

HIST 1971 L: ISLAMIC LEGAL HISTORY: THEORY AND PRACTICE

Fall 2009
Wed. 3:00-5:20
Rockefeller Library 412

Prof. Engin Deniz Akarli
Sharpe House #208, Phone: 863-2446
Office hours: Tu 1-2 & W 1:30-2:30

DESCRIPTION:

This course explores the historical development of a religiously inspired legal tradition that guided individual conduct, social relations, commercial transactions, and concepts of political legitimacy in Islamic lands. How did the theory and procedures of this tradition develop? How did it adapt to changing times and circumstances? How did it interact with other sources of right such as local or communal custom and sultanic law and ordinances in practice? These questions will be discussed in light of the writings of certain major jurists and actual court cases with due reference to their appropriate historical contexts. We will also review certain themes with closer focus. These themes include gendered aspects of law, influence of custom on legal practice, and the relations between law and political authority in the Middle East. The last four weeks of the course will be devoted to challenges that Islamic legal tradition faced and the changes it underwent in the modern era—focusing on the 19th-century Ottoman Middle East and 20th-century Egypt and Iran.

REQUIREMENTS

1. Six journals on any six of the weekly reading assignments. Each journal, approximately three pages in length, should reflect your understanding of and response to (but not merely summarize) the weekly assignments and the discussion on them in class. Three of the six journals should have been submitted by **November 2**. The journals will account for 30% of the final grade.
2. A research paper, 15-20 pages, which is due on **December 19**. Students must submit a one-two-page proposal, along with a short bibliography, for this paper on **December 2**. 40% of the grade will be based on this research paper.
3. Careful reading of all assigned materials, regular attendance, and active discussion in class are required of all participants in the seminar. Each week, a few students will be responsible for formulating critical questions on the assigned readings, circulating them among other members of the seminar prior to that week's meeting, and leading the discussion in class. Your attendance, preparation, and participation will account for 30% of the final grade.

READINGS

- Sami Zubaida, *Law and Power in the Islamic World* (I. B. Tauris, 2005) (available at Brown Book Store)
 - HIST 1971L- Course Packet (in two parts) (available at Allegra Print and Imaging)
 - A copy of the Qur'an
 - Judith E. Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* Univ. of California Press, 1998)
- Recommended: Albert Hourani, *History of the Arab Peoples* (as a general reference)

COURSE OUTLINE & ASSIGNMENTSⁱ

PART I-CONCEPTS, INSTITUTIONS, ISSUES

Sept 9: Introduction to the Course

Sept 16: Conceptual & textual architecture (Origins, development)

- Zubaida, 1-39,
- Wael Hallaq, *A History of Islamic Legal Theories*, 1-35 (Chapter 1) [CP]
- Weiss, "The *Madhhab* in Islamic Legal Theory" [CP]

Sept 23: Texts

- *The Qur'an*: **Chapters 2** (verses 177-200, 215-45, 267-86); **4** (verses 1-43, 127-30); **5** (verses 1-14, 38-50, 87-108); **24** (verses 1-34, 56-64); **33** (verses 28-73), & **65** (1-7)
- Al-Bukhari, *Sahih*: **Marriage**: VII: 1-2, 44-48, 51-52; **Divorce**: VII: 129-30, 133-36; **Witnesses**: III: 486-88, 491-92, 495-97, 504-12, 523; **Hudud**: VIII: 503-18; **Wills and testaments**: IV 1-4, 11-15, 23-24, 31-33 [CP]
- Al-Shafi'i, *Risale*, pp. 109-122 (authority of the *sunna*); pp. 285-87 (consensus) & pp. 288-303 (analogical reasoning and *ijtihad*) [CP]
- Recommended: Isam Ghanem *Outlines of Islamic Jurisprudence*

Sept 30: Institutions: Judges, Jurists

- Zubaida, 40-73
- M. K. Masud, R. Peters, and David S. Powers, "Qâdîs and Their Courts: An Historical Survey" [CP]
- M. K. Masud, B. Messick, and D. S. Powers, "Muftis, Fatwas, and Islamic Legal Interpretation" [CP]
- D. Powers, "Kadijustiz or Qadi-Justice? A paternity dispute from fourteenth-century Morocco," *Islamic Law and Society*, 1/3 (1994): 332-66 [E]

Oct 7: Legal Institutions: The Ottoman Case

- Akarli, "The Ruler and Law Making in the Ottoman Empire" [E]
- R. C. Jennings, "Kadi, Court, and Legal Procedure in 17th-Century Ottoman Kayseri" [E]
- G. El-Nahal, *Judicial Administration of Ottoman Egypt in the 17th century* [pp. 1-63]
- *Majalla*, Articles 1-99 [CP]
- Molla Nasreddin Stories on Judges and Rulers [E]

Oct 14: Law and Political Authority

- Zubaida, 74-120
- Hallaq, 162-206 (Chapter 5) [CP]
- R. Jennings, "Limitations of the Kadi's Judicial Powers in 17th-Century Ottoman Kayseri" [E]
- Akarli, "*Maslaha* from 'Common Good' to 'Raison d'Etat' in the Experience of Istanbul Artisans, 1730-1840" [E]
- Johansen, "Law-Justice" [E]

Oct 21: Custom ('urf & 'adah) as a Source of Law/Right

- Gideon Libson, "On the Development of Custom as a Source of Law in Islamic Law" [E]
- Othman, "'Urf as a Source of Islamic Law" [CP]
- A. Zysow, "The Under-theorization of Custom in Islamic Law" [E]
- A. Udovitch, "The Constitution of the Traditional Islamic Marketplace" [CP]
- Akarli, "Law in the Marketplace: Istanbul, 1730-1840" [E]
- Recommended: Wael Hallaq, "A Prelude to Ottoman Reform: Ibn 'Âbidîn on Custom and Legal Change" [CP]

PART II - SELECT THEMES IN ISLAMIC LEGAL HISTORY: THEORY AND PRACTICE

October 28: Family Law

J. Tucker, *In the House of the Law*, entire.

Nov 4: Legal status: The case of non-Muslims dhimmis

- Najwa Al-Qattan, "Dhimmis in the Muslim Court: Legal Autonomy and Religious Discrimination" *IJMES*, 31/3 (Aug., 1999): 429-44
- Najwa Al-Qattan, "Dhimmis in the Muslim Court: Justice Transcribed: Linguistic Discrimination & Legal Practice"
- Amnon Cohen "Communal Legal Entities in a Muslim Setting, Theory and Practice: the Jewish Community in 16th-Century Jerusalem" *ILS*, 3/1 (1996): 75-90
- K. Çiçek, "Interpreters of the Court in the Ottoman Sharia Court of Cyprus" *ILS*, 9/1 (2002): 1-15
- R. C. Jennings, *Christians & Muslims in Ottoman Cyprus, 1571-1640*, pp. 131-72
- Ronald C. Jennings, "Zimmis (Non-Muslims) in Early 17th Century Ottoman Judicial Records of Kayseri," *JESHO*, 21/3 (Oct., 1978): 225-93

PART III - THE MODERN PERIOD

Nov 11: Legal reform in the Ottoman Middle East 1800-1922

- Zubaida, 121-157
- Akarli, "Transition to the Modern Era" [E]
- Avi Rubin, "Legal Borrowing" & "Ottoman Legal Change" [E]

Nov 18: The Shari'a in Modern Debates & Institutions: Egypt

- Zubaida, 158-181
- Talal Asad, "Reconfigurations of Law and Ethics in Colonial Egypt" [E]
- Selections from works of Nathan J. Brown [E]

Nov 25: Thanksgiving break: PROPOSAL FOR FINAL PAPER DUE after the break

Dec 2: Politics of Shari'a in Islamic Republic of Iran

- Zubaida, 182-219
- Noah Feldman, "Why Shariah?" [E]
- Felicitas Opwis, "Maslaha in Contemporary Islamic Legal Theory" [E]
- Asghar Schirazi (selections from his *The Constitution of Iran: Politics and the State in the Islamic Republic*) [CP-2]

Dec 9: Human Rights & Concluding Review

- Zubaida, 320-24
- John L. Camaroff, "Foreward" (in *Contested States*) [CP-2]
- Talal Asad, "What Do Human Rights Do? An Anthropological Enquiry" [E]
- Lawrence Rosen, "Islamic concepts of justice and injustice" [CP-2]

December 19 (Saturday): * FINAL PAPERS ARE DUE *****

Have a nice semester!

ⁱ *In the assignments below [E] stands for “electronic” and [CP] for “Course Packet”. I will send the “electronic” sources as e-mail attachments and post them on the course web side at “MyCourses”.*