

Custom In Islamic Law And Legal Theory The Development Of The Concepts Of Urf And Adah In The Islamic Legal Tradition Palgrave Series In Islamic Theology Law

The Force of Custom presents a finely textured ethnographic study that sheds new light on the legal and moral ordering of everyday life in northwestern Kyrgyzstan. Through her extensive fieldwork and firsthand experience, Judith Beyer reveals how Kyrgyz in Talas province negotiate proper behavior and regulate disputes by invoking custom, known to the locals as salt. While salt is presented as age-old tradition, its invocation is shown to be a highly developed and flexible rhetorical strategy that people adapt in order to meet the challenges of contemporary political, legal, economic, and religious environments. Officially, codified state law should take precedence when it comes to dispute resolution, yet the unwritten laws of salt and the increasing importance of Islamic law provide the standards for ordering everyday life. As Beyer further demonstrates, interpretations of both Islamic and state law are also intrinsically linked to salt. By interweaving case studies on kinship, legal negotiations, festive events, mourning rituals, and political and business dealings, Beyer shows how salt is the binding element in rural Kyrgyz social life and how it is used to explain and negotiate moral behavior and to postulate communal identity. In this way, salt provides a time-tested, sustainable source of authentication that defies changes in government and the shifting tides of religious movements.

In *The Politics of Islamic Law*, Iza Hussin compares India, Malaya, and Egypt during the British colonial period in order to trace the making and transformation of the contemporary category of 'Islamic law.' She demonstrates that not only is Islamic law not the shari'ah, its present institutional forms, substantive content, symbolic vocabulary, and relationship to state and society—in short, its politics—are built upon foundations laid during the colonial encounter. Drawing on extensive archival work in English, Arabic, and Malay—from court records to colonial and local papers to private letters and visual material—Hussin offers a view of politics in the colonial period as an iterative series of negotiations between local and colonial powers in multiple locations. She shows how this resulted in a paradox, centralizing Islamic law at the same time that it limited its reach to family and ritual matters, and produced a transformation in the Muslim state, providing the frame within which Islam is articulated today, setting the agenda for ongoing legislation and policy, and defining the limits of change. Combining a genealogy of law with a political analysis of its institutional dynamics, this book offers an up-close look at the ways in which global transformations are realized at the local level.

"Islamic Law and International Law is a comprehensive examination of differences and similarities between the Islamic legal tradition and international law, especially in the context of dispute settlement. Sharia embraces a unique logic and culture of justice--based on nonconfrontational dispute resolution--as taught by the Quran and the Prophet Muhammad. This book explains how the creeds of Islamic dispute resolution shape the Islamic milieu's views of international law. Is the Islamic legal tradition ab initio incompatible with international law, and how do states of the Islamic milieu view international courts, mediation, and arbitration? Islamic law constitutes an important part of the domestic legal system in many states of the Islamic milieu--Islamic law states--displacing secular law in state governance and affecting these states' contemporary international dealings. The book analyzes constitutional and subconstitutional laws in Islamic law states. The answer to the "Islamic law-international law nexus puzzle" lies in the diversity of how secular laws and religious laws fuse in domestic legal systems across the Islamic milieu. These states are not Islamic to the same degree or in

the same way. Thus, different international conflict management methods appeal to different states, depending on each one's domestic legal system. The main claim of the book is that in many instances the Islamic legal tradition points in one direction while Western-based, secularized international law points in another direction. This conflict is partially softened by the reality that the Islamic legal tradition itself has elements fundamentally compatible with modern international law. Islamic legal tradition, international law, sharia settlement, peaceful dispute resolution"--

For the first time, the author has explored the intertwinement of written law, Islamic law, and customary law in the highly complex Afghan society, being deeply influenced by traditional cultural and religious convictions. Given these facts, the author explores how to bridge the exigencies of a human rights-driven penal law and conflicting social norms and understandings by using the rich tradition of Islamic law and its possible openness for contemporary rule of law standards. This work is based on ample field research in connection with a thorough analysis of the normative contexts. It is a landmark, since it offers broadly acceptable and thus feasible solutions for the Afghan legal practice. The book is of equal interest for scientists and practitioners interested in legal, religious, social, and political developments concerning human rights and regional traditions in the MENA region, in Afghanistan in particular.

This book is written with the objective of reasonably addressing the need of Muslim gays and lesbians for a life which involves intimacy, affection and companionship within the confines of a legal contract. Contemporary conservative Muslim leaders unreasonably promote false marriages with straight spouses, failing which they prescribe the "solution" of permanent celibacy as a "test." This book delves into an extensive scholarship on the same sources that conservative Muslim leaders draw on—the Qur'an, Hadith and jurisprudence. It is argued that the primary sources of Muslim knowledge addressed sexual acts between the same gender in the context of inhospitality, exploitation, coercion and disease, but not true same-sex unions; past Muslim scholarship is silent on the issue of sexual orientation and Muslim same-sex unions. The arguments of contemporary conservative Muslim leaders are deconstructed and the case for Muslim same-sex unions is made based on jurisprudential principles and thorough arguments from within the Muslim tradition.

This is the first attempt to present a comprehensive comparative study of Jewish-Islamic law on a particular topic during the early Middle Ages. Libson's in-depth study of Islamic law, together with his expertise in the wide range of geonic and rabbinic literature, enable him to determine the influence of Muslim practice on geonic custom.

This volume provides a comprehensive survey of the contemporary study of Islamic law and a critical analysis of its deficiencies. Written by outstanding senior and emerging scholars in their fields, it offers an innovative historiographical examination of the field of Islamic law and an ideal introduction to key personalities and concepts. While capturing the state of contemporary Islamic legal studies by chronicling how far the field has come, the Handbook also explains why certain debates recur and indicates fundamental gaps in our knowledge. Each chapter presents bold new avenues for research and will help readers appreciate the contested nature of key concepts and topics in Islamic law. This Handbook will be a major reference work for scholars and students of Islam and Islamic law for years to come.

In recent years, Islamic law, or Shari'a, has been appropriated as a tool of modernity in the Muslim world and in the West and has become highly politicised in consequence. Wael Hallaq's magisterial overview of Shari'a sets the record straight by examining the doctrines and practices of Islamic law within the context of its history, and by showing how it functioned within pre-modern Islamic societies as a moral imperative. In so doing, Hallaq takes the reader on an epic journey tracing the history of Islamic law from its beginnings in seventh-century Arabia, through its development and transformation under the Ottomans, and across lands as diverse

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as India, Africa and South-East Asia, to the present. In a remarkably fluent narrative, the author unravels the complexities of his subject to reveal a love and deep knowledge of the law which will inform, engage and challenge the reader.

The Beginnings of Islamic Law is a major and innovative contribution to our understanding of the historical unfolding of Islamic law. Scrutinizing its historical contexts, the book proposes that Islamic law is a continuous intermingling of innovation and tradition. Salaymeh challenges the embedded assumptions in conventional Islamic legal historiography by developing a critical approach to the study of both Islamic and Jewish legal history. Through case studies of the treatment of war prisoners, circumcision, and wife-initiated divorce, she examines how Muslim jurists incorporated and transformed 'Near Eastern' legal traditions. She also demonstrates how socio-political and historical situations shaped the everyday practice of law, legal education, and the organization of the legal profession in the late antique and medieval eras. Aimed at scholars and students interested in Islamic history, Islamic law, and the relationship between Jewish and Islamic legal traditions, this book's interdisciplinary approach provides accessible explanations and translations of complex materials and ideas.

This collective volume deals with the main components in the laws of Islamic societies, past and present: sharia, custom and statute. Covers a wide range of geographical areas, from the Balkans to Yemen, and from Iraq to the Maghrib -- Back cover.

The study of Islamic law can be a forbidding prospect for those entering the field for the first time. Wael Hallaq, a leading scholar and practitioner of Islamic law, guides students through the intricacies of the subject in this absorbing introduction. The first half of the book is devoted to a discussion of Islamic law in its pre-modern natural habitat. The second part explains how the law was transformed and ultimately dismantled during the colonial period. In the final chapters, the author charts recent developments and the struggles of the Islamists to negotiate changes which have seen the law emerge as a primarily textual entity focused on fixed punishments and ritual requirements. The book, which includes a chronology, a glossary of key terms, and lists of further reading, will be the first stop for those who wish to understand the fundamentals of Islamic law, its practices and history.

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Most Muslim-majority countries have legal systems that enshrine both Islam and liberal rights. While not necessarily at odds, these dual commitments nonetheless provide legal and symbolic resources for activists to advance contending visions for their states and societies. Using the case study of Malaysia, Constituting Religion examines how these legal arrangements enable litigation and feed the construction of a 'rights-versus-rites binary' in law, politics, and the popular imagination. By drawing on extensive primary source material and tracing controversial cases from the court of law to the court of public opinion, this study theorizes the 'judicialization of religion' and the radiating effects of courts on popular legal and religious consciousness. The book documents how legal institutions catalyze ideological struggles, which stand to redefine the nation and its politics. Probing the links between legal pluralism, social movements, secularism, and political Islamism, Constituting Religion sheds new light on the confluence of law, religion, politics, and society. This title is also available as Open Access.

Exploring the question in detail Kamali explains the basic principles of halal and haram and discusses, particularly in relation to the meat industry, key issues surrounding their implementation. In doing so he gives important insights into, and relevant understanding of, many of the misconceptions and challenges confronting Muslims today. The issue of additives for instance has caused considerable confusion in food consumption. Not surprisingly, perceptions of what constitutes halal also vary among the schools and scholars of Islam. Other factors such as custom and climate also tend to be influential. In addition the work at hand

examines issues in halal certification procedures, and matters of concern to uniformity in halal industry practices.

This book explores the relationship between custom and Islamic law and seeks to uncover the role of custom in the construction of legal rulings. On a deeper level, however, it deals with the perennial problem of change and continuity in the Islamic legal tradition (or any tradition for that matter).

Why is it that some countries comply with international laws, while others disregard them? Courts, Codes, and Custom argues that the degree to which states accept and comply with international legal norms is rooted in a country's domestic legal tradition. Offering a novel cultural-institutional theory to explain this variation, Dana Zartner looks specifically at state policy towards international human rights and environmental law. A state's legal tradition—the cultural and institutional factors that shape attitudes about the law, appropriate standards of behavior, and the legal process—is the key mechanism by which international law becomes recognized, accepted, and internalized in the domestic legal framework. Legal tradition shapes not only perceptions about law, but also provides the lens through which policy-makers view state interests, providing both direct and indirect influence on state policy. In the book, Zartner disaggregates the concept of legal tradition and examines how the individual cultural and institutional characteristics present within a state's domestic legal tradition facilitate or hinder the internalization of international law and, subsequently, shape state policy. This provides explanation for both the differences in international law recognition across legal traditions, as well as the variance among states within legal traditions. To test this theory, she presents a series of comparative case studies. These studies fall under five of the main legal traditions in the world today: common law (U.S. and Australia), civil law (Germany and Turkey), Islamic law (Egypt and Saudi Arabia), mixed traditions (India and Kenya), and East Asian law (China and Japan). Zartner addresses a number of different themes, including the differences among legal traditions as well as between states within the same tradition; the important role that legal culture and history play in shaping contemporary attitudes about law; and similarities and differences in state policy towards human rights law versus environmental law.

In many parts of Africa three different systems of laws are concurrently applied – the imported "Colonial" law, the indigenous customary law and Islamic law. In some countries the customary and the Islamic law are kept separate and distinct, while in others they are fused into a single system. This volume represents a unique survey of the extent to which Islamic law is in fact applied in those parts of East and West Africa which were at one time under British administration. It examines the relevant legislation and case law, much of which has never appeared in any Law Reports; the judges and courts which apply it and the problems to which its application give rise.

In this pioneering work Siraj Sait and Hilary Lim address Islamic property and

land rights, drawing on a range of socio-historical, classical and contemporary resources. They address the significance of Islamic theories of property and Islamic land tenure regimes on the 'webs of tenure' prevalent in the Muslim societies. They consider the possibility of using Islamic legal and human rights systems for the development of inclusive, pro-poor approaches to land rights. They also focus on Muslim women's rights to property and inheritance systems. Engaging with institutions such as the Islamic endowment (waqf) and principles of Islamic microfinance, they test the workability of 'authentic' Islamic proposals. Located in human rights as well as Islamic debates, this study offers a well researched and constructive appraisal of property and land rights in the Muslim world.

This book discusses the common principles of morality and ethics derived from divinely endowed intuitive reason through the creation of al-fitr' a (nature) and human intellect (al-'aql). Biomedical topics are presented and ethical issues related to topics such as genetic testing, assisted reproduction and organ transplantation are discussed. Whereas these natural sources are God's special gifts to human beings, God's revelation as given to the prophets is the supernatural source of divine guidance through which human communities have been guided at all times through history. The second part of the book concentrates on the objectives of Islamic religious practice – the maqa' sid – which include: Preservation of Faith, Preservation of Life, Preservation of Mind (intellect and reason), Preservation of Progeny (al-nasl) and Preservation of Property. Lastly, the third part of the book discusses selected topical issues, including abortion, assisted reproduction devices, genetics, organ transplantation, brain death and end-of-life aspects. For each topic, the current medical evidence is followed by a detailed discussion of the ethical issues involved.

This handbook is a detailed reference source comprising original articles covering the origins, history, theory and practice of Islamic law. The handbook starts out by dealing with the question of what type of law is Islamic law and includes a critical analysis of the pedagogical approaches to studying and analysing Islamic law as a discipline. The handbook covers a broad range of issues, including the role of ethics in Islamic jurisprudence, the mechanics and processes of interpretation, the purposes and objectives of Islamic law, constitutional law and secularism, gender, bioethics, Muslim minorities in the West, jihad and terrorism. Previous publications on this topic have approached Islamic law from a variety of disciplinary and pedagogical perspectives. One of the original features of this handbook is that it treats Islamic law as a legal discipline by taking into account the historical functions and processes of legal cultures and the patterns of legal thought. With contributions from a selection of highly regarded and leading scholars in this field, the Routledge Handbook of Islamic Law is an essential resource for students and scholars who are interested in the field of Islamic Law.

This study of Islamic law in the final phase of its pre-modern period of existence is based mainly on the fatwa collections of two prominent Arab jurists and one Turkish jurist from this period. The book re-examines the basic methodological structure of Islamic law (including its complex relations with the state) and poses the question as to whether Islamic law became increasingly closed and rigid. It was found that no such closure ever took place. The book will be of importance to those interested in Islamic law, as well as to those interested in Islamic thought in general and the relations between society and the state. Readership: All those interested in Islamic law, the Middle East under the Ottomans, Islam and civil society, Islam and the state.

In these insightful 1973 papers two leading authorities make a wide-ranging review of ideas and materials on bridewealth and dowry.

Early Islamic historical literature attributes several hundred pragmatic documents to the Prophet Muhammad. The consistent use of epistolary and legal formulae, which are found only in these documents, encourages us to treat these texts as a corpus. In addition to consistent terminology, formulaic structure, and formulae, these texts show remarkable stability through transmission. A comparison of these texts with Umayyad and Abbasid papyri reveals that the Prophet's documents reflect obsolete or otherwise unattested formulae. This study will demonstrate through three case studies the particular functions of these documents in the history of social relations in late antique Arabia.

Islamic legal theory (*usul al-fiqh*) is literally regarded as 'the roots of the law' whilst Islamic jurists consider it to be the basis of Islamic jurisprudence and thus an essential aspect of Islamic law. This volume addresses the sources, methods and principles of Islamic law leading to an appreciation of the skills of independent juristic and legal reasoning necessary for deriving specific rulings from the established sources of the law. The articles engage critically with relevant traditional views to enable a diagnostic understanding of the different issues, covering both Sunni and Shi'a perspectives on some of the issues for comparison. The volume features an introductory overview of the subject as well as a comprehensive bibliography to aid further research. Islamic legal theory is a complex subject which challenges the ingenuity of any expert and therefore special care has been taken to select articles for their clarity as well as their quality, variety and critique to ensure an in-depth, engaging and easy understanding of what is normally a highly theoretical subject.

Using contemporary illustrations, *Legal Maxims in Islamic Criminal Law* delves into the theoretical and practical studies of *al-Qawaid al-Fiqhiyyah* in Islamic legal theory. It elucidates the importance of this concept in the application of Islamic law and demonstrates how the concept relates to the objectives of Islamic law (*maqasid al-Shari'ah*), generally.

In the West, we tend to think of Islamic law as an arcane and rigid legal system, bound by formulaic texts yet suffused by unfettered discretion. While judges may indeed refer to passages in the classical texts or have recourse to their own

orientations, images of binding doctrine and unbounded choice do not reflect the full reality of the Islamic law in its everyday practice. Whether in the Arabic-speaking world, the Muslim portions of South and Southeast Asia, or the countries to which many Muslims have migrated, Islamic law works is readily misunderstood if the local cultures in which it is embedded are not taken into account. With *Islam and the Rule of Justice*, Lawrence Rosen analyzes a number of these misperceptions. Drawing on specific cases, he explores the application of Islamic law to the treatment of women (who win most of their cases), the relations between Muslims and Jews (which frequently involve close personal and financial ties), and the structure of widespread corruption (which played a key role in prompting the Arab Spring). From these case studies the role of informal mechanisms in the resolution of local disputes. The author also provides a close reading of the trial of Zacarias Moussaoui, who was charged in an American court with helping to carry out the 9/11 attacks, using insights into how Islamic justice works to explain the defendant's actions during the trial. The book closes with an examination of how Islamic cultural concepts may come to bear on the constitutional structure and legal reforms many Muslim countries have been undertaking.

In this book, the author examines sijills, the official documents of the Ottoman Islamic courts, to understand how sharia law, society and the early-modern economy of sixteenth- and seventeenth-century Ottoman Cairo related to the practice of custom in determining rulings. In the sixteenth century, a new legal and cultural orthodoxy fostered the development of an early-modern Islam that broke new ground, giving rise to a new concept of the citizen and his role. Contrary to the prevailing scholarly view, this work adopts the position that local custom began to diminish and decline as a source of authority. These issues resonate today, several centuries later, in the continuing discussions of individual rights in relation to Islamic law.

Jurisprudential maxims play a vital role in the Islamic way of life, serve as a source for legislation and regulate daily transactions. This book expounds and renders 114 maxims into English. It also furnishes a theoretical perspective of religio-legal translation and sheds light on distinctions among related terms, namely: Jurisprudential maxims, fundamentalistic maxims and Jurisprudential canons.

This book provides an accessible introductory discussion of issues in Islamic law, justice, and society. At the center of the volume is a discussion of some interrelated theological, historical, legal, and practical issues facing Islamic law in such different countries and regions as Algeria, Morocco, South Africa, and South Asia. This will be a valuable book for students and scholars of Middle Eastern studies, law, and history.

Shari'a, Inshallah shows how people have used shari'a to struggle for peace, justice, and human rights in Somalia and Somaliland.

This third edition of the best-selling title *Principles of Islamic Jurisprudence* has

been completely revised and substantially enlarged. In this work, Prof Kamali offers us the first detailed presentation available in English of the theory of Muslim law (*usul al-fiqh*). Often regarded as the most sophisticated of the traditional Islamic disciplines, Islamic Jurisprudence is concerned with the way in which the rituals and laws of religion are derived from the Qur'an and the Sunnah—the precedent of the Prophet. Written as a university textbook, *Principles of Islamic Jurisprudence* is distinguished by its clarity and readability; it is an essential reference work not only for students of Islamic law, but also for anyone with an interest in Muslim society or in issues of comparative Jurisprudence. Personal status laws remain a highly politicized area of debate in the Middle East, as the arena in which the contentious issues of women's rights, religion and minority groups meet. This is especially so when it comes to divorce. In Tunisia, with the moderate Islamist party Ennahda winning the first elections following the 2011 revolution, questions of religion in public life have gained greater primacy. The country is often hailed for its progressive personal status code, seen as an exception to the practice in many other Muslim countries. Polygamy is banned, for example, and in divorce cases there is gender equality. However, Tunisia's legal system contains many gaps and leaves much room for interpretation. Bearing in mind this importance of the role of Islam in judicial courts, Maaïke Voorhoeve investigates whether the more progressive, and ostensibly secular, principles enshrined in Tunisia's Personal Status Code of 1956 are in fact adhered to in divorce cases. And if not, whether judges frequently turn to the Sharia, custom or societal norms as their primary sources of guidance. Through extensive research in the Tunisian courts, Voorhoeve investigates the different types of divorce, the arguments presented to the court and the consequent legal decisions made. She focuses on the role of female judges, testing the assumption that they adjudicate in a more gender-neutral way and examining the impact they have had on Tunisian legal culture and through this, Tunisian society. *Gender and Divorce Law in North Africa* therefore sheds light on the wide-reaching debate throughout North Africa and the Middle East concerning the role of Islam and Sharia in the public, political, legal and private spheres. This debate, which often pits secularists against Islamists, but is in reality much more nuanced, is key in a variety of fields, including Middle East studies and Islamic law.

Women's rights in Afghanistan have been supported and championed by Afghan and international advocates and organizations since 2002. Substantial progress has been made, but the women's rights movement faces an uncertain future in the wake of the 2014 international troop withdrawals. In addition to the potential for decreased financial and public support from international actors, women's rights advocates face the challenge of collaborating with a national government that has been mistrusted by the Afghan people while trying to promote norms and laws that often contradict deeply held community traditions. This report draws on numerous in-country interviews, discussions and debates to explore a way

forward for women's rights in Afghanistan: promoting women's rights through an Islamic framework. Women's rights groups have increasingly been using Sharia-based arguments and working with religious leaders to give arguments for stronger women's rights protections more legitimacy. Greater understanding of how Islamic legal literacy, scholarship and dialogue might help protect women's rights in the coming difficult period is crucial.

Expands and updates family law as it pertains to women with regard to marriage, divorce and inheritance throughout the Middle East. This second revised edition of John L. Esposito's landmark work expands and updates coverage of family law reforms -- marriage, divorce, and inheritance -- throughout the Middle East, North Africa, South and Southeast Asia. Copyright © Libri GmbH. All rights reserved.

The delayed development of the Islamic world, in defiance of the formulaic approaches long favored by economists, suggests that the traditional Sharia and Islamic values and principles are at least partially responsible for the region's persistent backwardness. By analyzing the impact of the legal regime of the Sharia on Saudi Arabia during the Arab Oil Bust of the 1980s, this thesis concludes that Islamic social values and the Sharia's de facto role as an uncodified pre-emptive Arab common law implemented with high regard to precedent by ulama with extraordinary power of judicial review had the effect of accentuating the effects of the Oil Bust, making the theory of the Petrocurse a subset of a larger Cost of Being Muslim. On the other hand, the author concludes that not only is the Sharia not constrained by its nature to playing a deleterious economic role, but that it has broad commercial application, both domestically and internationally, and a new generation of more flexible Muslim economists, lawyers, and financial theorists have pointed the way toward a possible comprehensive modern adaptation of Islamic laws and principles.

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