



JUSTRAC

JUSTICE SECTOR TRAINING, RESEARCH
& COORDINATION PROGRAM

Rule of Law Collaborative

U.S. DEPARTMENT OF STATE (INL)

Understanding Islamic Law: A JUSTRAC Special Rule of Law Topics Course

November 3-4, 2016

Course Objectives

Islamic law is one of the longest enduring and most widely practiced systems of law in the world. At the same time, however, it is one of the most maligned and misunderstood. This course will offer practitioners a firm grounding in the principles, concepts, and terminology of Islamic law, as well as its role in the contemporary era. Through discussions of both practice and theory, as well as interactive exercises, participants will gain practical insights into the sources and constructs of this religious-based legal system, including the substantive difference between Shari'ah and jurisprudence, analysis of the Qur'an, the Tradition of the Prophet Muhammad, the schools of law, differences between Shi'i and Sunni Islamic law, the historical demise and the modern resurgence of Islamic law, and Islamic political movements, i.e., Islamism. Participants will also gain an in-depth understanding of selected aspects of Islamic constitutionalism, Islamic criminal law, and not only how classical and contemporary Islamic law comports with international human rights law, but also how Islamic law can be misapplied and misunderstood. This course will use real-world examples and interactive exercises throughout, in order to give participants a practical understanding of these concepts as they apply today.

Location

FHI 360
Vista Room, 8th floor
1825 Connecticut Avenue NW
Washington, DC 20009

Nearest Metro: Dupont Circle

Contact Information

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UNIVERSITY OF
SOUTH CAROLINA
Rule of Law Collaborative



Day 1: Thursday, November 3, 2016

- 8:30AM-9:00AM** **Registration and Light Refreshments**
- 9:00AM-9:15AM** **Welcoming Remarks, Overview of JUSTRAC and the Special Topics Course**
- An overview of the JUSTRAC Program, as well as the Rule of Law Collaborative. Discussion of takeaways from the course. Participants introduce themselves.
- 9:15AM-10:30AM** **SESSION I: THE RISE OF ISLAM AND THE RATIONALE OF ISLAMIC LAW (c. 610-661 CE)**
- This session will ground participants in the historical context of Islamic law. The session will offer participants insight into the rise of Islam, beginning with the ministry of the Prophet Muhammad, the advent of the Qur'an and the establishment of the Muslim polity (*ummah*) within Arabia, and the challenges of governance beyond Arabia and after the Prophet.
- *Suggested reading/references:**
- Aslan, Reza. NO GOD BUT GOD: THE ORIGINS, EVOLUTION, AND FUTURE OF ISLAM (New York: Random House, 2006).
- Khan, Hamid. PRACTITIONER'S GUIDE TO ISLAMIC LAW (International Network to Promote the Rule of Law, 2015).
- 10:30AM-10:45AM** **Break**
- 10:45AM-12:00PM** **SESSION II: ISLAMIC LEGAL THEORY EXPOUNDED: THE USUL AL-FIQH**
- This session will examine the step-by-step approach to legal interpretation under Islamic law, including sources, doctrines, strengths and pitfalls. In particular, the session will cover the evolution of different approaches to interpretation of Islamic law, the body of Prophetic Tradition, and the emergence of a rule of law-based paradigm for Islamic governance. Participants will also learn about the approaches scholars took to promote the overall effectiveness of this legal system including the doctrines of *istihsan*, *istislah*, and the *maqasid al sharia*.
- *Suggested reading/references:**
- Auda, Jasser, MAQASID AL-SHARIAH: A BEGINNER'S GUIDE (International Institute of Islamic Thought, 2008)
- Brown, Jonathan, HADITH: MUHAMMAD'S LEGACY IN THE MEDIEVAL AND MODERN WORLD (Oxford: Oneworld, 2009).

Hallaq, Wael B., A HISTORY OF ISLAMIC LEGAL THEORIES: AN INTRODUCTION TO SUNNI USUL AL-FIQH (Cambridge: Cambridge University Press, 1999).

Quarishi-Landes, Asifa, *Five Myths About Sharia*, The Washington Post, June 24, 2016.

12:00PM-1:15PM

Lunch

1:15PM-2:30PM

SESSION III: THE ULAMA, MADRASA, THE CALIPHATE AND THE RULE OF LAW UNDER ISLAMIC LAW

This session will examine the *ulama*, a body of dedicated scholars and jurists that form the foundation of the Islamic legal system. The session will also examine the rise of the office and authority of the *caliphate* and the *madrasa*, as well as the various schools of law. Particular attention will also be devoted to examining separation of powers theory under Islamic law and how the concept of the rule of law is envisioned in Islamic political theory.

***Suggested reading/references:**

Black, Antony, THE HISTORY OF ISLAMIC POLITICAL THOUGHT: FROM THE PROPHET TO THE PRESENT (New York: Routledge, 2001).

Hallaq, Wael B., THE IMPOSSIBLE STATE: ISLAM, POLITICS, AND MODERNITY'S MORAL PREDICAMENT (New York: Columbia University Press, 2012).

Zaman, Muhammad Qasim, THE ULAMA IN CONTEMPORARY ISLAM: CUSTODIANS OF CHANGE (Princeton: Princeton University Press, 2002).

2:30PM-2:45PM

Break

2:45PM-4:00PM

SESSION IV: SHI'I & SUNNI ISLAMIC LAW

This session will delve into the sectarian divide in Islam between the Sunni and Shi'i, as well as examine how Islamic law is distinctly different when examined through the Sunni and Shi'i paradigms.

***Suggested reading/references:**

Aslan, Reza, NO GOD BUT GOD: THE ORIGINS, EVOLUTION, AND FUTURE OF ISLAM (New York: Random House, 2006).

4:00PM-5:00PM

EXERCISE: A FATWA, ANALOGIES AND RELIGIOUS GUESSWORK

This exercise aims to challenge participants in the art of issuing religious opinions on various subject matters, from ritual functions, to the mundane, to one of the most challenging issues in classical and contemporary Islam today: "who constitutes a believer?"

Day 2: Friday, November 4, 2016

8:30AM-9:00AM **Registration and Light Refreshments**

9:00AM-9:05AM **Overview to Day 2**

9:05AM-10:25AM **SESSION V: THE DECLINE AND RESURGENCE UNDER
POLITICAL ISLAM (c. 1798-2016 CE)**

Many expected that the Islamic legal system would end up in the dustbin of legal history, but predictions of Islamic law's early demise were premature. This session will examine how Islamic laws came under reform and colonial subversion. It will also explore how widely Islamic revivalist and Islamist movements have attempted to revive Islamic law less than a century after its predicted demise.

***Suggested reading/references:**

Wael Hallaq, *SHARĀ'AH: THEORY, PRACTICE, TRANSFORMATIONS* (1st Ed. 2009).

Hamid, Shadi et, al., *Islamism, Jihadism, and Salafism, A Primer*, The Brookings Institution.

10:25AM-10:40AM **Break**

10:40AM-12:15PM **SESSION VI: ISLAMIC FAMILY LAW**

This session is dedicated to a brief understanding of the most widely adopted form of Islamic law: family law. The session will examine the role of women, family, and examples of attempts to achieve reform of various family and personal status laws in a variety of different states.

***Suggested reading/references:**

Bakhtiar, Laleh, and Kevin Reinhart, *ENCYCLOPEDIA OF ISLAMIC LAW: A COMPENDIUM OF THE MAJOR SCHOOLS* (Chicago: Kazi Publications, 1996).

Ali, Kecia, "Marriage in Islamic Jurisprudence: A Survey of Doctrines," in *THE ISLAMIC MARRIAGE CONTRACT, CASE STUDIES IN ISLAMIC FAMILY LAW*, ed. Asifa Quraishi and Frank Vogel (Islamic Legal Studies Program, Harvard Law School, 2008).

Khan, Hamid, *Special Report: "Islamic Law, Customary Law and Afghan Informal Justice"* (United States Institute of Peace, March 2015).

12:15PM-1:15PM

Lunch & Exercise on Advocacy of Women's Rights Under Islamic Law

Perhaps no particular area is of greatest concern to practitioners and human rights activists than the issue of women's rights. This session will examine the advantages and challenges to advancing women's rights platforms under Islamic law.

***Suggested reading/references:**

Khan, Hamid et, al., *Fostering Synergies for Advancing Women's Rights in Post-Conflict Islamic States: A Focus on Afghanistan, Egypt, and Libya*, The Brookings Project on U.S. Relations with the Islamic World, U.S.-Islamic World Forum Papers (November 2013).

1:15PM-2:30PM

SESSION VII: ISLAMIC CONSTITUTIONALISM AND INTERNATIONAL LAW

This session will examine various contemporary Islamic constitutional systems and their legal and governing implications. The session will also highlight the alternative manifestation of Islamic constitutionalism found in the Islamic Republic of Iran and its conformity under Shi'i Islamic law.

***Suggested reading/references:**

Grote, Rainer, and Tillman J. Röder, eds. *Constitutionalism in Islamic Countries: Between Upheaval and Continuity*. New York: (Oxford University Press, 2012).

M. Cherif Bassiouni, ed, *Al Watha'eq al-Dawlia al-Ma'neyya bi Huquq al-Insan: Al-Watha'eq al-blamiya wallqlimia [International Protection of Human Rights: Islamic and Regional Instruments]* (Cairo: Dar El Shorouk 2003).

2:30PM-2:45PM

Break

2:45PM-3:30PM

SESSION VIII: ISLAMIC CRIMINAL LAW

This session will offer participants an in-depth understanding of the classical offenses, defenses, and evidentiary issues concerning Islamic criminal law, as well as the challenges posed by its imposition and application in the contemporary period.

***Suggested reading/references:**

Kadri, Sadakat, *HEAVEN ON EARTH: A JOURNEY THROUGH SHARI'A LAW FROM THE DESERTS OF ANCIENT ARABIA TO THE STREETS OF THE MODERN MUSLIM WORLD* (New York: Farrar, Straus & Giroux, 2012).

Peters, Rudolph, *CRIMES AND PUNISHMENT IN ISLAMIC LAW: THEORY AND PRACTICE FROM THE SIXTEENTH TO THE TWENTY-FIRST CENTURY* (Cambridge: Cambridge University Press, 2005).

3:30PM-4:45PM

SESSION X: JIHAD, TAKFIRISM AND TERRORISM

The final session will delve into contemporary manifestations and implications of classical Islamic law's approach to war, including the practice of *takfirism*, as well as ideological points of view from various jihadist groups and their purported grounding within Islamic law.

***Suggested reading/references:**

Al Dawoody, Ahmad, *THE ISLAMIC LAW OF WAR: JUSTIFICATIONS AND REGULATIONS* (New York: Palgrave Macmillan, 2011).

Hamid, Shadi et, al., *Islamism, Jihadism, and Salafism, A Primer*, The Brookings Institution.

4:45PM-5:00PM

Wrap-up and Feedback