*qadis* and *muftis*) such as those by the Muslim College and DFID. A study of the processes of the making of legal education was also suggested. This would include the study of reforms in legal education.

An area of study that gained wide agreement from the participants was law in practice. This was seen to have both historical as well as contemporary dimensions. Several specific ideas were expressed including the study of alternate dispute resolution mechanisms; informal legal systems such as the *Jirgas* in many tribal areas; the workings of informal Sharia courts in Muslim minority contexts such as the UK; the role of legal scholars in providing legal advice on a day-to-day basis; the role of print and electronic media in promoting legal stances; and, sources of legal information for lay Muslims.

The discussion of the above mentioned legal structures that operate outside the state framework generated an interesting debate which touched upon the types of research noted in an earlier section of this report. Some participants cautioned that these alternative structures often perpetuate traditional biases against certain groups, particularly women, and thus their study must ensure that they are not legitimised simply because they were traditional and alternatives. The perspectives of equality and justice must provide critical viewpoints in carrying out such studies.

The role of law in promoting or discouraging civil society and values such as tolerance and pluralism were also highlighted for studies. In this regard a study of the legal construction of the 'other' was recommended.

A related area of investigation proposed was the law in relation to minorities both in Muslim majority and minority contexts. In this regard tensions between traditional fiqh categories of Muslim/non-Muslims and modern legal categories of citizen/foreigner were seen as productive areas of study.

Concluding Remarks

In his concluding comments Dr. Abdou Filali-Ansary noted that many of the issues raised during the workshop could be linked to the question of language. He said that in the late nineteenth and early twentieth centuries attempts at ‘code-switching’ were made where by many Muslims were seeking to reformulate the language of modernity in their traditional conceptual frameworks. This attempt, he argued, was aborted and hence today we are still finding ourselves in the same dilemmas. He saw the work done in the workshop as a useful way forward.