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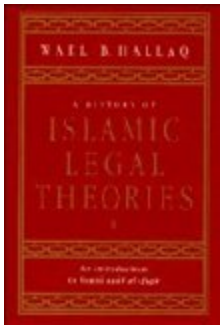
Wael B. Hallaq. *A History of Islamic Legal Theories: An Introduction to Sunni Usul Al-Fiqh.* Cambridge: Cambridge University Press, 1997. ix + 294 pp. $33.99 (paper), ISBN 978-0-521-59986-3; $104.00 (cloth), ISBN 978-0-521-59027-3.



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The History of Islamic Legal Theory

This book is addressed to a four-part audience: (1) a wide readership of persons both within and without Islamic studies, (2) comparative lawyers, (3) students of religious studies and comparative religion, and (4) those deeply interested in Islamic studies. As an elementary text, it both is excellent as a survey of the Sunni legal theories and as a source for scholars in the subject, who will be stimulated by views generously provided them for additional study. The bibliography is wide-ranging and Professor Hallaq's agreements and disagreements with such leading Western scholars as Ignaz Goldziher and Joseph Schact are an important part of an ongoing debate. The style is smooth, inviting, and as easy as possible for introducing this challenging subject to persons "without the field of Islamic studies" (p. viii).

The author's view is that the Quran is an assembled document, compiled early in the period of the Companions. However, he believes that the content is entirely from the period of the Prophet's life – his sayings, responses, and actions, all carefully compiled. No "Q document" stands back of the Quran, unlike the Christian Gospels, nor is there any place for a Jesus Committee to judge the authenticity of the Parables. Also, while a substantial part of the Sunna, collected by the pious over several centuries, were fabricated during the collection, there is a body of material within them that occurred in the Prophet's time; and, in any event, the core of the Sunna is "inspired by the vitally important issues raised in the Quran" (p. 12).

The fact that the first two roots of Sunni jurisprudence are the Quran and Sunna is historically justified. The other two of the basic four roots are consensus (that is, among the legally learned, though on occasion of the whole Islamic community) and qiyas (generally translated as reasoning by analogy). Lesser roots, though of varying importance among the Sunni schools and individual theorists, are juristic preference (istihsan, which stems from switching among qiyas) and reasoning on the basis of public interest or public utility (istislah).

Behind all roots of Islamic jurisprudence, however, is the predicate of Islamic theology. The two are thoroughly integrated. No Islamic legal theorist is indifferent to the religion of the Prophet or critical of any authentic utterance of the Prophet. But Islamic theology and law still are not the same. While a minority of verses in the Quran deal with law, they are lengthy verses and they are indicative of a juristic mentality capable of providing law. The Prophet had been an arbitrator and this book asserts some of that pre-Islamic law, which survives in these juristic verses. The Prophet's legal decisions can change serially, as in the case of the prohibition of alcohol consumption, ranging from prohibiting the individual from coming to services drunk to prohibition of alcohol at all times and places. The language of juristic verses is rational rather than revelatory, the product of one who knows the law and changes its existing content for factually-based reasons.

The first three centuries of Islamic jurisprudence are

foundational, but are they equally so? Disagreement about how important individual centuries may be divides scholars. Professor Hallaq accepts the importance of the second century of Islam, but emphasizes the third century as well and is less impressed with the 1st century than others. For him, however, each of these centuries played an important role and cannot be slighted. Indeed, jumping well ahead in time, he puts substantial emphasis as well on the commentaries, which have been dismissed by many modern scholars. Without the commentaries, the author insists, Islamic jurisprudence would lack much of its richness and its continued ability to provide fresh views. Is that not also true of any century of Islamic legal theory?

The closing of the "gate of ijtihad" (p. 160), and the arguments about that alleged event, are intricately entwined with the movement of argument through the ages of Islamic jurisprudential thought. Did the gates close in the tenth century C. E.? The thirteenth C. E.? In the nineteenth C. E, when state legislation began replacing individual jurists? Never? If closed, can the gates be reopened? Is the opening occurring now at the turn of the twentiethth and twenty first centuries C. E.? How many meanings does ijitihad have? All of these have been – and are – grain for grinding in the mills of argumentation. A book note cannot summarize all that this book has to say about ijitihad, but what it does have to say should prevent anyone from referring casually to either the closing or the opening of the "gate of ijtihad."

To the serious student of Sunni jurisprudence, his work concerning the fourteenth century C. E. scholars, Tufi and Shatibi, could be the most interesting. Tufi is a strong exponent of the supremacy of public interest and public good and, consequently, has received much attention among Islamic modernists. But this book gives far more attention to Shatibi, who the modernists also have turned to in their work on Islamic jurisprudence. Shatibi, an Andalusian, finding the law of his time had not accommodated to contemporary socioeconomic conditions, set about to create a theoretical foundation for that accommodation. As Professor Hallaq says, more is in Shatibi's ideas than meets the eye and he sets out to bring Shatibi's contributions into full view. Interestingly enough for a writer of value to modernists, Shatibi regarded himself as one who sought, with all else he attempted, to produce a theory in complete accord with Islam. But, then, is that not what the modernists, perhaps especially the religious liberals, mean to do?

When treating of the twentieth century C. E., Professor Hallaq excludes from his consideration both secularists, who are indifferent or even hostile to SharîÒa, as well as those who are among the most conservative of self-proclaimed traditionalists. He divides his attention between what he calls the religious utilitarians (whom he regards as largely successful in their attempts at influence) and the religious liberals, whom he regards as largely unsuccessful, although some have been most inventive in their interpretations of the traditional learning. His descriptions of their ideas, particularly that the Syrian engineer/lawyer Shahrur, again could lead Islamic legal specialists into further consideration of what these religious liberals propose. It would seem more useful than abstract musings on opening the gates of ijitihad.

Still, Professor Hallaq's conclusion, despite his recognition of the continued liveliness of Islamic jurisprudence, does not cast a prediction of success on any of the current writers or movements.

"[T]he ultimate success of any legal methodology hinges not only upon its intellectual integrity and a sophisticated level of theorization but also for its feasibility in a social context. . . . It is no coincidence .. . . the religious liberals have met stiff resistance

from a large and powerful segment of native Islamicist movements. All of [the religious liberals]. . . offer new conceptions of law and legal methodology that have proved thus far alien to the majority of Muslims. . . We have seen that the religious utilitarianists pay no more than lip service to traditional Islamic values; for their ultimate frame of reference remains confined to the concepts of interest, need and necessity. The revealed texts become, in the final analysis, subservient to imperatives of these concepts." (pp. 253-254.)

What the future holds, Professor Hallaq does not seek to determine. The custom of our day does not favor the individual scholar, so typical of Islamic legal theory from the time of the Prophet until the nineteenth century C. E. Rather for over one hundred years, custom has favored the lawyer who is part of the modern state apparatus, drafting legislation and regulations, and trained in Western law. Even if the lawyer is also trained in Shari'a, the thinking will be strongly influenced by Western legal forms. Yet whatever happens, this book offers reading of great value for anyone curious about the future – as well as the past – of Sunni jurisprudence.