David S. **Powers**: Law, Society, and Culture in the Maghrib, 1300-1500. Cambridge: Cambridge University Press 2002.

"If a man has sexual intercourse with a female slave belonging to his daughter, is a child of that union born into slavery or freedom?" (Powers, p. 231) The qadi ʿĪsā b. Muḥammad at-Tirjālī of a town in northern Morocco had to face this question when a certain Sālim approached his court. Sālim claimed to be the biological son and heir of that man, called ʿAlī b. Abī l-ʿUlāʾ. Since ʿAlī was no longer alive, Sālim, in order to prove the truth of his claim, submitted a number of witness documents which confirmed that ʿAlī had recognized him as his son. The other party of the lawsuit, ʿAbd ar-Raḥmān, undisputed son of ʿAlī, argued that the witnesses were wrong and raised the point that Sālim could not be a legal son of ʿAlī, because he did not spring from a legal intercourse between ʿAlī and either his wife or his own female slave. At-Tirjālī, being somewhat puzzled, described the case to the prominent Fāsī mufti Ibrāhīm al-Yaznāsinī and asked for a *fatwā*. The mufti declared Sālim's claim to be valid.

These two documents, *istiftāʾ* and *fatwā*, are reproduced in al-Wansharīsī's (d. 1508) famous *Miʿyār*, the main source for Powers's study of that and five other cases, all from Morocco between 1300 and 1500. The fourth and the sixth cases also deal with inheritance issues; apart from these, Powers analyses struggles about divorce, a dispute about water rights between two rural communities and a case of alleged blasphemy. The six studies which have been presented separately as conference papers between 1993 and 2000 provide interesting glimpses into the fabric of Moroccan society in the past. The documents which he uses do not omit the names of the litigants, which is otherwise often the case in al-Wansharīsī's *fatwā* collection. Some of the involved individuals can thus be identified as prominent personalities or even jurists in various types of sources. Powers is therefore able to reconstruct, at least partly, the social context of the cases.

Yet Powers's main approach belongs to legal history rather than to sociology. By a detailed analysis of the texts, he shows how the authors of the *istiftā*'s and *fatwās* try to adapt their knowledge of Mālikī judicial doctrine to the problems at hand. His general question behind this is how the *fuqahāʾ* could be creative after the "closing of the gate of *ijtihād*". Powers assumes that especially the muftis constantly demonstrated a legal creativity which can be defined in the following way: Though generally sticking to *taqlīd*, only exceptionally using *ijtihād* within the *madhhab*, they displayed a "remarkable discursive vitality" in that they took the juridical problems as an "occasion for thought and argument". Their decisions were "unpredictable", a fact which contradicts "the common assumption that a given verse of the Qurʾān or saying of the Prophet will automatically dispose of a case" (All quotes from Powers, p. 231).

Firstly, I wonder if anyone concerned with Islamic law holds such an assumption. Secondly, the discussion of new legal questions within the established system of law, and that is what the jurists were concerned with in the presented case studies, would not leave much room for creativity. The search for creativity in these judgements does not seem to be a very rewarding task. It would be more interesting to find out whether they went along with a change of existing norms. In this respect Powers could have referred to Christian Müller's book about legal practice

in Umayyad Cordoba[1]. Müller argues that there might indeed have been some "underground legal development" ("schleichende Rechtsfortbildung") in the *fatwās* while the jurists would not explicitly admit for the possibility of such a development (Müller, p. 390). It is a weakness of Powers's book that he does not discuss Müller's and other recent studies (e.g. by Baber Johansen) on Islamic legal history, which he only mentions in his bibliography.

Besides the question of creativity, the six case studies focus on a discussion of Lawrence Rosen's well known thesis about Moroccan legal praxis[2], which—as summarized by Powers—holds that "the judge's central aim ... is to return people to a position in which they can negotiate their own permissible relationships outside of the legal realm. Only secondarily and incidentally does the qadi seek to enforce individual rights or impose a resolution to a dispute." (Powers, p. 23; in a similar way repeated on pp. 137, 167 and 206). Powers regards this aspect as important but "overstated" (p. 167) and tries to prove that the Moroccan jurists in fact did consider the legal rules systematically. They may have been partially guided also by extra-legal considerations, but these "served only as a catalyst" for the qadi's struggle "to ground his judgement in a correct interpretation of the relevant Islamic legal doctrine" (p. 24).

I agree with Powers in that the very existence of so many *fatwās* in collections like al-Wansharīsī's *Miʿyār* "testifies to the importance of reasoned justification of judicial decisions in the Maghrib" (p. 233). But this alone cannot prove Rosen's argument wrong, and I do not quite understand, why Powers does not avoid such a strong statement as the one he makes in the end of his book where he says that, regarding the idea of a Moroccan judge between 1300 and 1500 acting without reference to *fiqh*, "nothing could have been farther from the truth" (p. 232). Because of the lack of sources, Powers himself is not able to say how the Moroccan judges behaved in daily court practice when less important personalities were involved in less precarious litigations than those which he presents. His interpretation of the *fatwās* and related materials, fascinating as it is, provides only very limited insights into Moroccan legal practice. Thus, as Powers admits (p. 52), further research would be required to strengthen his thesis.

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Akiko Motoyoshi **Sumi**. Description in Classical Arabic Poetry – Waṣf, Ekphrasis, and Interarts Theory (Brill Studies in Middle Eastern Literatures, Volume XXV). Leiden & Boston: Brill, 2004. ISBN 9004 129227. xvi + 251 pp. $ 94/€ 75

This is one of the latest contributions from the "Chicago School" of Arabic and Persian poetry, a "school" that is characterized by the shared literary and critical

[1] Christian Müller: *Gerichtspraxis im Stadtstaat Córdoba. Zum Recht der Gesellschaft in einer mālikitisch-islamischen Rechtstradition des 5./11. Jahrhunderts*, Leiden 1999.

[2] Lawrence Rosen: *Anthropology of justice. Law as culture in Islamic society*, Cambridge 1989.