

HISTOIME DE L'ORGANISATION  
JUDICIAIME EN PAYS D'ISLAM, Volume I  
(History of the Organization of the Judiciary in  
Islamic Regions), by Emile Tyan.\* *Annales de  
l'Universit  de Lyon; Librairie du Recueil Sirey,  
Paris, 1938. Pp. xvi, 528.*

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### Repository Citation

John H. Wigmore, *HISTOIME DE L'ORGANISATION JUDICIAIME EN PAYS D'ISLAM, Volume I (History of the Organization of the Judiciary in Islamic Regions)*, by Emile Tyan.\* *Annales de l'Universit  de Lyon; Librairie du Recueil Sirey, Paris, 1938. Pp. xvi, 528., 1 La. L. Rev. (1939)*

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## Reviews

HISTOIRE DE L'ORGANISATION JUDICIAIRE EN PAYS D'ISLAM, Volume I (History of the Organization of the Judiciary in Islamic Regions), by Emile Tyan.\* Annales de l'Université de Lyon; Librairie du Recueil Sirey, Paris, 1938. Pp. xvi, 528.

We can learn almost all about Islamic law from the various treatises available in English, French, and Dutch. But hitherto we could find out little about the judiciary and its development. The monographs of Savvas Pacha on the Turkish system (1892, 1902) and Gottheil's translation (1908) of Al Kindi's *History of the Egyptian Cadis* have been almost the only sources of information, and yet not of the history of the system from its beginnings. Now comes this treatise of Judge Tyan, which, beginning at the beginning, illuminates the whole path of its development in all the regions of Islam.

This first volume in Chapter 1 sketches the administration of justice in pre-Mohammedan Arabia and later under Mohammed himself. It next proceeds in Chapter 2 to its main subject, the evolution of the *kadi*, or judge. Chapter 3 takes up the *kadi's* jurisdiction, his qualifications, and his costume. Chapter 4 elaborates upon the "composition of the tribunal" in its other aspects—the advisers, the jurisprudents (*mufti*), the witnesses, the attorneys, the hearing. Chapter 5 examines the revelations of literature as to the judiciary's morals and manners in the various countries, as contrasted with the ideal judge depicted in the books of theory. (And here the tale is not a pleasing one; yet we wonder whether an account of the American judge based only on the recorded complaints of critical contemporaries would be regarded by us as correct in respect to the average judge of today?) Chapter 6 concludes with an account of the salaries and perquisites of the judiciary.

It would be out of place here to enlarge upon the details of the Islamic system in contrast with our own. The author's account must be read to be appreciated. But we must pay tribute both to the absolute lucidity and completeness of the treatment and to the comprehensiveness of the author's documentation.

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This book introduces us intimately to the Islamic point of view and the spirit of the whole system.

The remarkable feature of Islamic law, that attracts the interest of all who look into it, is its development exclusively by treatises and opinions. This feature, to be sure, marked also the Roman law (up to the later Imperial era) and the Hindu law. But the total absence of development by statute and decree, in a highly developed system spread out over a dozen kingdoms, is unique, and must excite the curiosity and wonder of all who have dipped into comparative law.

And another singular feature—unparalleled, we believe, in any other system—is the dependence in modern Islamic courts on jurists who composed their works a thousand years ago. These leading jurists, who founded schools, have of course been succeeded by commentators after commentators. But even commentators of five and six hundred years ago are still quoted textually as authorities for a decision of today, based on a continuous tradition. This cannot be paralleled in any European country (except perhaps occasionally in English real property law).

One occasionally finds a statement in some modern European treatise on Mohammedanism that its law has been static and that it has failed to respond to social changes. Nevertheless, at the Hague International Congress of Comparative Law, in 1937, we listened, in the Oriental section, to a lively debate between jurists from Persia, Egypt and Algeria, on the liability in Islamic law of the father of a family for injury caused by the unruly scion in the use of the family automobile!

We shall welcome the second volume of Judge Tyan's valuable work, which will deal with the varied powers of the *kadi* and with the other minor and special jurisdictions having some share in the administration of justice.

JOHN H. WIGMORE†

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LAWYERS AND THE PROMOTION OF JUSTICE, by Esther Lucile Brown.  
Russell Sage Foundation, New York, 1938. Pp. 302. \$1.00.

Aristotle thought that justice was the greatest of all virtues. Yet it is possible to spend three years in the study of law in this country without ever hearing the word! In a world of swift and drastic change, political and legal institutions are endangered, and

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