The Origins of Islamic Legal Theory: The Traditionalist and Western Perspectives

Abstract

Islamic law is both immensely important to those living in the modern Middle East and consistently misunderstood by those living outside of it. The way that individual Middle Eastern nations interpret and apply Islamic law directly impacts the lives of their citizens, but for years the origins of Islam (and Islamic law) closely mirrored the narrative presented in the Qur’an. While it is odd that the origins of Islamic law escaped scrutiny for years, the current state of scholarship is one of tension and excitement. Western scholars (primarily from Germany) have applied rigorous historical methodology to ancient sources and have challenged the traditional narrative. Traditionalist scholars (primarily from the Middle East) have noted that Western attempts to define the Middle East often mirror the pattern laid out by Edward Said’s Orientalism, and counter with Arabic sources ignored by the West. The end result is a tense academic standoff, as Western scholars attempt to duck charges of Imperialism and repeatedly point to the intriguing questions brought up by their sources, while Traditionalist scholars give ground on some pieces of the Qur’anic narrative but not others. This paper breaks down the research and arguments of key scholars from each group. Wael Hallaq’s work represents the most nuanced of the Traditionalist school, and his research is placed alongside the combined work of Joseph Schacht, Patricia Crone, and Benjamin Jokisch. It is important to note that these two schools should not be viewed as oppositional, despite the natural inclination to do so. This paper will show that they are, in effect, arguing with very specific goals in mind. The Traditionalist approach demands that Middle Eastern scholars be allowed to participate in the creation of their own historical narrative, and rightfully bristle at Western attempts to place Islam in a larger context, as this contextualization often places Islamic culture in a position subservient to the West. The Western approach attempts to bring new sources into the discussion of Islamic legal origins and, if it is done correctly, carefully separates this research from the historia sacra of Islamic tradition.
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Today, the Moslem world is witnessing a resurgence of Islamic fundamentalism. A central and controversial tenet of this movement is the incorporation of Koranic criminal law and procedure into domestic legal systems. Professor Joseph Schacht writes that law “remains an important, if not the most important, element in the struggle which is being fought in Islam between traditionalism and modernism. under the impact of Western Ideas.” This article outlines the evolution and substance of Islamic criminal law and procedure and reviews some of the human rights issues raised by the re...