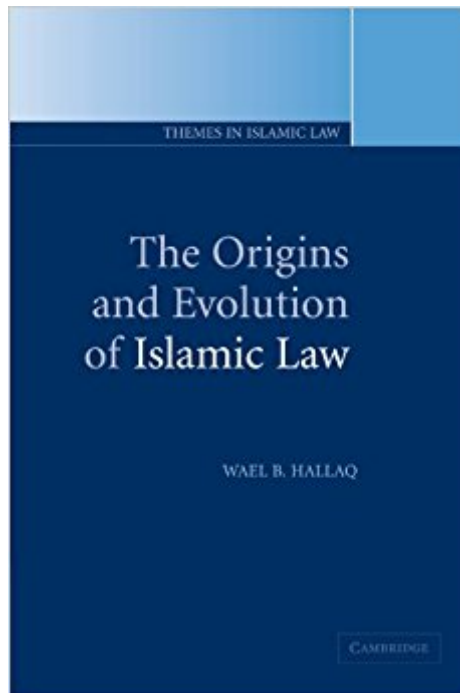


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# The Origins And Evolution Of Islamic Law (Themes In Islamic Law)



## Synopsis

Covering more than three centuries of legal history, this study presents an important account of how Islam developed its own law from ancient Near Eastern legal cultures, Arabian customary law and Quranic reform. The book explores the interplay between law and politics, demonstrating how the jurists and ruling elite led a symbiotic existence that paradoxically allowed Islamic law to become uniquely independent of the "state."

## Book Information

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## Customer Reviews

"The book is an essential contribution to the field. Highly recommended. Essential for collections on Islam and the history of law." --Choice "...succinct, up-to-date, and stimulating account of the early history of Islamic law..." --Joseph E. Lowry, Department of Near Eastern Languages and Civilizations, University of Pennsylvania, International of Middle East Studies

Covering more than three centuries of legal history, *The Origins and Evolution of Islamic Law* presents an important account of how Islam developed its own law while drawing on ancient near Eastern legal cultures, Arabian customary law and quranic reform. The book explores the interplay between law and politics, explaining how the jurists and the ruling elite led a symbiotic existence and mutual dependency that--seemingly paradoxically --allowed Islamic law and its application to be uniquely independent of the 'state'. This book will appeal to students, lawyers and legal historians.

Current events but also pure curiosity motivate many to seek out a better understanding of Islamic culture, especially as regards to its legal structure. This book is a good start, especially to those who have studied the religious aspects of Islamic culture, but need a more in-depth understanding of how the Islamic religion has influenced legal reasoning. It is of course difficult to assess the accuracy of the book if one is not an expert on Islamic law. This reviewer is not such an expert, but found the book very readable and gained much insight into the intricacies behind Islamic legal thought. Islamic culture had a great influence on Western scientific progress, and so an interesting question is to the degree that its legal structure encouraged this influence. This book does not address this question, but its contents could be helpful in studying this influence. The book could also assist in answering the question of whether Islamic law requires stricter adherence to its precepts than American or British law. Does Islamic law require dogmatic adherence to legal precepts or can its interpretation be flexible or allow rapid changes? The author concentrates on what he calls the "formative" period of Islamic law, which he defines as the historical period where the legal system began to the point in time where the features of this system can be clearly identified. The "shape" of Islamic law, i.e. those attributes deemed essential to its identification, are determined according to the author by the presence of a complete judiciary, complete elaboration of positive legal doctrine and methodology, and the full emergence of doctrinal legal schools. Interestingly, he holds that the religious character of the law is also an essential attribute, but it must be derived from these four attributes. This implies that the Islamic religion, whether Quranic or otherwise, is not viewed as the underlying foundation of Islamic legal reasoning. There is no doubt though that the author believes that the new Islamic religion of the seventh century "generated" the legal system of today. The author's thesis is an interesting one but also difficult to justify since one must be able to disentangle the influence of other religious systems from the Islamic one. There are many surprises in the book for those just beginning their study of Islamic culture, law, and science:

1. A time period called 'Haram', which was established by the Quraysh, a tribal confederation in pre-Islamic Mecca, wherein no violence was permitted.
2. Shedding light on the historical influences on Muhammad, he apparently followed to a large extent the teachings of Zayd b. 'Amr, and was thus a "Hanif", i.e. a follower of the (monotheistic) religion of Hanifiyya.
3. The Quran holds that all property acquired by women during marriage are theirs exclusively. This is at odds with the common Western view of the Islamic religion that women are subjugated (but on the other hand one may argue that Quranic passages such as this one may be completely ignored by current practitioners of Islam).
4. The meaning of the word 'sunan' and its ancient (pre-Islamic origins).
5. Contradictions in Quranic texts were resolved by a 'theory of abrogation'.

A natural question to ask here is whether

this theory was in any way influenced by Greek logic. 6. The Islamic concept of "rationalism" and its antipathy to the "hadith". 7. The assertion that sunnaic practice is infallible, this infallibility arising from a consensus of jurists and not from the opinion (or "ra'y") of an individual jurist. This is to be contrasted to the practice in Western legal reasoning, wherein fallibility is considered normal and legal reasoning is considered to a large extent "defeasible." The author though discusses the 'three categories of argument' that are present in Islamic legal reasoning: expert judgment, systematic reasoning on the basis of revealed texts (with a form of analogical reasoning called 'qiyas') and the 'istihsan' which might be described rather loosely as a "commonsense" form of logical inference that yields "reasonable" results. In the same context as this discussion, Islamic law apparently had its own conflict between the "rationalists" (ahl al-ra'y) and the traditionalists (ahl al-hadith). 8. The real meaning behind the term 'fatwah', this word having definitely been distorted by the Western press. 9. The concept of the 'madhbab', illustrating the importance of doctrinal conformity in Islamic legal reasoning. The author argues, interestingly, that the madhbab were unique to Islamic civilization, not being influenced by any outside ideas. The author's discussion on the madhbab leads into one concerning the 'imam', who in Islamic law was the only one permitted to interpret revealed texts. The imam, the author explains, arose from a process of "authority construction." All of this discussion sheds considerable light on the degree to which absolute legal authority is placed in one individual in Islamic law. 10. Most surprising of all, is that legal authority in Islamic law is considered to be solely epistemic, never residing in the state, a view which is certainly at odds with what is reported in the Western press.

product was as described.

Wael Hallaq prior to this Islamic legal history had written 'a history of Islamic legal \*theories\*'. That book had a (very) short introductory chapter: which went into the origins of the actual \*law\*, before the lawyers thought to make a theory of it. Here, Hallaq expands that chapter into a book in its own right. In this book's introduction, the author writes about the modern 'state of scholarship': 'to date, there has not been a single volume published that offers a history of Islamic law during the first three or four centuries of its life. At least three works have thus far appeared bearing titles that contain the designation "Origins," in one way or another associated in these same titles with "Islamic law" or "Islamic jurisprudence." None, however, can boast content that truly reflects what is implied'. Leaving aside why that embarrassment has come to pass, Hallaq is exactly right that it has been an embarrassment. I haven't studied far into the Abbasid era, at least not so far as the other reviewers

here have studied. So I will aim my review of \*this\* book at its first few chapters, which mainly handle the Umayyads. These chapters rely upon the *Tabaqat* and *Akhbar* literature concerning judges: mainly by Waki` and Kindi; with some Ibn Hibban, Shirazi, Ibn Khallikan and others. Thence, Hallaq deduces that early Islamic law was an ad-hoc affair, growing out of Arab sharifian hukm - that is, wise elders mediating disputes between Arabs. The Qur'an was not much adhered to, let alone the Hadith; some judges could not even read. Later, the Muslims figured out that they were believers in a new world religion and, so, they professionalised the legal field. The book does well at organising this material and making it readable. Hallaq is however naive about the state of Islamic literature in the first centuries AH. First off, he accepts the Muslims' account of Muhammad and the Qur'an (pp. 19-23). I can skip those (thankfully few) pages and put up with the rest, given that most of this book concerns the mid 40s / 660s and beyond. More serious is his acceptance of pseudo-Hasan's Qadarist letter. The arguments for that letter were debunked in Michael Cook's 'Early Muslim Dogma' - back in 1981. In addition, whilst Hallaq was writing this book, Suleiman Mourad was writing his own book which debunked the letter entirely. (Does Cambridge not have email?) The index has missed some references. Sa'id b Jubayr is noted only for p. 65; the index needs to link to 60-1. Speaking of page 61, Said is there given as scribe to `Abd Allāf b. `Utba in '95 / 713'. This year was when Sa'id was \*executed\* - anyway "`Abd Allāf" is itself a mistake, since it should be `Ubayd Allāf b. `Abd Allāf b. `Utba. I wonder if this portion of the book was penciled in during the proof process. Elsewhere in the book, one finds an 'Abāf Ayyāf b' al-Sakhtiyani who needs to be just plain Ayyāf b. It made me worry about what might be lurking in the second half (which as I've said, I have to take his word for). Now, besides the naivete, I was impressed with the author's \*knowledge\*. It is extremely unlikely that Hallaq does not know of what I'd noted in the preceding para. It is more probable that they were simple typo's. My ire goes more to the editorial staff at Cambridge; it appears that they lack a grounding in the 'rijal'. Overall, I shouldn't let these problems bug me. This is a solid explanation of these critical centuries. Recommended.

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