CLASSICAL ORIGINS AND CONTEMPORARY CONTESTATIONS OF SHARI‘A: A MODEL SYLLABUS

Robert W. Hefner and Dennis R. Hoover

One of the more striking trends in global religion during the final decades of the twentieth century was the resurgence in religious piety and observance across many Muslim communities around the world. The Islamic resurgence also gave rise to a more politically ambiguous development: calls for the state to apply a uniform and codified version of shari‘a, or “Islamic law” on all Muslim citizens. Most activists making these appeals were mainstream Muslims intent on abiding by what they regarded as the commands of their faith. In some cases, however, as in Afghanistan, Somalia, and Pakistan in the 2000s, demands for the law were voiced by armed militants willing to carry out spectacular acts of violence to get their way.

These and other developments have raised questions about the place of the shari‘a in modern politics, and its implications for citizenship, religious tolerance, and the modern profession of Islam. Does Islam require that the state implement a uniform and comprehensive variety of shari‘a? Can the shari‘a be compatible with modern democracy and pluralist citizenship? What are the implications of the law for women, non-Muslims, and Muslims who profess a non-conforming variety of the faith? Few questions are more decisive than these for assessing the future of the Muslim world. Yet few have proved more vexing for a global public unfamiliar with the history, meanings, and politics of Islamic law.

This syllabus aims to address the question of the place of Islamic shari‘a in modern Muslim politics and civilization. Juxtaposing the shari‘a’s history with trends in the law today, it examines the complex origins and varied meanings of the shari‘a. It also examines what today’s calls for the application of shari‘a mean, why the appeals have become widespread, and what the popular concern might imply for Muslim politics and world affairs in years to come.

SYLLABUS MODULES

SECTION ONE: ISLAMIC LAW SEEN AMONG VARIETIES OF RELIGIOUS LAW

The shari‘a is but one of several varieties of religious law practiced in today’s world. These readings examine what the shari‘a has in common with other varieties of religious law, as well as with non-religious law like that of the Western civil tradition.

Recommended Readings:

Glenn, H. Patrick. 2000. *Legal Traditions of the World: Sustainable Diversity in Law*. New York: Oxford University Press, pp. 86-278.

Robert W. Hefner, 2009. “Introduction: Shari‘a Politics – Law and Society in the Modern Muslim World.” Bloomington: Indiana University Press, pp. 1-54.

Neusner and Tamara Sonn, *Comparing Religions through Law: Judaism and Islam* (New York, Routledge 1999), pp. 1-152.

SECTION TWO: THE EARLY SOCIAL AND INTELLECTUAL GENEALOGY OF THE SHARI‘A

Although some commentators, Muslim and non-Muslim have suggested that the shari‘a is fixed and unchanging, Muslim scholars’ understanding of the law evolved over the first centuries of the Islamic era. The evolution reflected the fruits of the compilation in the form of *hadith* of authoritative sayings and events from the Prophet Muhammad’s life, and, with

standardized collections of hadith on hand, scholars' efforts derive ethical regulations and laws from the combined corpus of the Qur'an and hadith. Beginning in the ninth century, the shari'a became the subject of a great jurisprudential literature, known as *fiqh* (Ar., literally "understanding," as in the efforts of religious scholars to understand God's will). This body of exegesis and commentary eventually came to comprise one of the richest traditions of legal scholarship in any world civilization. However, although ethically far-reaching, the shari'a and the *fiqh* were never fixed and finished blueprints for a sociopolitical order. Indeed, the shari'a was more exhaustively articulate on matters of personal devotion and worship than it was on matters of politics.

Recommended Readings:

Burton, John. 1994. *An Introduction to the Hadith*. Edinburgh: Edinburgh University Press; chapter 1.

Hallaq, Wael B. 2005. *The Origins and Evolution of Islamic Law*. Cambridge, Cambridge University Press. Cambridge, Cambridge University Press, pp. 1-121.

SECTION THREE: THE SHARI'A AND EARLY POLITICAL AUTHORITY

Some modern commentators claim that Muslim politics in the early period was marked by a seamless union of religious and state authority. In fact, however, although state officials and religious scholars (*ulama*) collaborated, there was a clear and important separation of powers between the two authorities. Moreover, rather than just one system of law, Muslim societies were marked by a legal pluralism and a separation of state (*siyasa*) authority and that of the ulama scholars.

Recommended Readings:

Muhammad Khalid Masud, "The Doctrine of Siyasa in Islamic Law," *Recht van Islam* 18 (2001), pp. 1-29.

Knut S. Vikor, 2005. *Between God and the Sultan: A History of Islamic Law*. Oxford: Oxford University Press, pp. 185-205.

Zaman, Muhammad Qasim. 1997. "The Caliphs, the Ulama, and the Law: Defining the Role and Function of the Caliph in the Early Abbasid Period." *Islamic Law and Society* 4,1, pp. 1-36.

Zubaida, Sami. 2003. *Law and Power in the Muslim World*. London: I.B. Tauris, pp. 74-120.

SECTION FOUR: DIVINE LAW AND THE MODERN STATE

During the colonial and early postcolonial periods, the scope of the shari'a in Muslim lands was progressively restricted, until its jurisdiction was limited in most countries to family law and conventional religious affairs like the pilgrimage and pious endowments (*awqaf*). European colonial governments found that the scope of Islamic law got in the way of their own imperial ambitions. Although the British in India, Nigeria, and Malaya developed a peculiar synthesis of English and "Mohammadan" law, they and other colonial rulers sealed off the law from the broader avenues of social life. The circumscription of Islamic law continued even after the emergence of Muslim-based movements for national restoration. During the early and middle decades of the twentieth century, nationalism, not Islamism, was the dominant political force in Muslim-majority countries, and many secular-minded nationalists wished to do away with the cumbersome plurality of legal systems once and for all.

Modern Muslims came to conceptualize law—religious and secular—not as a decentered and dynamic process whereby scholars enunciate shari'a-based rulings, but as a standardized code to be enforced by the state. The codification and étatization effected by modern states shifted the balance of legal authority even more decisively to the state and rulers. In so doing, shari`a politics—the processes involved in determining the place and authority of the shari`a in society—was drawn ever more tightly into the interests, alliances, and contentions that everywhere surround state power. The shift in social location would guarantee that, in the late twentieth century, efforts to implement Islamic law would be functionalized for ends more varied than the law itself, including those related to struggles for control of the state.

Recommended Readings:

Brown, Nathan J. 1997. *The Rule of Law in the Arab World: Courts in Egypt and the Gulf*. Cambridge: Cambridge University Press, pp. 23-92.

Feldman, Noah. 2008. *The Fall and Rise of the Islamic State*. Princeton: Princeton University Press, 2008, pp. 59-102.

Knut S. Vikor, 2005. *Between God and the Sultan: A History of Islamic Law*. Oxford: Oxford University Press, pp. 206-53.

Zubaida, Sami. 2003. *Law and Power in the Muslim World*. London: I.B. Tauris, pp. 121-57.

Noah Feldman, "Imposed Constitutions and Established Religions," *The Review of Faith & International Affairs*, Volume 4, Issue 3 (Winter 2006): 3-12.

For Further Reference:

Crone, Patricia. 2004. *God's Rule: Government and Islam*. New York: Columbia University Press.

SECTION FOUR: WOMEN AND ISLAMIC LAW

Although they offered no finished blueprint on how the state should be organized, jurists in the classical era provided extensive commentaries on women, non-Muslims, and Muslim non-conformists. The status of women in Islamic jurisprudence was dealt with primarily through family law, touching on matters of marriage, divorce, property, and inheritance. In all of these fields, women were accorded far broader rights than they are thought to have enjoyed in pre-Islamic Arabia. Indeed, the rights accorded Muslim women were greater than their counterparts in medieval Europe. Although they were barred from studying in madrasas (and thus from the legal profession), some women used private study to achieve status as respected religious scholars. Although women did not play a central role in mosque services or religious education, they did sponsor the establishment of religious schools. Adult women could also own property; register the purchase and sale of their properties in courts; and set up pious endowments (*waqfs*) to support schools, baths, and other institutions of public benefit. By the eighteenth century, women in Middle Eastern Muslim lands constituted between 30 and 50 percent of *waqf* founders. Notwithstanding these social achievements, on several matters classical interpretations of the shari'a assigned women a significantly different set of rights than Muslim men. In modern times, these legal precedents have provided conservative Islamist scholars with a "letter-of-the-law" precedent with which to justify the claim that Islam does not allow women to play a prominent role in public life, or to assume any role that might involve exercising authority over men. However, in modern times, a host of reformers and, today, Muslim activists have challenged this legacy, arguing for a new understanding of women's roles in light of egalitarian ideals affirmed in the Quran.

Recommended Readings:

Ahmed, Leila. 1992. *Women and Gender in Islam: Historical Roots of a Modern Debate*. New Haven: Yale University Press.

Mir-Hosseini, Ziba. 2003. "The Construction of Gender in Islamic Legal Thought and Strategies for Reform," *Hawwa* 1:1, pp. 1-28.

Isobel Coleman. 2013. "Women, Religion, and Security: Islamic Feminism on the Frontlines of Change." In Chris Seiple, Dennis R. Hoover, and Pauletta Otis, eds., *Routledge Handbook of Religion and Security*, pp. 148-159. Oxford: Routledge.

For Further Reference:

Judith E. Tucker, 2008. *Women, Family, and Gender in Islamic Law*. Cambridge: Cambridge University Press.

Knut S. Vikor, 2005. *Between God and the Sultan: A History of Islamic Law*. Oxford: Oxford University Press, pp. 299-325.

Abou El Fadl, Khaled. 2001. *Speaking in God's Name: Islamic Law, Authority and Women*. Oxford: One World.

Ziba Mir-Hosseini and Vanja Hamzic, *Control and Sexuality: The Revival of Zina Laws in Muslim Contexts*. London: Women Living Under Muslim Law, 2010.

SECTION FIVE: THE LAW, NON-MUSLIMS, AND CITIZEN RIGHTS

The law's stipulations with regard to non-Muslims show a similarly differentiating tendency as seen with regard to women. Departing from the ecumenical spirit of the earlier Meccan period, revelations from the Medina period (622-632 C.E.) distinguish sharply between Muslims and non-Muslims. Qur'an 9: 29, for example, urges believers to fight against and humble those to whom God has given revelation, that is, Jews and Christians, but who no longer forbid what God has commanded to be forbidden. Verses like these have led modern Muslim reformists to argue that the passages in question apply only to heated contests taking place in seventh-century Medina, not to interfaith relations for all time. However, from the classical period onward, a significant number of jurists interpreted passages like Sura 29 as evidence of enduring tension between Muslims and non-Muslims. During Islam's middle ages, jurists from this same current extended the distinction into an elaborate set of prescriptions concerning the political standing of non-Muslim "peoples of the book" (*ahl al-kitab*), a category which commonly refers to Christians and Jews. As recipients of earlier divine revelations, and as the demographic majority in most of the newly conquered lands during the first 150 years of the Muslim era, the peoples of the book were accorded a "protected" status known as *dhimmihood*. *Dhimmas* were tolerated and given social autonomy on the condition that they submit to Muslim rule and pay a special capitation tax, the *jizya*. The arrangement was far more generous than what most Christian European states offered Jews—and stood in stark contrast to the ethnoreligious cleansing implemented by Christian forces in *reconquista* Spain. Notwithstanding this comparison, however, the letter of the law in classical jurisprudence imposed other restrictions on *dhimmas*, the overall effect of which was to underscore their subordination, sometimes quite starkly. In legal principle, polytheists like Hindus, who (according to most but not all interpretations) were not included among peoples of the book, were subject to even more draconian restrictions. However, in practice, many Muslim rulers set aside these jurisprudential restrictions on polytheists and people of the book, adopting a less discriminatory approach to their multireligious societies. For most of their history, for example, India's great Mughal rulers chose to dispense with the shari`a provisions with regard to non-

Muslims, although at first they did apply the *jizya* tax. Nonetheless, although often put aside in practice, the letter of the law with regard to non-Muslims was never formally rewritten. Today, then, its exclusions and inequalities are easily invoked by letter-of-the-law literalists. This fact poses a special challenge for Muslim reformists hoping to bring the interpretation of the shari`a in line with modern notions of democratic citizenship.

Recommended Readings:

Yohanan Friedmann, 2003. *Tolerance and Coercion in Islam: Interfaith Relations in the Muslim Tradition*. Cambridge: Cambridge University Press, pp. 1-86.

Anver M. Emon, 2012. *Religious Pluralism and Islamic Law: Dhimmis and others in the Empire of Law.* Oxford: Oxford University Press, pp. 31-76 & 223-59.

Abdullahi Ahmed An-Na'im,2008. *Islam and the Secular State: Negotiating the Future of Shari'a.* Cambridge: Harvard University Press, pp. 84-139.

Asma Afsaruddin, "Absolutism vs. Pluralism in Islam Today," *The Review of Faith & International Affairs*, Volume 6, Issue 4 (Winter 2008): 23-27.

SECTION SIX: THE HISTORICAL SHARI'A AND MODERN IDEALS OF RELIGIOUS FREEDOM

A tension similar to that seen with regard to the law, women, and non-Muslims has emerged in modern times on questions of religious freedom, not least of all with regard to non-conformist Muslims accused of doctrinal deviation or apostasy. By comparison with medieval Western Europe, the situation in Muslim lands on matters of religious non-conformity once looked decidedly favorable. Islam had no counterpart to the inquisitional arrest, torture, and execution of tens of thousands of alleged heretics, witches, and nonconformists in early modern Europe. Indeed, Muslim rulers tolerated a variety of what today would be regarded as mildly heterodox Sufi orders. Nonetheless, throughout Muslim history, there were occasional prosecutions for apostasy, some of which resulted in capital punishment. At times rulers mounted full-blown campaigns against populist Sufis and others deemed heterodox, particularly where followers of the mystic path acquired a mass following and threatened central authority. Notwithstanding these episodes, written jurisprudence took great care not to apply the accusation of apostasy broadly, and to require high standards of proof for a conviction. Those accused of apostasy were given repeated opportunities to revert back to a proper profession of Islam. However, if the accused chose not to recant, classical jurisprudence stipulated that he or she was to be stripped of all civil rights, including rights of inheritance and the right to marry a Muslim; an already-married apostate would see his or her marriage dissolved. If the offender persisted in his or her ways, the penalty was death or, in the case of women, indefinite imprisonment. On these points, Muslim jurisprudence developed a legal vigilance on matters of the faith that, to some modern Muslim commentators, stands in tension with the oft-cited injunction in Qur'an 2:26 that there is no compulsion in Islam. For modern Muslims seeking to promote an understanding of the shari'a compatible with modern notions of citizenship and religious freedom, unreformed understandings of the shari'a also present a serious ethical challenge.

Recommended Readings:

Abdullah Saeed and Hassan Saeed, 2004. *Freedom of Religion, Apostasy and Islam*. Burlington: Ashgate Publishing, 2004, pp. 1-108.

Friedmann, Yohanan, 2003. "Apostasy," in *Tolerance and Coercion in Islam*, pp. 121-59.

Paul Marshall and Nina Shea, 2011. *Silenced: How Apostasy & Blasphemy Codes are Choking Freedom Worldwide.* Oxford: Oxford University Press, pp. 3-18, pp. 177-226.

"Islam and Religious Freedom," a special issue of *The Review of Faith & International Affairs*, Volume 9, Issue 2 (Summer 2011).

Asma Afsaruddin, "Making the Case for Religious Freedom Within the Islamic Tradition," *The Review of Faith & International Affairs*, Volume 6, Issue 2 (Summer 2008): 57-60.

SECTION SEVEN: SHARI'A IN THE WEST

Western legal traditions have long tended to accommodate elements of Jewish and Christian law, especially as regards matters of the family and worship. In the early 2000s, non-Muslim leaders in several Western countries have suggested extending a similar non-binding acknowledgement to elements of Islamic law, especially, again, with regard to family law. These proposals have met with a firestorm of controversy, and raised questions about legal pluralism and religious equity in the West.

Recommended Readings:

Rex Ahdar and Nicholas Aroney, eds., 2010. *Shari'a in the West.* Oxford: Oxford University Press, pp. 1-58, and pp. 255-292.

Kathleen M. Moore, 2010. *The Unfamiliar Abode: Islamic Law in the United States and Britain*, pp. 3-50.

Anna C. Koarteweg and Jennifer A. Selby, 2012. *Debating Shari'a: Islam, Gender Politics, and Family Law Arbitration*, pp. 5-34, and pp. 192-227.

Tariq Ramadan, 2009. *Radical Reform: Islamic Ethics and Liberation*. Oxford: Oxford University Press, pp. 1-38, 125-155.

SECTION EIGHT: SHARI'A CONTESTATIONS AND TRANSITIONS

The late 1990s and 2000s brought with them a greatly accelerated pace of political and economic change, culminating in the Middle East in the events of the "Arab Spring" and their aftermath. For many Western observers, the rise of transnational Islamist terrorism was the most striking feature of these complex developments. Within Muslim-majority countries, however, the spread of higher education, the movement of women in some (but not all) countries into extra-familial employment, and a broader public engagement with transnational discourses of democracy and human rights struck many Muslims as the more significant influence on these world-changing events. The confluence of developments also served to heighten debate over the proper understanding and practice of the shari'a. Although some Western observers and Islamist conservatives continue to insist it is unchanging, the breadth and intensity of these debates show that Muslims' understandings of sharia are varied. The variation reflects broader engagements with the question of how to be a proper believer in a plural and globalizing world.

Recommended Readings:

Noah Feldman, "Shari'a and Islamic Democracy in the Age of al-Jazeera." In Abbas Amanat and Frank Griffel, eds., *Islamic Law in the Contemporary Context* (Stanford: Stanford University Press, 2007), pp. 104-119.

Dale Eikelman, "The Coming Transformation of the Muslim-Majority World," *The Review of Faith & International Affairs*, Volume 7, Issue 2 (Summer 2009): 23-26.

Zakia Salime, "Introduction: Struggles over Political Power: Entangled Feminist and Islamist Movedments," in Z. Salime, *Between Feminism and Islam: Human Rights and Sharia Law in Morocco* (Minneapolis: University of Minnesota Press, 2011), pp. xi-xxx.

Johannes Harnischfeger, *Democratization and Islamic Law: The Sharia Conflict in Nigeria* (Chicago: University of Chicago Press, 2008), esp. pp. 155-220.

Robert W. Hefner, "Global Politics and the Question of Shari'a: An Introduction to the Winter 2012 Issue," *The Review of Faith & International Affairs*, Volume 10, Issue 4 (Winter 2012): 1-8.

Nathan J. Brown, "Debating the Islamic Shari'a in 21st Century Egypt," *The Review of Faith & International Affairs*, Volume 10, Issue 4 (Winter 2012): 9-17.

Frank E. Vogel, "Shari'a in the Politics of Saudi Arabia," *The Review of Faith & International Affairs*, Volume 10, Issue 4 (Winter 2012): 18-27.

M. Hakan Yavuz, "Ethical Not Shari'a Islam: Islamic Debates in Turkey," *The Review of Faith & International Affairs*, Volume 10, Issue 4 (Winter 2012): 28-34.

Bahman Baktiari, "The Islamic Republic of Iran: Shari'a Politics and the Transformation of Islamic Law," *The Review of Faith & International Affairs*, Volume 10, Issue 4 (Winter 2012): 35-44.

Thomas J. Barfield, "Shari'a in Afghanistan," *The Review of Faith & International Affairs*, Volume 10, Issue 4 (Winter 2012): 45-52.

Muhammad Qasim Zaman, "Shari'a and the State in Pakistan," *The Review of Faith & International Affairs*, Volume 10, Issue 4 (Winter 2012): 53-60.

Robert W. Hefner, "Shari'a Politics and Indonesian Democracy," *The Review of Faith & International Affairs*, Volume 10, Issue 4 (Winter 2012): 61-69.