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İbrahim Halil Tuğluk

Customary law

In what follows the vague but indispensable term "**customary law**" will be used only to refer to legal systems of the kind found in small, more or less autonomous, rural communities, whether sedentary or nomadic. Most Muslims, during most of Islamic history, lived in communities of this kind, and the number and variety of the associated legal systems is enormous. An attempt is made here to give some sense of that variety by offering sketches of six such systems, each from a different region of the Muslim world: North Africa, the Middle East, the Caucasus, Central Asia, the Indian subcontinent, and Indonesia.

1. Introduction

Broadly speaking, the customary legal systems of rural communities are survivals from the time before those communities converted to Islam. But this does not exclude the possibility of developments after conversion. So, for instance, modern Bedouin law descends from the law of the pre-Islamic Arabs but is by no means identical with it; and the changes that have occurred in the law of the Bedouin since their conversion are in large part unconnected to Islamic influence.

The central doctrines and institutions of Islamic law came into existence during the first two centuries of the Islamic era. The process took place mainly in cities, and customary law (as understood here) did not contribute much. The one exception to this is the customary law of the pre-Islamic Arabs, which left a significant heritage to the *sharī'a* (Islamic law; Schacht, 6–9). Muslim jurists were always aware, however, of the existence of customary practices, whether, for instance, in the usages of a particular occupation or as part of a comprehensive legal system, and they did not shirk the task of dealing with such practices. The range of subjects that demanded their attention was enormous. At one end lay matters of fine detail: when, for instance, can a court draw on custom to supplement the explicit provisions of a contract? At the

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