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Islamic Law: From Mecca to Modernity

Synopsis

This course will introduce the student to classical theories of the sources and development of Islamic Law, as well as exposing the student to a few of the canonical legal codes. The arc of the development of both Islamic jurisprudence and positive law and its relationship to the societies which fostered its growth will be discussed. Finally, contemporary scholarly approaches which focus on the nexus between legal decision-making and society as a whole will be explored.

Course Objectives

By the end of the semester, you should (i) have a sense of the organic development of the primary schools of Islamic law; (ii) be able to identify the sources of Islamic law and how the primary schools relate to them; (iii) have a sense of the major literary genres of Islamic law and how these genres interact in actual decision-making; and (iv) understand how the vicissitudes of history have influenced the process and content of Islamic law.

Textbook

Please purchase *Islamic Law (Sharīʿa)*, second edition, by Raj Bhala (New Providence, NJ: Matthew Bender, 2016). In the syllabus, this text will be listed as IL. Other reading materials for the course are either on the Blackboard website for the course, via the Heard Catalog (that is, through electronic versions of journals or through electronic databases such as the *Encyclopaedia of Islam* to which the Heard Catalog grants access), or directly via the internet.

Course Requirements

This is a small course. Your preparation of the readings and active participation will contribute significantly to the learning environment. Therefore, participation will contribute 15% to your final grade. The remaining 85% of your final grade comes from the written assignments.

Encyclopedia Article (15% of final grade)

For many students, studying Islamic law and Islamic history involves acquiring an entirely new vocabulary. We will spend much time in class and in the readings developing this vocabulary. In addition, you will demonstrate mastery of one aspect of Islamic law by composing an encyclopedia article on a subject of your choosing. The subject for the article may be historical, jurisprudential (that is, methodological), or topical. It is advisable to discuss your article topic with me before embarking on this project. The format of the article consists of a 50-word “micropedia”, a 500-word article, and a bibliography. The articles will be posted on the course’s BLACKBOARD site, allowing the class as a whole to develop its vocabulary with respect to Islamic law. **The encyclopedia article should be submitted before 9 February.**

Book Review (20% of final grade)

In order to demonstrate your growing familiarity with the structures of Islamic law and, should you have interest in this area, its continued impact on Western legal decision-making, the requirements for the course include composing a 1000-1500 word book review of a recent publication. These reviews will be shared with the other students in the class, and you may wish to seek publication for your review. The book you choose for review may also engage the question you wish to explore in your paper. **The book review is due on 2 March.**

Major Paper (40% of final grade)

Your paper for the semester should employ the understandings you have gained over the course of the semester by examining how the major schools of Islamic law react to an issue of contemporary relevance. You may be able to do this by reading fatwas (responsa) from various contemporary Islamic decisors on a specific issue; or by focusing on a specific contemporary fatwa and exploring the mufti's (decisor's) use of Islamic legal sources; or by studying the historical development of legal opinions on a particular issue over time as social, political, and economic pressures have led to corresponding legal transformations. **The paper is due on 1 May.**

Paper Presentation (10% of final grade)

Students are asked to give a 10-minute presentation of their paper at some point during the last session of the course, **with time and date to be set.** This may or may not include presenting snippets of the fatwas or other Islamic legal sources that were used to prepare the paper. Your colleagues' questions and comments on the presentation will ideally be useful in preparation of the final draft of the paper, which is due well after the presentation.

Topics and Readings

In each session, we will explore the development and maturation of the distinctive Islamic legal schools which continue to dominate Islamic legal decision-making; as well as actual legal decision emerging from those schools. Thus, Islamic jurisprudence (“*uṣūl al-fiqh*”) will be discussed in parallel with positive law (“*furū‘ al-fiqh*”).

Weekly Assignments

12 January

An Introduction to Islam and Islamic Law

Lapidus, Ira. (1988) *A History of Islamic Societies* (Cambridge: Cambridge University Press); pp.11-36

Robinson, Neal. (1996) *Discovering the Qur'an: a Contemporary Approach to a Veiled Text* (London: SCM Press); pp.27-46.

Mallat, Chibli. (2007) *Introduction to Middle Eastern Law* (Oxford: Oxford University Press); pp.32-39

Goitein, S.D. (1966) “The Birth-Hour of Muslim Law”, in *Studies in Islamic History and Institutions* (Leiden: Brill); pp.126-134.

Qur'ān: Sūras 1, 5, 114 (available online at www.islamicity.com, among other places)

Ali, Muhammad. (1955) *A Manual of Hadith* (Lahore: Ahmadiyya Anjuman Ishaat Islam); pp.292-301.

Positive Law/Law in Practice: The Interaction of Legal Systems

Sizemore, Chelsea A. (2011) "Enforcing Islamic Mahr Agreements: The American Judge's Interpretational Dilemma". *George Mason Law Review* 18; pp.1085-1116

Yefet, Karin Carmit. (2011) "The Constitution and Female-Initiated Divorce in Pakistan: Western Liberalism in Islamic Garb". *Harvard Journal of Law & Gender* 34.2; pp.553-615

19 January – No Class

26 January

Thumbnail Sketch of Islamic Law and Legal Decision-Making

IL, pp.317-348 (353-386).

Mottahedeh, Roy P. (2003) *Lessons in Islamic Jurisprudence* (London: Oneworld Publications); pp.1-17.

Masud, Muhammad Khalid; Brinkley Messick and David S. Powers. (1996) "Muftis, Fatwas, and Islamic Legal Interpretation" in Muhammad Khalid Masud, Brinkley Messick and David S. Powers (eds.), *Islamic Legal Interpretation, Muftis and Their Fatwas* (Cambridge: Harvard University Press); pp.3-32.

Positive Law/Law in Practice: Business Partnerships

IL, pp.535-572 (585-635).

Udovitch, A.L. (1970) *Partnership and Profit in Medieval Islam* (Princeton: Princeton University Press); pp.29-39; pp.129-131; pp.145-150.

Nyazee, Imran. (1996), *The Distinguished Jurist's Primer* (Reading: Garnet); II:284-292.

2 February

Jurisprudence: The Textual Sources

IL, pp.257-282 (285-312).

Schacht, Joseph. (1950) *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press); pp.58-81, 190-213.

EP, "Fikḥ" (both articles).

Mottahedeh (2003); pp.17-34; pp.41-53.

Positive Law/Law in Practice: Business Partnerships II

IL, pp.573-600 (637-666).

9 February

The Sources of Islamic Law and the Development of Legal Schools

IL, pp.349-368 (387-407); pp.123-136 (127-141).

Khadduri, Majid. (1953) "Nature and Sources of Islamic Law", *George Washington Law Review* 22; pp.3-23.

Schacht, Joseph. (1950), pp.1-5.

Melchert, Christopher. (2004), "The Formation of the Sunnī Schools of Law", in Wael Hallaq (ed.), *The Formation of Islamic Law* (Aldershot: Ashgate), pp.351-66.

Melchert, Christopher. (1999), “How Hanafism Came to Originate in Kufa and Traditionalism in Medina”, *Islamic Law and Society* 6.3:318-347.

Udovitch, A.L. (1970), pp.3-12.

Udovitch, A.L. (1970b), “The ‘Law Merchant’ of the Medieval Islamic World”, in G.E. von Grunebaum (ed.), *Logic in Classical Islamic Culture* (Wiesbaden: Harrasowitz), pp.113-130.

Positive Law/Law in Practice: Banking and Interest

IL, pp.601-632 (667-701).

Mallat, Chibli. (1996) “Tantawi on Banking Operations in Egypt” in Muhammad Khalid Masud, Brinkley Messick and David S. Powers (eds.), *Islamic Legal Interpretation, Muftis and Their Fatwas* (Cambridge: Harvard University Press); pp.286-296.

16 February

Methods of Legal Exegesis and the Development of Islamic Courts

EP, “Mazālim”.

Hallaq, Wael. (1997) *A History of Islamic Legal Theories* (Cambridge: Cambridge University Press); pp.125-161.

Hoexter, Miriam. (2006) “Qāḍī, Muftī, and Ruler: Their Roles in the Development of Islamic Law” in Ron Shaham (ed.), *Law, Custom, and Statute in the Muslim World* (Leiden: Brill), pp.67-86.

Lambton, A.K.S. (1971) “Islamic Mirrors for Princes”, *La Persia nel Medioevo* (Rome: Accademia Nazionale dei Lincei); pp.419-442.

Positive Law/Law in Practice: Legal Fictions and Banking

IL, pp.633-672 (703-734).

Mayer, Ann Elizabeth. (1985) “Islamic Banking and Credit Policies in the Sadat Era: The Social Origins of Islamic Banking in Egypt” *Arab Law Quarterly* 1.1; pp.32-50.

Supreme Constitutional Court (Egypt)—Shari’a and Riba (1985). *Arab Law Quarterly* 1.1; pp.100107.

23 February

Non-Textual Sources and the Development of Fiqh

IL, pp.283-298 (313-330).

EP, “Kiyās” and “Idjmā”.

Hallaq, Wael. (1994) “From *Fatwās* to *Furū’*: Growth and Change in Islamic Substantive Law”, *Islamic Law and Society* 1.1:29-65

Wheeler, Brannon. (1996) *Applying the Canon in Islam: the Authorization and Maintenance of Interpretive Reasoning in Hanafī Scholarship* (Albany: State University of New York Press), pp.115-165.

Positive Law/Law in Practice: Debt Instruments

IL, pp.673-714 (735-780).

2 March

Handbooks, Formularies, and Collections of Fatwas

Wakin, Jeanette. (1972), *The Function of Documents in Islamic Law* (Albany: State University of New York Press); pp.1-10.

Thung, Michael. (1996) “Written Obligations from the 2nd/8th to the 4th/10th Century”, *Islamic Law and Society* 3.1:1-12.

Frantz-Murphy, Gladys. (1981) “A Comparison of the Arabic and Earlier Egyptian Contract Formularies” *Journal of Near Eastern Studies* 40.3:203-225.

Hallaq, Wael. (1995), “Model Shurūṭ Works and the Dialectic of Doctrine and Practice”, *Islamic Law and Society* 2.2:109-134.

Powers, David S. (2002), *Law, Society and Culture in the Maghrib, 1300-1500* (Cambridge: Cambridge University Press); pp.1-52, 206-228.

Positive Law/Law in Practice: Checking and Insurance

IL, pp.715-756 (781-825).

Kuran, Timur. (2005) “The Absence of the Corporation in Islamic Law”, *American Journal of Comparative Law* 53.4; pp.785-834.

9 March – No Class – Spring Break

16 March – No Class

23 March

Ikhtilāf al-Fuqahā’/Disputes of Law

EP, “Ikhtilāf”.

Twersky, Isadore. (1980) *Introduction to the Code of Maimonides (Mishneh Torah)* (New Haven: Yale University Press); pp.121-124.

Ibrahim, Yasir S. (2007) *Al-Tabari’s Book of Jihad: a Translation from the Original Arabic* (Lewiston, NY: Edward Mellen Press); selections.

Positive Law/Law in Practice: Financial Engineering and Islamic Law

IL, pp.757-785 (827-856).

Vogel, Frank E. and Samuel L. Hayes III. (1998) *Islamic Law and Finance: Religion, Risk and Return* (Boston: Kluwer Law International); pp.1-15, 71-95, 181-200.

30 March

Beyond the Sources: Istiḥsān, Istiṣlāḥ, Maṣlaḥa

EP, “Ḥiyal”, “Istiḥsān and Istiṣlāḥ”, and “Maṣlaḥa”.

Budziszewski, J. (2010) “Natural Law, Democracy, and Shari’a” in Rex Ahdar and Nicholas Aroney (eds.), *Shari’a in the West* (Oxford: Oxford University Press); pp.181-206.

Johansen, Baber. (1995) “Casuistry: between Legal Concept and Social Praxis”, *Islamic Law and Society* 2.2; pp.135-156.

Positive Law/Law in Practice: The Place of Women in Islamic Societies

IL, pp.841-914 (915-988).

Mernissi, Fatima. (1992) *The Veil and the Male Elite* (New York: Basic Books)

6 April

A General Approach to Ijtihād

IL, pp.299-316 (331-349).

EP, “Idjtihād”, “Taklīd”

Hallaq, Wael. (1984), “Was the Gate of *Ijtihād* Closed?” *International Journal of Middle East Studies* 16.1; pp.3-41.

Positive Law/Law in Practice: Family Law and Sexual Misconduct

IL, pp.925-1006 (1001-1088), 1007-1040 (1197-1227).

13 April (Via Skype)

Modern Anthropological Approaches to Islamic Law

Rosen, Lawrence. (2000) *The Justice of Islam* (Oxford: Oxford University Press).

Bowen, John R. (1998) ““You May Not Give It Away”: How Social Norms Shape Islamic Law in Contemporary Indonesian Jurisprudence”, *Islamic Law and Society* 5.3:382-408.

Positive Law/Law in Practice: Marriage and Polygamy

IL, pp.785-840 (859-913).

Goldfeder, Mark (2015) *Revisiting Polygamy* (Waltham, MA: University Press of New England)

20 April

Islamic Law in the US

IL, 1261-1294 (1339-1382).

Lopez, Clare. (2010) *Shariah: The Threat to America* (Washington: The Center for Security Policy); pp.119-144.

Ali-Karamali, Sumbul. (2010) *The Muslim Next Door* (Ashland, OR: White Cloud Press); pp.62-82, 117-162.

Pearl, David (1995) “The Application of Islamic Law in the English Courts” (SOAS Noel Coulson Lecture).

Internet-based fatwas and their effect on Islamic Law (subject matter TBA)

Presentations TBA