



# Islamic Jurisprudence, Islamic Law, and Modernity

By Mohammad H. Fadel

Resources in Arabic and Islamic Studies

ISLAMIC JURISPRUDENCE,  
ISLAMIC LAW, AND MODERNITY

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# ISLAMIC JURISPRUDENCE, ISLAMIC LAW, AND MODERNITY

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## Series Editors' Preface

Mohammad Hossam Fadel, the leading exponent of a Rawlsian perspective on Islamic law and governance, has produced an impressive body of innovative, theoretically grounded, and provocative scholarship. His work on Islamic law and Islamic legal history ranges from medieval institutions and the history of Islamic legal interpretation to urgent problems of modernist receptions and re-assessments of Islamic legal doctrine. He received a Ph.D. from the University of Chicago in Near Eastern Languages and Civilizations and a J.D. from the University of Virginia School of Law. After two federal judicial clerkships he worked as an attorney for a major law firm in Manhattan. In 2006 he joined the Faculty of Law at the University of Toronto, where he is currently a professor of law and was for a decade Canada Research Chair for the Law and Economics of Islamic Law.

Although Professor Fadel's intellectual concerns focus to a large degree on the compatibility of the Islamic legal tradition with modern liberal political sensibilities and institutions (what he calls "conditions of modernity" in his Introduction), his research and writing have also focused on premodern Islamic legal thought and institutions. His explorations of issues in commercial law, problems of gender hierarchy, and dimensions of interpretive authority in premodern contexts, for example, underpin arguments that stress the flexible, subtle, and contingent aspects of Islamic law. Those properties of Islamic law, for Professor Fadel, render it suitable, once properly understood, for communities characterized by self-government, by emerging ideas about equality, and by market capitalism.

A frequent point of reference in Professor Fadel's work is the political philosopher John Rawls. Professor Fadel's "Rawlsian-inflected-approach" (as he calls it) leads him to read the Islamic legal tradition politically. His reading is not a search for top-down, 'authentically' Islamic structures of governance. Rather, by teasing out jurists' assumptions, often latent, about the political, the economic, or the familial, and interpreting the legal doctrines the jurists articulate on the basis of those assumptions, he emphasizes those doctrines' sophistication, potential adaptability, and thus the ways in which they thereby retain continuing viability. Although his readings of Islamic legal sources suggest that those sources remain relevant to a society in which there may be substantial but legitimate disagreements over matters of law and morality, equally his Rawlsian approach reminds us that premodern Muslim jurists formulated Islamic law also under conditions



of substantial disagreement over matters of law and morality, and also over questions of religion, politics, theology, and metaphysics.

Drawing on his expertise in the Mālikī school of legal thought, Professor Fadel has recently collaborated (with Connell Monette) on what will likely become the standard translation of the *Muwattaʿa*<sup>7</sup> (Harvard University Press, 2019), the legal treatise produced by Mālik ibn Anas (d. 795), the eighth-century CE scholar after whom the Mālikī school is named. The *Muwattaʿa*<sup>7</sup> is one of the very earliest preserved complete Islamic law texts. It is critically important for the early history of Islamic law in all its dimensions and also the foundation of the work of Mālikī jurists from the early ninth century CE up through today.

The studies published in this volume give an excellent overview of the concerns and approaches that animate Professor Fadel's scholarship. They illustrate well his interests in Islamic law as a domain of Islamic political thought, in law-and-economics perspectives on Islamic commercial law, in the problem of gender hierarchy in Islamic law, and more generally in the ways Islamic law might be deployed in pluralistic and secularized societies today.

Professor Fadel's scholarship benefits from and continues the legacy of those path-breaking historians of Islamic law who re-invigorated its study in the 1980s—notably, Wael Hallaq, Sherman Jackson, Baber Johansen, David Powers, Susan Spector, Jeanette Wakin, Bernard Weiss, Aron Zysow, and others—and put Islamic legal studies and Islamic legal history on a modern academic footing. We are excited to present this collection to scholars and to the interested public.

Joseph E. Lowry  
Devin J. Stewart  
Shawkat M. Toorawa

## Acknowledgments

In the course of an academic career, one incurs debts, scholarly and personal, that overwhelm one's capacity to discharge them. Writing as someone who, in the words of the Muslim jurists, is *mustaghraq al-dhimma*—a person whose capacity to bear any further obligations has been exhausted—I have been blessed to owe too much to far too many. I will never be able to repay what my teachers, friends, colleagues and most importantly, my family, have freely given me over my lifetime. This book, however, would have been impossible without the valuable assistance of my two research assistants, Faizan Malik and Ghassan Osmat, each of whom worked diligently to help me prepare this anthology. I also wish to single out my wife, Reem Elsobky, whose presence in my life catalyzed so much of my work and brought me untold personal joy. Without her resilience, patience, and encouragement, I could not have accomplished what I did. I do hope, in the spirit of the saying “the alms due in respect of knowledge is spreading it,” that this work satisfies in part the obligations a scholar owes to knowledge. My numerous errors, of course, are fully my own and I hope no one holds any of my numerous teachers responsible for them, whether real or imagined.