

Islamic Law
Winter 2021
Clark B. Lombardi
T/Th: 10:30-12:30

Group Office Hours: TBD
Individual Office hours: By appointment

Course Description

This course provides an introduction both to classical Islamic law and to a range of modern versions of Islamic law that guide the lives of contemporary Muslims. It explores how Muslims over the years have tried to understand God's ethical command and how they have built from their rich body of ethical speculations, bodies of state law that reflect Islamic values. After introducing the history and basic concepts of classical Islamic ethical speculation and law, the course examines how modernity caused some Muslims to question their traditional assumptions about ethical and legal reasoning. The course concludes with case-studies of "Islamic law" in action today—including Islam in America. Taken together, the different sections of the class highlight the constant evolution of Islamic legal thought over time and place and the diversity of contemporary interpretations of Islamic law. There will be an optional session on Islamic legal research. Students will have the option either of (a) taking an exam or (b) writing a paper that will satisfy the advanced writing requirement. For students who choose the latter option, they will be expected to attend a session discussing research challenges that arise when working on questions of Islamic law.

Learning Objectives

Students will study the roots and historical evolution of the *shari`a* legal tradition. They will learn how, today, *shari`a* informs the positive law of many modern Muslim states, and they will also learn how, even in non-Muslim states such as the United States, *shari`a* law becomes the map which Muslims arrange their private contractual arrangements and their personal behavior. Through this work, students will become familiar with the primary sources in which the rules of *shari`a* are found, and they will learn a variety of competing methods that different Muslims over the centuries have used to interpret those sources. At a general level, students will practice evaluating legal problems from multiple perspectives and will come to appreciate how cultural assumptions shape the process of legal thinking and shape a community's law. In the process, they will become familiar with the techniques and the payoffs of comparative legal analysis. At a specific, they will be able to understand and analyze Islamic law's evolving views on a number of important subjects, and they will build the skills necessary to do further research in the area. Through reflection papers and class presentations, students will build skills in written and oral communication.

Background Reading

One of the great attractions of this class is that it attracts a wide variety of students with different backgrounds and different interests. Some have superb training in the study of law, but little training in Islamic studies or area studies. For others it is the reverse. Students in the past have asked for recommendations for background reading to do in advance of the class—reading that might help them contextualize the readings that they will be doing.

For those feel that they need some background on the history of Islam and with the broader evolution of Islamic culture and religion: I have arranged for the bookstore to purchase a book by Jonathan A.C. Brown, *Misquoting Muhammad*. This is also available. Brown is a superb American scholar of Islamic history who converted to Islam as a graduate student, and now runs Georgetown University’s Center for Muslim-Christian Understanding. This book goes into a number of religious issues that we will NOT cover in this course and it provides more detail about many issues than you will need for our tests. However, it may be valuable to those who do not have deep familiarity with Islamic societies. It may be fascinating also for other students who want to engage with the reflections of an important scholar upon “religious” aspects of Islamic law and upon contemporary debates about controversial topics such as jihad and women’s rights. For those with the time and inclination, reading this book can help deepen your engagement both with the cultures that we are studying and with some of the required reading that we will do later in the course.

Whether or not you read Brown, many of you will find it very helpful to read as soon as possible, Clark Lombardi, *State Law as Islamic Law in Modern Egypt*: Chapters 1-6 (totaling about 120 pages) and easily readable in a 3 hour sitting. These chapters focus on the question of how Muslims have over the years developed sophisticated systems of ethical speculation and how they used their insights into morality to develop a religiously infused “law” that governed economic and political communities in a remarkably effective way. All these chapters will be assigned in various later classes and they cover a lot of material you will be tested on. If some of the details in the reading seem confusing in the first read, don’t worry. We will read them again and go them it in class discussion.

There are two advantages to reading the *State Law* chapters in one or two sittings during the first week of class: (1) reading them at the outset will introduce you to major themes we will discuss in the class and will introduce them in the order that we will cover them; it will thus give you an overview of where we are going and will allow you, when we read the chapters in class, to have a sense of our class reading fits into the larger “story” of Islamic legal development from the Medieval to modern times. (2) Reading them now will save time later. As noted, these will all be assigned later—along with the other readings. Since you will have read the *State Law* chapters, already, you will be able to reread them quickly when they are assigned over the quarter and will be able to focus on other readings.

Texts Assigned for the Class

I have asked you to buy the Brown text because I am recommending more of it than can be copied for fair use. All other course readings are available on electronic reserve or through internet links listed on the syllabus. (My author’s contract permits copying my book to support my lectures)

The Two Short-thought papers to be prepared for regular classes

Starting with class #2, two or three students (depending on class size) will be expected during each class to write 3-5 page reflections on the reading and to distribute them by noon on the day before class. At the start of the class, a third student will start the class by orally summarizing in *no more than 5-7* minutes the papers that have been distributed and give some of her thoughts about her colleagues' reflections on the reading—adding, as appropriate, her own comments about the reading. Broader class lecture and discussion will follow.

Students should expect to write papers twice over the course of the quarter and to be the oral presenter [once].

The Final Short Thought Paper Due on the Last Day of Class

In this class you will be asked regularly to reflect upon what people mean when they refer to Islamic law. You will come to appreciate that the term can mean different things to different people. For the final thought paper (which can be submitted at any time before the last day of class), you will be expected to write btw 3 to 5 pages discussing a topic that you might be interested in researching, if you had time. It can be any topic that touches upon “Islamic law.” In the thought paper, explain why you find the subject interesting. You should reflect upon what “type” of Islamic law, your topic implicates. And you must explain what sources you would need to use if you were to answer your research question. If this sounds mysterious, fear not. We will discuss the exercise during the semester.

For those who are writing a paper (see below) the thought paper can (and probably should) be done early in the quarter as part of your planning phase for the research paper.

Grading

The evaluation for this class will include the following components:

- A short midterm quiz worth 10% of your grade. (It will cover some basic facts and concepts covered in the first five classes. It is designed simply to make sure that you have these facts and concepts down before we go on to study how those facts and concepts evolved in the modern era and shaped modern Islamic legal consciousness.
- Performance on reflection papers and as commentator: 10%
- Class participation, worth 10% of your grade.
- A final short thought paper worth 5% of your grade. This paper will identify one issue that you encountered over the course of the quarter that you found particularly interesting and that, if you had world enough and time, you would research further. The paper should describe the issue, explain why you find it interesting and describe a research plan for how you would go about researching it—what types of source you would need to look at to learn more about it. A 2-3 page initial version will be due before the start of class 16. A final, 3-5 page version will be due at the start of class 18.
- EITHER a take-home final exam worth 65% of your grade OR a research paper worth 65% of your grade, the topic for which must be discussed and approved by the professor before Feb. 1.

Overview of Class Lectures

Part I: The Origins of Islam and Islam's Scriptures		
Tues. Jan. 5	Class #1: Introduction	(A) Introduction: What do people mean when they talk about "Islamic Law?" (B) Background to Islam and the ethical discourse of the early Muslim community: Muhammad & the Qur'an (C) Overview of the course (D) Introduction to the Qur'an as a source of law
Th. Jan. 7	Class #2: The scriptural sources of Islamic law and their ambiguities.	(A) The Qur'an as a source of law `ctd. <ul style="list-style-type: none"> • Exercise: The Qur'an on Alcohol. What is prohibited? (B) Introduction to the <i>hadiths</i> (records of the Prophet's words and deeds) & debates about whether (and how) to use them as a source of law. <ul style="list-style-type: none"> • Exercise: <i>hadiths</i> on alcohol: what new things do they tell us? Do they make things easier or harder? (C)
Part II: Classical Islamic Legal Theory and Law		
Tues. Jan. 12	Class #3: Rise of Classical Isl Law (<i>Fiqh</i>)	(A) The hadith ctd' (If necessary) (B) Introduction to the classical schools of law (<i>madhhabs</i>) & their theory of interpretation (<i>usul al-fiqh</i>) <ul style="list-style-type: none"> • Exercise: Try to read a Medieval Commentary comparing the views of different scholars on the on legality of alcohol.
Th. Jan. 14	Class #4: The further evolution of the "classical schools of <i>fiqh</i> "	(A) The evolution of a hierarchy of scholars; (B) Precedential reasoning in later Isl legal interp. <ul style="list-style-type: none"> • Exercise #1 looking at a classical handbook and the commentary on the legality of alcohol (C) Did the rise of precedential reasoning "freeze" Islamic law and prevent its further evolution? <ul style="list-style-type: none"> • Exc #1: Reread the commentary. What level of scholar is it written for? • Exc. #2 Reflect on a fatwa by that seems to question the established rules of a school.
Tues. Jan. 19.	Class #5: The Doctrine of Mutual Ethical Orthodoxy and the Challenge of Creating a Single, Ethically Legitimate Body of State Law.	(A) Intro to Law and Legal systems in pre-modern Muslim states: <i>shari`a</i> , <i>siyasa</i> and <i>siyasa shar`iyya</i> (B) The division of courts into courts that resolved cases by <i>siyasa</i> and those that resolved cases by <i>fiqh</i> . (C) When cases were resolved by <i>fiqh</i> : how was labor divided between the judge (<i>qadi</i>) and "jurisconsult" (<i>mufti</i>).

Thurs. Jan. 21	Class #6	Reflection and review
Thurs. Jan. 21	Midterm	
Tues. Jan. 26	Class #7: Pre-modern Islamic family law: An area governed by <i>fiqh</i> .	(A) Medieval Islamic family law. (The rules of pre-modern Islamic family law according to Sunni scholars. (B) How Islamic judges found rules of decision in cases of family law and applied them to the facts of a case:
Thurs. Jan. 28	Class #8: Criminal law in pre-modern Islamic societies: combining <i>fiqh</i> and <i>siyasa</i> .	(A) Reviewing <i>fiqh</i> , <i>siyasa</i> and <i>siyasa shar`iyya</i> (B) How Islamic criminal law in a pre-modern state combined <i>fiqh</i> and <i>siyasa</i> . (C) Reading a case involving the application of “Islamic” criminal statutes enacted by Sultan as <i>siyasa shar`iyya</i> .
Tues. Feb. 1	Class #9 Reflection and Review	
Part III. Evolution of Islamic Law in the Modern Age		
Thurs. Feb 3	Class #10: Modernity & New Legal Reasoning	(A) What defines “Modernity”? (B) The rising role of the modern state. (C) The modern impulse to codify “Islamic law.” Can you codify <i>fiqh</i> ?
T. Feb. 8	Class #11 Modernist Islamic Legal Thought	(A) Contemporary Islamic Legal Theories in modern Egypt (B) Competing proposals for how to derive “Islamic” laws to include in Egyptian codes.
Thurs. Feb. 10	Class #12 Egypt: Constitutionalizing Islam in an Islamizing post-colonial state.	(A) History of Constitutionalizing Islamic law in the Arab world: (B) Debates about how to interpret Article 2 of Egypt’s Constitution (C) The rise of “Salafism” in the 1980s (D) Revisiting Islamic constitutionalism in Egypt after the Arab Spring
M. Feb. 15	President’s Day	
Tues Feb. 16	Class #13: Indonesia: Codifying Islamic Family law in a “secular” post-colonial state	(A) Introduction to Indonesia & Islam Traditionalism and modernism in Indonesia
Thurs. Feb 18	Class #14: Case Study of another majority Muslim country	TBD
Tues. Feb 23	Class # 15 Case study of another majority Muslim	TBD

	country	
Thurs. Feb. 25	Class #16 Islamic Finance	Islamic Finance
		Topical Issues in Contemp Isl. Law
Tues. Mar. 2	Class #18 Islam in America:	First draft of short “thought paper” due Enslavement and importation of African Muslims to the African Muslims in the Colonies; Immigration from Muslim Asia; Reimagination of Islam in the American Context
Thurs Mar. 4		`ctd.
Tues. Mar. 9	Class #19:	Wrap-up: Whither Islamic Law? Final draft of Short thought Paper”
Thur. Mar. 11		Optional review session

Part I: Islam and its Scriptures

Class #1: What is “Islamic Law?”

A: Ambiguities in the Term “Islamic Law”

Reading:

Reading #1A: Jonathan A.C. Brown, *Misquoting Muhammad: The Challenge & Choices of Interpreting the Prophet’s Legacy*, (Oxford: Oneworld, 2014): 1-14

B: Birth of the Islamic Legal Tradition: Muhammad and the revelation of the Qur’an

Reading:

Reading #2A: Michael Cook, *Muhammad* (1983), pp.12-24

Class #2: The Scriptural Sources of “Islamic Law” and their ambiguities

A. The Qur’an as a source of law and the questions it raises.

Reading 1:

1A. Selections from the *Qur’ān*¹

Exercise #1:

Does the Qur’an prohibit the drinking of alcohol?

B. Early debates about whether the Prophet’s Life is a Model for Correct Behavior and Arguments about whether the Ḥadīth can serve as another “Scriptural” Source of Law.

Reading:

2A (Required) D. Brown, *Rethinking Tradition in Modern Isl. Thought* (Cambridge U. Press, 1999)

2B (Recommended) Jonathan A.C. Brown, *Misquoting Muhammad*, 15-46. (This is a more detailed discussion of points that are made by Daniel Brown. It is awfully long, but if you have time and inclination, it is an interesting and rich account.)

2C (Required) selections from *Ṣāḥīḥ Abū Muslim* on wine and wine-drinking.

Exercise #2:

Are the hadiths from Abū Muslim authentic accounts of the Prophets words and deeds? How do you know? If so, what do they add to our knowledge about the legality of alcohol?

¹ For those interested in further reading of the Qur’an: you might look at a complete translation of *The Qur’an* and some of the following secondary sources: (a) Michael Cook, *The Koran, A Short Introduction* (An overview of the Qur’an and Muslim views of it. (b) Bruce Lawrence, *The Qur’an; a biography* (2006)

Part II: The Classical Islamic Tradition

Class #3: The Birth of the Classical Islamic Ethical Tradition

- A. *The rise of the classical “schools” of law & the evolution of their theory about how humans could best approach scripture to understand God’s ethical command (usul al-fiqh);*

Reading:

Lombardi, *State Law as Islamic Law in Modern Egypt* (2006), Ch. 1

Lombardi, *State Law as Islamic Law in Modern Egypt* (2006), Ch. 2

Optional Further Reading

J. A.C. Brown, *Misquoting Muhammad*, 46-113

- B. *A closer look at ijihad and an exploration of why each different scholar tended to reach a different conclusion about God’s ethical command.*

Reading:

Muhammad ibn Ahmad Ibn Rushd (aka. “Averroes”) *Bidayat al-Mujtahid* trans by Imran Ahsan Khan Nyazee as *The Distinguished Jurist’s Primer* (1994). vol. I pp. 571-77 [Note this is a challenging text, but it provides you with a good opportunity to see how classical scholars reasoned. As you read it, bear in mind that it was written by a famous Maliki scholar. When he refers to “the Kufans” or “the people of Kufa he is referring to members of the Hanafi school. When he says “we” he means “members of the Maliki school”]

In Class Exercises:

- (1) If we did not get to finish Exercise 2 from Class #3, do that here.
- (2) Can you understand what classical scholars agreed on when it came to alcohol and what they disagreed about? Why did they agree? Why did they disagree?

Class #4: Maturation of the Classical Ethical Tradition

- (A) *The theoretical and practical challenges posed by the existence of conflicting, mutually “orthodox” interpretations of God’s law and the rise of taqlid.*
- The triumph of 4 legal schools of thought—each based on teachings of a different early scholar.
 - Gradual acceptance of idea that among all scholars must embrace one of these “schools” and interpret Islamic law according to its doctrines;
 - The decision to place the scholars of each “school” into a hierarchy.
 - How scholars in a particular school used scripture and the precedents of their school to develop law & how precedential reasoning led schools to develop different interpretations. of God’s law.
 - Why each school (and scholar’s) interp. of law was said to be “orthodox.”

Reading:

Excerpts from Mohammad Fadel, “The Social Logic of Taqlid and the Rise of the Mukhtassar”, 3 *Isl. Law and Society* (1996) 193-233, (On class website)²

² Full article available at JSTOR

(B) *A look at some actual texts produced by Islamic scholars in the age of taqlid.*

Reading:

- Excerpt from a handbook (*mukhtassar*) from the Shafi'i school of law explaining the basic rules about when one can drink wine.
- Re-read last class's reading from Ibn Rushd. (See how it is designed to help advanced students understand *why* adherents of the Shafi'i school embraces the rules found in their mukhtassar and why adherents of the Hanafi school embrace the rules found in their rival mukhtassar.)

Optional Further Reading [Challenging but interesting reading for students who want to know more about classical Islamic Legal Reasoning during the age of taqlid]

- A fatwa by classical shafi'i scholar al-Nawawi on wine-drinking and why he thinks the rule adopted in the past by his school should be changed. \
- Excerpt available on course website from Najam Haider, "Contesting Intoxication" *Islamic Law and Society*. Vol 20 (2013).

Class #5:

Beyond Ethics: Creating an "Islamic" Law for a State or, to conceptualize it differently, Creating the Law of an "Islamic State"

(A) *Classical Conceptions of the Islamic State: In a world where there were multiple "orthodox" interpretations of God's law and each Muslim was supposed to choose for herself which interpretation to follow. How then, can a state legitimately create and enforce uniform law?*

(B) *The theory of siyasa shar'iyya: Why fiqh and siyasa shar'iyya can be conceptualized as different types of "Islamic law".*

Required Reading:

- Clark Lombardi, *State Law*, Chapter 3 (pp. 47-58.)
- Knut Vikor, *Between God and Sultan*, Chapter 8 ("The Court and the Law: Muftis and Legal Development")

Strongly recommended reading:

Baber Johansen, "Signs as Evidence" *Islamic Law & Society*, vol. 9, pp. 168-93 (from Website) [(this is a difficult, but interesting reading about early theorists of *siyasa shar'iyya* & how one used the concept to justify torture—a state practice prohibited under the rules of classical *fiqh*.)]

Midterm Quiz

The Midterm Quiz: will take one hour. It is designed to make sure that you have digested the vocabulary and concepts found in the readings for classes 1-5.or discussed in classes 1-5. We do this because the readings for later classes will continue to use that vocabulary and draw upon those concepts. You need to get them down now so that those later readings will make sense.

Reading for Intro to classical Islamic Family Law. Viktor: 299-321

Class #6: Reflection and Review

Class #7: Islamic Family Law and its application 1000-1800

A. *Introduction to classical Islamic family law (fiqh).*

Reading

Vikor: 299-321

B. *Applying fiqh: a case study of courts resolving “family law” disputes in pre-modern states:*

Reading:

David S. Powers, “Four Cases Relating to Women and Divorce in al-Andalus and the Maghrib, 1100-1050” Muhammad K. Masud, Rudolph Peters & David S. Powers, eds., *Dispensing Justice in Islam* (2006), pp. 384-409

Class #8: Criminal Law in Muslim States and its application 1000-1800

A. *Intro to classical Islamic criminal law (fiqh): classical rules and the scholar’s implicit recognition that rulers might (through siyasa shar`iyya) modify or supplement these rules.*

Reading:

Wael Hallaq: *Shari`a: Theory, Practice Transformations* (2009), 308-323

B. *Criminal law & interplay between fiqh and siyasa shar`iyya: A case from the Ottoman Empire*

Reading:

Leslie S. Pierce, “A New Judge for Aintab: The Shifting Legal Environment of a 16th Century Court”, in Muhammad K. Masud, Rudolph Peters & David S. Powers, eds., *Dispensing Justice in Islam* (2006), pp. 71-93.

Class 9: Reflection and Review

Part III: Islamic Law in the Modern Era

Class 10: Modernity & Codification

A. *Modernity and challenges it posed to traditional approaches to Islamic law.*

Required Reading:

Lombardi, *State Law*, Chapter 4

Optional Further Reading

- Brown, *Misquoting Muhammad*, 69-113; [provides more detail than we can engage with in this class about modernity & its impact on Islam. . . but very rich and interesting.]

B. *Codification of fiqh . . . Why?*

Required Reading:

- Report of the Commission Drafting the Mecelle: 367-373:

Optional Further Reading:

The Mecelle: Art. 1449-1457 [Section on “Agency”]

Class #11:

Modernist methods of Islamic legal interpretation #1: The Arab World

A. Islamic modernism in Egypt: Modernist challenges to classical assumptions about scripture; competing modernisms; competing ideas about appropriate modern analysis.

Required Reading:

Clark Lombardi *State Law as Islamic Law in Modern Egypt*, Chapter 5-6
Sayyid Qutb, *Social Justice in Islam* (Hardie tr.; rev. tr. by Algar) (2000) & TBD

Recommended Reading

Jonathan A.C. Brown: *Misquoting Muhammad*; 114-21; 130-41

Class # 12:

A Case Study of Debates between Egyptian Traditionalists and Modernists: Contest over how to interpret a constitutional provision requiring that all state law respect “the principles of the Islamic Shari`a”

Reading

On the enactment of a constitutional provision requiring that no Egyptian law violate Islamic norms and the debates about how courts should interpret it:

Reading: Clark B. Lombardi & Nathan Brown, “Do Constitutional Clauses requiring Adherence to Shari`a Threaten Human Rights: How Egypt’s Supreme Constitutional Court Reconciles Islamic Law with the Liberal Rule of Law” 21 Am. U. Int’l L Rev. 379 available online

Class #13: Islamic Law in Indonesia

Reading:

Background the spread and institutionalization of Islam in Indonesia:

- Reading #1 Background on Islam in Indonesia: Robert Hefner “Indonesia”

On the diversity of modernist thought in Indonesia (Think about how the various thinkers might relate to different thinkers in modern Egypt.)

- Reading #2: On the evolution of modernist thought in Indonesia: Michael Feener, “Muslim Legal Thought in Indonesia: Introduction and Overview” in Michael Feener and Mark Cammack eds., *Islamic Law in Contemporary Indonesia: Ideas and Institutions*, (Cambridge, MA: 2007) 13-26.

On Debates in the 1980s and 90s about whether to codify a traditionalist or, instead, a modernist interpretations of Islamic Law in the Family Law Code for Indonesian Muslims:

- Reading #3 Siti Musdah Mulia and Mark Cammack, “Towards a Just Marriage Law: Empowering Indonesian Women through a Counter Legal Draft of the Indonesian Compilation of Islamic Law” in *Islamic Law in Contemporary Indonesia*, R. Michael Feener and Mark Cammack eds. (Cambridge, MA: Harvard Univ. Press, 2007) 128-145.

Class #14

Case Study of Islamic Law in another Contemporary State (TBD)

Class #15
Case Study of Islamic Law in another Contemporary State (TBD)

Part III. Contemporary Issues in Islamic Law

Class #16
Contemporary Trends: Islamic Finance

Reading #1: Mohammad Fadel, “Riba, Efficiency, and Prudential Regulation: Preliminary Thoughts,” *Wisconsin International Law Journal*, forthcoming, available online (Read only pp. 4-39)

Reading #2: Clifford Chance, “Introduction to Islamic Finance.”

Reading #3: Kilian Bälz, “A Murabaha transaction in an English Court,” *Islamic Law and Society*, vol. 11 (2004) pp. 117-134

Classes #17-18
Islam and Islamic Law in America

Reading TBD

Class #19
Wrap-up: Whither Islamic Law?

No Reading

Hand in updated version of thought paper: Update the thought paper you wrote for class #16, incorporating what you learned in the session on researching Islamic law. Thus, you should not only describe the research project that you might one day like to undertake—if you could ever find the time. You should explain the questions you would try to answer, what sorts of text you would look in order

to answer the research questions and also explain how you would go about finding the sorts of texts that you need. The thought paper should be 3- pages long double spaced.

[Please note: you do NOT need to actually identify specific texts that you would look at, only the TYPES of materials that you would need in order to answer the question and the types of library or internet search that you would do in order to find appropriate materials (i.e. "I would look in Database [X] for materials [Y])]

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**Optional Extra Discussion Topic (if anyone is interested):
Continuing Debates over Islamic Constitutionalism**

- Clark B. Lombardi, "Designing Islamic Constitutions: Past Trends and Options for a Democratic Future," *International Journal of Constitutional Law* 11 (2013), 615-45.
- Muhammad Qasim Zaman, "Religious Discourse and the Public Sphere in contemporary Pakistan" online [An interesting piece on the resistance by traditionalists to Pakistani constitutional court decisions that adopt a liberal modernist interpretation of Islamic law analogous to the one adopted by the Egyptian Supreme Constitutional Court].