



JUSTRAC

JUSTICE SECTOR TRAINING, RESEARCH
& COORDINATION PROGRAM

Understanding Islamic Law

A Justice Sector Training, Research and Coordination Advanced Training Course
Convened by the Rule of Law Collaborative at the University of South Carolina

April 25-26th, 2018

Course Objectives

Islamic law is one of the longest enduring and most widely practiced systems of law in the world. It is, however, one of the most misunderstood. This course will offer participants a firm grounding in the principles, concepts, and terminology of Islamic law as well as an introduction to its history and its role in the contemporary era. Through discussion and 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 various rational constructs devised by jurists and eminent legal scholars, the schools of law, differences between Shi'i and Sunni Islamic law, the historical demise and the modern resurgence of Islamic law, and Islamism. Participants will also gain an in-depth understanding of selected aspects of classical and contemporary Islamic legal matters along with opportunities for practitioner engagement on various issues.

Location

American Bar Association Rule of Law Initiative
1050 Connecticut Avenue, NW, Suite 570
Washington DC 20036, USA

Nearest Metro: Farragut North

Contact Information

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Day 1: Wednesday, April 25, 2018

- 8:30AM-9:00AM** **Registration and Light Refreshments**
- 9:00AM-9:15AM** **Welcoming Remarks, Overview of JUSTRAC and of the Course**
Hamid M. Khan, *Deputy Director, The Rule of Law Collaborative and Adjunct Professor, The University of South Carolina and Non-Resident Senior Fellow, The King Faisal Center for Research and Islamic Studies*
- 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-10:15AM** **SESSION I: THE RISE OF ISLAM AND THE RATIONALE OF ISLAMIC LAW**
- This session will offer participants insight into the rise of Islam beginning with the ministry of the Prophet Muhammad, the revelation of the Qur'an and the establishment of the Muslim polity (*ummah*) within Arabia and the challenges of governance beyond 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)
- 10:15AM-10:45AM** **Networking Break**
- 10:45AM-12:00PM** **SESSION II: ISLAMIC LEGAL THEORY EXPOUNDED: THE USUL AL-FIQH**
- Legal jurisprudence is a product of a legal theory. This session will examine the step-by-step approach to legal interpretation under Islamic law, including sources, doctrines, strengths and pitfalls. Particular attention will be paid to the evolution of rationalist and traditionalist approaches to Islamic law and the crystallization of the body of Prophetic Tradition as well as the emergence of a rule of law-based paradigm to Islamic governance. Participants will also learn about the approaches scholars took to promote the overall effectiveness of this legal system.
- Brown, Jonathan. HADITH: MUHAMMAD'S LEGACY IN THE MEDIEVAL AND MODERN WORLD. (Oxford: Oneworld, 2009).
- Wael B. Hallaq, A HISTORY OF ISLAMIC LEGAL THEORIES: AN INTRODUCTION TO SUNNI USUL AL-FIQH (Cambridge: Cambridge University Press, 1999).
- 12:00PM-1:15PM** **Lunch**

1:15PM-2:30PM

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

The foundation of the Islamic legal system is a body of dedicated scholars and jurists known as the *ulama*. This session will examine the *ulama* as well as the rise of the office and authority of the *caliphate* and the *madrasa*, and the various schools of law and their juridical differences. 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 by 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).

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

2:30PM-2:45PM

Break

2:45PM-3:45PM

EXERCISE: FATWAS, ANALOGIES AND RELIGIOUS OPINION-MAKING

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

3:45PM-5:00PM

SESSION IV: SHI'I & SUNNI ISLAMIC LAW

Perhaps no subject has garnered more recent attention than the purported schism in Islam regarding the differences between the Sunni and Shi'i. This session will not only delve into the sectarian divide in Islam, but also examine how Islamic law is distinctly different when examined through the Sunni and Shi'i paradigms of Islamic law.

***Suggested reading/references:**

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

Day 2: Thursday, April 26th, 2018

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

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

9:05AM-10:20AM **SESSION V: COLONIALISM, ISLAMIC FUNDAMENTALISM & POLITICAL ISLAM**

Dr. John L. Iskander, *Chair, Near East and North Africa Area Studies, Foreign Service Institute, U.S. Department of State*

Many expected that, like other religious legal systems, the Islamic legal system would end up in the dustbin of legal history, especially with the erosion of Islamic empires under the weight of reforms, the European colonial intervention, and the final demise of the caliphate. Predictions of Islamic law's early demise, however, 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, *SHARIA: THEORY, PRACTICE, TRANSFORMATIONS* (1st Ed. 2009)

10:20AM-10:35AM **Break**

10:35AM-12:15PM **SESSION VI: ISLAMIC FAMILY & GENDER LAW**

Palwasha L. Kakar, *Senior Program Officer, Religion and Inclusive Societies, U. S. Institute of Peace*

Aimee Breslow, *Senior Advisor for Democracy, Governance & Gender, Bureau of Near Eastern Affairs, Office of Assistance Coordination, U.S. Department of State*

The morning session is dedicated to a concise understanding of the most widely adopted form of Islamic law within nation states. Attention will be paid to the role of women, family, and attempts to achieve reform of various family and personal status laws from a variety of different states. Perhaps no area is of greatest concern to practitioners and human rights activists than the issue of women's rights. This session will conclude with a discussion concerning gender empowerment issues under Islamic law.

***Suggested reading/references:**

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

Kecia Ali, "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

1:15PM-2:15PM

SESSION VII: ISLAMIC CONSTITUTIONALISM

This session is devoted to examining the various forms of Islamic constitutional systems within the contemporary period and examining the legal and governing implications of such provisions. Particular attention will also be paid to the alternative manifestation of Islamic constitutionalism found in the Islamic Republic of Iran and its conformity under Shi'i Islamic law.

1:15PM-2:30PM

SESSION VII: ISLAMIC CRIMINAL LAW

Hillary Forden, *Senior Justice Sector Program Advisor, The Bureau of International Narcotics and Law Enforcement Affairs' Office of Afghanistan and Pakistan, U.S. Department of State*

Few areas of substantive Islamic law capture the attention of the media, detractors, and politicians of all stripes more than 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).

2:30PM-2:45PM

Break

2:45PM-4:30PM

PRACTITIONERS' DISCUSSION

Featured Speaker: James D. Filpi, *Senior Counsel, Commercial Law Development Program, U.S. Department of Commerce*

The concluding session of the course will be devoted to examining various principles practitioners can use in engaging various issues under Islamic law. Attention will be paid to emerging issues under Islamic law, engagement strategies and a trends forecast on issues.

4:30PM-5:00PM

Wrap-up and Feedback