ISLAMIC LAW AND LEGAL THOUGHT

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Course Description

This course is organized around two main objectives. First, we consider the internal structure of Islamic law (*Sharie'a*) and legal thought: the origins and sources of Islamic law, the historical development of Islamic law within different schools of jurisprudence, the relationship between Islamic jurisprudence and Islamic theology and practice, and the principles that inform key areas of Islamic law. Second, we consider Islamic law in relation to modern legal systems and theories – religious and secular. The course thus aims not only to introduce the principles of Islamic law but to also place Islamic law in conversation with within the fields of comparative law, international law and human rights, constitutional law, and jurisprudence.

Course Requirements and Grades

The course will operate in a classic seminar fashion. Each meeting of the seminar will have one or more students assigned to serve as discussion leaders. Discussion leaders are expected to assume an active role in guiding and facilitating discussion. Discussion leaders will also open class with a 10 minute presentation that introduces key issues from the readings and raises questions to be examined. We will then pursue a communal class discussion about the materials in which it is expected that all students will actively participate.

In addition to carefully reading the assigned materials, each student is to write a "response paper" in advance of each meeting of the seminar. The purpose of this paper, which should be approximately 2 double-spaced pages in length (and under no circumstances more that 2 pages), is not to summarize the readings – it is assumed that you can do this – but rather to critically and constructively engage the material. You should view this task as an opportunity to begin wrestling with arguments advanced in the readings, to interrogate the logic of cases, to think more deeply about issues that you find interesting or troubling or unclear, and to raise questions that you think demand further attention in class.

The final grade will be based on the following factors: Final research paper (15-20 pages) on a topic approved by the professor (60%), class participation and seminar discussion leadership (20%), weekly written response papers (20%).

Course Materials

The primary text for the course is Raj Bhala, *Understanding Islamic Law (Shari'a)* (LexisNexis, 2011). A course reader containing all additional assigned materials will be made available to students in either print or electronic format.

I. Principles of Islamic Law and Jurisprudence

1. Introduction to Islam and Islamic Theology

Understanding Islamic Law, Introduction (xix-xlii); Chapters1-3; 15-16

2. Sources of Authority and Methods of Interpretation in Islamic Law

Understanding Islamic Law, Chapters 12-14
Bernard Freamon, "Some Reflection on Post-Enlightenment *Qur'anic* Hermeneutics"

3. The Historical Evolution of Islamic Law

Understanding Islamic Law, Chapters 4-12
Wael Hallaq, *The Origins and Evolution of Islamic Law* (selections)

4. Continuity and Change in Contemporary Islamic Jurisprudence

Mohamed Hashim Kamali. "Disagreement (*Ikhtilaf*) and Pluralism in the *Shari'ah*" *in Shari'ah Law*: *An Introduction*
Mohamed Hashim Kamali. "Independent Reasoning (*Ijtihad*) and Juristic Opinion (Fatwa)," in *Shari'ah Law*: *An Introduction*
Basheer M. Nafi. "The Rise of Islamic Reformist Thought and its Challenge to Traditional Islam" in *Islamic Thought in the Twentieth Century*
Felicitas Opwis. "Changes in Modern Islamic Legal Theory: Reform or Reformation?" in *An Islamic Reformation*?

John Voll. "Renewal and Reform in Islamic History: *Tajdid* and *Islah*," in *Voices of Resurgent Islam*

5. Islam, Liberalism and Public Reason: The Case of Natural Law

Anver Emon, *Islamic Natural Law Theories* (selections)
Anver Emon, "Natural Law and Natural Rights in Islamic Law"
Mohammad Fadel, "The True, The Good and the Reasonable: The Theological and Ethical Roots of Public Reason in Islamic Law"
Andrew March, *Islam and Liberal Citizenship* (selections)
Abdulaziz Sachedina, "Natural Law and Knowledge of Ethical Necessity"

II. Topics in Contemporary Islamic Law and Jurisprudence

6. Commercial Law

Understanding Islamic Law, Chapters 18, 21, 27-28
Robert Bianchi, "The Revolution in Islamic Finance"
Nicholas Foster, "Islamic Finance Law as an Emergent Legal System"
Hussein Hassan, "Contracts in Islamic Law: The Principles of commutative Justice and Liberality"
Chibli Mallat, "Commercial Law in the Middle East"
Rodney Wilson, "The Development of Islamic Economics: Theory and Practice," in *Islamic Thought in the Twentieth Century*
Frank Vogel, *Islamic Law and Finance* (selections)

7. Family Law and Women

Understanding Islamic Law, Chapters 33-36
Elizabeth Mayer, "Restrictions on the Rights and Freedoms of Women," in *Islam an Human Rights*
Mohammad H. Fadel, "Political Liberalism, Islamic Family Law, and Family Law Pluralism," in Joel Nichols, ed., *Marriage and Divorce in a Multicultural Context*
Tariq Ramadan, "Women," in *Radical Reform: Islamic Ethics and Liberation*
Barbara Stowasser, "Geder Issues and Contemporary *Qur'an* Interpretation"

Cardiff Report, Social Cohesion and Civil Law: Marriage, Divorce and Religious Courts

8. Criminal Law

Understanding Islamic Law, Chapters 43-45
Rudolph Peters, "The Eclipse of Islamic Criminal Law," in *Crime and Punishment in Islamic Law*, http://www.youtube.com/watch?v=-OvVFunr8jk

9. Religious Freedom, Blasphemy, and Religious Defamation

Understanding Islamic Law, Chapter 46
Asher Maoz, "Proselytism and the Right to Change Religion" in *Law and Religion in the 21*st *Century*
Roberta Beck-Peccoz, "Proselytism and the Right to Change Religion in Islam," in *Law and Religion in the 21st Century*
Robert Blitt, "Defamation of Religion in Muslim States"
Mohammad Hashim Kamali. "Freedom of Religion in Islamic Law"
Lorenz Langer, "The Rise (and Fall) of Defamation of Religions"

10. International Law: Jihad and Terrorism

Understanding Islamic Law, Chapters 48-50
Nader Hashemi, "Islamic Fundamentalism and the Trauma of Modernization"

III. Islamic Law, Secular Law, and the Modern State

11. Islamic Constitutionalism and the Islamic State

Said Amir Arjomand, "Shari'a and Constitution in Iran: A Historical Perspective," in *Shari'a: Islamic Law in the Contemporary Context*
Noah Feldman, *Fall and Rise of the Islamic State* (selections)
Ran Hirschl, "Constitutional Courts vs. Religious Fundamentalism: Three Middle Eastern Tales"

Ran Hirschl, "The Theocratic Challenge to Constitutional Drafting in Post-Conflict States"

12. Islamic Law and the Secular State

Abdullahi Ahmed An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a* (selections)
Andrew March, "Islamic Legal Theory, Secularism and Religious Pluralism"
Zachary Calo, "Pluralism, Secularism, and the European Court of Human Rights"
European Court of Human Rights: *Dahlab v. Switzerland*; *Sahin v. Turkey*; *Dogru v. France*

13. Civil Law, Religious Law, and Legal Pluralism

Phillip Blond and Adrian Pabst, "Integrating Islam into the West," *New York Times*
Anver Emon. "Islamic Law and the Canadian Mosaic: Politics, Jurisprudence, and Multicultural Accommodation"
Abdulaziz Sachedina, *The Islamic Roots of Democratic Pluralism* (selections)
James Skillen, "Shari'a and Pluralism," in *Shariʾa in the West*
Bryan Turner and Berna Arslan, "*Shariʾa* and Legal Pluralism in the West"
Rowan Williams, "Civil and Religious Law in England"

14. Democracy, Human Rights, and Islamic Jurisprudence

Cairo Declaration on Human Rights in Islam
Mashood A. Baderin. "Islam and the Realization of Human Rights in the Muslim World"
Khaled Abou El Fadl, "Islam and the Challenge of Democarcy"
Abdulaziz Sachedina, *Islam and the Challenge of Human Rights* (selections)