

# Reviews

**Visions of Justice: Shari‘a and Cultural Change in Russian Central Asia**, Paolo Sartori, Leiden and Boston, MA: Brill, 2016 [Handbook of Oriental Studies 8, Uralic and Central Asian Studies, vol. 24, ed. by Nicola di Cosmo], ISBN 978-90-04-33089-4 (hbk), ISBN 978-90-04-33090-0 (ebk), xvi + 392 pp.

At the core of *Visions of Justice* by Paolo Sartori lies a multifocal study of a wide range of unpublished legal and administrative documents in Persian, Chaghatay, Arabic and Russian from several archives of the Republic of Uzbekistan, mostly from the Central State Archive and the Institute of Oriental Studies in Tashkent. The bulk of these documents cover various aspects of Islamic law enforcement practices and legal proceeding techniques in the territories of the Khoqand Khanate, the Khivan Khanate and the Bukharan Emirate before and after the Russian colonization of Central Asia up to the beginning of the Soviet period (1750–1920). Selected primary sources are examined in the book with a task to outline “the emic perspective” (pp. 13–16) of understanding transformation processes in the *shari‘a* judicial system of the Central Asian domains incorporated into Russian Turkestan in 1865–73 and administered under a special legal regime according to a series of imperial statutes (1865, 1867, 1886). The results of this research, based on a meticulous investigation of archival records pertaining to particular lawsuits, are twofold: an in-depth analysis of the mechanism of the local *shari‘a* judicature subjected to imperial laws of

an alien origin is accompanied by a stimulating discussion of changes in attitudes towards specific legal matters and justice in general among the Muslim population of Transoxiana at the turn of the twentieth century. It is this latter facet of Sartori's research that is accentuated in the book's title and repeatedly addressed in its introduction as an experimental attempt "to trace changes in Muslim legal consciousness in Russian Central Asia" (p. 38). The author's contribution to rich academic output in socio-political and cultural studies of Russian Turkestan is emphasized by an overall polemical tone of the book. Contesting earlier views of some essential issues related to the *sharī'a* jurisdiction in the region, *Visions of Justice* is announced as part "of a broader historiographical project that aims at rethinking the ways in which the history of law and colonialism in Central Asia has been written so far" (p. 4).

To reach ambitious goals set in the introduction, Sartori offers to readers what he calls "methodological compromise" (p. 38), which may be interpreted as a rather intricate combination of both scholarly approaches and subjects. In the pages of *Visions of Justice* readers will find a thorough manuscriptological examination of minute details (seals, dates, marginal notes, etc.) of a disputed endowment foundation certificate (*waqf-nāma*) from 1881 (pp. 150–3) and brief comments on the philosophy of knowledge (p. 80), an entertaining story about eccentric Bukharan personalities from the memoirs of Tajik writer Šadr al-Dīn 'Aynī (d. 1954; p. 79) and an inquiry into the semantics of the *sharī'a* notion of ownership (*milk*; pp. 168–72). Along with comprehensive surveys of numerous courtroom dramas which exemplify concrete Islamic legal norms and institutions in action, the author adopts an abstract all-embracing concept of "juridical field" borrowed from theoretical anthropology. Such a diverse arsenal of facts and methods underpinned by an exhaustive bibliography attests to the author's superb expertise in many a discipline, though sometimes interferes with conceptual consistency of narration. It seems unreasonable, for example, to consider the Hanafi legal doctrine and sources as the basis of Muslim jurisprudence in Central Asia only towards the end of the book in the last chapter, or ground far-reaching conclusions about legal consciousness, which embraces "beliefs and sensitivities" as well (p. 15), predominantly on formal documentation.

Key topics discussed in five chapters of the book are the status of Muslim judges (*qādīs*), the legal framework for disputes over real property, and the functionality of Muslim legists' opinions (*fatwās*).

Sartori argues that in the pre-colonial period (and later in the Khivan and Bukharan protectorates) Muslim judges acted "primarily as notaries and legal assessors" (p. 41) and "their actual role in conflict resolution amounted mostly to the notarization of amicable settlements" (p. 57), while administration of justice per se was a prerogative of "royal courts" (*darbār-i ālī*) presided over by local khans and emirs. Thus, the latter, according to Sartori, exercised much greater judicial authority than appellate and administrative "courts of complaints" (*mazālim*) in other Muslim polities. This idea is inferred from bureaucratic documents which tell of such procedures in the regional jurisdiction as appointment of judges by rulers' decrees, direct appealing of litigants to "royal courts," involvement of the court personnel called "trustees" (sg. *amīn*, *maḥram*, *yasāwul*) in investigation of cases, and *qādīs*' regular reporting to their superiors.

Exploring cardinal changes in the Central Asian khanates' judiciary and the status of *qādīs* after the enactment of the Imperial Statute of 1886, P. Sartori expounds an idea aphoristically formulated in the title of Chapter 2: "Native Judges into Colonial Scapegoats." Documented cases of lodging false appeals to Russian colonial officials with accusations of malpractice and corruption against *qādīs* ("native judges" under new regulations) Sartori reads as "a strategic alliance" between imperial administration and indigenous population to undermine the *sharī'a* jurisdiction (p. 138). In verbalized norms of the Imperial Statute, which deliberately avoids any mention of *sharī'a* and masks it under the term "existing customs," as well as in the general line of the Russian colonial policy, the author of *Visions of Justice* rightly sees a long-run objective to eliminate Islamic legal elements from the regional jurisdiction and unify the system of justice (similar developments took place in Russian North Caucasus). This goal of imperial policy was finally achieved a few decades later in Soviet times, when anticlerical propaganda with explicit if retrospective "scapegoating" of *qādīs* reached its peak. A caricature from the satirical journal *Mushtum* (1937) mocking *qādīs*' elections well illustrates an implication of the long-planned "colonial legal project" (pp. 109, 127). On the other hand, the author admits that *qādīs* would also benefit from this project, for in contrast with the situation in the khanates they "enjoyed unprecedented power" and "had a monopoly over *sharī'a* in Russian Turkestan" (p. 156).

The dynamics of changing property relations in the region are investigated in the book through the study of alterations in the *sharī'a* institutions of land tenure and charitable endowments (*waqfs*). P. Sartori provides deep insights into the collision between the basic Islamic terminology of landholding, taxation and administering of *waqfs* with the legal notions introduced by imperial statutes. With reference to a number of litigations P. Sartori proves that ambiguities in perceptions of land ownership and legal standing of various forms of real estate in Muslim Central Asia prompted the locals to exploit colonial legal resources for the appropriation of state lands with uncertain status, e.g. non-irrigated pastures, and the annulment of those charitable endowments which allegedly circumvented the Islamic laws of succession and dispossessed legitimate heirs of properties. Crucial condition for laying property claims and challenging the integrity of *waqfs* is associated with a transition from the *sharī'a* culture of oral testimony to "a bureaucratic regime that conferred a definitive probative value on deeds," i.e. notarized written documents (p. 191). The necessity of employing colonial juridical vocabulary in lawsuits instigated "an increase in legal services," a process defined in *Visions of Justice* as "a juridification of the Muslim communities of Central Asia" (pp. 248–9).

In an essay on the *sharī'a* practice of issuing legal opinions (*iftā'*) which was left intact under colonial rule, P. Sartori describes formal attributes, doctrinal sources, purposes, mechanics of procedural application, and operational efficiency of fatwas. If traditionally composed fatwas for Muslim litigants are regarded in the book as "the key to the domain of legal hermeneutics," in muftis' written answers to the queries of the Russian imperial authorities on particular *sharī'a* matters in appellate proceedings P. Sartori detects "the birth of a new juristic genre" as well as evidence of the Russian officials' "more intrusive role in the shaping of the Islamic juridical field" compared to that of the local Muslim rulers (pp. 252, 257, 303–4).

Final conclusions, brought into the context of broader issues of interaction between colonial laws and regional Islamic jurisdictions, center on the idea that Central Asian Muslims in the mass pragmatically adapted to changes in the judicial sphere and, feeling no moral obligations to exhibit their “Muslimness” vis-à-vis Russians, “made effective use of the legal institutions that the empire created for them” (pp. 312–13).

The polemical nature of *Visions of Justice* inevitably makes it more open for critical comments. In Chapter 1, for example, the most debatable statements are that “Muslims would not bring their affairs to a judge unless ordered to do so by the royal court or a governor” (pp. 102–3), and that “Central Asian rulers exercised Islamic judicial authority with little apparent concern for the presumed divine origin of *sharī‘a*” (p. 46). Both claims seem too categorical and need further explanation. First, extant documents from the khanates’ chancelleries do not reflect everyday activities of *qāḍīs* whose real competency in major fields of Islamic jurisdiction (personal status matters, property and contracts, criminal prosecution) should be scrutinized separately. The texts of two diplomas of *qāḍīs* in the Appendix describe the judge’s office as a potent legal establishment rather than just a subsidiary one (pp. 316–20). Second, the very notion of “Islamic judicial authority” excludes any speculation on “the divine origin of *sharī‘a*,” even with respect to the ideologies of customary law in local judicial practices (p. 98). A description of the types of land property and taxes in Chapter 3 (pp. 163–76) is extremely vague; a clearer differentiation between a protocol of claim (*maḥḍar*, or *riwāyat* ?) as a document and a fatwa as a legal opinion in Chapter 5 would be highly desirable.

Despite a somewhat patchy narration, *Visions of Justice* covers fundamental academic research which fills lacunas in the studies of the legal history of Transoxiana in the period of Russian colonization. It offers a complex outlook on the evolution of the Islamic judicial system in Russian Central Asia and introduces a large number of new documentary sources on the everyday consumption of the *sharī‘a* justice in a changing social environment. Numerous excerpts from archival material quoted throughout the book as well as full texts of exemplary documents in the Appendix provide a solid footing for the author’s argumentation and conclusions. Specialists will take advantage of transcriptions of the most important fragments from original texts occasionally supplemented with photocopies of quoted documents. What makes *Visions of Justice* suitable for a wider readership is that the intriguing lawsuit cases are regularly discussed as life stories in which the author gives voice to people of varied standing, be they ordinary Muslim litigants of both sexes, or high-up native judges and legists, or local translators and assessors, or Russian military and administrative officials on different rungs of the imperial bureaucratic ladder.

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<https://doi.org/10.1080/00210862.2018.1518865>