ISLA 383: Central Questions in Islamic Law

Ahmed Fekry Ibrahim

Winter 2017 [Tuesdays and Thursdays 11:35-12:55, Arts Building W-120]

Course Description

Through a mix of lectures and discussions, Central Questions in Islamic Law offers an integrative view of Islamic law in the past and present, including landmarks in Islamic legal history (e.g., sources of law; early formation; intellectual make-up; the workings of court; legal change; legal effects of colonialism; modernity and legal reform).

For an introduction to the course, watch: https://www.youtube.com/watch?v=UHhbSvOcz4g

Office Hours:

Ahmed Fekry Ibrahim: Tuesdays and Thursdays: 1:00 – 2:00 PM (Morrice Hall, Room 310, Institute of Islamic Studies). Email: ahmed.f.ibrahim@mcgill.ca

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Course Requirements and Evaluation

20 % Attendance

- Attendance will be calculated only after the add/drop period
- You will get the full grade if you attend at least 20 classes in the semester

40 % Two Quizzes

- Essay questions and/or defining important terms

25 % Final Paper (3000-3500 words)

- The paper should be roughly 3000-3500 words in length. Anything that exceeds or falls short of this word count by a significant margin will be penalized. Please write the paper’s word count at the top.
- Unlike your other assignments, you will be required to do your own original research for this paper. If you choose to cover a theme that we have discussed thoroughly in class (e.g. authenticity of hadith debate), you will be expected to go significantly beyond the class readings in your citations and address other dimensions of the debate.
- Only use academic secondary sources (i.e. peer reviewed journal articles and academic books). You can certainly refer to non-academic Muslim resources/websites etc, if these are the primary sources of your study. For example, if you are studying a particular Muslim community, you can cite their own publications in describing the object of your study.
- Once again, please pay attention to accurate descriptions, proper grammar, and sentence structure.
• Make sure you have proper citations using a citation guide. We recommend Chicago Style, as it is the most common in the field, but any other will do (APA, MLA etc).
• For some good resources to help you get started, check out the online subject guide available on our Islamic studies website (click on the tabs above): http://libraryguides.mcgill.ca/islamicandmiddleeast

15 % Reflection Paper (500-600 words)

The point of the reflection paper is to help us assess that you've done the class readings, understand them, and are able to summarize the major debates/discourses in your own words and provide your own informed opinion on the topic you choose.

• This paper is only 500-600 words. Going too far over or under this general limit will be penalized. Please write the word count at the top of the reflection paper.
• You may choose any theme or topic covered in class thus far for your paper and we ask that you primarily focus on the class readings related to that topic.
• A good way of helping you think of good topics is to look at the different class headings in the syllabus to give you an idea of what each classes' readings will discuss. This will give you some ideas of what theme to choose and on which readings you should focus.
• The more class readings you incorporate in your paper the better. Don't get overwhelmed by the nitty gritty details of each scholar's argument. Just give us a general sense of what the authors of the various readings are arguing/discussing.
• Please make sure to use a proper citation guide and stick to it when quoting or paraphrasing a particular reading. You're not required to go beyond the class readings for this assignment but you are certainly more than welcome to use other academic literature.
• In giving your opinion it is always best to err on the side of caution based on your limited understanding of the field than provide radical arguments/statements that would need to be substantiated.

Class Policies

• There will be time for questions and discussions after lectures, so do not interrupt the lecture to ask questions. Have your questions ready for the discussion time.
• Extensions will be granted only in cases of genuine emergency.
• No incompletes will be given except in cases of genuine emergency.

Required Books (available at the McGill bookstore)

Reference Works and Guides
The Encyclopaedia of Islam

Books on Reserve for Final Paper Research


**Week 1:**

**Thursday, Jan. 5 – Introduction**

**Week 2:**

**Tuesday, Jan. 10 – Origins**


**Thursday, Jan. 12 – The Emergence of Schools**


**Week 3:**

**Tuesday, Jan. 17 – Authenticity of the Ḥadīth Literature**


Questions: How is Hallaq different from Schacht and traditional scholars? Do you agree with his solution to the authenticity question?
Thursday, Jan. 19 – Legal Theory


Questions: What came first legal theory or legal doctrine, i.e. actual law? What is the function of legal theory? What is the function of the imperative form and how can this lead to multiple interpretations? What is the theory of abrogation (naskh)? Can a jurist exercise his own reasoning to come up with new laws contradicting consensus? What’s the point of this rule? What are the types of legal reasoning mentioned by the author? Describe *qiyaṣ* (analogy)?

Week 4:

Tuesday, Jan. 24 – Public welfare (*maslaha*)


Questions: According to the Muʿtaṣilis, can good and evil be discovered by humans without the need for divine revelation? What is the Ashʿarī position? What is the ratio legis? Why is inebriation the ratio legis for the prohibition of wine? What is the theory of maslaha? How was it used in legal analogy? What are the five purposes of the law?

Thursday, Jan. 26 – The Ijtihād Controversy

*First theme (due today): Discuss the authenticity of the hadith literature.*


Questions: When was the gate of ijtihad closed according to Schacht? Why was the gate closed? Does he consider the closure of the gate to be a positive development? What is taqlīd (Schacht uses taklid)? What was Ibn Taymiyya’s view? And who is he? What does Schacht say about the Wahhabis? He says that Islamic law was rigid? What does he mean?


Questions: What does Hallaq think of the closure of the gate of ijtihad? What is his evidence? Does Hallaq agree with Schacht that Islamic law was rigid say in the tenth century?

Week 5:

Tuesday, Jan. 31 – Legal conformism (*Taqlīd*) in Islamic Law


Questions: How does this author agree with or contradict Hallaq and Schacht? Is taqlīd a positive development in Islamic law? What is his evidence for the rise of taqlīd? How can you frame Fadel’s critique vis-à-vis Schacht and Hallaq?
Thursday, Feb. 2 – Taqlīd and Legal Pluralism


**Questions:** What does the codification episteme mean? What was the context that led to the rise of the codification episteme? Why did the state try to impose a code? What is pragmatic eclecticism? Why is the discussion about the multiplicity of truth important? What is the meaning of “every mujtahid is correct”?


**Questions:** What was al-Sha’rani’s theory? What was the context in which this theory was articulated and why? How important is this theory to Islamic law? How does it fit in with the ontological multiplicity of truth discussion? Who was al-Sha’rani writing against?

**Week 6:**

Tuesday, Feb. 7 – Quiz 1

Thursday, Feb. 9 – Pragmatic Eclecticism in Islamic Law


**Questions:** Does the author agree or disagree with Schacht, Hallaq, and Fadel? Can pragmatic eclecticism be used in the context of ijtihad? What functions did pragmatic eclecticism serve? How can you relate the discussion of the ontological multiplicity of truth to legal pluralism? How did Islamic law deal with legal pluralism? What does talfīq mean?

**Week 7:**

Mon. Feb. 14 – Legal Practice Prior to the 19th Century


**Questions:** What was the role of the state in lawmaking in the Mamluk period? How does this discussion relate to Schacht’s view on ijtihad as well as those of Hallaq and Fadel. What are the possible ramifications of this article on the question of taqlid and ijtihad?


**Questions:** What is the difference between talfīq and tatābbu’ al-rukhas? What are some of the court transactions that were facilitated by these two techniques, which the author terms “pragmatic eclecticism”? What does the case of Rida from p. 153-5 tell us about Ottoman Egypt? Was pragmatic eclecticism only reserved for the benefit of higher classes?

**Thursday Feb. 16 – Legal Practice Prior to the 19th Century**
• **Reflection paper due today** (choose one theme discussed so far)

*What is the author’s main argument? What does he say about secular or state justice? What is he writing against? Did royal justice go beyond questions of public order? If yes, give some examples.*

**Week 8:**

**Tuesday, Feb. 21 – Legal Procedure**


*What are the different types of evidence? Is circumstantial evidence sufficient to establish conviction in Islamic law? How did Ibn Taymiyya and Ibn Qayyim al-Jawziyya deal with this issue? Why do you think this was an area of the law that they wanted to reform? What type of jurists were they?*

**Thursday, Feb. 23 – The Sweep of Modernity**

*Was there a confusion over the meaning of talqīf in the modern period among legal historians? Did the meaning of talqīf evolve in modern juristic discourse? What does takhayyur mean? What are the different approaches to law in the modern period and how do they compare to the early debate between the rationalists and traditionalists? What are some of the differences between modernists and purists? How are the liberalists different from the modernists?*

*How was darūra (necessity) used in the modern period, according to Hallaq? What happened to the waqf and madrasa? Does Hallaq argue for a rupture or continuity between the modern and premodern periods? How different is Hallaq’s view from my own view of pragmatic eclecticism? What does Hallaq think of the reengineering of family law in the modern period? What is the role of the state in Islamic law in the modern period and how is it different from the premodern state?*

**BREAK:** (Feb. 27 – March 3)

**Week 9:**

**Tuesday, March 7 – Quiz 2**

**Thursday March 9 – Criminal law**

What is the role of the Islamic judge in 19th century Egypt and how is that different from the period prior to the 19th century? How connected was Egyptian criminal legislation to the Ottoman Empire? Generally, what were the functions of the secular councils and the Sharia courts in criminal law? Was there appeal from the qadi’s decisions in modern Egypt? What happened with the case of murder (p. 79) and what does that tell us about secular and Islamic criminal justice? What are the cases that were tried by the qadi first and then by the secular authorities? How were cases of rape dealt with in 19th century Egypt?


How is criminal law dealt with in the countries that Peters examines? Were hadd crimes applied differently in these modern states compared to premodern Islamic law?

Week 10:

Tuesday, March 14 – Family Law


Did Jews in Egypt exercise pragmatic eclecticism in the modern period? How? How was hostility toward the Jewish minority manifested according to Shaham?


How was the concept of darar used in the courts? Why use the Maliki school with respect to the concept of darar? What does this importation of the Maliki concept tell us about legal modernization and pragmatic eclecticism?

Thursday, March 16 – Islamic Law and the International Human Rights Regime


Is he a cultural relativist? What does he propose as a reform strategy? What is your own position on cultural relativism? What are the international conventions guaranteeing the rights of religious minorities? What is his vision of modern Sharia?


What are the areas of tension between this declaration and human rights discourses?

Week 11:

Tuesday, March 21 – Canada’s Sharī’a Law Controversy

Do you support the Sharia councils of Ontario? Do you think accommodation of cultural differences through law should be implemented by the state? How did Canadians involved in the Ontario debate understand Sharia? Do you agree with their position? What is the author's view of Sharia in the modern period? What is the difference between arbitration and mediation? Can you think of some of the problems with arbitration?

Thursday, March 23 – The Search for An Overlapping Consensus with Liberal Democracy

Mohammad Fadel, "Public Reason as a Strategy for Principled Reconciliation: The Case of Islamic Law and International Human Rights" 8(1) Chicago Journal of International Law 1 (Summer 2007). What is the Rawlsian approach to International Human Rights? Are the rules of Islamic law compatible with public reason? Do you find the author’s argument convincing? What does the author propose as a solution to the issue of incompatibility of Islamic law and human rights discourses?

Week 12:

Tuesday, March 28 – Islamic Law and Human Rights: Models of Reconciliation


What is Rawl’s concept of overlapping consensus? What are comprehensive doctrines? Is submission to non-Muslim political authority acceptable in Islamic law? What does the author think? What is the objective of his project with respect to political liberalism?

Thursday, March 30 – Islamic Law and Human Rights: Models of Reconciliation


What does the author mean by moral obligation? What are the different approaches that he excavates from the sources? Define each one of the three approaches. What is March’s objective in writing this article?

Week 13:

Tuesday, April 4 – Islamic Law and Human Rights: Models of Reconciliation


Are child custody arrangements in the premodern period compatible or incompatible with gender equality and equality among citizens regardless of religion and beliefs? How was juristic discourse different from actual practice in the courts? What does this article tell us about Egyptian society in the 16th-18th centuries? How can this paper help us reform Islamic law?

Thursday, April 6 - Can the Sharia Be Restored?
Wael B. Hallaq, “Can the Shari’a Be Restored?,” in Islamic Law and the Challenge of Modernity, ed. Yvonne Yazbeck Haddad and Barbara Freyer Stowasser (Walnut Creek, CA: AltaMira Press, 2004), 21-53.

What is the author’s answer to the question of whether the Sharia can be restored or not? What are his main argument for why it can or cannot be restored? In your opinion, can the Sharia be restored? What are some of the premises that the author holds that are not compatible with your understanding of Islamic law in the premodern period throughout this class?


What are the transformations that happened to Egyptian law in the 19th century? What does de-Hanafization mean? How was pragmatic eclecticism used in modern Egypt and what are some examples? Does this author think that the Sharia can be restored? What is his argument?

Final Class:
Tuesday, April 11– In-class Documentary

- Final paper is due today
- Inside Islam: What a Billion Muslims Really Think

University Honor System and Students’ Rights

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In accord with McGill University’s Charter of Students’ Rights, students in this course have the right to submit in English or in French any written work that is to be graded.

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