The 10th Islamic Legal Studies Conference

London, 19-21 May 2022

Conference Programme

Evgenia Kermeli, Hacettepe University
ISILS President

Dear Colleagues and Students,

I would like to welcome you all to the 10th Islamic Legal Studies conference, convened by the International Society for Islamic Legal Studies (ISILS) in partnership with the Governance Programme at the Aga Khan University — Institute for the Study of Muslim Civilisations (AKU-ISMC).

Since the first Joseph Schacht Conference on Theory and Practice held in Amsterdam and Leiden, in 1994, the interest in Islamic Law and its jurisprudential and juridical development led scholars to form a society dedicated to the study of Islamic Law and Society. The vision and determination of our society's 'forefathers and foremothers' led a discipline — previously marginalized — to flourish. We have recently lost two of our most dedicated members, Ruud Peters and Éric Chaumont, whose erudition and generosity to younger scholars inspired us all. Their collegiality, a common trade of our members, guided the Society's triennial conferences held in three continents so far -we hope to complete the globe- and resulted in cutting-edge scholarship but most importantly facilitated the cooperation between scholars.

Following the parallel paths in the research of Islamic Society and Law of both the Institute for the Study of Muslim Civilizations at the Aga Khan University and of the International Society for Islamic Legal Studies, I am certain, this conference will continue the tradition and open new paths to research. I would like to wholeheartedly thank our host, the Governance Programme at the Aga Khan University — Institute for the Study of Muslim Civilisations for their engaging and energetic efforts to ensure the success of our Conference.

Biographical Note

Evgenia Kermeli is a Professor in Ottoman Law at the Turkish Studies Institute of Hacettepe University, Ankara. She specializes in Ottoman Law and Muslim and non-Muslim relations in the Ottoman Empire. She was awarded a Doctoral Degree from the Middle Eastern Studies Department of Victoria University in Manchester on the legal reasoning of the ottoman jurisconsult Ebussuud with regard to Christian waqfs. In 2009 she was a visiting fellow at the Islamic Studies program at Harvard University, doing research on legal pluralism and the role of custom in Ottoman Law. She is the co-editor of *Islamic Law: Theory and Practice*, R. Gleave, E. Kermeli (eds.), I. B. Tauris, London, 1997.

Leif Stenberg, The Aga Khan University

Dean of AKU's Institute for the Study of Muslim Civilisations

I am delighted to welcome the International Society for Islamic Legal Studies to the Aga Khan Centre this very year in which we celebrate the vicennial of our Aga Khan University Institute for the Study of Muslim Civilisations (AKU-ISMC).

As the conference celebrates its 10th edition, it has grown in prestige and significance, building a forum for scholars all over the world to interact and engage with the most pertinent and pressing issues in the field today. Since its inception, the organisation has led the field globally, encouraging scholarship and fostering communication about Islamic Law and related subjects.

At AKU-ISMC, our Governance Programme has been instrumental in the development of our core research objectives and outreach impact. As a research platform, it focuses on legal processes, refugee struggles, constitutional issues, and gender questions in all Muslim contexts. It is therefore my pleasure for AKU-ISMC's Governance Programme to host the 10th triennial ISILS conference.

As an Institution, our focus is on building the foundations for future scholars to learn and grow. The Aga Khan Centre is the world-class educational resource which hosts us, and I hope you will enjoy your stay during the conference and will return to visit us in the future.

Biographical Note

Leif Stenberg is the Dean of AKU-ISMC. He recently co-edited (with Professor Philip Wood) a volume on the politics of studying Islam entitled *What is Islamic Studies?* (to be published by Edinburgh University Press, 2022). His latest research has been on the various intersections between football, religion, and social identities. He recently organised an AKU-ISMC conference on the topic in May 2022, with an edited volume forthcoming in 2023 (to be published by Edinburgh University Press).

Gianluca Parolin, The Aga Khan University

Faculty Lead on the Governance Programme and Organising Committee / Local Host

The Governance Programme was established in the mid-2010s to provide a platform for a passionate, informed, and open discussion on the broad spectrum of matters of relevance for governance in Muslim majority contexts, from water management in the Maghreb to the practices of Islamic Courts in East Africa. The Programme invites academics, policy makers, journalists, activists, and others to contribute and elevate the discussion for the public good.

Over the past seven years, we have gathered scholars and stakeholders from around the world to reflect on and discuss the challenges of decision-making and policy implementation that affect the lives of Muslims at any latitude. And in doing so, we have explored together a variety of matters, from the politics of Blasphemy Laws in Pakistan to the Tunisian efforts to reform inheritance law to ensure gender equality.

We now feel extremely privileged to be able to facilitate the discussion on one of the most debated modalities of governance in Muslim majority contexts by hosting the 10th triennial conference of the International Society for Islamic Legal Studies. We intend to share the wealth of knowledge and engagement that these contributors bring to the greatest possible extent. As with all our activities, we will make the conference materials freely, easily, and widely accessible on our portals.

We aim at creating the conditions for new opportunities to arise for Members old and new of the International Society for Islamic Legal Studies during the conference, and we also hope that new initiatives can be developed in cooperation with the Governance Programme team for the future.

Partnering with the International Society for Islamic Legal Studies for the organisation of this conference has been an absolute pleasure. Engagement, laughter and drama have all been part of this delightful journey, thanks to the human and scholarly qualities of its President, Evgenia Kermeli, and the relentlessly supportive Executive Board members Asifa Quraishi-Landes, Delfina Serrano Ruano, and Samy Ayoub. The champion without whose unrelenting commitment over the past several months the conference would not have been possible is ISILS Secretary-Treasurer, Serena Tolino.

The Governance Programme thrives thanks to the firm vision and unwavering support of the Chancellor, and the rest of the university administration. Dean Leif Stenberg, in particular, has endorsed the hosting of the 10th Islamic Legal Studies Conference since its inception, and has included it among the activities to mark the 20th anniversary of the Institute in London, recognising its momentum in the life of AKU-ISMC.

Our diverse, colourful, and caring team of colleagues, staff members, students, and volunteers will try and make your participation in the conference as enjoyable and fruitful as possible.

Biographical Note

Gianluca Parolin is a comparative lawyer working on constitutional design, State-Islam relations, citizenship, shifting semiotics of law, and images of law in popular culture. He holds a PhD in Public Law from the University of Turin, and is a Professor of Law at Institute for the Study of Muslim Civilisations of the Aga Khan University in London, where he also leads the Governance Programme. He is currently working on a new book on the law's *imaginaire* in Egyptian television drama.

Serena Tolino, University of Bern
ISILS Secretary-Treasurer and Organising Committee

As Organising Committee, we are delighted to finally welcome you to the 10th Islamic Legal Studies conference. When the first news about the coronavirus appeared, we had just started the preparation for a conference that, as usual, was supposed to take place three years after the previous one, namely in 2021. However, it soon became clear that holding an international conference in presence in 2021 would have been impossible, and considering that for us an online conference was not an option, we decided quite early that we would have had to postpone to 2022. Indeed, one of the aspects we all appreciate more about conferences in general, and maybe this is even more the case for a society's conference, is the social aspect: meeting colleagues, discussing ideas during the presentations, brainstorming during the breaks, is something we all missed during the pandemic, and we are extremely glad we can do it again.

When we launched the Call for Papers in September 2021, we were slightly worried that the pandemic would have made many presenters sceptical about the possibility to come to London for a conference. Instead, we received many excellent abstracts coming from all over the world, and we are really grateful to all the people who, notwithstanding the unstable situation, decided to send an abstract. The job of the international selection committee has not been an easy one, but we are really excited about the programme we put together. Without the engagement of the members of the selecting committee and of the executive board members, in particular of our President Evgenia Kermeli, this conference would have never taken shape. I would like to thank all of them wholeheartedly. Without the incredible management skills, but also the dedication and patience of our local host, Gianluca Parolin, the organization of this conference would have never been possible.

Biographical Note

Serena Tolino is Associate Professor of Islamic and Middle Eastern Studies and co-director of the Institute for the Study of the Middle East and Muslim Societies at the University of Bern, where she also leads the project *TraSIS: Trajectories of Slavery in Islamicate Societies. Three Concepts from Islamic Legal Sources*, financed by the Swiss National Science Foundation. Before moving to Bern, she was assistant professor at the University of Hamburg, post-doc at the University of Zurich and visiting fellow at the Program in Islamic Law at Harvard Law School.

Roundtable discussion on

Islamic Law and Popular Culture
The Case of Marriage

Marion H Katz, New York University
Ziba Mir-Hosseini, SOAS University of London
Jakob Skovgaard-Petersen, University of Copenhagen

Moderated by:
Jonas Otterbeck, The Aga Khan University

(*) abstracts in alphabetical order by last name

Marion H Katz

Housework, *fiqh*, and the many faces of Muslim marriage

How broadly disseminated in society were the concepts and norms we know from *fiqh* texts? And what other, more popular models of relationships, transactions, and ritual actions were in circulation in different historically Muslim societies? These questions hover in the penumbra of most scholarship about the history of Islamic law but are often difficult for specialists in eras before modernity to address directly due to the nature of our sources.

Because it was historically both highly elaborated in *fiqh* and deeply embedded in the social values and everyday experiences of ordinary people, the institution of marriage offers a useful test case for our ability to construct a multi-faceted picture by juxtaposing different kinds of sources. It is difficult to access premodern sources that are genuinely "popular" in the sense of representing the unfiltered values or experiences of the poor or unlearned, but available sources offer a variety of vantage points on what constitutes a good or bad marriage (or a good or bad husband or wife).

In the course of researching a book on the history of the legal discussion over wives' domestic labor, I found a persistent discrepancy between *fiqh* doctrines generally holding that a wife had no obligation to provide housework and didactic stories – stories that, although available through scholarly sources, might have been more accessible and appealing to a layperson than the technical discourse *fiqh* – suggesting that virtuous wives did housework and those who refused to do so were less than pious. The concrete content of such tasks varied, but housework – in the sense of consumption-oriented work within the home – played a vital role both in legal constructions of the obligations created by the marriage contract and in less technical and more entertaining renditions of marital life.

It is tempting to interpret such a discrepancy in terms of a dichotomy between "ideal" and "reality," or in terms of whether *fiqh* rules were really "applied." Instead, however, I would argue that even the individual scholars who elaborated *fiqh* doctrines were familiar with and subscribed to more "popular" ideas of the good marriage. We can thus best understand the *fiqh* as being complementary to and in dialogue with everyday ideas about good behavior. The significance of potentially enforceable legal rules (such as the jurists' interpretations of the rights and obligations of spouses under the marriage contract) emerged from the ways in which such rules paralleled and diverged from everyday practices and common-sense understandings of marital life. Only by drawing in a variety of sources that go beyond the technical discourses of the 'ulama' can we understand what the role and significance of *fiqh* really was.

Biographical Note

Marion Holmes Katz is a Professor of Middle Eastern and Islamic Studies at New York University. Her research revolves around issues of Islamic law, gender, and ritual. Her publications include *Body of Text: The Emergence of the Sunni Law of Ritual Purity* (SUNY, 2002), *The Birth of the Prophet Muhammad: Devotional Piety in Sunni Islam* (Routledge, 2007), *Prayer in Islamic Thought and Practice* (Cambridge, 2013) and *Women in the Mosque: A History of Legal Thought and Social Practice* (Columbia University Press, 2014).

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Ziba Mir-Hosseini

Is this Just? Is this what Islam Says?

In the early 1980s, when I started attending the Tehran branches of the post-revolutionary Family Courts, presided over by Islamic judges, women who came to court were astonished to learn that their husbands could now not only take another wife but also divorce them, all without securing their consent. Some were incredulous, and would ask more than one judge, "Can he really divorce me, if I don't agree? Is this just? Is this what Islam says? Is this Shari'a?" They used every occasion – sometimes thumping the judge's desk – to remind the judge of his role as custodian of the Shari'a, and of the injustice of a system that could not protect them … The judges had no answer.

My research in these family courts was the beginning of my quest to make sense of the gap between the ideals of Islam and legal practices in countries such as post-revolutionary Iran, where the government and the judiciary claim to be implementing Shari'a. As an anthropologist, I wanted to know what it means to be married and divorced under Islamic law, whose advocates claim it to be sacred. Between 1985 and 1989, I did fieldwork in family courts in Iran and Morocco; I focused on the litigants' strategies, and how judges came to their decisions. Sitting in courts and listening to litigants, observing and conversing with judges, I learned that by the time a marital dispute reached court, whatever was sacred and ethical in the law had evaporated. Neither the judges nor the disputing couple were concerned with the sacred. What was left of the Shari'a was a strong patriarchal ethos that privileged men and placed women under male authority: it was an ideology to legitimize unequal and unjust power relations in marriage and society and to curtail women's voices and choices.

My quest has changed course over the years, but since the early 1990s I have focused on two questions. If justice is an intrinsic value in Islam, why have women been treated as second class citizens in Islamic legal tradition? Now that equality has become inherent in contemporary conceptions of justice, is it possible to argue for equality between men and women from within that tradition?

In my latest book — *Journeys Toward Gender Equality in Islam* — I explore these questions with six prominent reformist thinkers (three men and three women) in conversations conducted between 2009 and 2020. All six are public intellectuals; with some, I have interacted in academic meetings and workshops, with others I have collaborated in research. My initial aim in the project was to make these thinkers' writings accessible to a wider audience, and in particular to women's rights activists, as alternative ways of approaching Islam and gender. As the project progressed, I found that what was I doing was tracking how these reformist thinkers came to know Islam and its textual sources in the way that they do; and how their life experience became a source of theological and juristic discoveries. At the same time, I realized that I was bringing their journeys to knowledge of Islam into conversation with my own, which for the past two decades has been closely involved with a number of feminist scholars and activists associated with Musawah - a global movement for equality and justice in the Muslim family that I co-founded in 2009.

I shall talk about how I came to develop this methodology of conversation and collaboration as a way of exploring and producing knowledge to challenge patriarchy in Muslim legal tradition.

Biographical Note

Ziba Mir-Hosseini is a legal anthropologist, specializing in Islamic law, gender and Islamic feminism, and a founding member of Musawah. Co-director of two award-winning documentaries on Iran: *Divorce Iranian Style* and *Runaway*, she has taught at numerous universities in Europe, North America and elsewhere, and received the American Academy of Religion's 2015 Martin E. Marty Award for the Public Understanding of Religion. Her research has resulted in major books on Islamic family law in Iran and Morocco, Iranian clerical discourses on gender, Islamic reformist thinkers, the revival of *Zinā*' laws and most recently Journeys Towards Gender Equality in Islam.

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Jakob Skovgaard-Petersen

Fatwas and Popular Culture or What has Television Done to *Fiqh?* The Example of Fatwa Giving

Television is mass culture; a standardized commodity produced for mass consumption. Running non-stop in most homes, for three generations of Arab Muslims, it has been an overwhelmingly powerful source of information and inspiration to their world views, emotions and, indeed, religious norms. Not least as part of the rituals of Ramadan.

Like television, fatwas are situated at the interface between the cultural elites and the broader population – a dissemination of norms from the *khāṣṣa* to the *ʿāmma*. After an early unwillingness on the part of TV producers to do religious broadcasting, fatwas and religious advice programs grew to become a staple of Arab television with the rise of satellite TV (and intensified channel competition) in the 1990s. The proliferation of fatwas on programs and on the internet gave rise to new programs discussing the 'fatwa chaos' and how it could be remedied. That concern, in turn, led to an interest in the muftis and their qualifications. In a sense, the classical *fiqh* genre of *adab al-muftī* was revived.

There are some reflections of this interest also in fictional treatments of *iftāʾ*. In recent decades Arab TV dramas have taken an interest in providing more elaborate portrayals of ulama and muftis, not least after the 2011 revolutions when the subject of collaboration between authoritarian power, religious broadcasting and the rise of media sheikhs could be openly discussed.

The 2022 drama *Fātin Amal Ḥarbī* is particularly rich in its discussion of *iftāʾ*. Named after the famous actress Fātin Ḥamāma and alluding to her role on the divorce drama "I Need a Solution" (1979), the 2022 drama also has its eyes set on a reform of the Personal Status Law of Egypt to improve the situation of the divorcee, this time on the issue of the rights to custody of the children. It is thus set within the framework of the Egyptian state law. Nevertheless, the series is awash with religion, and makes a point of Fātin's (the heroine's) personal piety. Early on she gets into contact with sheikh Yaḥyā, a young *muftī* from a private religious organization, and consults him on issues of *fiqh*, but also to ease her own conscience. In a number of scenes, dimensions of modern *iftāʾ* are taken up: the relationship to state law, the balancing of opposing considerations, the role of intentions. Due to his engagement with Fātin's case, sheikh Yaḥyā is forced to reconsider the *fiqh* he has been taught, and he consults more senior muftis, some of them wise, some of them rigid.

As of writing these lines, the series is only half finished. My intervention will focus on the role of *fiqh* and its practitioners in this series, also contrasting it to the 1979 film and to the feature film *Mawlānā* (2017), the most complex character study of a sheikh in modern Egyptian film. It will also look at the heated debate and criticism that has erupted in Egypt, with well-known preachers and the Sheikh al-Azhar criticizing its treatment of *fiqh*. I will argue that, to date, *Fātin Amal Ḥarbī* is the most detailed fictional treatment of the role of *iftāʾ* in modern Egypt, and that it provides a place for *fiqh* in a modern legal context where, formally speaking, it really doesn't have one.

Biographical Note

Jakob Skovgaard Petersen is Professor of Islamic and Arabic studies at the University of Copenhagen.

His field of research is contemporary Islam, more specifically the establishment of a modern Muslim public sphere, and the role of the Muslim ulama in modern Arab states. Lately, his research has primarily focused on the role of Islam in the new pan-Arab television networks.

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Jonas Otterbeck

Roundtable Moderator

Biographical Note

Jonas Otterbeck is Professor of Islamic Studies, Head of Research, and the Rasul-Walker Endowed Chair in Popular Culture in Islam. Over the last twenty-five years, Professor Otterbeck has engaged in research about contemporary Islam, often with political relevance. His most recent research is on popular culture that makes references to Islam. Otterbeck has published widely, most notably the monograph *The Awakening of Islamic Pop Music* (2021) and several journal articles about popular culture and Islam in Contemporary Islam and Popular Music and Society. He has also edited books and thematic journal issues on Music and Islam, Music censorship and Islamic studies. Otterbeck has an interest in research on music censorship and an engagement for artists' right to expression.

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Conference Sessions

Chaired by:
Samy Ayoub, University of Texas at Austin
Robert Gleave, University of Exeter
Evgenia Kermeli, Hacettepe University
Asifa Quraishi-Landes, University of Wisconsin - Madison
Delfina Serrano Ruano, CSIC, Madrid
Knut S. Vikør, University of Bergen

(*) abstracts in alphabetical order by last name

Hakkı Arslan

From a Marginal Opinion to a Dominant Position: Molla Khusraw's Treatise on the Inheritance of the Patronate *(al-walāʾ)*

After the canonization and standardization of Islamic law between the 11th and 14th centuries, we observe an increasing diversification in the legal literature. New genres and sub-disciplines emerged where legal discourses were negotiated. This diversification of the legal genres served as a strategy to generate stability and flexibility and to strike a balance between theory and practice. While law remained largely unchanged in certain genres such as commentaries and supercommentaries, other genres like treatises and responsa were used to negotiate new relevant issues. The inclusion and exclusion of new opinions were negotiated within this paradigm, whose parameters can be found in the *adab al-fatwā* literature. I propose that a holistic approach where these different genres and the functional interplay between them is taken into consideration will further our understanding of the legal discourses and the processes of rule determination.

This paper will demonstrate how a legal position was negotiated across various genres, then integrated into the canon of prevailing opinions. How can a marginal opinion establish itself against a dominant one? What was the canonization process for certain opinions in the Ottoman Empire? To answer this question, I use a case study from the patronage law (*walā*) in the work of Molla Khusraw, a famous ottoman jurist in the 15th century, who engaged many high-ranking scholars in the Ottoman Empire. Using this example, I show how a marginal opinion, which initially was vehemently rejected, gradually receives support, and becomes the dominant opinion after about 150 years. I argue that although there were many state regulations and structural interventions in the Ottoman system, the law-making process was still dominated by the internal structures of the legal discourse, which of course reflected the social circumstances but were not completely determined by them.

Biographical Note

Hakkı Arslan is a postdoctoral research associate at the collaborative research center for Law and Literature. He teaches Islamic law at the Institute for Arabic and Islamic studies at the University of Münster. Prior to this, he worked as a postdoc researcher at the Institute for Islamic Theology at the University of Osnabrück (2014–19) where he had completed his PhD (2015) in the field of Islamic legal hermeneutics with a study on Molla Khusraw's (d. 885/1480) *Uṣūl al-fiqh* work *Mirqāt al-wuṣūl*. His current research project focuses on the relation between fatwa and *rasāʾil* literature in the 14th–19th centuries. More broadly, Arslan is working on the interrelationship between the different genres of Islamic law in the postclassical period.

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Samy Ayoub

After Manumission: Islamic Inheritance Law and the Abolition of Slavery in Modern Egypt

Egypt was a center of slave trade and struggled to bring it to an end by the mid-19th century CE, whether by khedival imperial edicts, military campaigns, or enhanced criminal punishments. The litigation in Islamic courts in Egypt on issues of inheritance provides rare glimpses into social life after manumission. The legal claims established by Islamic law in the context of inheritance of the patronate (*walāʾ al-ʿitq*), especially Ḥanafī jurisprudence, gives us access to the economic and social conditions after manumission, inaccessible through usual archival materials. Unlike government documents, Islamic courts do not speak about manumitted slaves as an object of study. Instead, they are active participants and actors. We learn about their life, family, economic conditions, marital status, and heirs. The inheritance of the patronate is one of the key doctrinal norms in Islamic Inheritance Law, where the manumitter (*muʿtiq*) takes the place of an agnatic relative of his freedman and inherits as his last agnate. Muslim jurists affirmed that *al-walāʾ* establishes a bond of loyalty, friendship, and support that triggers legal consequences regarding inheritance (*irth*). Islamic law authorized the manumitter to share wealth with his manumitted slaves (*ʿutaqā*) in the form of inheritance and endowment. It also allowed the manumitter to inherit from his manumitted slave. I propose that the decisions by the Islamic Supreme Court (ISC) in Egypt reveal how the judicial system addressed the issue of inheritance in relation to manumitted slaves. I examine two court decisions regarding the inheritance of the patronate (*walāʾ al-ʿitq*) of manumitted slaves and their patrons in the early 20th-century Egypt.

Biographical Note

Samy A. Ayoub is an Assistant Professor in the Department of Middle Eastern Studies and the University of Texas School of Law. He is a legal historian of the Ottoman Empire who specializes in Islamic law and issues concerning the interaction between religion and law and the role of religion in legal and socio-political systems within a comparative perspective.

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Mürteza Bedir

Revisiting the Ottoman *Qānūn-Sharīʿa* Dichotomy: Secular Law vs Religious Law?

Ottoman legal historians generally read the dichotomy of *sharīʿa* and *qānūn* by stating that the Ottoman law has in fact two types of law, hence two legal systems operating at the same time. *Qānūn* has been named as secular law, *sharīʿa* as religious law. This view is further bolstered by the fact that the source of *qānūn* is the authority of the ruler (Sultan) himself, hence his legislation is secular, while *sharīʿa* is based on Islamic precepts, hence it is a religious law. This way of reading the legal history of a pre-modern state is not only anachronistic but it also creates wrong assumptions as to the nature of this dichotomy between *sharīʿa* and *qānūn*.

This paper will argue that seeing *sharīʿa–qānūn* dichotomy as a reflection of dual legal systems – one secular, the other religious – is a backward projection of the late 19th-century legal dualism. The terms of religious law and secular law in the Ottoman context are a neology of the late 19th century, when the Nizamiye courts emerged as a distinct national court system along with the already existing universal *qāḍī*s courts, gradually limiting the latter's jurisdiction to the so-called religious sphere. The modern theoretical classifications of legal systems as religious and secular ones probably helped to consolidate the idea in the minds of modern legal historians. That the religious laws are idealistic and have no relevance to the actual practice of law has been translated to Islamic law. The local customs and practices led to a growing gap between written law and actual practice, culminating in the *qānūn–sharīʿa* distinction.

The paper will argue that the Ottoman *sharīʿa–qānūn* distinction is a continuation of the *sharīʿa–siyāsa* distinction, that has been ever present in the legal theory of Islam right from its beginnings. The only difference was that Ottomans after Mehmed II produced a written documents of *siyāsa* and called it *qānūn* or *ʿurf*, producing a very rich literature. I will argue that *siyāsa*/*qānūn*/*ʿurf* is a product of a deliberate gap, finally leading to the separation of the roles of the *ʿulamāʾ* from that of the rulers.

Biographical Note

Mürteza Bedir holds a BA in Theology (1992) from the University of Marmara, Istanbul, and an LLM from the University of London, SOAS (1995). He obtained his PhD from the University of Manchester, Department of Middle Eastern Studies (1999). He is the author of several books, including *Fiqh, Madhhab and Sunnah: The Authority of the Prophet in the Hanafi Legal Theory* (2004, in Turkish); and *Bukharan Law School: An Analysis on 10th–13th Centuries Central Asian Waqf Law* (2014, in Turkish). His research interests cover Islamic legal theory, reason and revelation, fatwa literature, law of religious endowments, and bioethics. He is currently working on o project about 16th-century Ottoman law.

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Meriem Ben Ammar

The Role of Ḥanafī Jurisprudence in the Urban Domain of the Medina of Tunis: The *Sābāṭ* as a Case Study

The expansion of the Muslim world and the creation of new cities has been accompanied by the emergence of problems and conflicts accentuated by the nature of the urban fabric of the Islamic medina, the typology of its adjacent houses, the road system, and the neighborhood. These problems can be divided into legal matters such as ownership and use rights and technical questions such as construction techniques and materials, lighting, street dimensions, openings, etc.

To resolve these questions, the public turned to jurists and *qāḍī*s, the intermediary between the disputants, to restore the rights to their owners and preserve the harmony of the city based on what Islamic jurisprudence has provided of rules and laws governing the city and its organization.

The medina of Tunis was an example where Islamic jurisprudence has played an important role in the resolution of these conflicts by the nature of the legal writings (*Nawāzil*, *Rasā'il*...). In this presentation, we are interested in an architectural element of the medina, whose origin and introduction into the urban fabric lack explanatory studies, namely the *Sābāṭ*, distributed in the medina as an economical and intelligent choice for the exploitation of space. This structure, in terms of its constructive typology, created a set of problems between neighbors which required a juridical intervention. We propose to analyze a Ḥanafī legal source on the *Sābāṭ* written by a Tunisian Ḥanafī jurist, Muḥammad Bayram II (1749–1831), entitled *Risālat Taḥqīq al-Manāṭ fī ʿAdam ʾIʿādat al-Sābāṭ* [Proper reasons for not reconstructing the *Sābāṭ*]. Through a multidisciplinary approach combining history, jurisprudence, architecture, and urbanism, we will approach this legal text in a manner to determine technical and material reality.

Biographical Note

Meriem Ben Ammar is a 3rd year PhD student in Civil Engineering and Architecture at the University of Cagliari, Faculty of Civil and Ambiental Engineering and Architecture. She obtained her diploma of Architect and a Master's degree in architecture from the National School of Architecture and Urbanism of Tunis. She also studied another Master in Heritage Sciences: Islamic Archaeology in the Faculty of Humanities and Social Sciences of Tunis, where she prepared her Master's thesis on Islamic law manuscripts of architecture and town planning.

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Alexandre Caeiro

The Political Work of the *Qāḍī*: Islamic Law and the Demands of the Rentier State

This paper examines the political roles of Qatar's *Sharīʿa* scholars and institutions from the foundation of the *Sharīʿa* judiciary in the 1950s until the latter's assimilation into the centralized structures of the modern state in the 2000s. This was a period of momentous political, economic, and social change in the Gulf. The legal structures of the Gulf states were transformed in ways that challenge the secularization stories prevalent in the literature. Enabled by oil wealth and the power of emerging state institutions, Qatar's *Sharīʿa* scholars managed to expand the scope of Islamic law in the twentieth century, separating political from legal authority, marginalizing customary legal forums, and making *Sharīʿa* relevant beyond the confines of family law.

Drawing on legal decisions by the chief *qāḍī* ʿAbd Allāh b. Zayd Āl Maḥmūd (1911–97), publications from the Presidency of *Sharīʿa* Courts (1958–2003), scholarly biographies and treatises, and British colonial archives, I delineate the political space in which *Sharīʿa* scholars operated. I examine how judges and muftis served to legitimate the political rule of the ruling family, contributed to the establishment of the rule of law, participated in contestations over jurisdictional authority, naturalized the logic of the nation-state, and helped delimit the powers and ambitions of emerging government bodies. I argue that during this period, *Sharīʿa* scholars not only defined Islam for the Qatari state but also circumscribed the state according to Islam. I suggest in conclusion that *Sharīʿa* judges and muftis were ambivalent allies of the Qatari state's modernizing project. They were just as likely to echo and further the state's developmentalist goals and regulatory ambitions as they were to critique and resist them.

Biographical Note

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David Drennan

Clarifying the Complexity of Shāṭibī's Legal Thought: Unpacking Mālikī Commentaries on *Muwāfaqāt* in Early Twentieth Century Mauritania

This paper focuses on tracing the engagement with al-Shāṭibī's (d. 1388) *Muwāfaqāt* and *maqāṣid* approach by Mālikī jurists in early-modern Mauritania. It does this in order to begin exploring the apparent 500-year break in historical transmission and reception of Shāṭibī's works, as a counterbalance to the much more widely-known modernist trend in *maqāṣidi* thought, which became prominent after Muḥammad ʿAbduh (d. 1905) encouraged his students to read and produce printed editions of Shāṭibī's texts during the 1920s. This modernist approach has become the standard narrative in Islamic studies discourse today. However, it ignores a corpus of existing work in the Muslim 'periphery', which shows Shāṭibī was not 'forgotten' and in need of revival there.

This paper traces the transmission of Shāṭibī's ideas through his student, Ibn ʿĀṣim (d. 1426), and onwards into early-modern Mauritania. It substantiates that Shāṭibī's *Muwāfaqāt* was known and discussed, in writing, from 1800 at the very latest, and that his approach to *maqāṣid* and other issues were clearly delineated and subsumed within mainstream Mālikī *uṣūl al-fiqh* discourse, not treated as a separate discipline, as simple utilitarianism, or as a way with which to jettison the transmitted body of juristic thought in favor of contemporary norms, as has often been suggested in today's discourse surrounding *maqāṣid* and *maṣlaḥa*.

It does this through highlighting the commentaries on Ibn ʿĀṣim's *uṣūl al-fiqh* text by Muḥammad Yaḥyā al-Walātī (d. 1912), the earlier sources he relies on, as well as later commentaries building upon him. It aims to show that the teaching of Ibn ʿĀṣim was commonplace, and that there has long been a connection between Ibn ʿĀṣim and Shāṭibī recognised within that space. This is to show both parallel and preceding engagement with al-Shāṭibī and *Muwāfaqāt*, accounting for a further century of engagement with and transmission of his work.

Biographical Note

David Drennan is a PhD Candidate at the Centre for Islamic Studies and Civilisation at Charles Sturt University, based in Sydney, Australia. His doctoral research focuses on Mauritanian abridgements and commentaries on al-Shāṭibī's *Muwāfaqāt* from the late 19th and early 20th centuries, as well as other related *uṣūl al-fiqh* texts, in order to trace the reception history of this important work of Islamic legal theory within the Mālikī school of law as found in the Northwest Africa. David was previously a recipient of the Australian government's Endeavour Research Fellowship Award in 2011, which saw him travel to Jordan for intensive research.

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Baudouin Dupret and Ayang Utriza Yakin

Establishing Filiation Relationships in Islamicate Contexts: A Comparative Perspective on the Practice of Islamic Positive Law

In a relatively recent paper on the establishment of marriage in the family law of Muslim-majority states, it is argued that it is not so much Islamic legal doctrine (*fiqh*) that transformed into codified state law from the early nineteenth century onward, as positive law, which established itself as the new-born nation states' organizing normative system, that transformed *fiqh* into one (main) substantive source of national laws. This corresponded to what was called elsewhere the "invention of Islamic law", i.e., the rephrasing of Islam-inspired normative systems through the prism of modern legal positivism. It also corresponds to the claim that research should be cautious when claiming to assess the authenticity of what is called "*sharīʿa*", "*fiqh*" or "Islamic law", as there is no "true" background against which to evaluate such expressions, only situated uses of them.

The present paper draws on a broad project aiming to deepen our understanding of the phenomenon of the legal positivization of Islam through the comparative examination of an issue that was rarely legislated and thus largely remained in the hands of judges' discretion: filiation. Whereas in the broad project we intend to address no less than five countries (Indonesia, Israel, Egypt, Tunisia, Morocco), we concentrate this discussion on the cases of Indonesia and Morocco. Recently, the question of filiation received special attention in both countries. Of special importance was the question of the admissibility of DNA tests. Through a close look at what we call the "trajectory" of two recent cases (one per country) and after the description of both legal systems, family laws, and specific treatments of filiation establishment (*ithbāt al-nasab* in Arabic *fiqh*), the paper will address the two cases' factual elements, the first degree judges' arguments, the appeals' rationales, and the supreme courts' final rulings. This type of inquiry allows us to examine the competing arguments, the stakes and dynamics involved, and the fundamental features of both legal and judicial processes.

Biographical Notes

Baudouin Dupret is educated in Law, Islamic Sciences and Political Sciences. He is Directeur de Recherche at the French National Centre for Scientific Research (CNRS). He is also guest lecturer at the University of Louvain (Belgium) and research associate at the Netherlands Institute Morocco (NIMAR, Rabat, Morocco). He has published extensively in the field of the sociology and anthropology of law in the Middle East. He (co) edited numerous volumes, the last one being *State Law and Legal Positivism* (with J.L. Halpérin, Brill, 2021), and authored several books, e.g. *Positive Law from the Muslim World: Jurisprudence, History, Practices* (Cambridge UP, 2021).

Ayang Utriza Yakin is a Postdoctoral Researcher at Sciences-Po Bordeaux, France, working on the French National Research Agency funded project "Equality and Laws in Personal Status" 2021–2024. He was a visiting fellow and postdoctoral researcher at the universities of Oxford (2012), Harvard (2013), Tokyo (2016), and UCLouvain (2016–2019), and visiting professor in Arabic and Islamic Studies at the Department of Languages and Cultures, Section Middle-East, Ghent University (2019–2021). He co-edited *Rethinking Halal: Genealogy, Current Trends, and New Interpretation* (Brill, 2021) and *Islamic Divorce in the 21st Century. A Global Perspective* (Rutgers University Press, 2022).

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Nijmi Edres

Mahr: Legal Practice Affecting Palestinian Muslim Women in Israel

In recent years scholarly attention toward issues of Muslim family law in Israel has grown substantially. Nonetheless, while relevant academic works of scholars such as Moussa Abou Ramadan and Ido Shahar have recently focused on legal issues such as child custody and maintenance, the development of Muslim legal practices and thinking in Israel with regards to *mahr* remains understudied. Yet, *mahr* practices continue to have a huge impact on Muslim women's lives, affecting both marriage and divorce. This paper looks at the evolution of practices regarding the legal institute of *mahr* among the Muslim community in Israel and at the impact of such changes on the life of Palestinian Muslim women with Israeli citizenship. The paper aims at contextualizing the discussion on *mahr* in the broader framework of the codification of Muslim law in Israel and at its enduring challenges.

Israel provides an extremely rich case study when dealing with issues regarding the codification of Islamic law in modern times, and related problems. Indeed, while important pieces of civil legislation gained the approval of the Knesset, becoming laws of the State, attempts to modernize family laws applied in religious courts (Muslim, Christian, Druze, and Rabbinical) never turned into laws. This affected *mahr* practices as well. Due to the overlapping of different legislations and legal traditions, the case of Israel also offers a unique viewpoint from which to investigate the development of Muslim law in Muslim minority countries. By drawing from secondary and primary sources, and especially from judgments issued by *sharīʿa* courts in Israel, the paper aims at tracing the history of *mahr* practices in Israel from 1948 to contemporary times, shedding light on unresolved problems, strategies, and changes.

Biographical Note

Nijmi Edres holds a PhD from the Sapienza University of Rome, where she specialized in socio-legal studies on the Palestinian minority in Israel. She currently contributes to the project "CanCode: Canonization and Codification of Islamic Legal Texts", at the University of Bergen (Norway). Her research investigates processes of standardization of Muslim legal texts in Israel.

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Sebastian Elsässer

Islamist Ideology and the Tactical Use of *Fiqh*: The Muslim Brotherhood and the Problem of *takfīr* (1960s–90s)

In theory, the Muslim Brotherhood (*Ikhwān*) claims that its teachings are based on the solid foundation of traditional Sunni *fiqh*, the "*sharīʿa*". The underlying notion embraced by the Muslim Brotherhood is that the four canonical legal schools of Sunni Islam agree on the "fundamentals" and only disagree on the "details" (*furū*) of Islamic normativity. In reality, however, there is a clear discursive dichotomy between the ideological language of the *Ikhwān*, which is in many instances only loosely or not at all based on *fiqh* concepts, and the realm of *fiqh*. More precisely, the *fiqh* tradition is only activated selectively; for example, when discussions arise about the meaning of particular ideological concepts and propositions, not least when participants in a debate find some tactical benefit in shifting the mode of reasoning into the realm of *fiqh*.

My paper demonstrates and analyzes these patterns in one concrete case study, namely Muslim Brotherhood debates about the question of *takfīr* – under which circumstances fellow Muslims may be declared unbelievers – between the 1960s and 1990s. The analysis draws attention to the following patterns of using *fiqh* in an ideological context: 1) Muslim Brotherhood authors habitually reify the *fiqh* tradition: any opinion they adopt is usually portrayed as "the point of view of Islam" or the "consensus of the scholars". This is sometimes coupled with: 2) *Fiqh* as ideology in disguise. In this case, the authors surreptitiously introduce ideological notions into *fiqh* discourse without mentioning that they are adding their own layer of interpretation to classical opinions. However, there does not always need to be a harmonization between *fiqh* and ideology, as the following two patterns show: 3) *Fiqh* as an evasion. Authors use a technical *fiqh* discourse to criticize ideological statements without challenging them directly on an ideological level. A typical case is the treatment of Qutbist ideology in Ḥasan al-Huḍaybī's work "Preachers not Judges". 4) *Fiqh* as "salon radicalism". In this pattern, the author uses the *fiqh* discourse to spell out a scenario of persecution against political opponents, without calling for its practical implementation. A typical case is the contributions of Yūsuf al-Qaraḍāwī.

Biographical Note

Sebastian Elsässer has been assistant professor of Middle Eastern and Islamic Studies at Christian-Albrechts-Universität Kiel since 2011. He received his Master degree in Islamic Studies, Political Science and Political Economy from Freie Universität Berlin in 2005 and his PhD degree from Freie Universität Berlin in 2012. He was a guest doctoral researcher at the CEDEJ, a French research center for the social sciences in Cairo, between 2008 and 2011. His research interests include the cultural and ideological history of Islamism, Muslim and Christian family law, the contemporary role of religious institutions and authorities, and religious change in the Arab world.

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Dörthe Engelcke

Attitudes toward Inheritance and Inheritance Practices of Muslim and Christian Jordanians

Every law is imbued with assumptions, including types of behavior that are deemed the norm and those that are discouraged. This is equally true for Islamic inheritance law. In general, Sunni and Shiʿi law continues to uphold the concept of two shares for men and one share for women. During the marriage the husband is obliged to provide for his wife; in exchange, he is entitled to her obedience. Men's right to guardianship (*wilāya*) over women and children is linked to men's financial responsibility for their wives and children. According to Islamic law, women can own property and their income belongs exclusively to them without any obligation of spending it on their families. Many Muslim scholars therefore claim that larger inheritance shares for men help to ensure that men can perform their role as providers, that is Islamic inheritance provisions assign inheritance shares based on individual financial responsibilities. This project investigates whether current inheritance practices are in line with the theoretical construct on which Islamic law has been built. The study aims to provide a fuller picture of inheritance practices and attitudes toward inheritance among Christian and Muslim Jordanians. Do Muslim and Christian Jordanians share similar attitudes regarding inheritance and experiences with inheritance practices? And, to what extent do socio-economic factors shape attitudes towards inheritance? In Jordan, as in many other Muslim-majority jurisdictions, Christian communities apply the Islamic inheritance law. The project is based on a representative, Arabic-language quantitative survey that is carried out in cooperation with the Center for Strategic Studies at the University of Jordan. The sample consists of 1400 respondents. The respondents are sampled from seven out of the twelve governorates in Jordan; almost all Christian Jordanians live in one of these seven governorates.

Biographical Note

Dörthe Engelcke is a senior research fellow at the Max Planck Institute for Comparative and International Private Law. She received her PhD from St Antony's College, University of Oxford, in 2015. She has held fellowships at Harvard Law School and the Lichtenberg-Kolleg, the Göttingen Institute of Advanced Study. Her work has appeared in *Law & Social Inquiry*, the *Journal of Law and Religion*, and *Islamic Law and Society*. She is the author of *Reforming Family Law: Social and Political Change in Jordan and Morocco*, which was published by Cambridge University Press in 2019.

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Fatima Essop

Islamic Inheritance Laws as Interpreted and Applied by Muslim Judicial Bodies in South Africa

As a deeply pluralistic society, the South African legal system has multiple systems of law that co-exist within society. Although the state does not recognize Muslim personal laws, they continue to be practiced by the Muslim community within the private sphere. In the spheres of marriage, divorce, and inheritance, Muslim judicial bodies within the community regulate and implement systems of Islamic law that run parallel to the existing state law, without receiving official state recognition.

With regard to Islamic inheritance, Muslim judicial bodies assist the Muslim community in drawing up *sharīʿa* compliant wills, so that their estates devolve according to the Islamic laws of inheritance. Upon the death of a Muslim testator, Muslim judicial bodies also draw up distribution certificates, which stipulate who the testator's Islamic law heirs are and their respective inheritance shares. These Muslim judicial bodies wield considerable power in determining how wealth is transmitted within Muslim families through the institution of inheritance. Their interpretation and application of Islamic inheritance laws are deferred to by members of the Muslim community, by the legal profession and by state officials responsible for winding up the deceaseds' estates.

I undertook empirical research at one of the leading Muslim judicial bodies in the Western Cape in order to identify the challenges of implementing Islamic inheritance laws in the South African context. I found that the conservative interpretations adopted by the Muslim judicial body when applying Islamic inheritance law, did not always result in favorable outcomes for certain vulnerable members in the Muslim family unit, like women or children conceived out of wedlock. Their interpretations are furthermore not always reconcilable with rights entrenched in the South African Constitution. My paper discusses some of these challenges uncovered in my empirical research.

Biographical Note

Fatima Essop is an Advocate of the High Court of South Africa and has practiced as both an attorney (solicitor) and advocate (barrister) in various areas of law, including Muslim personal law. She obtained her Master's degree in law from the University of Cape Town (UCT) in 2001 and recently obtained her degree in Arabic and Islamic law. She is currently completing her PhD in UCT's law faculty on the intersection between South African and Islamic laws of inheritance and has conducted extensive empirical research toward her thesis.

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Rozaliya Garipova

Imperial Rule, Marital Consent, and Women's Agency Among Volga-Ural Muslims in Imperial Russia

Starting from the early nineteenth centuries, Enlightenment-guided Russian imperial authorities decided to "bring order" to the Muslim family. In the early 1820s Alexander Nikolaevich Golitsyn, the Minister of Spiritual Affairs and Enlightenment and the overprocurator of the Holy Synod, attempted a project of compilation of Muslim Marital Laws where he included the absence of marital consent as a "disorder" persistent in Muslim society. An imperial institution, the Orenburg Mohammedan Spiritual Assembly, which was established in 1788 to better control the Muslim population of the Russian Empire, played an important role in "bringing order" to the marital affairs of Muslims and giving agency to Muslim women. In 1840, the Assembly compiled a set of rules that the *ʿulamāʾ* were ordered to follow when performing marriage of their parishioners. Imams were instructed to check carefully if the bride consented to marriage, and only after that perform marriage ceremony. Marital consent became an important element of the legality of marriage and gave women the right to claim their marriage invalid if undertaken without their consent. Moreover, the Orenburg Assembly functioned as a court of appeal, granting Muslim men and women the right to bring their complaints about marital and inheritance problems. This paper will explore two interrelated questions: what was women's agency in negotiating their choice of future husband and what was the impact of the imperial regulations in this question?

Biographical Note

Rozaliya Garipova is Assistant Professor of Religious Studies and History at the Department of History, Philosophy and Religious Studies at Nazarbayev University. She is currently completing her first book project titled *Muslim Marriage and Divorce in Imperial Russia: Empire, Legality and Religious Authority*. It is the first comprehensive study on the impact of the modernizing Russian empire on Muslim marital practices. Rozaliya has published several articles on this topic in *JESHO*, *Islamic Law and Society*, and in the collective volume titled *Sharia in the Russian Empire: The Reach and Limits of Islamic Law in Central Eurasia, 1550–1917*.

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Faisal Kamal

Secularizing Wealth and Property: Regulating Islamic Law in the Supreme Court of Bangladesh

What ideological justifications do courts use to secularize property law in legally pluralistic regimes? Like many postcolonial jurisdictions, Bangladesh recognizes and applies Islamic law in some domains of law. This paper examines landmark judgments by the Bangladesh Supreme Court in which a few avant-garde judges "undid" religious property law on various grounds, all of which were later overturned on appeal. Since Bangladesh recognizes secularism as one of its founding principles *and* declares Islam to be the state religion, these seemingly contradictory commitments have produced enough legal ambiguity to allow progressive judges to either liberalize or secularize religious law, drawing from a variety of ideological frameworks. The extant scholarship on law and religion, particularly on Bangladesh, is primarily concerned with meta debates on constitutional design, politicization of religion, and national identity. In comparison, relatively little attention has been given to studying Islamic and non-Islamic justifications in Bangladesh for secularizing property by some judges, and to maintain the status quo by other judges. The paper outlines four main approaches used to untether property from religious rules in the case of pre-emption (*shufʿa*), *waqf*, and inheritance. I employ an interpretive framework based on an examination of Bangladeshi jurisprudence and non-legal texts by Bangladeshi judges as well as fieldwork spanning six months that was conducted in Dhaka. The four justifications are as follows: 1) a theory of "divine accommodation" that exhorts a reading of religious texts in contemporary light; 2) a "Pauline" justification for separating law from belief that eviscerates any legal residues from Islam; 3) a legislative approach to the study of Quranic law; and 4) a non-religious justification emanating from political economic and gender considerations. These four approaches are based on different assumptions about the nature and place of religious law in Islam. Theoretically, my main contention is that attempts at secularization (and their reversal) cannot be explained purely by appealing to an institutional design, political expediency, or activism logic. One also needs to account for how different forms of justification serve as anchors that are used by courts when adjudicating Islamic law. This paper provides a systematic classification of the different justifications that have been used thus far to secularize law.

Biographical Note

Faisal Kamal is a PhD candidate in the Department of Political Science at the University of Toronto. His dissertation research focuses on state-religion relations in Pakistan and Bangladesh through the prism of property, constitutional law, and religion. He was previously a visiting doctoral researcher at the Bangladesh Institute of Law and International Affairs in Dhaka, and a visiting doctoral fellow at the Max Planck Institute of Ethnic and Religious Diversity, Göttingen, Germany and Alexander von Humboldt Chair of Comparative Constitutionalism at the University of Göttingen. His research is supported by the Ontario Graduate Scholarship.

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Hadi Qazwini

Juristic In/fallibility and the Construction of Islamic Legal Pluralism

This paper revisits the popular academic assumption that Islamic law is inherently pluralistic. By taking the debate in Islamic legal theory (*uṣūl al-fiqh*) over juristic in/fallibility (*al-takhṭi'a wa-l-taṣwīb*) as a case study, this paper underscores the difference between historical diversity and theoretical pluralism in the study of Islam and Muslims. There is no doubt that, as a historical reality, "Islam" in its various doctrinal and practical manifestations has never been monolithic. However, this diversity as a historical or sociological reality has often been confused or collapsed with pluralism as a theoretical or ideational construct. In other words, some scholars appear to have taken the historical fact of a plurality of voices on the ground over the course of the history of Islam to be the basis for their arguments that Islam – and more specifically Islamic law – is inherently or essentially pluralistic. Through a close reading and comparative analysis primarily of the works of several major Sunni and Shi'ī legal theorists of the fourth-fifth/tenth-eleventh centuries, this paper demonstrates how both the proponents of legal monism (juristic fallibility; "single-truth") and the proponents of legal pluralism (juristic infallibility; "all-correct") were engaged in ideational constructions as reactions to or justifications of the plurality of legal voices and communities on the ground, respectively.

Biographical Note

Hadi Qazwini is an educator and intellectual historian of Islam. He holds extensive training in both traditional and academic Islamic studies. He is currently completing a PhD at the University of Southern California (USC) in Los Angeles. His research centers on the intersections of classical Islamic theology and legal theory, with a particular focus on Shi'ism.

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Adam Ramadhan

Qāʿidat al-injibār: The Debate over Rehabilitating Traditions in Imāmī Legal Theory

When faced with a tradition that does not meet the criteria to be considered probative (*ḥujja*) in terms of its chain, Imāmī scholars would not necessarily reject it outright. If the tradition conveyed information regarding a recommended ruling (*al-ḥukm al-istiḥbābī*), some would employ the legal maxim of taking a lenient attitude towards its chain (*qāʿidat al-tasāmuḥ fī adillat al-sunan*). This maxim does not apply, however, if the tradition with a weak chain regards an obligation or prohibition. In such a case, the obvious solution would be to drop the tradition from consideration. Imāmī scholars, however, developed a mechanism by which the weakness of such traditions can be compensated for due to earlier scholars acting on them. This is known as "*qāʿidat al-injibār*" or "the principle of rehabilitation" and is the focus of this paper.

This paper first discusses *qāʿidat al-injibār* in its fully developed form in modern works of Imāmī *uṣūl al-fiqh* and presents the debate over its legitimacy as a principle. In particular, the views of al-Shaykh al-Anṣārī (d. 1281/1864) and al-Sayyid al-Khūʾī (d. 1413/1992) will be examined. This paper will then move from theory to practice and demonstrate how *qāʿidat al-injibār* has been applied in the *fiqh* works of al-Anṣārī and al-Khūʾī through the example of the famous *maqbūla* of ʿUmar b. Ḥanẓala which, despite its problematic chain, is often cited in *fiqhī* discussions on *taqlīd* and *wilāyat al-faqīh*.

The paper argues that the case of *qāʿidat al-injibār* is indicative of a general trend within Imāmī *uṣūl al-fiqh* to resort to mechanisms that justify a reliance on textual sources – however problematic they may sometimes be – at the expense of other potential solutions such as reason (*ʿaql*), which is identified as a source of law but is conceived of in such a way which makes its use almost impossible.

Biographical Note

Adam Ramadhan completed a BA in Arabic and Islamic Studies at the University of Leeds and subsequently spent several years studying traditional Islamic Studies at Al-Mahdi Institute. At present, he is completing an MSt in Islamic Studies and History at the University of Oxford and is the Head Librarian at Al-Mahdi Institute. His research interests include Imāmī legal theory and theology.

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Ari Schriber

Social Knowledge as Evidence: The *Lafīfiyya* Testimony in the Twentieth Century Moroccan-Mālikī Legal Tradition

In my paper, I examine a distinctly Maghribī twelve-layman testimony – the *lafīfiyya*, or *shahādat al-lafīf* – as practiced in twentieth-century Moroccan *sharīʿa* courts. The *lafīfiyya* testimony arises in Moroccan *ʿamal* literature, which stipulates that litigants may present twelve Muslim lay witnesses in cases of necessity (*ḍarūra*) to replace the standard two professional witness-notaries (*ʿadl*, pl., *ʿudūl*). In practice, the *lafīfiyya* was very common in Moroccan *sharīʿa* courts, appearing to establish everything from land ownership and enslavement to sales and marriage contracts. However, such lay testimonies also presented major challenges to judges and standard Islamic norms of court procedure: the witnesses were unknown to the court and chosen by the very litigant for whom they testified. How then could the *sharīʿa* judges credibly establish whether the twelve unknown laymen were reliable and their testimony truthful and accurate?

Using both individual *lafīfiyya* documents and case records, I demonstrate how Moroccan judges actively assessed *lafīfiyya* testimonies through both Mālikī testimonial criteria and their own contingent social knowledge. I focus in particular on the judges' scrutiny of the lay witnesses' capacity to identity (*taʿrīf*) and present a knowledge basis (*mustanad al-ʿilm*) for what they testified. Judges invoked these criteria directly from Moroccan-Mālikī legal texts, especially in Mālikī compendia (e.g., the *Mukhtaṣar of Khalīl* and *Tuḥfa* of Ibn ʿĀṣim), their Moroccan-authored commentaries, and *ʿamal* collections. At the same time, judges could only assess the "plausibility" of such criteria through their own knowledge of local social norms. By invoking their own social discretion for textually stipulated criteria, I propose that Moroccan judges were able to 1) ensure the *lafīfiyya*'s functionality as testimony, and 2) reinforce it as a distinctly Islamic legal practice.

Biographical Note

Ari Schriber is Postdoctoral Fellow in the Department for the Study of Religion at the University of Toronto. His research focuses on Islamic legal and intellectual history of twentieth-century North Africa and Middle East. He is currently developing a book manuscript examining *sharīʿa* court practice in colonial and post-colonial Morocco (1912–65).

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Delfina Serrano Ruano

Is Maternity Legally Determined by Labor and Delivery? Five Andalusi Interpretations of Qur'an LVIII: 2

In contemporary Islamic bio-ethical discourses, Qur'an LVIII: 2 is cited among the textual arguments that allegedly establish the prohibition of surrogate maternity. According to this reasoning, when it comes to elucidate what it means to be someone's mother, gestation and delivery prevail over conception whereas gestation involves an exchange of biological materials that affects the ontological status of the fetus. As with third-party gamete donation, the prohibition is thus further justified by the ever present need to avoid the "mixing of lineages" (*ikhṭilāṭ al-ansāb*).

My paper is aimed at checking whether the above understanding of Qur'an LVIII: 2 is as self-evident and compelling as the Muslim detractors of surrogate maternity appear to assume. I will do this by reference to a compact and fertile context as far as the discipline of Qur'anic exegesis is concerned. I refer to al-Andalus between the 12th and 13th centuries CE. In this period at least five authoritative Qur'an commentaries were written whose impact was felt well beyond the limits of al-Andalus until today. Four of them are focused on the legal import of the Sacred Book, whereas an outstanding sample of mystical *tafsīr* will be used for the sake of comparison. Reading the Qur'an does not occur in a vacuum or solely on the grounds of scholarly methods. Furthermore, it is questionable whether by that time and in that place, the available medical or pseudo-medical knowledge was part of the admitted exegetical tools. To the extent that this is possible, I will then test whether the scholars' understanding of the textual evidence relevant to the normative definition of maternity was shaped by widespread beliefs among the religious scholars; for example, that the uterus is a mere receptacle of an embryo formed out of a man's sperm and that sexual intercourse with a pregnant woman contributes to the healthy development of the fetus.

Biographical Note

Delfina Serrano Ruano is PhD Tenured Researcher at the Spanish National Council for Scientific Research (CSIC). She specializes in the history of Islamic law. In 1999 she published a Spanish translation and study of *Madhāhib al-ḥukkām fī nawāzil al-aḥkām*, a collection of legal cases compiled by the 12th century Mālikī jurist Muḥammad b. ʿIyāḍ. Other results of her work have appeared in both Spanish and international academic journals like *Al-Qantara*, *Islamic Law and Society*, *Der Islam*, *Hawwa*, *Bulletin d'Études Orientales*, *Revue des Mondes Musulmans et de la Méditerranée*, and *Journal of Middle East Women's Studies*.

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Ido Shahar

A Law 100 Years Young: The Interpretative Viability of Codified *Sharīʿa* – the Application of the Ottoman Family Law in Palestine/Israel, 1917–2017

The paper aims at illustrating the "interpretative viability" of the Ottoman Family Code of 1917 – i.e., its susceptibility to changing interpretations – and to discuss some of the interpretative tools that *qāḍī*s have applied to it over the years. By tracing the changing implementation of Article 130 (*nizāʿ wa-shiqāq*) of this law by *sharīʿa* courts in Palestine/Israel over a period of 100 years (1917-2017), the article shows that the codification of the *sharīʿa* did not produce a closed, immutable, monolithic legal system but rather has provided *qāḍī*s with considerable interpretative freedom – much more than is commonly assumed. Moreover, the hermeneutic tools employed by *qāḍī*s to interpret the code build on earlier, pre-codification sources of pluralism and interpretative freedom within the *sharīʿa*. By highlighting the continuities between pre-codified and post-codified *sharīʿa*, the article aims at contributing to the debate concerning the transformation of the *sharīʿa* in modern times.

Biographical Note

Ido Shahar is a senior lecturer at the Department of Middle Eastern and Islamic Studies, University of Haifa. He is a legal anthropologist and a social historian, specializing in the study of *sharīʿa* courts and of Palestinian society. He has published extensively on legal pluralism, on *sharīʿa* courts in Israel, and on Palestinians in Israel.

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Mariam Sheibani

A Tale of Two *Ṭarīqa*s: The Iraqi and Khurasani Shāfiʿī Communities in the Fourth/Tenth and Fifth/Eleventh Centuries

Recent developments in the study of Shāfiʿī legal history have focused on the thought of al-Shāfiʿī and his direct students, Shāfiʿī legal theory in the formative and post-formative periods, and Mamluk-era legal practices and institutions. A gap persists regarding the evolution of the Shāfiʿī school after the generation of al-Shāfiʿī's students, roughly during the fourth/tenth to the fifth/eleventh centuries. The historiography of this period tends to depict the Shāfiʿī school as one homogeneous and undifferentiated institution pitted in competition against other legal schools, chiefly the Ḥanafīs in Khurasan and the Ḥanbalīs in Iraq. My paper draws on an array of legal, biographical, and historical sources to provide a new account of Shāfiʿī legal history in the fourth/tenth to the fifth/eleventh centuries: the tale of two *ṭarīqa*s, or Shāfiʿī interpretive communities, that developed in Khurasan and Iraq independently and represented two distinct legacies of the Shāfiʿī school.

The paper first reconstructs the expansion of the Shāfiʿī school Eastward from its base in Cairo, into the emerging intellectual centers in Iraq, and later Khurasan and Transoxiana. I analyze the provenance of the elusive conceptual-historical categories that dominated Shāfiʿism in this period: the diverging method and community of the Khurasanis and the Iraqis (*ṭarīqat al-khurasāniyyīn wa-l-ʿirāqiyyīn*). I argue that Shāfiʿism in this period was primarily concerned with consolidating school doctrine by arbitrating among a multiplicity of transmitted views from early authorities and developing a methodology for treating unprecedented cases. Through a reconstruction of the intellectual networks that constituted the Iraqi and Khurasani communities and an analysis of the thought of prominent figures in each community, I show that by the mid-fourth/tenth century, what were formerly fluid Shāfiʿī networks had evolved into two discrete interpretive communities. The fault lines between the two communities included claims of descent from distinct lineages of authorities and championing of divergent substantive legal rules, methodological particularities, and views on the relationship between rational theology and legal theory. These insights not only complicate our understanding of the what constitutes the postformative *madhhab* as an institution, but it also points to how broader developments in intellectual and institutional life – such as the ascendance of Ashʿarism, the emergence of new centers of intellectual life, and the introduction of the *madrasa* – shaped the internal workings of the *madhhab*. The paper ends with an analysis of how and why the two *ṭarīqa*s came to an end, and how Mamluk-era Shāfiʿī biographers and intellectual historians, who were responsible for fusing the two legacies of the school into a single, unitary school doctrine, understood this period in the school's evolution and memorialized it in the school's collective memory.

Biographical Note

Mariam Sheibani is Assistant Professor in History at the Department of Historical and Cultural Studies at The University of Toronto-Scarborough. She received her PhD in Islamic Thought from the Department of Near Eastern Languages and Civilizations at the University of Chicago. Prior to joining the University of Toronto, she was a Research Fellow at Harvard Law School and Lecturer at Harvard Divinity School. Her research interests are in late antique and medieval Islamic intellectual and cultural history, with a focus on the theory and practice of Islamic law. She also serves as Lead Blog Editor for the Islamic Law Blog based at Harvard Law School.

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Sümeyye Şimşek

Seeking Freedom in Court: The Cases of 18th-Century Ottoman Female Slaves

Female slaves were employed in the Ottoman Empire for two main purposes; either as domestic servants such as cooks, nursemaids, cleaners, and laundrywomen or as elite slaves such as concubines, singers, and poets. Even though their living standards differed in accordance with their employment purpose and the household to which they belonged, all female slaves theoretically had the right to claim their freedom in court for several reasons. The court records (*kadı sicilleri*) and emancipation documents (*ıtkname*) demonstrate that the primary way of gaining freedom was voluntary manumission by the master but female slaves could also acquire freedom by giving birth to the master's child (the slave was then called *ümmüveled*). If there was any injustice toward such slaves – for example, if the owner tried to sell his pregnant concubine – they had the legal right to apply to the court. As a distinctive feature of Ottoman slavery, serving for a certain period (i.e., seven to nine years) or being subjected to mistreatment would also give slaves the right to apply to the court to claim their freedom. Another significant aspect of Ottoman slavery was that the status of slaves of certain nationalities could change according to the political events and international relations of the time. For example, all Persian slaves in the Ottoman Empire were given free status following the wars and treaties with Persia in the 18th century. To identify and analyze these various emancipation procedures, this study focuses on the Ottoman court cases initiated by female slaves in 18th-century Istanbul. At the same time, it aims to shed light on a range of related topics such as the legal rights of female slaves while claiming their freedom, the representation ratio of female slaves in court, some distinctive features of Ottoman slavery, and illegal practices of the slave owners and traders.

Biographical Note

Sümeyye Şimşek is a PhD candidate in Islamic law at Istanbul 29 Mayis University. She is currently studying female slavery in the 18th-century Ottoman Empire. She has completed her MA in Islamic law at Marmara University with a thesis on *shaykh al-islām* fatwas and new legal problems in the late Ottoman period. Her interests include historical practices of *sharī'a* law, the Ottoman legal system, and gender and slavery.

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George Warner

Scholars as Liturgists: The Shifting Authority of the Jurist in Twelver Shīʿī *Aʿmāl* Literature

Manuals of *aʿmāl* are an ancient and highly distinctive feature of Twelver Shiʿi legal writing, delineating complex supererogatory rites that usually involve long texts for recitation, structured around a calendrical framework. Despite their ubiquity, *aʿmāl* (literally "acts") have received minimal attention in studies of Twelver law, an attitude seemingly motivated by their supererogatory, "non-canonical" status. This paper, however, will contend that the different status of *aʿmāl* engenders a different kind of scholarly discourse that is no less complex than that concerning topics like *Ḥajj* or almsgiving, and that these devotional manuals are a meeting point of numerous overlapping imperatives of practice and logics of authority seldom visible in other legal literature.

Examining the *aʿmāl* manuals composed by four authors spanning four centuries – Muḥammad b. al-Ḥasan al-Ṭūsī (d. 1067), Raḍī al-Dīn ʿAlī b. Mūsā Ibn Ṭāwūs (d. 1266), al-ʿAllāma al-Ḥillī (d. 1325), and Ibrāhīm b. ʿAlī al-Kafʿamī (d. 1499) – this paper's focus will be the distinct models of scholarly authority that operate in these works. As well as the usual claims of prophetic or imamic precedent, these models include justification through the practice of scholars themselves, the commands of the Hidden Imam's emissaries, and reference to pre-existing, unwritten frameworks of devotion. The manuals' authors, meanwhile, claim the prerogative to direct the internal, emotional states of the devotee, in a manner quite uncharacteristic of other kinds of legal writing. Moreover, the form of these works – compendia of lengthy texts for recitation that few could hope to memorize in their entirety – offers an unusually direct insight into the physical mechanisms whereby jurists directed the faithful in their worship. Through an anatomy of these features and their development, it will be argued that *aʿmāl* literature evidences the consolidation of an enduring and particular liturgical role for Twelver scholars within their communities.

Biographical Note

George Warner is a research associate at the Centre for Religious Studies at Ruhr-Universität Bochum, Germany, having previously taught at SOAS, where he also completed his PhD in 2017. His research interests include Shiʿism, devotional literature in Arabic and Persian, ritual studies and hadith. His first book, *The Words of the Imams: Al-Shaykh al-Ṣadūq and the Development of Twelver Shīʿī Hadith Literature*, was published by I.B.Tauris in 2021.

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Taha Tariq Yavuz

Muḥammad Zāhid al-Kawtharī (d. 1952) and the Defence of Abū Ḥanīfa (d. 767)

In history, a wide variety of opinions can be found regarding Abū Ḥanīfa (d. 767). In addition to praise, scholars such as al-Khaṭīb al-Baghādī (d. 1071) or Ibn Abī Shayba (d. 849) criticize him very strongly. This article aims to analyze this criticism on the basis of a protagonist of the last century, Muḥammad Zāhid al-Kawtharī (d. 1952).

Al-Kawtharī devoted himself to analyzing these very criticisms of the scholars and wrote separate works on these opinions of al-Bāghḍādī and Ibn Abī Shayba. The latter claimed that Abū Ḥanīfa went against 125 Prophetic traditions. As a result, his book *al-Nukat al-Ṭarīfa* focused on elaborating both strands of argumentation and subjecting them to analysis. This work will not focus on al-Kawtharīs refutation of al-Baghdādī but rather on Ibn Abī Shayba and his *Muṣannaf*.

His approach is very pragmatic and easy to follow. Al-Kawtharī approaches the matter *peu à peu* by first citing the traditions used by Ibn Abī Shayba in his *Muṣannaf*. The author then states his own opinion, which he identifies by "*aqūlu*". In this context, other scholars who followed Abū Ḥanīfa or agreed with him on this matter are mentioned.

The present work contains several important research desiderata. Al-Kawtharī's personality has been neglected in scholarly debate. As a result, there is added scholarly value in analyzing al-Kawtharī's personality. Furthermore, the discussion of the *Ahl al-Ḥadīth* and *al-Fuqahāʾ* has always been a contentious issue and will be reproduced and examined in relation to the discussion of Ibn Abī Shayba and al-Kawtharī.

The research questions are: what intellectual contribution did al-Kawtharī make to the discussion regarding the Ḥanafī school of law? Is his criticism of Ibn Abī Shayba justified? What is the relationship between Prophetic traditions and the Ḥanafī school of law?

Biographical Note

Taha Tariq Yavuz obtained his Bachelor and Master degrees from the University of Osnabrück. He is currently a doctoral student and research assistant at the same university. He is interested in rational theology (*ʿIlm al-Kalām*), rhetoric (*ʿIlm al-Balāgha*), philosophy (of language), *uṣūl al-fiqh*, and *fiqh*, Muḥammad Zāhid al-Kawtharī and Saʿd al-Dīn at-Taftāzānī. He is currently working on his PhD thesis on the relationship between *kalām* and rhetoric in Saʿd al-Dīn.

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