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978-0-521-12059-3 - Law, Society, and Culture in the Maghrib, 1300-1500

David S. Powers

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Law, Society, and Culture in the Maghrib, 1300–1500

Focusing on the Maghrib in the period between 1300 and 1500, David Powers analyzes the application of Islamic law through the role of the *muftī*. To unravel the subtlety and sophistication of the law, he considers six actual cases which took place in the Marinid period on subjects as diverse as paternity, fornication, water rights, family endowments, the slander of the Prophet and disinheritance. The source for these disputes are *fatwās* issued by the *muftīs*, which the author uses to situate each case in its precise historical context and to interpret the principles, rules and norms of Islamic law. In so doing he demonstrates that, contrary to popular images and stereotypes, *qāḍīs* and *muftīs* were in fact dedicated to reasoned thought and argument, and highly sensitive to the manner in which law, society and culture interacted with, and shaped, one another. The book represents a groundbreaking approach to a complex field. It is certain to be read by students of Islamic law and by anyone with an interest in traditional Muslim societies.

DAVID S. POWERS is Professor of Arabic and Islamic Studies at Cornell University. He is the author of *Studies in Qur'an and Hadith: The Formation of the Islamic Law of Inheritance* (1986), co-editor of *Islamic Legal Interpretation: Muftis and their Fatwas* (1996), and editor of the journal *Islamic Law and Society*.

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*In memory of my nephew
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12 December 2000 – 27 January 2001*

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Preface

Work on this book began in the academic year 1991–92 when a grant from the National Endowment for the Humanities provided me with release time from teaching to conduct a survey of the *Kitāb al-Mi'yār* of Aḥmad al-Wansharīsī. During that year, I prepared draft translations of *fatwās* that contain transcriptions of legal documents. These translations became the basis of courses on Islamic law that I have taught at Cornell in subsequent years, both in the College of Arts and Sciences and the Law School. I thank the students who participated in these courses for their questions, comments, criticisms, and insights, many of which have helped to shape the final form of the book.

While on sabbatical leave at the Hebrew University in the academic year 1996–97, I taught a graduate-level seminar on Islamic law in which we read several *fatwās* in their Arabic originals. Participants in the seminar included Haim Gerber, Aharon Layish, Oded Peri, and Ron Shaham. I could not have asked for a more stimulating intellectual environment in which to work out the meaning and interpretation of the texts that we read together.

A grant from the American Institute for Maghribi Studies made it possible for me to visit Morocco from December 1996 to January 1997, to examine manuscripts of the *Mi'yār* in the Bibliothèque Générale, and to visit the village of Zgane in the Middle Atlas Mountains, near Sefrou.

I thank my friend and colleague Baber Johansen for nominating me as *Directeur d'études-associé* at the Ecole des Hautes Etudes en Sciences Sociales for the period between 25 December 1998 and 21 January 1999, during which I presented several of the cases to his seminar on Islamic law.

I have presented earlier versions of individual chapters at workshops, seminars, and conferences both in the United States and abroad. Chapter one was presented at the workshop on Gender, Family and the Courts, co-organized by Leslie Peirce and myself, Cornell University, 15–17 October 1993. Chapter two was presented at the seminar, The Public Sphere in Muslim Society, organized by Shmuel Eisenstadt and Nehemia Lev Zion, Van Leer Institute, 17 April 1997; at the workshop on Family and the Social Order, organized by Ted Fram and Nimrod Hurvitz, Ben-Gurion University, Israel, 9 June 1998; at the Mellon Seminar on *Fatwas* in Islam: Text, Subtext, Hidden Agenda, organized by John R. Willis,

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Princeton University, 13 March 1998; and at the conference on Law and the State, organized by Yohannan Friedman and Nurit Tsafrir, Institute for Advanced Study, Jerusalem, 12 January 2000. Chapter three was presented at the workshop on The Dynamics of Legal Change in Muslim Societies, organized by Aharon Layish and Ron Shaham, The Hebrew University, 19 March 1997; at the Workshop on Evidence in Islamic Law, organized by Bernard Haykel, New York University, 2–3 April 1999; and at the Summer Academy of the Berlin Working Group on Modernity and Islam, Notions of Law and Order in Muslim Societies, organized by Güdrün Kraemer, Casablanca, Morocco, 13–25 September 1999. Chapter four was presented at the annual meeting of the American Oriental Society, Boston, March, 1992; at the Conference on Law and Praxis, organized by Engin Akarli and Cornell Fleischer, Washington University, May 1992; and at the XXII Medieval Workshop, University of British Columbia, 13–14 November 1992. Chapter five was presented at the workshop on Approaches to Islamic Law, organized by Petra Sijpesteijn and Orit Bashkin, Princeton University, 7–8 May 2000. Chapter six was presented at the Symposium on Islamic Law, organized by Gerhard Bowering, Yale University, September 1993; and at the Forum in Memory of Professor Baneth, Hebrew University, 26 February 1997. I thank the organizers of these events for their generosity and hospitality and the participants for their valuable comments on work in progress.

I am grateful to friends and colleagues who read draft versions of individual chapters and offered valuable comments and criticisms: Senwan Akhtar, Richard Antoun, Omar Benmira, John Bowen, Patricia Crone, Maribel Fierro, Peter Hennigan, Baber Johansen, Jonathan Katz, Timur Kuran, Aharon Layish, Paul Milliman, Martha Mundy, Aḥmad Nāṭūr, Richard Polenberg, Buni Rehav, Lawrence Rosen, Everett Rowson, Ron Shaham, Susan Spector, Justin Stearns, Dan Varisco, and Francisco Vidal Castro. I thank Wael Hallaq, Munther Yunis, and Qadi Aḥmad Nāṭūr for their assistance with difficult Arabic texts.

Special thanks to my friend and colleague Brinkley Messick, who read the entire book in manuscript and offered detailed suggestions for improvement; to the two anonymous readers of the manuscript who offered important suggestions for improving the book; and to my friend and long-time editor Penny Beebe, who has read nearly every word that I have ever written and helped me to sharpen my thinking and polish my prose.

An earlier version of chapter one appeared in *Islamic Law and Society*, 1:3 (1995). Chapter six draws on a book chapter and an article: “The Art of the Legal Opinion: al-Wansharisi on *Tawliḥ*,” in *Islamic Legal Interpretation: Muftis and their Fatwas*, ed. Muhammad Khalid Masud, Brinkley Messick, and David S. Powers (Cambridge, MA.: Harvard University Press, 1996), 98–115; and “The Art of the Judicial Opinion: On *Tawliḥ* in Fifteenth-Century Tunis,” *Islamic Law and Society*, 5:3 (1998), 359–81. This material is reproduced here with the permission of the publishers.

Finally, I thank my wife, Jane, and my children, Kate, Sarah, and Andrew, for their love, support, encouragement, and understanding.