Islamic Law in Africa Conference – Dakar 2001

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The Centre for Contemporary Islam (CCI), a research unit based at the University of Cape Town convened the second ILAP conference held in Dakar, Senegal, from the 29th June – 1st July 2001. The Islamic Law in Africa Project (ILAP) which is being conducted by the CCI is now in its second year. Papers presented at the Dakar conference concentrated mostly on countries in West Africa, although not exclusively. More specifically, studies were conducted on the following countries: Mauritania, Morocco, Niger, Eritrea, Nigeria, Mali, Senegal and finally Togo. In addition to regional studies, a few papers dealing with general themes in Islamic law in Africa were also presented.

I would like to reflect upon this conference by posing the following question: How do we reconcile poetics, or performance, of the Law with the politics, or implementation, of the Law? Especially when the Law itself is plural. From the opening session Law in West Africa was qualified as a dual system. Muslims from colonial times to the present have experienced a legal system with an Islamic and personal component as well as a Western and constitutional component. In addition, discussions in many papers touched on a third system, i.e. customary law.

We have now reached a point where we need a much broader, and also more complex

way of talking about Muslim Personal Law (MPL). We might go forward by going back. I would like to go back and revisit 2 important points that Dr Ebrahim Moosa charted as a legacy from the 1st Symposium on Islamic Law in Africa, held in Dar Es-Salaam last summer (2000).

These were:

1] How do we reckon with MPL as discursive performance, that is, how do we see it as performance which has its own ideal or aesthetic form that we can never match in any human society or at any point in present or future practice?

2] At the same time, how do we see MPL as an ambiguous instance of complex processes in which politics is evident? MPL is ambiguous because political space never allows for, or certifies closure, and so MPL as politics competes and compromises with the poetics or the ideal of MPL, even as it presupposes that ideal for its effective function.

From this double lens of poetics and politics, performance and compromise, what do we take forward from some of the papers presented at this conference?

The citizenship of women is the title of Asmau Joda's paper; it is also her analytic lever. Through it she already places woman in public space, as equivalent to men in claiming rights and exercising responsibilities under the Constitution. That is the poetics for Asmau; it derives from the Nigerian Constitution, even as it wrestles with the pragmatics of a MPL weighted toward men and also takes account of a polyphonous diversity among Nigerian Muslims, varying not just from region to region but also from town to town.

For Simeone Ilesanmi poetics was also foregrounded, and for him too it was the poetics of constitutionalism. In a paper that opened out many perspectives on MPL in contemporary Nigeria, one that recurred was the space between the constitutional ideal, or constitutionalism as a holistic concept, and the actual constitutions of particular states. What came up, especially in his response to subsequent questions, was the need to trace the procedure, the muddled historical process often contaminated by deceptive power politics involving but not limited to the Nigerian military. It is this shadowy process, far from the lofty aesthetics of constitutional theorists and drafters, that produced a dizzying array of constitutions in colonial, then post-colonial Nigeria. The role of scholars as well as the media muddles the process still further, as certain American academics, David Laitin chief among them, have made of Africa a model of protracted political friction, one where incommensurate internal differences continue to play out as inter-religious strife or outright war.

The Honourable Justice Mustapha Ambali proved himself adroit at combining scholarly enquiry with practical insight. Though enthralled with the poetics of the shari'a, he took us through a history of British engagement with MPL that was as instructive as it was broad brush. Of special note was his accent on the role of the British in amalgamating North and South in 1914, and also in introducing indirect rule into both differently. Not only did British administrators find it easier to implement shari'a in the North than in the South, but throughout the colonial period Islamic law enjoyed full implementation - in its penal and criminal as well as its civil dimensions - in the North.

If Justice Ambali's was the poetic performance of the Shari'a, then its compromising politics was made evident by Asmau. She questioned the aftermath of introducing Shari'a. When the state embraces shari'a, she noted, it also creates shari'a Courts. It becomes politicised, and though no one announced the penal part in advance, soon after its introduction that part becomes highlighted, which brings up a further question: if you cut hands, where is the argument for Islam as justice (or peace or love)? Consider the criminal Muslim bureaucrat: if one who steals a cow has his hand cut off, should not one who cheats by cheques also suffer corporal punishment?

For Prof. Richard Roberts poetics was the poetics of a dual court system that had unintended consequences, working better for Muslim subjects of French Sudan than the colonial administrators who introduced both citizenship and subject as separate, though parallel, domains could have imagined. Dr Mohammed El-Mansour caught a critical aspect of Richard's essay when he noted that West African Muslims were able to reconcile different forms of law. Finding compromise at the interstices of tension between local and regional, between indigenous and French values, they were able to resort to native or to customary/Islamic courts depending on what they sought and how they could best maximise their own outcomes.

Richard also introduced the aesthetics of graphs which, even without regressive analysis, enlivened and clarified his very rich exploration of local court records in turn of the century French West Africa.

Two other papers also reflected the tension between poetics and politics. Both Fatimata Djourte and Hadja Assa Diallo looked at Mali but with different templates. Fatimata scanned internal evidence about Muslim marriage, demonstrating how local practices victimised women in ways that framers of MPL could not have intended. Hadja Assa demonstrated convincingly how the structures of international law, including conventions for the provision of women's rights, are not an invention of the West or the imposition of its values on Malian women, but rather the complementary reflex to the age old search of women for greater self-expression and freedom within a pluralist Muslim world view. Hers was a poetics that embraced politics as the preferred modus operandi for West African Muslim women.

Beyond this brief, and too cursory, summary, I would be remiss if I did not highlight at least two important questions that came up in discussion. Both linger. Both call for more sustained attention, whether now or in subsequent deliberations about MPL. The first comes from Cheikhou Diouf. He questioned a key term that we have used repeatedly throughout this symposium: post-colonial. "Does post-Colonial imply a temporal break?" he asked. It may be, he suggested, that what comes after the colonial is not an actual break. If it be colonial by another name, then it is important to see the continuity and hybridity between colonial and post-colonial.

In listening to him, I was reminded of Frantz Fanon's argument in *Black Skins, White Masks*: the old, European regime may have exited but its habits and structures, its preferences and distortions are continued by native rulers who are not less colonial for

being African rather than European. If Fanon's judgement persists, and applies to MPL, then perhaps several of the papers given here should be retitled, e.g., Religious Law and Customary Law in Neo-Colonial Mauritania for Yahya Ould el Barra's paper, or Christians and Muslim Law in Colonial and Neo-Colonial Niger. If not in the paper titles, then certainly in the summary or prefaces to the overall conference themes one must account for the elision between the post-colonial and the neo-colonial.

Finally, there is the point that Dr Shamil Jeppie raised with laser-like intensity as part of his response to Richard's paper: Why is it that in Sudan and Nigeria, both of them post-British colonies, shari'a is being pursued most vigorously as part of current political discourse, while in Francophone West Africa the accent is on MPL but not on shari'a per se. That is, it encompasses the arc of civil law but does not range into criminal or penal law. What historical experience or contemporary choices of post-colonial political actors might reflect the neo-colonial trajectory of variant British and French styles of engagement with the culture and practices of their Muslim subjects?

The second ILAP conference sets up a very interesting and challenging platform for the final leg of the project that is to be held in Cape Town in 2002. We will undoubtedly once again be forced to grapple with what seem to be recurrent themes in Islamic Law in post (neo) – colonial Africa.