

Introduction to Islamic Law

Professor Dr. Ebrahim Afsah

v. 1.2

Tuesdays, 13:00–13:00, Juridicum, U16

Description

This course provides an accessible and systematic introduction to the study of Islamic law. Reflecting its traditional strengths in private law, this course focuses on Islamic *family, commercial and contract law*, treating Islamic public law only in passing. These also happen to be those areas most relevant to legal practitioners, as courts in Western legal systems often have to resolve private law matters with reference to Islamic legal principles. Those interested in constitutional law and Muslim governance more broadly should consider “Comparative Constitutional Law in an Islamic Context” taught at the Law Faculty by the same instructor.

This course examines the nature and development of Islamic law from three distinct but related angles: as *dogma* centred around the interpretation of authoritative texts; as *practice* centred around the observation of the way its norms are actually observed by human beings; and as *contingency* centred around the recognition of the diverse historical, social and cultural forms it can take.

This course is aimed at graduate students in law, oriental studies, political science and related disciplines. There are no linguistic or disciplinary prerequisites, all required material is in English, necessary terms will be explained in class and a glossary provided. Given the complexities of its historical and dogmatic genesis, the study of Islamic law can be a forbidding prospect for those setting out to enter this field. The inherent intricacies of the subject are confounded by an increasingly polarised political and scholarly debate surrounding political Islam, in which demands for religious law often take central stage.

Learning Outcomes

At the successful completion of the course, students will have obtained the following learning objectives. Students will:

Knowledge

- Know the basic contours of the historical development of Islamic law

- Know the main protagonists
- Know the main difference between *shari'a*, *ta'zir*, *siyasa*.
- Know the key doctrinal differences between *Sunni* and *Shi'i* law and dogma
- Know the orthodox Legal School, their geographical distribution and historical significance
- Know key substantive norms regarding marriage, guardianship, inheritance, and maintenance
- Know key substantive norms regarding interest, risk, capital accumulation, and lending
- Know key substantive norms regarding contracts, testimony, court proceeding, and evidence
- Know major divergences between the Legal Schools
- Know key areas of modern legal reform in family law
- Know key characteristics of Islamic banking

Skills

- Read translations of key doctrinal texts
- Identify major dogmatic debates, both historical and contemporary
- Identify 'lines of parentage' of key concepts and ideological positions
- Differentiate between private and public law
- Identify and evaluate major legal and bureaucratic institutions
- Identify social pressures for legal change
- Carry out independent interdisciplinary research
- Assess the feasibility of competing ideological positions
- Distinguish between dogmatic ideal and practical reality
- Communicate academic findings to an interdisciplinary audience
- Analyse the role of law in complex socio-political phenomena in current events
- Communicate these insights effectively

Competencies

- Conduct independent interdisciplinary research
- Critically examine the validity and reliability of dogmatic claims
- Disaggregate complex phenomena in the Islamic world
- Give basic legal advice on Islamic private law
- Distinguish legal from related argumentation
- Critically assess claims about cultural and legal immutability

Course materials can be downloaded here:

<https://ucloud.univie.ac.at/index.php/f/127086221>

Prerequisites

By choice and necessity, this course will be interdisciplinary and has no prerequisites. No knowledge of Arabic or other oriental languages is assumed; neither is previous familiarity with the study of religion in general and Islamic beliefs in particular. Previous knowledge of family, commercial, constitutional, international or administrative law is welcome but not a prerequisite. Students from beyond the law faculty are explicitly encouraged to join, and we will make reasonable accommodation to make the legal exegesis accessible. Rather than assuming a common frame of reference, it is expected that students' diverse disciplinary backgrounds will complement each other. A sufficient command of English is necessary.

Much of the material will be made electronically available. Students should be prepared to purchase the most-widely used textbooks in this class, that is Schacht, Zubaida and Hallaq.

Exam

The grade for this course consists of one written, two day, open-book book exam of maximum 2000 words excluding footnotes. You can write your answer in either **German, English or French**.

Students will have to answer two questions out of six, thus accommodating to some degree personal preferences. The exam is aimed to motivate a renewed engagement with the course material and to cement the retention of the above stated Learning Outcomes, which will guide grading. Special emphasis will be given to the mastery of comparative approaches.

Curriculum

1st Session: Introduction: The Study of Islamic Law

- Why does Zubaida consider the “fixity and clarity” of the *shari'a* to be problematic?
- How do Zubaida and Gellner differ regarding the potential for secularization?
- Why does Lewis deem Goldziher especially attuned to Muslim sentiments?
- What makes Islamic law, according to Jackson, the “very antithesis to Western law”?
- What does Schacht consider to lie at the centre of the Islamic faith?

Mandatory Material:

Sami Zubaida, *Law and Power in the Islamic World* (London: I.B. Tauris, 2005), pp. 1–9. “Introduction.”

Robert Houghwout Jackson, “Foreword,” in: *Law in the Middle East, Vol. 1. Origin and Development of Islamic Law*, ed. by Majid Khadduri and Herbert J. Liebesny (Washington, D.C.: The Middle East Institute, 1955) pp. v-xi.

Ignaz Goldziher, *Introduction to Islamic Theology and Law*, trans. by Andras and Ruth Hamori (Princeton, N.J.: Princeton University Press, 1981), pp. vii–xiii, 3–30. “Introduction” by Bernard Lewis; Chapter 1 “Muhammad and Islam.”

Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Oxford University Press - Clarendon, 1964), pp. v–vi, 1–5. “Preface” and “Introductory.”

Jan Michiel Otto, “Introduction: Investigating the Role of Sharia in National Law,” in: *Sharia Incorporated. A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. by Jan Michiel Otto (Leiden: Leiden University Press, 2010) pp. 17–50. Focus especially on pp. 21–27 and 38–44. The book is organised in national chapters with identical structure, so you can easily compare how the substantive provisions you will encounter later in the course are implemented in different contemporary jurisdictions.

Voluntary Material:

Rüdiger Lohlker, *Islamisches Recht* (Wien: facultas WUV – UTB, 2012), pp. 7–17. Kapitel „Vorbemerkung“ und „Umrisse und Kontexte.“

Mathias Rohe, *Das islamische Recht: Eine Einführung* (München: C.H. Beck, 2013), pp. 7–13. „Vorwort“ und Kapitel 1 „Islam, Scharia und Recht: die Grundlagen.“

Idem, *Das islamische Recht: Geschichte und Gegenwart*, 3. Auflage (München: C.H. Beck, 2011), pp. 3–18. Einführung „Islam, «Scharia» und Recht.“

Knut S. Vikør, *Between God and the Sultan: A History of Islamic Law* (London: Hurst, 2005).

Noel J. Coulson, *A History of Islamic Law* (The Hague: Aldine De Gruyter, 2011).

Wael B. Hallaq, *Shari'a: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), pp. 1–23. “Introduction.” Read with caution, in both senses of the word. The writer is perhaps the most well-known contemporary scholar of Islamic law, but he is also self-avowedly “heavily Foucauldian.” His post-modern approach is deliberately and proudly apologetic of the Islamic heritage and deliberately dismissive of Weberian ‘formal rationality.’ As such, I consider him to be of questionable utility for the comparative lawyer, because he goes beyond Goldziher’s “intuitive sympathy” into an uncritical, intellectually indefensible double-standard.

Shahab Ahmed, *What is Islam? The Importance of Being Islamic* (Princeton and Oxford: Princeton University Press, 2016), pp. 113–75. Chapter 2 “Islam as Law, islams-non-Islam, Islamic and Islamicate, Religion and Culture, Culture and Civilization.” This follows self-consciously a similar ‘critical’ perspective suggested by Hallaq and Said, see p. 118, fn. 10.

2nd Session: Formation of Islamic Law

- Which elements contributed to the *shari'a*'s “hybrid formation”?
- What are the four universally agreed sources of Islamic law?
- Where is the state in this process?
- What role is played by pre-existing norms and institutions?
- What is the ‘Gate of Ijtihad’ and why was it closed?

Mandatory Material:

Zubaida, *Law and Power in the Islamic World*, pp. 10–39. Chapter 1 “Concepts, Origins and Mutations.”

Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009), pp. 7–30. Chapter 1–2 “Who’s who in the Shari’a” and “The Law: how is it found?”

Voluntary Material:

- Majid Khadduri, "Nature and Sources of Islamic Law – Symposium on Muslim Law," *George Washington Law Review*, Vol. 22(1), No. 1 (1953) pp. 3-23.
- Schacht, *An Introduction to Islamic Law*, pp. 6–27. Chapters 2–5 "The Pre-Islamic Background," "Muhammad and the Koran," "The First Century of Islam" and "The Umayyad Administration and the First Specialists."
- Joseph Schacht, "Pre-Islamic Background and Early Development of Jurisprudence Chapter II," in: *Law in the Middle East, Vol. 1. Origin and Development of Islamic Law*, ed. by Majid Khadduri and Herbert J. Liebesny (Washington, D.C.: The Middle East Institute, 1955), pp. 28-56.
- Hallaq, *Shari'a: Theory, Practice, Transformations*, pp. 27–71. Chapter 1 "The Formative Period." *Idem*, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005), pp. 1–78. Introduction, Chapters 1–3 "The pre-Islamic Near East, Muhammad and Quranic Law," "The Emergence of an Islamic Legal Ethic" and "The Early Judges, Legal Specialists and the Search for Religious Authority."
- Goldziher, *Introduction to Islamic Theology and Law*, pp. 31–66. Chapter 2 "Development of Law."
- Lohlker, *Islamisches Recht*, pp. 67–98. Kapitel "Zur Geschichte des islamischen Rechts."

3rd Session: Sources, Methods and Schools

- Have the two scriptural sources always been indisputably fixed?
- What is the name of the discipline deriving norms from these sources?
- What is the name of the methodology/theory deployed?
- What is *siyasa shari'a*, who established it and why does it matter?
- What is the functional role of the four (plus two) orthodox schools of law?

Mandatory Material:

- Schacht, *An Introduction to Islamic Law*, pp. 112–23. Chapters 16 and 17 "The Original Sources" and "General Concepts."
- Hallaq, *An Introduction to Islamic Law*, pp. 31–37. Chapters 3 and 4 "The Legal Schools" and "Jurists, Legal Education and Politics."

Voluntary Material:

- Joseph Schacht, "The Schools of Law and Later Developments of Jurisprudence Chapter III," in: *Law in the Middle East, Vol. 1. Origin and Development of Islamic Law*, ed. by Majid Khadduri and Herbert J. Liebesny (Washington, D.C.: The Middle East Institute, 1955) pp. 57-84.
- Hallaq, *Shari'a: Theory, Practice, Transformations*, pp. 72–124. Chapter 2 „Legal Theory: Epistemology, Language and Legal Reasoning.”
- Idem*, *The Origins and Evolution of Islamic Law*, pp. 79–101, 150–177. Chapters 4 and 7 "The Judiciary coming of Age" and "The Formation of the Legal Schools."
- Rohe, *Das islamische Recht: Eine Einführung*, pp. 13–21. Kapitel 2 "Entwicklung, Quellen und Methoden."

Idem, *Das islamische Recht: Geschichte und Gegenwart*, pp. 43–73. Erster Teil, Kapitel 2 “Die Entwicklung einer islamrechtlichen Dogmatik – Die Lehre von den Rechtsquellen und den Methoden der Rechtsfindung (*usul al-fiqh*).”

4th Session: Methods and Rationality

- According to Weber, are the *fuqaha*, the scholars of Islamic law, rational people?
- Which three normative elements are covered by the classical *shari'a*? How are they sanctioned?
- What is the difference between ‘formal’ and ‘substantive’ rationality?
- Are *qadis*, judges, independent of worldly power? Whose law do they apply?
- Would Berman agree with Jackson’s earlier assessment of Islamic law as the “antithesis” of Western law? If so, what are the differences? If not, what the similarities? Where do they come from?

Mandatory Material:

Baber Johansen, “The Muslim *Fiqh* as a Sacred Law,” in: *Contingency in a Sacred Law: Legal and Ethical Norms in the Muslim Fiqh*, ed. by Baber Johansen, Studies in Islamic Law and Society (Leiden: Brill, 1999) pp. 1-76. Focus on pp. 42–57 where Weber’s concept of ‘sacred law’ and Schacht’s important reception are analysed.

Zubaida, *Law and Power in the Islamic World*, pp. 40–73. Chapter 2 “Institutions, Courts, Qadis and Muftis.”

Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, Mass.: Harvard University Press, 1983), pp. 1–45. “Introduction.” Focus on pp. 1–15. Berman sees the key characteristics of ‘Weberian’ modern, rational, corporate law in the transformations taking place in the period 1050–1200. See also his “Conclusion,” especially pp. 538–558 aptly titled “Beyond Marx, Beyond Weber.”

Voluntary Material:

Hallaq, *Shari'a: Theory, Practice, Transformations*, pp. 125–58. Chapter 3 “Legal Education and the Politics of Law.”

Idem, *The Origins and Evolution of Islamic Law*, pp. 122–49. Chapter 6 “Legal Theory Expounded.”

Patricia Crone, “Weber, Islamic Law, and the Rise of Capitalism,” in: *Max Weber & Islam*, ed. by Toby E. Huff and Wolfgang Schluchter (New Brunswick, NJ: Transaction Publishers, 1999) pp. 247-72.

Wolfgang Schluchter, “Hindrances to Modernity: Max Weber on Islam,” in: *Max Weber & Islam*, ed. by Toby E. Huff and Wolfgang Schluchter (New Brunswick, NJ: Transaction Publishers, 1999) pp. 53-138.

Sadiq Jalal al-Azm, “Islam and the Science–Religion Debates in Modern Times,” *European Review*, Vol. 15(3), No. 3 (2007) pp. 283-95.

Tilman Nagel, *Die Festung des Glaubens: Triumph und Scheitern des islamischen Rationalismus* (München: 1988).

5th Session: Law and Political Authority

- What could the rulers generally *not* do throughout Islamic history?
- What was the relationship between the *fuqaha* and the state?
- Does Zubaida agree with the view espoused by Snouk about Islamic public law? Do you?
- According to Salzman, what is the great virtue of religion in a depressing reality?
- According to Hallaq, what is the relationship between *siyasa shari'a* and *shari'a*?

Mandatory Material:

Zubaida, *Law and Power in the Islamic World*, pp. 74–120. Chapter 3 “The *Shari'a* and Political Authority.”

Hallaq, *An Introduction to Islamic Law*, pp. 72–82. Chapter 6 “Pre-modern Governance: The Circle of Justice.”

Voluntary Material:

Philip Carl Salzman, “When They Proclaim “Islam is the Answer,” What is the Question? The Return to Political Islam,” *Journal of the Middle East and Africa*, Vol. 2(2), No. 2 (2011) pp. 129-52.

C.E. Bosworth, I.R. Netton, and Frank E. Vogel, “Siyāsa,” in: *Encyclopaedia of Islam, Second Edition (online)*, ed. by Peri Bearman *et al.* (Leiden: Brill, 2012).

Hallaq, *Shari'a: Theory, Practice, Transformations*, pp. 159–222. Chapters 4 and 5 “Law and Society” and “The Circle of Justice and Later Dynasties.”

Idem, *The Origins and Evolution of Islamic Law*, pp. 102–21. Chapter 5 “Prophetic Authority and the Modification of Legal Reasoning.”

Rohe, *Das islamische Recht: Geschichte und Gegenwart*, pp. 21–42. Erster Teil, Kapitel 1 “Die Entstehung des islamischen Staats und seiner Rechtsordnung.”

Tilman Nagel, *Staat und Glaubensgemeinschaft im Islam: Geschichte der politischen Ordnungsvorstellung der Muslime. Band 1: Von den Anfängen bis ins 13. Jahrhundert* (Wiesbaden: Artemis Verlag, 1981), pp. 11–18, 279–441. “Zur Eigenheit des politischen Denkens im Islam” und Kapitel 3 “Die Überwindung des charismatischen Herrschertums in der Sunna.”

Sherman A. Jackson, “The Primacy of Domestic Politics: Ibn Bint al-A’azz and the Establishment of the Four Chief Judgeships in Mamluk Egypt,” *Journal of the American Oriental Society*, Vol. 115(1), No. 1 (1995) pp. 52-65.

Louis Milliot, “La conception de l’état et de l’ordre légal dans l’Islam,” *Recueil des Cours*, Vol. 75 (1949) pp. 591-706.

6th Session: Material Scope of Islamic Law

- What purpose played the *madhabs* in the development of Islamic law?
- How does Hallaq treat the legal discrimination of women in classical Islamic law?
- How does Schacht see the relationship between theory and practice in Islamic law?
- What is the relative strength of private and public law provisions in Islamic law?
- How and how much does Islamic law regulate the exercise of public power?

Mandatory Material:

Hallaq, *The Origins and Evolution of Islamic Law*, pp. 194–206. “Conclusion.”

Schacht, *An Introduction to Islamic Law*, pp. 199–211. Chapter 26 “The Nature of Islamic Law.”

Werner Menski and David Pearl, *Muslim Family Law* (London: Sweet & Maxwell, 1998), pp. 3–18. Introduction

Voluntary Material:

Hallaq, *An Introduction to Islamic Law*, pp. 57–71. Chapter 5 “Shari’a’s Society.”

Idem, *The Origins and Evolution of Islamic Law*, pp. 178–93. Chapter 8 “Law and Politics: Caliphs, Judges and Jurists.”

Idem, *Shari’a: Theory, Practice, Transformations*, pp. 225–38. Chapter 6 “The Legal Pillars of Religion.”

S. G. Vesey-Fitzgerald, “Nature and Source of the Shari’a Chapter IV,” in: *Law in the Middle East, Vol. 1. Origin and Development of Islamic Law*, ed. by Majid Khadduri and Herbert J. Liebesny (Washington, D.C.: The Middle East Institute, 1955) pp. 85-112.

Rohe, *Das islamische Recht: Geschichte und Gegenwart*, pp. 76–164. Erster Teil, Kapitel IV „Die Regelungsbereiche des klassischen islamischen Rechts.“

Lohlker, *Islamisches Recht*, pp. 40–66. Kapitel „Strukturen von Rechtswerken.“

Rohe, *Das islamische Recht: Geschichte und Gegenwart*, pp. 409–22. Anhang „Der Aufbau des *kitab al-mabsut fi l-furu’* des hanafitischen Juristen al-Sarahsi (gest. 483/1090).“

7th Session: Modernity and Legal Reform

- Is jurisdiction primarily territorial or personal under Islamic law?
- What was the impetus and the challenges for colonial codification efforts?
- Was all legal reform initiated by colonial powers?
- Which areas of Islamic law proved particularly resilient towards reform?
- Can modern states operate effectively through Islamic law?

Mandatory Material:

Zubaida, *Law and Power in the Islamic World*, pp. 121–57. Chapter 4 “The Age of Reform: The Etatization of Law.”

Ebrahim Afsah, “Contested Universalities of International Law. Islam’s Struggle with Modernity,” *Journal of the History of International Law*, Vol. 10 (2008) pp. 259-307.

Voluntary Material:

Hallaq, *An Introduction to Islamic Law*, pp. 85–139. Chapters 7 and 8 “Colonizing the Muslim World and ist Shari’a” and “The Law in an Age of Nation-States.”

Schacht, *An Introduction to Islamic Law*, pp. 89–111. Chapters 13–15 “Islamic Law in the Ottoman Empire,” “Anglo-Muhammadan Law and *Droit Musulman Algérien*” and Modernist Legislation.”

Hallaq, *Shari’a: Theory, Practice, Transformations*, pp. 225–38. Chapter 6 “The Legal Pillars of Religion.”

- Herbert J. Liebesny, "Impact of Western Law in the Countries of the Near East Symposium on Muslim Law," *George Washington Law Review*, Vol. 22(2), No. 2 (1953) pp. 127-41.
- Ebul'ula Mardin, "Development of the Shari'a under the Ottoman Empire Chapter XI," in: *Law in the Middle East, Vol. 1. Origin and Development of Islamic Law*, ed. by Majid Khadduri and Herbert J. Liebesny (Washington, D.C.: The Middle East Institute, 1955) pp. 279-91.
- S. S. Onar, "The Majalla Chapter XII," in: *Law in the Middle East, Vol. 1. Origin and Development of Islamic Law*, ed. by Majid Khadduri and Herbert J. Liebesny (Washington, D.C.: The Middle East Institute, 1955) pp. 292-308.
- Rohe, *Das islamische Recht: Eine Einführung*, pp. 53–88. Kapitel 4 „Reformen seit dem 19. Jahrhundert.“
- Idem*, *Das islamische Recht: Geschichte und Gegenwart*, pp. 167–276. Zweiter Teil „Modernes islamisches Recht“, Kapitel I–III „Weiterentwicklung und Umsturz seit dem 13./19. Jahrhundert,“ „Methoden der Weiterentwicklung und Anwendungsbeispiele“ und „Kernbereiche modernen islamischen Rechts.“
- Mark S. W. Hoyle, "The Origins of the Mixed Courts of Egypt," *Arab Law Quarterly*, Vol. 1(2), No. 2 (1986) pp. 220-30.
- Barbara D. Metcalf, "Weber and Islamic Reform," in: *Max Weber & Islam*, ed. by Toby E. Huff and Wolfgang Schluchter (New Brunswick, NJ: Transaction Publishers, 1999) pp. 217-30.
- Mohamed Charfi, "L'influence de la religion dans le droit international privé des pays musulmans," *Recueil des Cours*, Vol. 203 (1987) pp. 321-454.

8th Session: Family Law

- How would you legally classify a Muslim marriage? Can you state an alternative tradition?
- What impediments to marriage exist under Islamic law? Do all of them render it invalid?
- What are the legal effects of marriage?
- How have states attempted to change marriage laws and why?
- Regarding dissolution, what is the difference between *talaq* and *khul'*?

Mandatory Material:

- David Pearl, *A Textbook on Muslim Personal Law*, 2nd ed. (Beckenham: Croom Helm, 1987), pp. 41–187. Chapters 2–8 "Marriage: Form and Capacity," "Marriage: Legal Effects," "Polygamy," "Dissolution of Marriage" and "The Laws of Inheritance."
- Hallaq, *Shari'a: Theory, Practice, Transformations*, pp. 271–95. Chapter 8 "Family Law and Succession."

Voluntary Material:

- Schacht, *An Introduction to Islamic Law*, pp. 76–88, 161–174. Chapters 11,12 and 22, 23 "Theory and Practice," "Purist Reactions," "Family" and "Inheritance."
- Menski and Pearl, *Muslim Family Law*. (newer edition of Pearl's book above; you can use either.)

Rohe, *Das islamische Recht: Geschichte und Gegenwart*, pp. 79–102, 207–233, 351–367. „Personenstand-, Ehe- und Familienrecht,“ „Erbrecht“ und „Internationales Privatrecht.“

Muhammad Abu Zahra, “Family Law Chapter VI,” in: *Law in the Middle East, Vol. 1. Origin and Development of Islamic Law*, ed. by Majid Khadduri and Herbert J. Liebesny (Washington, D.C.: The Middle East Institute, 1955) pp. 132-78.

Germaine Tillion, *The Republic of Cousins* (London: Saqi Books, 1983).

Choucri Cardahi, “La conception et la pratique du droit international privé dans l’Islam (Etude juridique et historique),” *Recueil des Cours*, Vol. 60 (1937) pp. 507-650.

Charfi, “L’influence de la religion dans le droit international privé des pays musulmans.”

9th Session: Contracts & Obligations, Property & Ownership

- Reading the material, what is the relationship between general principles and casuistry?
- What are the ingredients of the contract of sale?
- How does *hiyal* permit circumventing undesirable dogmatic rules?
- How are spiritual concerns affecting civil liabilities?
- What is the modern significance of *gharar*, *kafala* and *hawala*?

Mandatory Material:

Schacht, *An Introduction to Islamic Law*, pp. 134–60. Chapters 19–21 “Property,” “Obligations in General” and “Obligations and Contracts in Particular.”

Hallaq, *Shari’a: Theory, Practice, Transformations*, pp. 239–270, 296–307. Chapters 7 and 9 “Contracts and Other Obligations” and “Property and Ownership.”

Voluntary Material:

Rohe, *Das islamische Recht: Geschichte und Gegenwart*, pp. 103–121, 234–242. „Vertrags- und Wirtschaftsrecht,“ „Gesellschaftsrecht“ und „Eigentumsrecht.“

Babak Dehghanpisheh and Steve Stecklow, “Assets of the Ayatollah. The Economic Empire Behind Iran’s Supreme Leader. Part 2 National Champion: Khamenei’s Conglomerate Thrived as Sanctions Squeezed Iran,” *Reuters Investigates Series*, London, Reuters, 11 November 2013, available at: <http://www.reuters.com/investigates/iran/#article/part2>, accessed on: 12 January 2015.

Robin Wright (ed.), *The Iran Primer. Power, Politics, and U.S. Policy* (Washington, D.C.: USIP Press, 2010), pp. 95–114. Different chapters on “Iran’s Economy.”

10th Session: Finance

- What is the difference between ‘Islamic banking’ and ‘Islamic Economics’?
- What does Sadr consider the central economic problem?
- How does he solve it? How is his ‘law and economics’ different from the Western school of the same name?
- Why does Hamoudi consider the Islamic bank to be impossible in America? Why is it nevertheless desired? Would your assessment be different in a Muslim-majority country?
- What is the relationship of these Islamic models to economic science?

Mandatory Material:

Chibli Mallat, *The Renewal of Islamic Law: Muhammad Baqer as-Sadr, Najaf and the Shi'i International* (Cambridge: Cambridge University Press, 1993), pp. 113–57. Chapter 4 “Law and the Discovery of ‘Islamic Economics.’”

Haider Ala Hamoudi, “The Impossible, Highly Desired Islamic Bank,” *William & Mary Business Law Review*, Vol. 5(1), No. 1 (2014) pp. 105-58.

Voluntary Material:

Chibli Mallat, “Commercial Law in the Middle East: Between Classical Transactions and Modern Business,” *American Journal of Comparative Law*, Vol. 48(1), No. 1 (2000) pp. 81-141.

Rohe, *Das islamische Recht: Geschichte und Gegenwart*, pp. 112–18. „Inhaltskontrolle und Umgebungsgeschäfte (*hiyal*).“

Frank E. Vogel and Samuel L. Hayes, *Islamic Law and Finance: Religion, Risk, and Return* (Leiden: Brill, 1998).

11th Session: Offences and Penal Law

- Why does Hallay, unlike Schacht and most people, reject the term ‘penal law’?
- Schacht identifies which two sources of all penal law?
- What is remarkable about the procedural requirements of *hudud*?
- What is the difference between *qisas* and *ta’zīr*?
- What is *hisba* and which contemporary significance does it have?

Mandatory Material:

Schacht, *An Introduction to Islamic Law*, pp. 175–98. “Penal Law” and (General) “Procedure.”

Hallaq, *Shari’a: Theory, Practice, Transformations*, pp. 308–323, 342–354. Chapters 10 and 12 “Offences” and “Courts of Justice, Suits and Evidence.”

Voluntary Material:

Mawil Y. Izzi Dien, “Ta’zīr,” in: *Encyclopaedia of Islam, Second Edition (online)*, ed. by Peri Bearman *et al.* (Leiden: Brill, 2012).

R. Matran and A.S. Basmee Ansari, “Hisba,” in: *Encyclopaedia of Islam, Second Edition (online)*, ed. by Peri Bearman *et al.* (Leiden: Brill, 2012).

Riyad Maydani, “Uqubat: Penal Law Chapter IX,” in: *Law in the Middle East, Vol. 1. Origin and Development of Islamic Law*, ed. by Majid Khadduri and Herbert J. Liebesny (Washington, D.C.: The Middle East Institute, 1955) pp. 223-35.

Hallaq, *An Introduction to Islamic Law*, pp. 140–62. Chapter 9 “State, Ulama and Islamists.”

Rohe, *Das islamische Recht: Geschichte und Gegenwart*, pp. 122–139, 264–276. „Strafrecht und Deliktsrecht.“

12th Session: State, Administrative and International Law

- What is meant by the etatization of religion and law?
- What is the dogmatic role of *siyar* and how has reality affected it?
- Who controls the interpretation of Islamic law in Egypt?
- Is it true that in Egypt “there seem to be no secularists” (Zubaida, p. 173)?
- The theory of *jihad* is premised on a victorious Islam. How has it been applied in a Westphalian world?

Mandatory Material:

Zubaida, *Law and Power in the Islamic World*, pp. 158–81. Chapter 5 “The *Shari’a* in Modern Debates and Institutions: Egypt.”

Majid Khadduri, “International Law,” in: *Law in the Middle East, Vol. 1. Origin and Development of Islamic Law*, ed. by Majid Khadduri and Herbert J. Liebesny (Washington, D.C.: The Middle East Institute, 1955) pp. 349-72.

Voluntary Material:

Hallaq, *Shari’a: Theory, Practice, Transformations*, pp. 324–41. Chapter 11 “*Jihad*.”

Kamel Daoud, “Saudi Arabia, an ISIS That Has Made It,” *New York Times*, (20 November 2015).

Graeme Wood, “What ISIS Really Wants,” *The Atlantic*, March 2015, available at: <http://www.theatlantic.com/features/archive/2015/02/what-isis-really-wants/384980/>, accessed on: 8 June 2015.

Afsah, “Contested Universalities of International Law.” (repeated from Week 7)

Zubaida, *Law and Power in the Islamic World*, pp. 182–219. Chapter 6 “The Politics of the *Shari’a* in Iran.”

Muḥammad ibn al-Ḥasan Shaybānī, *The Islamic Law of Nations: Shaybānī’s Siyar*, trans. by Majid Khadduri (Baltimore: Johns Hopkins Press, 1966). Note especially the excellent Translator’s Introduction by Majid Khadduri, focus on pp. 1–21 on “Islamic Law and the Law of Nations” and “Theory of the Islamic Law of Nations.”

Rohe, *Das islamische Recht: Geschichte und Gegenwart*, pp. 140–166, 243–263. „Staats- und Verwaltungsrecht.“

Ahmed Réchid, “L’Islam et le droit des gens,” *Recueil des Cours*, Vol. 60 (1937) pp. 371-506.

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Dietrich F. Pohl, *Islam und Friedensvölkerrechtsordnung. Die dogmatischen Grundlagen der Teilnahme eines islamischen Staates am modernen Völkerrechtssystem am Beispiel Ägyptens*, Vol. 84, *Forschungen aus Staat und Recht* (Wien: Springer, 1988).

Majid Khadduri, *War and Peace in the Law of Islam* (Baltimore: The Johns Hopkins Press, 1955).

‘Ali b. Muhammad al-Mawardi, *The Ordinances of Government*, trans. by Wafaa Hassan Wahba (London: Garnet, 1996).

13th Session: Review and Outlook

- Do you share Hallaq's nostalgic reminiscing about the nature of classical Islamic law?
- Do you consider his notion of an 'anthropological historical *sharia*' to be useful?
- How does Zubaida disagree with this depiction of a historical Muslim society governed by the holy law?
- Why have modern states found it hard to institute the *shari'a*? Why do they still try?
- What is the proper role of the *shari'a* in the diaspora?

Mandatory Material:

Hallaq, *An Introduction to Islamic Law*, pp. 163–70. Chapter 10 “Shari’a Then and Now: Concluding Notes.”

Zubaida, *Law and Power in the Islamic World*, pp. 220–24. Conclusion

Voluntary Material:

Rohe, *Das islamische Recht: Geschichte und Gegenwart*, pp. 397–405. Vierter Teil „Perspektiven des islamischen Rechts in einer globalisierten Welt.“