

The Rule of Law in Islamic Thought and Practice: A Historical Perspective

Timur Kuran*

Department of Economics
Duke University
213 Social Sciences Building
Box 90097
Durham, NC 27708, USA

t.kuran@duke.edu

(919) 660-1872, (919) 660-4302

October 2008

Abstract

The rule of law entails government accountability, equal access to justice and the political process, efficient judicial and political systems, clear laws, generally stable laws, and the protection of fundamental human rights. This paper explores whether Islamic law conforms to these principles in theory and in practice. Three conclusions are reached. First, various early Islamic institutions were meant, in some respect, to serve one or more of these principles. Second, the institutions in question lost effectiveness over time. Finally, the relevant Islamic institutions are now generally out of date.

*A draft of this article was presented at the World Justice Forum in Vienna, July 2-5, 2008.

The rise of movements to restore Islamic law and broaden its reach constitutes one of the most significant events of our time. These movements have spawned vast literatures, energized political movements that have shaken the global international order, and provided rationales for religious militancy. The architects of these campaigns, known as Islamists, view the holy law of Islam, the sharia, as the answer to assorted social, moral, political, and economic problems.¹

Without necessarily endorsing Islamist goals or values, diverse other groups have supported, or at least tolerated, Islamist campaigns, for reasons of their own. Many multiculturalists are sympathetic to reinstating Islamic law on the ground that diversity is inherently good and cultures cannot be ranked. Assorted democrats support peaceful Islamist parties that prove their popularity through elections. Western military strategists abet selected Islamists as counterweights to secular opponents deemed particularly dangerous; the American support of the Taliban against the Soviet army offers a case in point. Certain constitutional scholars view Islamic law as a vehicle for instituting political checks and balances capable of turning autocracies into stable democracies.

For all this support, Islamic law is very poorly understood. Few people know much about its content or about the means by which it is supposed to achieve results. Surprisingly little comparative research focuses on the identification of its advantages and disadvantages in relation to alternative legal systems or evolving conditions. The goal of this article is to advance the comparative agenda by evaluating Islamic law in one particular context, its compatibility with the rule of law. To what extent, and in what

¹ In practical usage, the sharia encompasses all legal pronouncements of trained Muslim jurists. This is the sense in which the term is being used here. Historically the term represented more than a system of law. It was considered a discursive tradition encompassing more than legal interpretations (Messick 1993).

ways, does Islamic law satisfy the principles of the rule of law?

The task requires specifying what these principles entail. As I understand the term, it encompasses government accountability, equal access to justice and the political process, efficient judicial and political systems, clear laws, generally stable laws, and the protection of fundamental human rights.² To what extent does Islamic law, in theory and in practice, conform to these principles?

Like the rule of law, Islamic law has meant different things to different people. Its applications, too, have varied enormously. The law enforced by the Islamic courts of sixteenth-century Istanbul differed in content and complexity from that enforced in the first Islamic state of seventh-century Arabia. Whereas the Taliban see Islamic law first and foremost as a vehicle for preserving a puritanical lifestyle, constitutional scholars consider its chief virtue to lie in its political functions. Every group gives priority to particular aspects of the Islamic heritage, downplaying, ignoring, or simply overlooking much else. Nevertheless, the various conceptions of Islamic law share certain characteristics that allow useful generalizations. Besides, it is instructive to consider how Islamic law has fared according to certain criteria that are widely considered desirable.

GOVERNMENT ACCOUNTABILITY

The sharia subjects all human beings—male and female, rich and poor, educated and illiterate—to the same rules. It makes no exceptions, not even for rulers. If people of means are to pay an annual tithe, so must they. If it is wrong to discriminate among Muslims on the basis of tribal affiliation, rulers, too, must pursue tribe-blind policies. If

² Each of these appears within the rule of law definition of the World Justice Forum. See Dam (2006) for accounts of what the principles entail.

employers must pay their workers a fair wage, rulers are to obey the same standards of fairness vis-à-vis government employees (Rahman 1979, chap. 4; Vikør 2005, chap. 1, 10; Lewis 1988, chaps. 2-3; Weiss 1998, chap. 2).

A central concept in Islamic political thought is that an Islamic ruler must not only enforce Islamic law but obey it strictly himself. The legitimacy of his rule depends critically on his adherence to the sharia. If he fails to uphold Islamic law through either his policies or his personal life, he must be deposed. Centuries before the issuing of the English Charter of Liberties (Magna Carta) in 1215, in Islamic thought the law was considered a force above government and independent of the whims of individual rulers. In principle, Muslim rulers were accountable for their actions.

To lay down a principle is not the same thing as putting it into practice. The most basic obstacle to implementing the sharia lies in its content. Consisting of a mix of very general and highly specific rules, it covers less than most people realize, and many of the rules are subject to interpretation. Most modern promoters of the sharia consider interest un-Islamic. They thus infer that the officials of an Islamic state should work to eradicate interest-based transactions. But what credit instruments qualify as interest-free? No consensus has emerged, making it impossible to judge conclusively whether any particular government is respecting the presumed interest ban (Kuran 2004; Imber 1997:145-46).

In the course of Islamic history the promoters and enforcers of Islamic law have understood that its provisions are seldom self-explanatory. Accordingly, they have developed various methods for resolving ambiguities. During Muhammad's lifetime, interpretations were facilitated through new verses of the Koran, Muhammad's own pronouncements, and examples set by his actions. With his death in 632 C.E. these means

ceased to be available with respect to new controversies. For a while people who knew him, or his acquaintances, or acquaintances of his acquaintances, could come forward with recollections of his words or deeds. Whatever the veracity of these recollections, they served to dampen ambiguities. With every passing generation, of course, new recollections lost credibility. It also became increasingly unlikely that the situations demanding resolution had parallels in Muhammad's time and milieu. Hence, for all practical purposes, the sharia progressively lost its usefulness as a source of guidance in everyday life (Zubaida 2003, chap. 1; Rahman 1979, chaps. 4-5). Today, 14 centuries after the birth of Islam, both rulers and the ruled routinely encounter issues unresolvable by consulting the Koran or remembrances of the Prophet's life. A vast array of issues demand fresh thinking.

Very early in Islamic history, just a few generations after Muhammad, a solution presented itself. An expanding group of religious scholars, known as *ulama* (in Arabic, '*ulamā*', plural of '*ālim*') asserted the right to settle controversies over the law. Over the course of a couple of centuries, they succeeded in getting caliphs and the wider Muslim community to recognize them as the guardians, transmitters, and interpreters of Islamic law. In the process, they effectively gained control over the evolution of legal doctrine, making their collective judgments serve roles once fulfilled by the Koran and Muhammad's wisdom. From then on, it was they who determined how the law applied to novel situations.

In acquiring the right to settle legal controversies, Noah Feldman (2008) notes, the religious scholars also placed limits on the executive dominance of caliphs. Although caliphs, and later sultans, who ruled over Muslim communities retained extensive administrative authority, they came to share power with *ulama*. Rulers became accountable to religious scholars, who could now undermine their legitimacy merely by

pronouncing state policies un-Islamic or simply by declaring them impious.

Precisely because Muslim rulers were accountable under Islamic law, Feldman considers Islam's traditional form of government to have provided, for a while, a version of the rule of law. He also imagines that in principle a modern Islamic state could institute the rule of law by returning to the community of religious scholars the authority that they lost as a result of secularization and political centralization. Restoring to the religious scholars their traditional rights could make Muslim governments less arbitrary and less despotic.

This optimism rests on the assumption that other constituencies would passively accept the shift of political power back to ulama. Historically, they never did. Rulers tried, often successfully, to gain control over scholarly interpretations. Diverse other groups, including soldiers, landowners, merchants, and craftsmen, took positions that influenced scholarly discourses. As in every known society, past and present, controversial issues thus got decided through give-and-take among multiple constituencies. Sometimes the ulama managed collectively to constrain policy decisions, control public opinion, and shape political fortunes by granting religious legitimacy to certain individuals and denying it to others. At other times they fell under the control of successive rulers who bought them off through perks or weakened them by exploiting their differences.

The Ottoman Empire provides abundant examples of the latter pattern. In certain periods the ulama managed to act as a pressure group that constrained Ottoman sultans (Zilfi 1988, chaps. 3-4). At times they went so far as to depose those who harmed their interests or failed to satisfy their sensibilities. However, far more often, and increasingly over time, they served them as loyal civil servants. Ebu's-Su'ud, for three decades in the mid-sixteenth century the chief judicial officer (*şeyhülislam*) of the Ottoman Empire, gave sultans vast discretion by dutifully issuing a supportive religious opinion (*fetva*) whenever

secular considerations made it expedient to change course (Imber 1997; Coşgel 2009)). One factor that facilitated the subordination of religious scholars is that as individuals they owed their positions to the sultan's patronage. Another is that the enforcement of property rights was in the hands of secular authorities. Still another is that in executing laws the sultan could abide by scholarly interpretations selectively, in self-serving ways. Each of these factors gave sultans leverage over the ulama, undermining their ability to constrain government.

In recent decades Al-Azhar, Egypt's leading Muslim institution of jurisprudence and higher learning, has helped to legitimize government policies through supportive statements laced with religious motifs (Barraclough 1998). In Saudi Arabia, too, the ulama have participated in the legitimation of policies motivated by secular considerations (Al-Rasheed 2002, chaps. 3-5; Steinberg 2005; Vogel 2000). True, they have resisted certain technological changes, and grumbled about Saudi military alliances with non-Muslims. But these are exceptions that prove the point. They have accepted every major technological advance that initially they opposed, including television and the telephone; and the Saudi government secured their approval even of placing non-Muslim soldiers on Saudi soil. Like Ottoman history, the modern records of Egypt and Saudi Arabia thus show that granting the community of religious scholars the right to reject government policies as un-Islamic does not make rulers accountable for their actions in practice.

None of these cases implies that the ulama have lost social relevance. In serving the state they legitimize not only state policies but also the principle of anchoring social institutions in Islam. As such, they make it harder for the government to pursue policies that the public considers un-Islamic. For example, they make it effectively impossible for their governments to defend the expressive freedoms of people deemed, in the public

imagination, to have violated a religious taboo. They thus distort government policies in domains removed from those in which they are asked to lend support.

Precisely for that reason, there exist constituencies who can be expected to resist the empowerment of Muslim religious scholars. The secularists of Turkey stand out as the most obvious example of a constituency opposed to reinstating Islamic law in any form and loathe to give religious functionaries control over their lives. Similar constituencies exist in other countries, though they are generally less vocal in their opposition to Islamic rule. In Iran, where religious scholars have enjoyed veto power over executive decisions since the Islamic revolution of 1978-79, political pressures have muted public expressions of anti-Islamic sentiment.³

In sum, both the historical record and contemporary patterns suggest that the balance of power that is implied by the concept of rule of law cannot be achieved simply by declaring government accountable to the ulama. Major constituencies will try to frustrate any attempt to increase the powers of religious functionaries. Soothing their fears would require institutional innovations that are not part of the Islamic heritage. It would also require reinterpretations of Islam itself. Modern Islamic thought has not yet generated the essential innovations, notwithstanding the ongoing transformations in religious traditions all across the Islamic world (Zaman 2002).

³ Although political repression makes it difficult to measure the extent of hidden opposition, the Iranian regime appears vulnerable to an explosion of the type that has toppled other modern regimes, including the Iranian monarchy and the communist regimes of Eastern Europe (Kuran 1995, chaps. 15-15, 19). On the political functions of the Iranian clergy after the Islamic Revolution, see Rahnema and Nomani (1990:chaps. 6-7) and Zubaida (2003:chap. 6).

EQUAL ACCESS TO JUSTICE AND THE POLITICAL PROCESS

Our second rule of law principle is that the process through which laws are enacted, administered, and enforced must be both accessible and fair. As with government accountability, this principle is satisfied in the abstract. Under Islamic law all segments of society, regardless of gender, wealth or status, are entitled to sue in an Islamic court, to defend themselves if sued, and to be treated fairly. Moreover, everyone is entitled to participation in the political process. In theory, therefore, the enactment, administration, and enforcement of laws obeys rules of impartiality (Khadduri 1984).

Yet barriers exist to the implementation of Islam's impartiality objectives. In a state committed to Islamic law, under its most common interpretations, two groups are bound to suffer legal and political discrimination: women and non-Muslims.

Islam emerged in a society in which women enjoyed fewer political rights than men. In seventh-century Arabia, women who participated in the marketplace and the political process generally did so under the protection of male relatives. Although the Koran contains provisions that improved the social status of women and gave them new economic rights in the Arabian milieu, it stops short of calling for economic gender equality. Its inheritance rules assign to a female inheritor a share equal to half that of a male in the same category; for instance, a daughter gets half as much as a son (Coulson 1971; Fyzee 1964).

Invoking the Koran, along with Islamic history, most contemporary promoters of Islamic law seek to maintain forms of gender inequality that are withering away in economically developed parts of the world, even elsewhere. No major Islamist party favors the liberalization of female attire, or removing restrictions on women's mobility and social

interactions. On the contrary, constraining women's freedoms stands out as one of the defining characteristics of modern Islamism. More to the point, no Islamists consider the inheritance shares recorded in the Koran to be nonbinding, or subject to revision. For all practical purposes, then, restoring the sharia is a recipe for instituting gender inequality in political and economic life. It is bound to place women at a disadvantage with respect to controlling assets and, hence, in politics and the courts.

The claim that non-Muslims are bound to face discrimination in a state governed under Islamic law may appear overdrawn, because for most of Islamic history Muslim-governed states treated religious minorities quite well by the prevailing global standards. In Spain under the Moors and in Ottoman Turkey lawsuits that pitted a Muslim against a Christian or Jew frequently ended in favor of the latter; for certain periods the Islamic court registers show no evidence of systematic discrimination in adjudication on the basis of religion.⁴ Nevertheless, Islamic states did not meet modern standards of impartiality. Non-Muslims were generally excluded from high reaches of the administration and military command, unless they accepted conversion. Even in the most tolerant Islamic regimes, including those just mentioned, Islamic courts drew their staffs from Muslims, generating inevitable biases on matters involving intercommunal conflict. There is no guarantee, then, that in a modern state governed under Islamic law non-Muslims would have equal access to justice, or that they could participate in the political process on an equal footing with Muslims.

The root problem is that Islam recognizes no basis for nationhood except religion. Having

⁴ In the court records of seventeenth-century Istanbul, one finds a huge number of lawsuits that pitted one or more Muslims against one or more Christians. The plaintiff won 59 percent of the cases in which the suing party was Muslim, but 68 percent of those where the suing party was Christian. This evidence is based on a data set, developed by the author. It involves more than 10,000 observations.

declared tribalism illicit from the start, it has been committed to building and strengthening ties of religious brotherhood. This alone has made religious equality inconceivable in administration, the military command, and the judiciary (Zaman 2002:4-50). Although non-Muslims may be granted protection of life and property, and allowed to participate in exchanges as equals, they cannot be given the means to subjugate Muslims, or allowed to make policies or engage in legal interpretations of consequence to Muslims.⁵

EFFICIENCY OF THE LEGAL AND POLITICAL SYSTEMS

To turn now to matters of efficiency, historically a distinct characteristic of the Islamic court system was its ability to settle disputes quickly. The litigation procedures of an Islamic court are simple by modern standards and highly transparent. There is no jury. A single judge, trained to handle both civil and criminal disputes, listens to the litigants and their witnesses, reviews any documents presented, and pronounces a verdict, possibly after conducting investigations or having experts do so on his behalf. He does not have to deliberate with other judges, or justify his decision. He may even avoid pronouncing one side right, and seek instead to have the litigants agree on a compromise. Litigants are not constrained in regard to the presentation of evidence. The absence of a jury contributes to the simplicity of the proceedings (Rosen 1989: chaps. 3-4; Tyan, 1960: chaps. 1-7).

Modern life is replete with interpersonal disputes that could be settled efficiently through the simple procedures of a traditional Islamic court. However, in a wide range of contexts

⁵ Religious discrimination remains common all over the world, even in countries where the law explicitly bans it. As a case in point, in the modern United States, a professed Muslim stands no chance of getting elected to high office. Witness the lengths to which Barack Obama traveled to assure voters that he is a practicing Christian, and not a Muslim.

the complexity of the disagreements would overwhelm the capacities of an unspecialized judge trained in classical Islamic law. Cases involving environmental damage, corporate responsibility, high technology, and international business often turn on concepts, or involve actors, absent from classical Islamic jurisprudence. On such cases, the disadvantages of incompetent litigation could easily overwhelm the advantages of speedy resolution. That is why, beginning in the nineteenth century, specialized courts have emerged all across the Islamic world. These courts have effectively secularized wide areas of the law, narrowing the jurisdiction of Islamic courts to a subset of the domains present at the rise of Islam, such as marriage.

A political system in which the government is accountable to the ulama religious scholars could work smoothly, especially insofar as the latter were organized hierarchically. Hierarchical organization would give them the capacity to judge government decisions systematically and communicate evaluations without delay. Whether the screening improves the quality of government—as measured, for example, by the delivery of public goods—would depend on the capabilities of individual scholars doing the screening. For the same reason that religious scholars lack the training to adjudicate complex disputes, they are unequipped to evaluate government policies involving complex tradeoffs.

The substance of Islamic training has varied across time and space. Though fixed in principle, in practice it has adapted to changing needs and circumstances. Yet nowhere have reforms been extensive enough to qualify the graduates of religious schools for monitoring government policies. To gain relevance to policy matters, Muhammad Qasim Zaman (2002, chap. 3) has observed, the religious content of Islamic legal training would have to make way for the natural and social sciences; in other words, the training would have to incorporate knowledge developed outside of distinctly Islamic realms, becoming

less Islamic.⁶ Yet many modern reforms have gone in the opposite direction by distinguishing between religious studies and secular knowledge, and making a point of excluding the latter from the curriculum. Moreover, some reforms have led to a redoubled emphasis on Islam's original sources, with the effect of increasing the detachment of students from policy controversies of the present. A modern training in Islamic law does not provide the skills to evaluate policies involving the money supply, the global trading system, food safety, or building codes, to name just a few of the issues that governments address.

In sum, instituting Islamic law need not improve the efficiency of the processes whereby a society governs itself and settles its disputes. Although it might do so in contexts similar to those present in the medieval social systems that produced Islamic law, in a wide range of contexts characteristic of modernity the costs could easily outweigh the benefits.

Many of the functions that religious scholars performed in the Middle Ages, and would be re-assuming under some current proposals, are now the province of specialized agencies: central banks, currency boards, global trade organizations, zoning boards, and myriads of other agencies with specialized staffs. The skills in question are not obtainable by studying Islam or, for that matter, Christianity or any other religion. This does not mean that religion has lost its usefulness as a political tool and instrument of social advancement. Islam still serves as a source of morality, a rhetorical tool kit, and an organizational medium. In parts of the Arab world societies to help battered women raise money in mosques by invoking verses of the Koran and Muhammad's calls for charity toward the downtrodden. Their officials find that people are more responsive to religious appeals than to ones framed in secular terms. Charitable organizations seeking to finance

⁶ For similar points, see Rahman (1982): chaps. 2-3.

scholarship programs and health services find, likewise, that religion motivates people to become more philanthropic.

So the issue is not whether Islam, or religion in general, remains socially useful. It is whether Islamic law, as commonly understood and practiced, can be the basic ingredient of a social system that satisfies the rule of law principles identified at the outset. Having addressed three of these principles, I now turn to the remainder.

CLEAR LAWS

Considered divine law, Islamic law is supposed to offer a universally comprehensible blueprint for human behavior. Over the ages its promoters have intimated that this condition is generally satisfied. There is a single law, they have suggested, which can be discovered and understood through study; and although interpreting the law may challenge the average person, especially in novel situations, the ulama are available to resolve ambiguities and fill in perceived gaps. Trained to reason by analogy and seek consensus among themselves, the ulama have been viewed as qualified to overcome confusion, whenever it arose. In assisting with interpretation, they are expected to extend the clarity of the law to an ever widening set of areas (Vikør 2005: chaps. 4-5).

In various contexts, the system has worked as envisaged. In the Middle Ages it was common for Muslims to consult a mufti on matters pertaining, say, to divorce. This remains the case today, all across the Islamic world. Yet, the legal clarity ideal has never been satisfied generally, in every domain. In certain domains the Islamic legal tradition has been considered irrelevant to resolving controversies. In other domains the problem has been that Islam's fundamental sources, or interpretations of their content, point in multiple directions, making it difficult to obtain authoritative advice.

To start with the first category of problems, in domains far removed from the content of traditional Islamic jurisprudence, religious scholars cannot credibly identify what Islamic law requires, because they have little to draw on, beyond abstract principles and remotely pertinent historical cases. In modern times such domains have included, among many others, mass production, industrial regulation, environmental preservation, medicine, and energy policy. Thus, most practicing Muslims look primarily to secular authorities for guidance regarding policy choices in these domains. Rarely do they approach muftis, teachers, judges or other Islamic functionaries. It is common knowledge that these functionaries lack the training to offer meaningful advice, are unaccustomed to handling queries, and have produced few relevant writings.

In modern countries with functioning sharia courts, the perception that Islamic law is irrelevant to a broad array of distinctly modern issues gets reflected in government constraints imposed on their jurisdiction. Consider Pakistan, whose successive constitutions have required laws to be compatible with Islam. Pakistan's Sharia Court may rule on the Islamic legitimacy of policies, but only on issues that the High Court, which has been dominated by western-trained modernist judges, considers it competent (Zaman 2002, p. 88-93). As a matter of practice, the Sharia Court has jurisdiction only in domains considered integral to religious life, narrowly defined. It is kept out of domains that classical Islamic jurisprudence did not address directly.

To turn now to the traditional domains of Islamic jurisprudence, they present the problem of indeterminacy. People seeking clarity from religious scholars may well encounter mutually inconsistent rulings and opinions. The root of this problem is that in certain contexts Islam's fundamental sources are too thin to guarantee a unique interpretation. After all, the Koran offers mostly moral guidelines. It provides few explicit instructions pertinent to the types of decisions people face on a daily basis in the marketplace, at

work, in the political arena, and in social interactions. Moreover, recollections of Muhammad's words and deeds cannot possibly fill in every perceived gap. First of all, they pertain to a pre-industrial society with relatively simple political and economic institutions. Second, ulama of the past have offered myriads of inconsistent opinions concerning issues already present in the Prophet's lifetime. Finally, modern life has compounded the possibilities of discord. It differs so radically from life in seventh-century Arabia that leading modern scholars routinely disagree on the practical implications of Islamic traditions to such issues as market freedoms, income distribution, and the state's economic role (Vikør 2005, chap. 16; Haneef 1995; Behdad 1994).

Historically, when scholars faced with the silences and ambiguities of Islam's traditional sources reached a consensus, they often did so by granting Islamic legitimacy to an existing local tradition (*'urf*). Commercial regulation offers cases in point. The Koran and Muhammad's life both contain certain specifics on pricing, bargaining, and contracting. These specifics relate to bilateral exchanges involving commodities of commercial significance in seventh-century Arabia, such as dates, camels, and gold. During Islam's long expansion, Muslim scholars had to address matters involving commodities without significance in seventh-century Arabia. They also faced controversies concerning practices, institutions, and conditions unknown in the early years of Islam. They had to rule, for instance, on disputes involving the just price of fur, the rights of craft guilds, and property claims after major urban fires. Generally they resolved the conflicts by granting Islamic legitimacy to what happened to be customary and appeared widely acceptable, rather than by appealing dogmatically to some variant of Islamic doctrine (Udovitch 1985).

The opinions and commentaries that legitimized customs were aimed at solving problems of daily life rather than at upholding a fixed interpretation of the law. This practical

orientation is evident in the nature of the differences among interpretations. They have differed precisely because needs and conditions varied across space and time.

The very success of past efforts to achieve legal clarity in particular locations and periods has had a downside from the standpoint of subsequent needs. Insofar as they produced variations in interpretation, they made it harder to reach a consensus later, in new circumstances. On any given issue, modern Muslims trying to make sense of the Islamic legal tradition encounter a panoply of possibly pertinent interpretations in historical records. The richness of those records raises the probability of disagreements.

To summarize, Islamic law does not necessarily satisfy the clarity principle in practice. In relation to modern life, it is not comprehensive. Besides, although Islamic jurisprudence is equipped with mechanisms for resolving legal ambiguities and responding to new situations, on issues addressed in the past voluminous precedents can complicate legal interpretation today.

STABLE LAWS

The legal stability principle of the rule of law is easily misunderstood. Although the terminology connotes fixity, what it requires is only that laws be resistant to modification. Laws must be difficult though not impossible to change. Implicit in the principle is a tradeoff between the predictability and adaptability of laws. They must be sufficiently stable to facilitate planning for the future, but also flexible enough to permit timely adaptations to changing conditions.

On the surface, Islamic law satisfies the stability requirement, as just identified. Under Islamic tradition, Muhammad was the last of a long line of prophets, and the Koran, the

unalterable word of God, constitutes the final divine revelation to humanity. By implication, Islamic law is eternally fixed. Yet the law can be reinterpreted from time to time, as new situations and challenges present themselves.

As already noted, over time new institutions and practices were incorporated into the Islamic legal system. For example, a century or so after the rise of Islam a distinct form of trust, the waqf, gained Islamic legitimacy; under successive regimes, and in various places, new taxes were absorbed into the system under one guise or another; and more than a half millennium after Muhammad craft guilds began to gain recognition as legitimate associations.

So Islamic law supports what one may call “adaptive legal stability”—legal fixity in general along with some capacity to change with the times. Whether it achieves an optimal balance between the conflicting needs for stability and change is a different matter. There are innumerable ways to reach a balance. The founding fathers of the United States sought the right balance through high hurdles for amending the constitution: the approval of both houses of Congress by two-thirds votes along with that of three fourths of the states within seven years. Since 1791 more than 10,000 proposed amendments to the U.S. Constitution have failed as a result of these hurdles, but 17 have been approved. It is easy to identify advantages of the resulting legal stability as well as inefficiencies caused by the stringent requirements for making amendments.⁷

In Islamic legal history, too, it is easy to identify both efficiency-enhancing adaptations over time and adaptational failures that have been harmful with regard to economic

⁷ Constitutional stability dampens the risk of investing in the United States. An unimplemented efficiency-enhancing change is the presidential authority to veto line items in Congress-approved budgets.

development, social peace, or democratization. The development of the waqf as an Islamic institution promoted economic growth by making it easier for wealth holders to shield property from state predation. By the same token, some of the waqf's key characteristics—lack of legal personhood, inability to restructure itself or modify its objectives without court approval—turned into economic handicaps as the modern global economy took shape (Kuran 2001). More generally, Islamic law equipped Muslim-governed societies with institutions that enabled them to function remarkably well within the global economy of the Middle Ages. However, as the global economy evolved it did not undergo the adaptations necessary for Muslim communities to remain economically competitive. For most of the second millennium, a time when western Europe was developing modern financial and commercial institutions. Islamic contract law remained essentially stagnant. Hence, by the nineteenth century the most dynamic Muslim merchants and investors considered it archaic. Most of them approved of the legal reforms that effectively moved commerce and finance beyond the jurisdiction of Islamic courts.

If excessive stability has been harmful in certain contexts, inadequate stability has been a major problem in others. Taxation offers a case in point. During the expansion of Islam, rulers sometimes found it convenient to retain the existing tax practices of conquered territories. At the same time, they retained the flexibility to alter tax rates and forms in response to changes in taxable capacity. The lack of constraints on taxation would have lowered incentives to invest and accumulate.

The taxes imposed arbitrarily in the early Islamic centuries include ones without Islamic precedent. The ulama accepted most of them without serious objection (Ashtor 1976). Continuing this pattern of permissiveness, the ulama of the Ottoman Empire formalized the state's authority to alter tax rates by recognizing a parallel legal system meant to exist

side by side with the sharia: state law (*kanun*). Matters essential to the health and survival of the state would fall within the jurisdiction of state law. Although the ulama retained the right to veto state policies and regulations in conflict with the sharia, this right did not always carry practical significance. When governments had a vital interest in changing legal practices, they usually prevailed (İnalçık 1970).

Earlier we saw that in many contexts Islamic law has lacked clarity, that gaps and silences have required reinterpretations, and that these led to a diversification of legal understandings and practices. The myriads of reinterpretations have also bred legal instability. As the challenges facing Muslim communities changed over time through such factors as urbanization, commercial expansion, conquests, and technological change, rulers were able to alter, essentially as they saw fit, laws critical to state power, size of government, and their own survival. Ordinarily they did so with the consent of religious scholars.

Many luminaries have shown that efficiency in governance requires constraints on the state's powers (Hayek 1973-79; North and Weingast 1989). "Leviathan" has to be chained in the interest of preserving individual incentives to produce. The task of chaining Leviathan has entered modern discourses on Islamic law mostly in relation to subordinating ruler's of the distant past to Islamic law. The finer challenges of binding modern states of the Islamic world, most of which are authoritarian, has received much less attention. The proposed concrete measures are mostly dated. This is particularly remarkable in view of a phenomenon noted by Seyyed Vali Reza Nasr (2001): state campaigns to use Islamic symbolism in order to squelch opposition and expand state powers.

PROTECTION OF FUNDAMENTAL RIGHTS

The protection of fundamental human rights is a basic element of almost every version of the rule of law. Islamic law guarantees both personal security and private property rights. Only people who stray from the path of righteousness can be fined, imprisoned, or killed, it holds; and private property cannot be restricted arbitrarily (Khadduri, chaps. 2, 6). Our focus here will be on the implied economic rights. The Koran provides a sound basis for protecting private property. It lacks prescriptions that might be construed as a ban on private property. In addition, it explicitly tolerates various types of material inequality: between men and women, masters and slaves, and merchants of different ability.

Turning now to how basic rights have been interpreted within Islamic discourses, we begin to encounter elements at odds with common modern understandings. Slavery, a legitimate institution under classical Islamic law, is incompatible with the almost universally accepted modern principle that individual freedom should be denied only for a proven crime. However, slavery is now illegal throughout the Islamic world, and modern Islamists do not want to restore its legitimacy. Islamic law has been reinterpreted in this regard by turning a blind eye to Koranic verses and historical precedents that accommodate slavery (Lewis 1990).

A more significant difficulty stems from Islamic principles in conflict with basic individual rights enshrined in classical Islamic law. In recognizing private property rights, the Koran also treats God as the owner of the universe. The principle of divine ownership can be invoked to restrict privileges that are central to modern notions of private property. For much of Islamic history, in fact, it served to deny peasants the right to sell land or pass it onto their heirs. In the early Arab empires, as in the Ottoman Empire that followed, a small farmer held land as a temporary trust, provided he kept it in production. If he

ceased cultivation, his plot reverted to the state for reassignment. At his death, likewise, the state reclaimed his farm. Although the state usually let his heirs take over, it retained the right to take the farm away from his family (İnalçık 1994: 103-78).

Lack of private ownership in small plots did not mean that peasants always worried about expropriation. Ordinarily the state lacked a reason to drive away productive and tax-paying farmers. Following a conquest, the new ruler would leave peasants alone, so long as their taxes started accruing to him. The groups threatened most seriously with expropriation were large landowners and successful merchants. For these wealthy groups, the danger of confiscation varied across periods and regions, and also according to political circumstances. It tended to rise in times of financial crisis or military threat. Expropriations of substantial estates were especially common.⁸

Until modern times, taxation was also relatively arbitrary. New taxes could be imposed, or rates changed for specific groups, under the rubric of state law, to transfer rents from producers, or assets from the wealthy, to the state. Maqrizi, an Egyptian historian of the fifteenth century, considered expropriation commonplace in his surroundings. Ibn Khaldun thought the same about Tunisia and Egypt in the fourteenth century (Ibn Khaldun 1379/1958; Allouche 1994). In the seventeenth century the greatest source of government revenue in the Ottoman Empire became the *avarız*—generic name for an extraordinary tax imposed by imperial edict, with no religious basis, but with the endorsement of *ulama* (Darling 1996).

⁸ This practice could be considered a violation of the Islamic law of inheritance, so usually it was justified on the ground that the deceased was not the rightful owner of his estate. The deceased could not defend himself, and his descendants were not necessarily privy to pertinent facts. This is what made states resort to it so frequently.

States resorted to arbitrary taxation and expropriations partly because they could not borrow easily. In turn, that difficulty reflected the ineffectiveness of the political checks and balances that the ulama were supposed to provide. As Douglass North and Barry Weingast (1989) have shown, states subject to appropriate constraints tend to repay their loans, developing a reputation as credit-worthy; consequently, they can borrow at low cost and have few incentives to expropriate. Whatever the governance benefits that the ulama supplied historically, clearly their oversight failed to protect property rights adequately by modern standards. This does not imply that rulers had incentives to grab any and all resources in their reach. Political considerations made them limit certain levies. Thus, Ottoman sultans generally capped the tax burden on the peasantry, in order to trim the resources available to potential political rivals, namely, provincial officials who exercised tax collection rights in return for military and other services (Karaman 2009).

In brief, although classical Islamic law allowed private property rights, these conflicted with a principle that facilitated state predation: God's ownership of everything. When the state took measures to advance material security, as when it imposed and enforced tax ceilings, it did so for self-serving reasons, not merely to abide by Islamic law.

AN EARLY ISLAMIC INSTITUTION TO STRENGTHEN PROPERTY RIGHTS

The Ottoman sultans who imposed tax ceilings in the countryside did so by invoking their own prerogatives under state law. However, they also appealed opportunistically to the Islamic legal heritage. During Muhammad's lifetime, Islam had established an institution to cap taxation and make it predictable. Known as zakat and still counted among Islam's five fundamental requirements, this institution provided a religious basis for limiting state predation. Why did zakat prove ineffective? Exploring the mechanisms at play will

identify the shortcomings of Islamic law as an enforcer of property rights.

Zakat consists of regulations designed to systematize transfer payments. Requiring certain groups to pay taxes, it entitles a few constituencies to subsidies. As implemented by Muhammad and his first few successors, zakat taxed major sources of income and forms of wealth at fixed rates, with exemptions for the poor and reductions for producers with high-cost producers. Because zakat revenue was meant to finance all expenditures of the Islamic state, except those met through booty, the fixity of the rates capped individual tax obligations. This fixity also limited the state's economic reach (Kuran 2003).

It made a huge difference that taxes collected under the rubric of zakat entailed not a general levy on income and wealth but, rather, a levy on their forms known in seventh-century Islam to the peoples of western Arabia. Because the underlying principles of equity were not made explicit, it is the specific rates and forms of taxation that entered Islamic teachings, not the principles. Specifics came to be treated as sacred, rather than the underlying principles. That choice quickly lessened zakat's relevance to economies with characteristics significantly different from those of seventh-century Arabia. Thus, as the early Arab conquests brought the cities of Syria and Iraq into the Islamic fold, their governors discovered that taxing the incomes of artisans required going outside the zakat system. Having breached the evolving Islamic fiscal regime in that context, they then found it easy to adjust agricultural taxes as well (Løkkegaard 1950). To do so, they did not have to challenge zakat rates. They could do so through new taxes, such as labor dues. Before long, Muslim rulers were adjusting taxes more or less at will.

At the inception of the zakat system, taxation was mildly progressive. Small farmers and herders were exempt, and farmers who needed to maintain water canals paid less than

those who relied only on rainfall. The subsequent arbitrariness of rates made the tax systems of Islamic states decidedly regressive. Within a century after the rise of Islam, the wealthiest officials were exempt from taxation, town-dwellers were being treated leniently to reduce the likelihood of revolt, and peasants were paying relatively high taxes. These transformations occurred at a time when increasing numbers of high officials were Persian. They amounted to a grafting of the ancient Persian system of taxation onto the original Islamic system. What historians of Seljuk Turkey, the Ottoman Empire, and Safavid Iran identify as variants of the Islamic system of taxation are actually forms of a pre-Islamic system. Unlike the zakat system, the core element of Islamic taxation in the Prophet's lifetime, it gives the ruler considerable discretion in setting rates and forms of taxation.

The upshot is that zakat did not become a permanently effective weapon against government predation. Formulated in relation to conditions of seventh-century Arabia, rather than as a general transfer system, it served merely as a temporary barrier to arbitrary taxation. This failure to impose general limits on taxation also affected the evolution of legal discourse. In allowing states to exercise discretion in setting taxes in new territories and economic sectors, it also kept Islamic legal discourse from focusing on the development of checks and balances. Today, fourteen centuries after the advent of Islam, texts on zakat written by expositors of "Islamic economics" spell out the early rates without identifying general principles that those specifics were meant to serve. Moreover, they refrain from addressing the challenge of protecting individual property rights in general (Kuran 2004, pp. 19-28).

THE TRUST AS A SUBSTITUTE FOR PROPERTY RIGHTS

The inadequacies of zakat as a barrier to state predation were bound to stimulate searches

for alternative institutions to protect private wealth. Indeed, by the eighth century prosperous Muslims were looking for alternative institutions to secure private property. The most important innovation had drawbacks of its own. It had unintended consequences that undermined the rule of law in ways still visible, more than a millennium later.

About a century after the rise of Islam, a form of trust known as waqf emerged as an antidote to weak private property rights. The owner of an income-producing property founded a waqf by endowing it in perpetuity to finance a designated social service. Regardless of the nature of the service, income-yielding assets endowed as waqf were considered sacred. Nevertheless, the founder was allowed to appropriate some of the income. In combination, these two provisions made the waqf a wealth shelter. On the one hand, they gave the assets considerable immunity against taxation and confiscation. On the other, they allowed the founder to maintain personal control over some of the assets. The waqf thus represented an ingenious implicit contract between the state and its wealthy subjects. The rich received the material security they craved, in return for providing social services. For its part, the state freed itself of the need to supply public goods, in return for accepting constraints on predation (Kuran 2001).

Over a millennium, this wealth-sheltering function resulted in the conversion of private property into waqf property on a massive scale. Waqfs were established to finance a vast range of social institutions—mosques, schools, fountains, soup kitchens, hospitals, and much more. Depending on the region, up to half of all real estate ended up in waqfs. This transformation strengthened property rights insofar as it limited the productive assets available for predation.

Against this benefit, there were also rising costs, as measured by effects on the rule of

law. The waqf's manager-trustee enjoyed little discretion over the deployment of assets, presumably to prevent misuse. Over the long run, there were major adverse consequences. Organizations established as waqfs could not renew themselves easily as conditions changed, as they could if they were corporations. Hence, over time they tended to become dysfunctional. Also, whenever adaptations did occur, they involved acts that skirted the law. These illegal acts contributed to a culture of corruption, which raised the cost of enforcing laws. Even today, certain laws enforced at low cost elsewhere—for example, rules against littering—are poorly enforced in the Islamic world. Also, corruption remains very common by global standards.⁹

The deeds of waqfs kept them from participating in political causes. That limited their contributions to political movements that might have strengthened the rule of law. Nor was this the sole long-term effect. Given the enormous economic weight of the waqf, its failure to become self-governing left the Islamic world without the intermediate social structures that form what we now call “civil society.” Civil society is essential to the establishment and preservation of democratic rights. Early in Islamic history, in the eighth century, the waqf system had put in place a key ingredient of a strong civil society: the freedom to found non-governmental organizations of one's choice. But it inhibited another condition: organizational autonomy. Meanwhile, the waqf limited pressures for stronger property rights also directly, by providing wealth shelters. Access to wealth shelters lowers incentives to seek stronger private property rights.

⁹ In the 2006 World Corruption Index of Transparency International (http://www.transparency.org/policy_research/surveys_indices/cpi), the three largest countries of the western Islamic World—Iran, Egypt, and Turkey—all rank as more corrupt than each of the five most populous countries of the European Union.

CONCLUSIONS

At the end of this excursus on whether Islamic law satisfies the core principles of the rule of law, three broad themes stand out. First, the early development of Islamic law involved a panoply of institutions that served these principles. For each principle we can identify one or more early Islamic institutions that were meant, at some level, to promote it. Second, the institutions in question were not flawless as measured by long run success in sustaining the rule of law. Over time they lost effectiveness. Finally, the relevant Islamic institutions now tend to be out of date. Hence, Islamic law, as it is now understood, does not offer an efficient variant of the rule of law.

In reaching these conclusions, the argument has appealed to evidence from various periods and places. The purpose has been to underscore a point to which contemporary Islamic discourses pay inadequate attention, if at all: the performance of a society's institutional complex depends critically on the available technologies, the external environment, and the knowledge that governs individual choices. This point, which should not surprise any trained social scientist, implies that Islamic law could satisfy any given rule of law principle in the early Islamic milieu without meeting its requirements in the present. The imposition of Islamic law on a society in any one of its pre-modern formulations would result in massive failures, at least as measured by the extent to which the rule of law principles are satisfied.

To this day, much of Islamic thought, which consists of discourses grounded self-consciously in Islamic sources and traditions, has been wedded to the notion of a fixed Islamic law, based on a divine text. However, the practice of Islamic law has never ceased to evolve. The promoters and practitioners of Islamic law, past and present, have enriched, modified, and updated it in various ways. Quite obviously reformers have been

motivated by a desire to overcome emerging deficiencies. Yet the reinterpretations have not been extensive or imaginative enough to make Islamic law compatible with the rule of law principles.

To start with government accountability, in the centuries immediately following the rise of Islam the community of Muslim religious scholars managed to check certain abuses of government power. However, neither rulers nor other constituencies passively accepted the instituted limitations on their prerogatives. Muslim rulers managed to establish, and then maintain, substantial control over the ulama in their realms. The records of modern regimes that formally give ulama veto power—Saudi Arabia offers an example—prove that the political processes responsible for limiting government accountability in early Islam remain operative today. Moreover, the promoters of Islamic law have developed no strategy for instituting the checks and balances that Muslim-dominated modern regimes generally lack.

All variants of Islamic law formally promote equal access to justice and the political process. However, the concept of equality is restricted by modern standards. Muslim men have greater political rights than women, who are subject to special social controls, and non-Muslims, who are considered unfit to govern or deliver justice. Although historically the inevitable biases did not handicap either group in every context, the inequities were certainly not harmless, and they would not lack significance in a modern regime.

Evaluated from the standpoint of efficiency, Islamic law presents further shortcomings. For more than a millennium the Islamic courts rendered justice quickly and cheaply. But the complexity of most modern disputes far surpasses what judges trained in Islamic law are equipped to handle. The same logic, applied to the political balancing role of the ulama, suggests that whatever their contributions to political efficiency in the Middle

Ages, they lack the expertise necessary to judge government actions involving distinctly modern technological and institutional complexities. It is possible, of course, to redesign the curriculum through which religious scholars are trained. However, the requisite curricular reforms have not taken place. In any case, there is reason to question the desirability of training religious scholars to exercise what have become distinctly secular functions everywhere, including the Islamic world. If nothing else, there would be a duplication social functions. A more efficient alternative would be to accept restrictions on the jurisdiction of Islamic law and leave political balancing to secular actors.

The legal clarity requirement of the rule of law is never fully satisfied, and early Islamic history offers no exception. Yet early Islam did develop procedures for resolving ambiguities. A common method for promoting legal clarity was to treat customary practices as consistent with Islamic law. This method would be much less reliable in modern settings, because the issues that require resolution are far more removed from those to which the fundamental sources of Islam speak. True, Islamic law has been broadened to subsume new institutions, such as banks and stock markets. However, nowhere has the broadening gone far enough for the purpose of guiding a person who wants to live by Islamic law. In none of its forms does Islamic law provide a comprehensive guide to daily life, and the boundaries of its authority remain undrawn.

Under the conditions of early Islam, even those of later centuries, the reliance on Islamic law stabilized its applications to daily life in a wide range of contexts. But the exceptions have carried great significance. One involves taxation. Because Islam's rules of taxation were developed in relation to a particular milieu, they quickly lost their relevance to government; this allowed states great discretion in taxation—precisely the opposite of the apparent original intention. Islamic thought has yet to come to terms with such unintended consequences of classical Islamic institutions. Nor has it considered the proper scope of

legal flexibility, with attention to particularities.

Islamic law recognizes private property, one of the fundamental rights enshrined in the rule of law. At the same time, it is committed formally to the principle that the universe belongs to God alone. In some contexts, the latter principle has served to weaken the former. On the ground that the ruler is the best judge of God's will, major Muslim empires denied peasants the right to transfer land at will. In other contexts, private property rights have effectively trumped divine ownership. Limits on wealth and income taxation, where enforced, kept most assets under individual control. But the significance of these limits eroded over time because they were specific to particular types of wealth and income.

There have been other Islamic institutions devised to provide material security to wealth holders. By far the most important has been the waqf, which imposed barriers against state predation. However, in substituting for property rights, the waqf undermined the rule of law in other ways. Its restrictions on resource reallocation stimulated corruption, which weakened the judicial system's perceived commitment to equal treatment. Meanwhile, in providing a wealth sheltering function, it dampened incentives to strengthen property rights directly.

REFERENCES

- Allouche, Adel (1994). *Mamluk Economics: A Study and Translation of Al-Maqrīzī's Ighāthah*. Salt Lake City: University of Utah Press.
- Al-Rasheed, Madawi (2002). *A History of Saudi Arabia*. New York: Cambridge University Press.
- Ashtor, E. (1976). *A Social and Economic History of the Near East in the Middle Ages*. London: Collins.
- Barraclough, Steven (1998). "Al-Azhar: Between the Government and the Islamists." *Middle East Journal*, 52: 236-49.
- Behdad, Sohrab (1994). "A Disputed Utopia: Islamic Economics in Revolutionary Iran." *Comparative Studies in Society and History*, 36:775-813.
- Coulson, N.J. (1971). *Succession in the Muslim Family*. Cambridge: Cambridge University Press.
- Dam, Kenneth W. (2006). *The Law-Growth Nexus: The Rule of Law and Economic Development*. Washington, D.C.: Brookings Institution Press.
- Darling, Linda (1996). *Revenue-Raising and Legitimacy: Tax Collection and Finance in the Ottoman Empire, 1560-1660*. Leiden: E.J. Brill.
- Feldman, Noah (2008). *The Fall and Rise of the Islamic State*. Princeton: Princeton University Press.
- Fyzee, Asaf A. A. (1964). *Outlines of Muhammadan law*, 3rd. ed. London: Oxford University Press.
- Haneef, Mohamed Aslam. *Contemporary Islamic Economic Thought: A Selected Comparative Analysis*. Petaling Jaya, Malaysia: Ikraq.
- Hayek, Friedrich A. (1973-79). *Law, Legislation and Liberty*, 3 vols. Chicago: University of Chicago Press.

- Ibn Khaldun (1359/1958). *The Muqaddimah: An Introduction to History*, 3 vols., translated by Franz Rosenthal. New York: Pantheon.
- Imber, Colin (1997). *Ebu's-Su'ud: The Islamic Legal Tradition*. Stanford: Stanford University Press.
- İnalcık, Halil (1970). "The Ottoman Economic Mind and Aspects of the Ottoman Economy." In *Studies in the Economic History of the Middle East*, edited by Michael A. Cook, pp. 207-18. London: Oxford University Press.
- İnalcık, Halil (1994). "The Ottoman State: Economy and Society, 1300-1600." In *An Economic and Social History of the Ottoman Empire, 1300-1914*, edited by Halil İnalcık with Donald Quataert, pp. 9-409. New York: Cambridge University Press.
- Karaman, Kıvanç (2009). "Decentralized Coercion and Self-restraint in Provincial Taxation: The Ottoman Empire, 15th-16th Centuries." *Journal of Economic Behavior and Organization*, in press.
- Khadduri, Majid (1984). *The Islamic Conception of Justice*. Baltimore: Johns Hopkins University Press.
- Kuran, Timur (1995). *Private Truths, Public Lies: The Social Consequences of Preference Falsification*. Cambridge, Mass.: Harvard University Press.
- Kuran, Timur (2001). "The Provision of Public Goods under Islamic Law: Origins, Impact, and Limitations of the Waqf System." *Law and Society Review*, 35: 841-97.
- Kuran, Timur (2003). "Islamic Redistribution through *Zakat*: Historical Record and Modern Realities." In *Poverty and Charity in Middle Eastern Contexts*, edited by Michael Bonner, Mine Ener, and Amy Singer, pp. 275-93. Albany: State University of New York Press.
- Kuran, Timur (2004). *Islam and Mammon: the Economic Predicaments of Islamism*. Princeton: Princeton University Press.
- Lewis, Bernard (1988). *The Political Language of Islam*. Chicago: University of Chicago Press.

- Lewis, Bernard (1990). *Race and Slavery in the Middle East: An Historical Enquiry*. New York: 1990.
- Løkkegaard, Frede (1950). *Islamic Taxation in the Classic Period, with Special Reference to Circumstances in Iraq*. Copenhagen: Branner and Korsh.
- Messick, Brinkley (1993). *The Calligraphic State: Textual Domination and History in a Muslim Society*. Berkeley: University of California Press.
- Nasr, Seyyed Vali Reza (2001). *Islamic Leviathan: Islam and the Making of State Power*. New York: Oxford University Press.
- North, Douglass C. and Barry R. Weingast (1989). "Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in 17th-Century England." *Journal of Economic History*, 49: 803-32.
- Rahman, Fazlur (1979). *Islam*, 2nd ed. Chicago: University of Chicago Press.
- Rahman, Fazlur (1982). *Islam and Modernity: Transformation of an Intellectual Tradition*. Chicago: University of Chicago Press.
- Rahnema, Ali and Farhad Nomani (1990). *The Secular Miracle: Religion, Politics, and Economic Policy in Iran*. London: Zed Books.
- Rosen, Lawrence (1989). *The Anthropology of Justice: Law as Culture in Islamic Society*. Cambridge: Cambridge University Press.
- Steinberg, Guido (2005). "The Wahhabi Ulama and the Saudi State: 1745 to the Present." In *Saudi Arabia in the Balance: Political Economy, Society, Foreign Affairs*, edited by Paul Aarts and Gerd Nonneman, pp. 11-34. Washington Square, N.Y.: New York University Press.
- Udovitch, Abraham L. (1985). "Islamic Law and the Social Context of Exchange in the Medieval Middle East." *History and Anthropology*, 1: 445-65.
- Tyan, E. (1960). *Histoire de l'Organisation Judiciaire en Pays d'Islam*, 2nd. ed. Leiden: E.J. Brill.
- Vikør, Knut S. (2005). *Between God and Sultan: A History of Islamic Law*. Oxford:

Oxford University Press.

Vogel, Frank E. (2000). *Islamic Law and Legal System: Studies of Saudi Arabia*. Leiden:

Brill.

Weiss, Bernard G. (1998). *The Spirit of Islamic Law*. Athens: University of Georgia

Press.

Zaman, Muhammad Qasim (2002). *The Ulama in Contemporary Islam: Custodians of*

Change. Princeton: Princeton University Press.

Zilfi, Madeline C. (1988). *The Politics of Piety: The Ottoman Ulema in the Postclassical*

Age (1600-1800). Minneapolis: Bibliotheca Islamica.

Zubaida, Sami (2003). *Law and Power in the Islamic World*. London: I.B. Tauris.