



- Ottoman *mufti*, undated

**REL 351/MENA 390/HUM 370:  
Islamic Law**

Northwestern University  
Fall Quarter 2018

Professor Brannon Ingram  
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Monday and Wednesday  
2:00 – 3:20 PM  
Harris Hall L04

Office Hours:  
Crowe Hall 4-135  
Tuesdays at 4 PM or by appt

## **COURSE OVERVIEW**

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Islamic law – the sacred law of Islam grounded in the Qur’an, the practice of the Prophet Muhammad, and the writings of Muslim scholars and jurists – stretches back nearly 1400 years. This course offers, first, an overview of the origins and evolution of Islamic law from the life of Muhammad to end of the classical era. We then seek, secondly, to understand how colonialism and the modern nation-state affected the conceptualization and implementation of Islamic law in the modern period. To these ends, we look in-depth at two specific areas of law – marriage and divorce, and criminal law – in the Ottoman empire and contemporary Iran.

## **COURSE GOALS**

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At the end of this course, you will:

- Have a broad understanding of the origins and development of Islamic law from the era of the Prophet Muhammad to the present, including: how the notion of an Islamic “law” emerged out of Qur’anic ethics in conversation

with the politics and culture of early Islamic society; how the notion of a Prophetic model (*sunna*) developed over time and intersected with the rise of Hadith scholarship; the institutionalization of Islamic law in the early modern period, especially in the context of Ottoman Syria and Palestine; and the trajectory of Islamic law in the modern world, as it has become part of the apparatus of the modern nation-state.

- Have a detailed understanding of Islamic criminal law, as well as laws of marriage and divorce.
- Develop an appreciation for the flexibility and nuance of Islamic legal reasoning through short assignments.
- Be able to engage critically in conversations about the status and place of “Shari‘a” in contemporary American politics and culture.
- Develop writing and analytical skills. We will refine our skills in thinking and writing, so that after the course you will be able to offer informed and insightful analysis of the major themes of the course. Throughout the course, I will stress the importance of clear and concise writing.

## **GRADING AND ASSIGNMENTS**

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(1) *Class attendance, participation, and Canvas posts*

30% (10% each)

I take attendance at the beginning of every class. You are permitted **one** “free” absence each quarter – that is, an absence for which you do not need an excuse (though, as a courtesy, I would still like to be informed if you expect to be absent). For any other absences, I require a medical, athletic or family-related reason for missing class.

This course uses occasional short lectures to clarify material, but the vast majority of class time will be oriented around discussion. To do well in this class you must participate **actively** in these discussions.

Beginning with the first week, you must post **one** comment on the course Canvas page (see “Discussions”). You may post your own comment, **or** respond to another student’s comment. Your comment should be a focused ‘talking point’, in which you should:

- **reflect** on an idea you found interesting or intriguing in the readings,
- **discuss** how the various readings complement or differ from one another,
- **explore** the implications of a particular idea,
- **compare** a reading to another work we’ve studied,
- **trace** how the work speaks to a theme we encountered earlier, **or**
- **connect** an idea in our readings to contemporary events.

Posts should reference the readings, and page numbers must accompany any

quotations. I will read these comments carefully and often use them to foster discussion in class, sometimes comparing or contrasting students' comments with each other.

To get credit you will need to post your comment **no later than 11 AM** the day of class. You cannot get credit for posting a comment for a class that has already met. (In other words, you cannot post on October 17 for the class that met October 15.)

(2) *Hadith Analysis Assignment* 10%

You will write a short (500 word) *isnad*-focused analysis of hadiths related to Qur'an 53: 5-18, in which the Prophet Muhammad of an entity "intense in strength ... at a distance of two bow lengths or nearer." See the assignment file on **Canvas** for more details. Due in class [October 10](#).

(3) *Film Analysis* 15%

You will write a 3-4 page (double-spaced) analysis of a film, *Justice at Agadez*, in response to a prompt (see below), or write on a topic of your own choice in relation to the film. Due [October 26 at 5 PM](#).

(4) *Fatwa Assignment* 10%

You will write a short *fatwa* (500 words) responding to specific queries (see "Fatwa Assignment" below). The source material for your *fatwa* is a set of readings from the Qur'an, *hadith*, and Islamic legal texts pertaining to the consumption of alcohol, posted to **Canvas**. Due in class [November 5](#).

(5) *Final Paper* (10-12 pages) 35%

You will write a final paper of 10-12 pages (double-spaced) on a subject of your choice. I advise you to speak with me before finalizing your paper topic. Due [December 13 at 5 PM](#).

## **CLASSROOM ETIQUETTE**

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- Please arrive to class on time. Habitually arriving late to class **will affect your participation grade**. If you have another class immediately before this one and you may occasionally be late to class, please let me know.
- **Bring ALL READINGS** for that day's discussion to every class, every time.
- **NO COMPUTERS OR TABLETS** are allowed in class.

## REQUIRED TEXTS

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- Rumees Ahmed, *Sharia Compliant: A User's Guide to Hacking Islamic Law* (Stanford: Stanford University Press, 2018) – 9781503605701 (list price \$22.95)
- Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009) – 9780521678735 (list price \$42.00)
- Rudolph Peters, *Crime and Punishment in Islamic Law* (Cambridge: Cambridge University Press, 2006) – ISBN 9780521796705 (list price \$36.00)
- Judith E. Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* (University of California Press, 1998) – ISBN 9780520224742 (list price \$31.95)
- Coursepack **[readings marked with CP]** available for purchase at Quartet Printing

## COURSE SCHEDULE

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### PART I: ORIGINS AND EVOLUTION

#### Monday, October 1

##### *Introduction*

- In-class lecture on origins of Islam, Prophet Muhammad, Qur'an
- Discussion of Qur'an, sura 2: 168-73, 178-203, 216-42, 267-84, sura 4: 1-43, 127-34, sura 24: 1-9, sura 65, suras 92-93, sura 102-103, sura 107 **[CP]**

#### Wednesday, October 3

##### *Pre-Islamic Arabia, the Advent of Islam, and the Qur'an*

- Hallaq, "Islamic law: history and transformation," *The New Cambridge History of Islam*, 142-158 **[CP]**
- Ibn 'Abd al-Barr on relation between Qur'an and *sunna* – in *Classical Islam*, 178-184 **[CP]**

## Monday, October 8

### *Emergence of Legal Communities and the Rise of Hadith*

- Hallaq, “Islamic law: history and transformation,” 158-183 [CP]
- Ibn Qudama on the *mujtahid* and Nawawi on *muftis* and *fatwas* – in *Classical Islam*, 185-201 [CP]

## Wednesday, October 10

### *Hadith Sciences*

- Brown, “The Transmission and Collection of Prophetic Traditions,” in *Hadith: Muhammad’s Legacy in the Medieval and Modern World*, 1-42, 67-84 [CP]
- Hadith analysis assignment due in class

## Monday, October 15

### *Law and Politics*

- Hallaq, *Introduction to Islamic Law*, 38-56
- Hallaq, *Origins and Evolution of Islamic Law*, 178-193 [CP]
- Mawardi, *Ordinances of Government*, 3-22 [CP]

## Monday, October 22

### *The Qadi’s Practice*

- Hallaq, *Introduction to Islamic Law*, 57-82
- *Justice at Agadez* [Canvas] – film discussion in class
- Gerber, excerpt from *State, Society and Law in Islam* [on Weber’s concept of “*kadi* justice”], 25-42 [CP]
- Weber, *Economy and Society*, 654-58 [on ‘rational’ and ‘irrational’ law], 818-22 [on Islamic law], 976-78 [on *kadi*-justice] [CP]
- Film analysis due [Friday, October 26 at 5 PM](#)

**Wednesday, October 24**

*Foundations of Islamic Criminal Law*

- Peters, *Crime and Punishment in Islamic Law*, 1-68
  - Highly recommended: Brown, "[Stoning and Hand Cutting: Understanding the Hudud and the Shariah in Islam](#)"
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**PART II:  
ISLAMIC LAW IN THE EARLY MODERN AND MODERN WORLD**

**Monday, October 29**

*Family Law in Ottoman Syria and Palestine*

- Tucker, *In the House of the Law*, 1-57
- Review Qur'an sura 4 excerpts from October 1

**Wednesday, October 31**

*Family Law in Ottoman Syria and Palestine (contd.)*

- Tucker, *In the House of the Law*, 58-112, 179-86

**Monday, November 5**

*The Fatwa Assignment*

- Fatwa assignment due, in class discussion
- Research a contemporary online *fatwa* on a topic that interests you and prepare to discuss it in class: What is the context? Who requested it? Does it provide legal reasoning or cite its sources? Does it affirm or contradict what we've discussed in this class so far?

## Wednesday, November 7

### *The Impacts of Colonialism: An Overview*

- Hallaq, *Introduction to Islamic Law*, 85-89
- Kugle, "Framed, Blamed and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia," *Modern Asian Studies* 35, 2 (2001): 257-313 [CP]
- Peters, *Crime and Punishment in Islamic Law*, 103-124
- Hamilton, "Preliminary Discourse," *Hedaya, or Guide* (1791), xiii-li [Canvas]
  - Focus on pp. xiii-xv and xxv-xxvi

## Monday, November 12

### *Islamic Law and the Modern Nation-State*

- Hallaq, *Introduction to Islamic Law*, 140-143, 148-158
- Mawdudi, "The Islamic Law," 79-106 [CP]
- Khomeini, *Islam and Revolution*, 27-54 [CP]

## Wednesday, November 14

### *Navigating Legal Bureaucracies*

- *Divorce Iranian Style* [Canvas]
- Mir-Hosseini, *Marriage on Trial*, 54-83 [CP]

## Monday, November 19

No class (professor at conference). **Read on your own:** Ahmed, *Sharia Compliant*, ix-64

## Wednesday, November 21

Film screening in class: *The Judge*

## Monday, November 26

### *Debating the Future of Islamic Law*

- Ahmed, *Sharia Compliant*, 65-157

**Wednesday, November 28**

*Debating the Future of Islamic Law*

- Ahmed, *Sharia Compliant*, 159-232

**Final paper due Thursday, December 13 at 5 PM**

## **FILM ANALYSIS PAPER**

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In *Terminiello v. City of Chicago* (1949), a landmark Supreme Court case on freedom of speech, Justice Felix Frankfurter remarked in his dissenting opinion, drawing on Max Weber's notion of 'kadi justice': "This is a court of review, not a tribunal unbounded by rules. We do not sit like a kadi under a tree dispensing justice according to considerations of individual expediency."

Was Frankfurter right in his understanding of the *qadi's* practice? Using the Weber readings, write a 3-4 (double spaced) page analysis of the film *Justice at Agadez*. How does the *qadi* in the film mediate between Islamic legal principles and the needs and demands of those who come to him? Does he do so successfully? Does his role affirm or contradict how we have discussed the role of the *qadi* in this class so far?

You may also write your film response paper on a topic of your choice.

The film is posted to the course Canvas page under "Library Media" if you need to review the film as you compose your film analysis.

## **FATWA ASSIGNMENT**

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To complete this assignment, you will consult the set of excerpts from Hanafi and Hanbali *fiqh* texts that are posted on Canvas. See the file "Rel 351-Mena 301 Fatwa Exercise Readings."

You are a *mujtahid* whose strongly held, independently-arrived at views happen to coincide exactly with those either of the **Hanafi** or of the **Hanbali** school (according to your assignment to one of these schools in class). The following questions have been sent to you by an Islamic judge (*qadi*) who is a *muqallid* (one not



qualified to practice *ijtihad*), and who seeks your legal opinion (*fatwa*) to aid him in ruling on cases before him.

According to the Islamic conception of *ifta'*, or the giving of *fatwas*, you assume the truth of the facts stated in the *fatwa* request. (Not you, but the *qadi* and the parties and witnesses in the trial of this case, will be religiously and legally responsible for the truth of the facts.)

- I. A Muslim man has just been brought before me by two upright male Muslim citizens<sup>1</sup> of our town, who testified that they had moments before observed the accused “drink whiskey” and that his breath “smelled of alcohol.” An open bottle of whiskey was produced from his pocket. The accused appeared not at all intoxicated. Is he guilty of a crime? If so, is it a crime of *hadd* or of *ta'zir*?
- II. In a previous case of *kehamr*-drinking (*shurb al-kehamr*), two upright male Muslim citizens of our town brought a free Muslim before me, stating that the man was a consumer of wine. When I asked them whether the man was now intoxicated and whether his breath smelled of *kehamr*, they denied that either was the case. I asked the accused whether he had drunk *kehamr*, and he answered, “Yes.” I sentenced him to forty lashes. Was my sentence correct?

Write a *fatwa*, no longer than 500 words, in response to each of the questions that are posed to you. Your *fatwa* should begin with your precise answer to the *fatwa* request, followed by your arguments supporting it. Your *fatwa* should outline your arguments with brief references to their proofs. Please confine yourself to the sources provided and cite any authority you mention.

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<sup>1</sup> Two upright male Muslim eye-witnesses constitute the canonically standard form of proof (*bayyina*), varied from in certain circumstances (such as adultery), but usually adequate to meet the plaintiff's burden of proof.