

ISLA 383: Central Questions in Islamic Law

Prof. Ahmed Fekry Ibrahim

Fall 2017 [Wednesdays and Fridays 11:35-12:55, McConnell Engineering Building 12]

Office Hours

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Wednesdays and Fridays: 1:00 – 2:00 PM (Morrice Hall, Room 310, Institute of Islamic Studies). Email: ahmed.f.ibrahim@mcgill.ca

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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 the following videos:

Orientalism: <http://alexpoucher.com/orientalism-is-everywhere-heres-what-edward-said-thought-about-it-narrated/> (3 minutes)

Introduction to Islam: <https://www.youtube.com/watch?v=UHhbSvOcz4g> (2 hrs. and 40 mins)

For a good library guide, see <http://libraryguides.mcgill.ca/islamicsources>

Course Requirements and Evaluation

15 % Reflection Paper (500-600 words, due October 4th)

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.

60 % Three Quizzes (October 11th, October 25th, and November 10th)

- Essay questions and/or defining important terms

25 % Final Paper (3000-3500 words, due December 6th)

- 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 their discourse.
- 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/islamicsources>

Class Discussions

I want us to strike a balance between saying what we feel freely and being respectful of the others in the room especially in a course on a sensitive subject such as premodern Islamic law. If you are uncomfortable with something that has been said, you can leave the room, meet with me privately, let me know, and I will intervene on your behalf in a later course session. Responsible freedom of speech also involves exercising radical compassion and restraining the impulse to offend a classmate because we do not know what that other person has been through and cannot afford to make assumptions.

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 Book (available at the McGill bookstore)

- Pragmatism in Islamic Law: A Social and Intellectual History (Syracuse: Syracuse University Press, 2015 or 2017).

Reference Works and Guides

The Encyclopaedia of Islam

Books that you may need for your final paper research

1. Ignác Goldziher and S. M Stern, *Muslim studies (Muhammedanische Studien)*; (London: Allen & Unwin, 1968), vol. 2.

2. G. H. A Juynboll, *Muslim tradition : studies in chronology, provenance, and authorship of early hadith* (Cambridge [Cambridgeshire]; New York: Cambridge University Press, 1983).
3. Mahmoud A. El-Gamal, *Islamic finance : law, economics, and practice* (Cambridge [UK]; New York: Cambridge University Press, 2006).
4. Joseph Schacht, *An Introduction to Islamic Law* (Oxford [Oxfordshire]; New York: Clarendon Press, 1982).
5. Joseph Schacht, *The Origins of Muhammadan Jurisprudence*, Corr. ed. (Oxford: Clarendon Press, 1967).
6. Wael B. Hallaq, *Sharī'a: Theory, Practice, Transformations* (Cambridge, UK ; New York: Cambridge University Press, 2009).
7. Christopher Melchert, *The Formation of the Sunni Schools of Law, 9th-10th Centuries C.E.* (BRILL, 1997).

WEEK 1

Wednesday, September 6 – Introduction

Wael Hallaq, *An Introduction to Islamic Law* (Cambridge, UK; New York: Cambridge University Press, 2009), 7-37.

Friday, September 8 – Origins

Wael B. Hallaq, *Sharī'a: Theory, Practice, Transformations* (Cambridge, UK; New York: Cambridge University Press, 2009), 27–71.

WEEK 2

Wednesday, September 13 – Islamic Studies Library presentation

Friday, September 15 – The Emergence of Schools (Omar Edaibat)

Joseph Schacht, *An Introduction to Islamic Law* (Oxford [Oxfordshire]; New York: Clarendon Press, 1982), 28-68.

Optional readings:

Christopher Melchert, "Traditionist-Jurisprudents and the Framing of Islamic Law," *Islamic Law and Society* 8:3 (2001): 383–406.

Christopher Melchert, "The Piety of the Hadith Folk," *International Journal of Middle East Studies* 34:3 (2002): 425–39.

Ahmed Fekry Ibrahim, "Rethinking the *Taqlīd-Ijtihād* Dichotomy: A Conceptual-Historical Approach," *Journal of the American Oriental Society* 136:2 (2016): 285–303.

Week 3:

Wednesday, September 20 – Authenticity of the *Ḥadīth* Literature

Joseph Schacht, *The Origins of Muhammadan Jurisprudence*, Corr. ed. (Oxford: Clarendon Press, 1967), 138–62, 163–89.

Friday, September 22 – Legal Theory

Wael Hallaq, *Sharī'a: Theory, Practice, Transformations* (Cambridge, UK ; New York: Cambridge University Press, 2009), 72-124.

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 qiyas (analogy)?

Week 4:

Wednesday, September 27 – Public welfare (*maslaha*)

Felicitas Opwis, “Islamic Law and Legal Change: The Concept of *Maṣlaḥa* in Classical and Contemporary Islamic Legal Theory,” in: *Sharī‘a: Islamic Law in the Contemporary Context*, ed. Frank Griffel and Abbas Amanat (Stanford: Stanford University Press, 2007), 62-82.

Questions: According to the Mu‘tazilis, can good and evil be discovered by humans without the need for divine revelation? What is the Ash‘ari 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?

Friday, September 29 – The *Ijtihād* Controversy

Joseph Schacht, *An Introduction to Islamic Law* (Oxford [Oxfordshire]; New York: Clarendon Press, 1982), 69-75.

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 taqlid (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?

Wael B. Hallaq, “Was the Gate of Ijtihad Closed?,” *International Journal of Middle East Studies* 16:1 (1984): 3–41.

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?

Optional readings:

Mohammad Fadel, “The Social Logic of *Taqlīd* and the Rise of the *Mukhtaṣar*,” *Islamic Law and Society* 3:2 (1996): 193–233.

Ahmed Fekry Ibrahim, “Rethinking the *Taqlīd* Hegemony: An Institutional, *Longue-Durée* Approach,” *Journal of the American Oriental Society* 136:4 (2016): 801–16.

Week 5:

Reflection paper due today

Wednesday, October 4 – Legal conformism (*Taqlīd*) in Islamic Law

Ahmed F. Ibrahim, *Pragmatism in Islamic Law: A Social and Intellectual History* (Syracuse, NY: Syracuse University Press, 2015), preface: xi-xiii, introduction: 1-28.

Is taqlid a positive development in Islamic law? What is his evidence for the rise of taqlid?

Friday, October 6 – *Taqlīd* and Legal Pluralism

Ahmed F. Ibrahim, *Pragmatism in Islamic Law: A Social and Intellectual History* (Syracuse, NY: Syracuse University Press, 2015), 31-60.

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”?

Optional readings:

Ahmed Fekry Ibrahim, “Al-Sha‘rānī’s Response to Legal Purism: A Theory of Legal Pluralism,” *Islamic Law and Society* 20:1-2 (2013): 110–40.

Week 6:

Wednesday, October 11 – Quiz #1

Friday, October 13 – Pragmatic Eclecticism in Islamic Law

Ahmed F. Ibrahim, *Pragmatism in Islamic Law: A Social and Intellectual History* (Syracuse, NY: Syracuse University Press, 2015), 63-125.

Questions: Does the author agree or disagree with Schacht, Hallaq, and Fadel? Can pragmatic eclecticism be used in the context of ijihad? 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 talfiq mean?

Week 7:

CONFERENCE (please find your conference group)

Wednesday, October 18 – Legal Practice Prior to the 19th Century

Ahmed F. Ibrahim, *Pragmatism in Islamic Law: A Social and Intellectual History* (Syracuse, NY: Syracuse University Press, 2015), 129-163.

Questions: What is the difference between talfiq and tatabbu' 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?

Friday, October 20 – Legal Procedure

E. Tyon, "Judicial Organization," in: *Law in the Middle East*, ed. Majid Khadduri and H. J. Liebesny (Washington, DC: The Middle East Institute, 1955), 236-78.

Optional readings:

Baber Johansen, "Signs as Evidence: The Doctrine of Ibn Taymiyya (1263-1328) and Ibn al-Qayyim (d. 1351) as Proof" *Islamic Law and Society* 9, no. 2 (2002): 168-193.

Week 8:

Wednesday, October 25: Quiz #2

Friday, October 27 – The Sweep of Modernity

Ahmed F. Ibrahim, *Pragmatism in Islamic Law: A Social and Intellectual History* (Syracuse, NY: Syracuse University Press, 2015), 167-201.

Was there a confusion over the meaning of talfiq in the modern period among legal historians? Did the meaning of talfiq 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?

Optional readings:

Wael Hallaq, *An Introduction to Islamic Law* (Cambridge, UK; New York: Cambridge University Press, 2009), 115-162.

Week 9:

Wednesday November 1 – Criminal law

Rudolph Peters, "Islamic and Secular Criminal Law in Nineteenth Century Egypt: The Role and Function of the Qadi," *Islamic Law and Society* 4, no. 1 (January 1, 1997): 70–90.

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?

Optional readings:

Rudolph Peters, "The Islamization of Criminal Law: A Comparative Analysis," *Die Welt des Islams* 34, no. 2 (1994): 246–274.

Friday November 3 – Family Law

Ron Shaham, "Jews and the Shari'a Courts in Modern Egypt," *Studia Islamica* 82 (1995), 113–136.
Did Egyptian Jews exercise pragmatic eclecticism in the modern period? How?

Optional Readings:

Ron Shaham, "Judicial Divorce at the Wife's Initiative: The Sharia Courts of Egypt, 1920-1955," *Islamic Law and Society* 1, no. 2 (1994): 217–57.

Week 10:

Wednesday November 8 – Teaching Assistant Runs the Class Today

Anver Emon, "Religious Minorities and Islamic Law: Accommodation and the Limits of Tolerance," in *Islamic Law and International Law: Searching for Common Ground?*, eds Anver M. Emon, Mark Ellis and Benjamin Glahn (Oxford: Oxford University Press, 2012), 323-343.

Abdullahi An-Na'im, "Religious Minorities under Islamic Law and the Limits of Cultural Relativism," *Human Rights Quarterly* 9, no. 1 (1987): 1–18.

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?

The nineteenth Islamic Conference of foreign ministers. Cairo declaration of Human rights in Islam, 1990: 1-9.
<http://www1.umn.edu/humanrts/instreet/cairodeclaration.html>

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

Friday November 10 – Quiz #3

Week 11:

Wednesday, November 15 – Canada's Shari'a Law Controversy: "Sharia in Canada" documentary:

http://www.nfb.ca/film/sharia_in_canada_part_1/

http://www.nfb.ca/film/sharia_in_canada_part_2/

<https://www.youtube.com/watch?v=RK8zb8dA4G4> (Mubin Shaikh)

Friday, November 17 – Canada's Arbitration Councils

Anver Emon, "Islamic Law and the Canadian Mosaic: Politics, Jurisprudence, and Multicultural Accommodation," *Canadian Bar Review* 87, no. 2 (February 2009): 391-425.

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?

Week 12:

CONFERENCE (please find your conference group)

Wednesday, November 22 – 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?

Friday, November 24 – Islamic Law and Human Rights: Models of Reconciliation

Andrew March, "Sources of Moral Obligation to non-Muslims in the 'Jurisprudence of Muslim Minorities' Discourse," *Islamic Law and Society* 16, no. 1 (2009): 34–94.

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:

Wednesday, November 29 – Islamic Law and Human Rights: Models of Reconciliation

Ahmed Fekry Ibrahim, "The Best Interests of the Child in Premodern Islamic Juristic Discourse and Practice," *American Journal of Comparative Law* 63 (2015): 859–91.

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?

Friday, December 1 - Can the Sharia Be Restored?

Ahmed F. Ibrahim, *Pragmatism in Islamic Law: A Social and Intellectual History* (Syracuse, NY: Syracuse University Press, 2015) 202-237.

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

Final Class:

Wednesday, December 6 – In-class Documentary

<http://topdocumentaryfilms.com/inside-islam-what-billion-muslims-really-think/>

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

University Honor System and Students' Rights

McGill University values academic integrity. Therefore, all students must understand the meaning and consequences of cheating, plagiarism and other academic offences under the Code of Student Conduct and Disciplinary Procedures (see www.mcgill.ca/students/srr/honest/ for more information). L'université McGill attache une haute importance à l'honnêteté académique. Il incombe par conséquent à tous les étudiants de comprendre ce que l'on entend par tricherie, plagiat et autres infractions académiques, ainsi que les conséquences que peuvent avoir de telles actions, selon le Code de conduite de l'étudiant et des procédures disciplinaires (pour de plus amples renseignements, veuillez consulter le site www.mcgill.ca/students/srr/honest/).

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.

Conformément à la Charte des droits de l'étudiant de l'Université McGill, chaque étudiant a le droit de soumettre en français ou en anglais tout travail écrit devant être noté (sauf dans le cas des cours dont l'un des objets est la maîtrise d'une langue).