

almost all of the reproductions are printed either too green or too orange. The latter case is less serious, as the warm red hue somewhat emphasizes the contours of the depicted objects, thus rendering them clearly visible. The gray-green tonality, on the other hand, weakens many contours, especially in paintings that are already in bad condition. It is to be hoped that the publisher will pay better attention to the paintings in the second edition. Indeed, a second edition of this publication is warranted to improve the color, even if the illustrations are far from spectacular and the stylistic analyses rather modest in scope and intention. The real power of this book is in the brilliant reconstruction of the fragmented or dispersed manuscripts of both *Jāmi' al-tawārīkh* and *Majma' al-tawārīkh*, the translation of sections from Ḥāfiẓ-i Abrū's text, and the sets of iconographic comparisons. Together these form a solid basis for future studies in the field, and, at the same time, offer an interesting picture of Islamic biblical and prophetic iconography within a specific historical context.

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The Codification of Islamic Criminal Law in the Sudan: Penal Codes and Supreme Court Case Law under Numayrī and al-Bashīr. By OLAF KÖNDGEN. Studies in Islamic Law and Society, vol. 43. Leiden: BRILL, 2018. Pp. xii + 480. \$171, €149.

Olaf Köndgen's revised 2013 dissertation at the University of Amsterdam enhances the blossoming literature critical of the reintroduction of Islamic penal law in several states because of its incompatibility with human rights. It presents a wealth of knowledge about the application of Islamic penal law in the Sudan commencing in the Penal Code of 1983, followed by the Criminal Act of 1991, as amended in 2015. He compares the Sudan statutory amendments with one another and with the court decisions interpreting the statutes, both comparisons against the backdrop of the historical classical opinions of the legal scholars (mainly Sunni) along with the opinions of some modernist Islamic jurists.

The volume's aim is to point out how the Sudanese interpretations contradict the majority opinions of the classical legal scholars to a large extent and represent minority opinions. For criminal law his book is on the order of Y. Linant de Bellefonds's work on comparative Islamic family and civil law. The legal offenses covered in the book are homicide, bodily harm, extramarital sexual intercourse, unfounded accusations thereof, theft, apostasy, alcohol consumption, highway robbery, and non-quranic punishments (*ta'zīr*). Why the offense of abortion in Arts. 135ff. of the Sudan Criminal Act of 1991 is omitted is not clear—there is reference to only one *fiqh* opinion on embryo killing (p. 305) despite there being a variety of traditional opinions; see R. Lohlker, *Schari'a und Moderne: Diskussionen über Schwangerschaftsabbruch, Versicherung und Zinsen* (Stuttgart: Deutsche Morgenländische Gesellschaft, 1996). The book concludes that the Sudanese political authorities responsible for the re-Islamization of penal law wanted to make the people believe their version was Islamic when in fact it was not. It was a national version, a Sudanese version—a pseudo-Islamic law rather than an authentic replication of Islamic penal law.

From a lawyer's point of view the book makes a significant contribution to legal studies using case law, in the tradition of common law. The judgments are only those that are reported in the *Sudan Law Journal Reports* (SLJR) from 1983 to 2002, the highest number cited being from 1984, 1985, and 1989; there are three judgments from the twenty-first century (pp. 438–40). The reported court cases are restricted to the Supreme Court only and do not cover the two volumes published by the Constitutional Court (1998–2003, 2006–2010). As Köndgen notes, there are certainly many unreported cases that would have given an even richer insight (p. 385 n. 39); any future research could hopefully include them. A promise to Köndgen to make available the judiciary statistics about unreported cases never materialized. Why alternative sources of judgments were not consulted is not mentioned. For example, in my own work in Sudan I had access to detailed police crime statistics and to activist advocates who argued before the courts against application of Islamic penal law to the

underaged and the insane. Köndgen is to be congratulated, however, for achieving access to interviews with high-ranking justices (I had access to only low-ranking judges as senior judges feared compromising their judicial independence).

After a brief summary of the legal system of the Sudan before independence from the Anglo-Egyptian colonial regime in 1956, and a series of military coups, the book summarizes the reasons for the re-Islamization, after an initial period of socialist ideology, under Numayrī, who is described as a pan-Arabist (p. 41). The implication is that Islamic law was part of the politics of Arabization of the multilingual, multiethnic, and multireligious Sudan. At the same time the book posits that re-Islamization was an instrument of oppression and control by the military security forces of Numayrī and his successor al-Bashīr. Whether the judges of the Supreme Court were equally instruments of oppression in terms of applying the Islamic law is more ambiguous. Generally, Köndgen credits them for being more lenient than lower courts in preventing application of the Islamic law punishments, such as amputation and stoning (p. 255), following the spirit of the classical legal scholars—namely, it is better to find reasons to avoid these drastic punishments and apply the strict rules of evidence and legal uncertainty (*shubha*). Köndgen makes no mention of the ambiguous feelings of Sudanese society with regard to a classification of Arab rather than African. Sudanese who worked in Arab lands suffer(ed) humiliation, as the popular 2004 novel *Hujūl min shawk* (Anklelets of Thorns) by Buthaina Khidr Mekki so clearly shows. Also not alluded to in the book is the widespread influence of Sufism in the Sudan, and a factor to be considered would have been whether the vision of an Arab-style Islamization as imagined by the Sudanese military rulers reflects an effort to counter the dominant cultural hold of the Sufis—who are known for their spirituality and mesmerizing music rather than devotion to legalism and who were pitted against the growing Salafi movements financed from outside that sought to discredit them as un-Islamic (see E. Ahmed, “Militant Salafism in Sudan,” *Islamic Africa* 6 [2015]: 164–84).

The book makes a valuable comparative contribution by spotlighting the differences among the classical historical jurists on penal matters, e.g., for the Malikis, pregnancy is considered evidence of extramarital intercourse, a position rejected by the three other Sunni schools. The Sudanese Act of Evidence takes the Maliki route. Köndgen points out that the Maliki school “eases” the job of police and prosecutors to convict (pp. 42, 113); the reader might wonder whether this means easier for men to escape responsibility and easier to lay the burden on women and imprison them and thus uphold the socially conservative view that unmarried pregnant women on the streets set a poor example for the youth. The actual motivations of the persons who drafted the Sudanese re-Islamized penal laws were difficult to uncover due to the refusal of a key interview or to interviews that did not reveal much (pp. 23–24, 80–81). One can only draw inferences.

The book carefully expounds in detail the differences among the classical jurists in penal law. Even within one school opinions were divided. Why the Sudanese courts cited some and not others was not clarified by the judges. In light of the position of the book that the Sudanese Islamic law contradicts the classical majority, where there was a majority, the differences among the jurists can be said to constitute contradictions as well. The book thus raises implicitly some vital questions for any type of Islamization of state law: who decides what is Islamic law, what is “authentic,” what is strict, which opinion among the contradictions ought to be applicable by a legislator or a judge. Gone are the days when a qadi consistently chose one school of law and all litigants knew which opinion would be applicable. Modern states by and large no longer select one school of law or appoint government judges according to the school of law in which they have chosen to train themselves. For a modern state to apply classical opinions is like trying to tame the unruly, for the Islamic law derives from sources as broad and deep as the sea (R. Peters, “The Reintroduction of Sharia Criminal Law in Nigeria: New Challenges for the Muslims of the North,” *Leipziger Beiträge zur Orientforschung* 15 [2004]: 9–23, at 22).

The book also offers a welcome deliberation on how the use of the classical principle of *shubha* serves as a tool of due process to avoid the harsh criminal punishments, a tool that was sometimes but not always used without clear justification either way by the Supreme Court (pp. 256–58). It is suggested that the Supreme Court could have utilized this aspect of Islamic law to put a stop to amputations which reached their height under the Numayrī regime. After his removal from office all pending amputations were nullified. Köndgen opines that the regime bowed to the popular dislike of the cruel

punishment, certainly evident in Ibrahim Shaddah's moving silent film *Insan* of 1994 about a poor farmer falling victim to shoddy police investigations and incompetent magistrates.

The conclusion that Sudan's Islamization process is unique among Muslim majority states is countered by one comparison, between Sudan and Pakistan. The higher Islamic court in Pakistan makes decisions that are said to be lenient, similar to those of the Sudanese Supreme Court (p. 385). Otherwise there is no other comparison in the book with other Islamization processes in other countries to test their national or unique character.

As said, the book emulates other writings about re-Islamization and how it contradicts and violates international human rights standards. For example, Köndgen suggests that the Sudan Child Act of 2010, which synchronizes the Sudan law with the UN Child Rights Convention (ratified by Sudan), would unlikely be applied by the Sudan criminal courts (p. 380). Indeed, there are no reported cases to the contrary, but among the unreported cases is evidence of differing court decisions. In one case the Supreme Court overturned a lower court's decision to apply the Child Act of 2010 and decided in favor of the Criminal Act of 1991 regarding what is the age of criminal responsibility in a case of extramarital intercourse.¹ The lawyer appealed to the Constitutional Court, which has heard human rights matters. In another case the Supreme Court explicitly applied the Child Act of 2010 contrary to the 1991 Criminal Act.² The Child Act was regarded as a "special law" that can restrict the law common to the land, namely, Islamic law.

Regarding fair trial standards for determining criminal responsibility of the insane perpetrator, the book points out that the Supreme Court seems untested (p. 352) in such a matter. As noted earlier by Köndgen (p. 385 n. 39), an unreported case might have shed light on the matter. One example is that of a homicide committed by an epileptic wife, aged fifteen, who stabbed her husband to death and was found guilty in the lower court. On appeal, the judges of the Criminal Appeals court differed in their opinions. Medical evidence and testimony of witnesses convinced the majority of judges (two out of three) to exonerate the wife's relatives from paying full bloodmoney (*diya*) to the relatives of her slain husband. He had tied her up and triggered a fit. She intended to commit suicide, but in the struggle to free herself took her husband's life. The court made a reference to the general Islamic law rule that the insane cannot be held criminally responsible and found the wife not liable.³ The prosecutor did not go on appeal to the Supreme Court.

Depending on the outcome of the recent imprisonment of al-Bashir and on negotiations between the military council and the civil society protesters, *The Codification of Islamic Criminal Law in the Sudan* serves as good teaching material for any future correcting of the application of Islamic law under a possibly new regime. It is a valuable historical documentation of thirty-five years of the state's contradictory application of a contradictory classical penal Islamic law in the Sudan.

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1. Supreme National Court in the trial of Osman Salih Khair, ref: MA/Mouabad/16/2011, court chaired by Mohamed Hamad Abusin. The lawyer, Rifaat O. Makkawi, took the case on appeal to the Constitutional Court, No. CC/P 2011 (courtesy of the advocate). Results are unknown to me.

2. Trial of Sadiq Al Baqi Ahmed, docket mim-bj/206/2011, court chaired by Dr. Moha Ali Khalifa (courtesy of UNICEF child protection specialist, Khartoum).

3. Appeals Court, Omdurman, no. MA-ASG-2128-2007, trial of Awdia Abdallah Dar al Beit, court headed by Sittana Abduljalid Mohamed (courtesy of police officer of the Family and Child Protection Unit).