

PLATO Society: Winter Interim

Sharia and Islamic Law:

Their Doctrinal Diversity and Status in the U.S. Legal System

Syllabus: 11/29/17 (phone # corrected 1/12/18)

Session: Winter 2018 **Day of Week:** Friday **Begin Time:** 10:00 a.m. **End Time:** 12 Noon **Start Date:** January 12, 2018 **End Date:** February 16, 2017 (6 sessions) **Location:** Arts Center, Oakwood Village University Woods, 6201 Mineral Point Road, Madison. **Coordinator:** Peter Krug **Phone Number:** 608-298-7233 **Email:** pkrug@ou.edu

I. Course Description:

Public discourse about *Sharia* and Islamic law includes warnings that they present a growing danger to the U.S. legal system. To examine the grounds for these concerns, this course first will focus on the evolution of diverse doctrinal authority in Islamic law, which consists of interpretation of the divine texts that comprise *Sharia*. The course then will address the status of Islamic law in the United States, including its application in the courts and in religious arbitration. Examples of specific legal questions will be presented, but the course will not cover the full range of topics in Islamic law.

Throughout the course, it will not be assumed that participants possess prior familiarity with the history or doctrines of Islam, or specialized knowledge of the U.S. legal system. Lectures will be the primary format, but questions, comments, and discussion will always be welcome. In the first hour of week one and second hour of week six, in particular, discussion will be encouraged.

The course does not include any assigned readings. It is possible that certain readings will be recommended from time to time, and recommendations will be made upon request.

All dates used will be CE (Common Era), unless otherwise noted.

II. Objectives:

- A. To explain the distinction made in this course between Sharia and Islamic law.
- B. To provide a framework for viewing the legal issues presented by warnings that Islamic law poses a threat to the legal system in the United States.
- C. To consider Islamic law as representative of a particular type of religious law.
- D. To present the foundations of Islamic law, including its sources and scope.
- E. To describe the historical development of doctrinal and structural diversity in Islamic law, and to introduce basic tenets of current approaches to interpretations of Islamic law.
- F. To examine the implications of doctrinal and structural diversity for the status of Islamic law in the U.S. legal system.
- G. To contribute to knowledge of the ways in which Islamic law is applied in the U.S. courts, in religious arbitration, and within the Muslim community in the U.S. generally.

III. Schedule:

- A. Week One: Friday, January 12, 2018 (10:00-noon):
1. Introduction to the questions addressed in the course
 2. Early history of Islam, 610-750 CE (Common Era)
- B. Week Two: Friday, January 19, 2018 (10:00-noon): Scholar-jurists' doctrinal dominance and the consolidation of Islamic law, 750-1750
1. The foundations of substantive Islamic law
 2. Doctrinal and structural diversity
 3. Scholar-jurists: a professional class with limited entry
- C. Week Three: Friday, January 26, 2018 (10:00-noon): The loss of jurists' doctrinal dominance and the expansion of doctrinal authority in Islamic law, 1750-present
1. Reasons for the jurists' loss of dominance
 2. The range of different interpretations of Islamic law
- D. Week Four: Friday, February 2, 2018 (10:00-noon): Islamic law in the contemporary United States
1. Introduction: where Islamic law is applied in the United States
 2. Warnings that Islamic law is a threat to the legal system
 3. Islamic law in the state-based courts
 4. Implications of doctrinal and structural diversity
- E. Week Five: Friday, February 9, 2018 (10:00-noon): Islamic law in the contemporary United States
1. Islamic law in the U.S. Muslim community, including its institutions
 2. Faith-based family law in the Muslim community and its relationship to the secular legal system
- F. Week Six: Friday, February 16, 2018 (10:00-noon): Islamic law in the contemporary United States
1. Religious arbitration
 2. Course conclusion: coordinator's observations and participants' views on Islamic law in the United States

IV. Glossary: the following terms, which probably will be used often in the course, might be unclear or susceptible to multiple meanings. For purposes of the course, they will be given these meanings:

Arbitration: A non-judicial dispute resolution process in which a third party renders a decision that is binding on the parties to the dispute. Religious arbitration entails the resolution of disputes that concern the interpretation and application of a body of religious law.

Authority: The recognized capacity of a deity, individual person, or organization to issue pronouncements of religious or secular law that will carry considerable weight within a legal system or among the public in general. Also, the term "authority" will be used to refer to the deity, or individuals or organizations endowed with legitimacy to make such pronouncements.

Choice of law: The process in which a court must decide the law to be applied in adjudicating a dispute in which grounds exist for application of laws from different jurisdictions; also, the governing rules in the court's jurisdiction for selecting the law to be applied.

Code, legal: A systematic body of rules that sets forth authoritative, binding answers to be applied in resolving specific legal questions within a particular area of law (for example, the Wisconsin Family Code).

Comity: A doctrine that permits courts, on a voluntary basis, to recognize foreign judgments. Generally, a court will not exercise comity if: it concludes that the foreign court lacked jurisdiction; the foreign proceedings were procedurally unfair; or, if recognition would offend a fundamental public policy.

Conflict of laws: The general term for the rules that a court will use when the laws of more than one jurisdiction might be applicable to a dispute. Among other aspects of litigation, conflict of laws addresses the questions of choice of law and recognition of foreign judgments.

Customary law: Within a particular political or social group, a body of unwritten rules or practices that have evolved over extended periods of time and are widely accepted as binding upon the general population.

Democratization: The expansion, beginning the second half of the 18th century and continuing throughout the modern era, of the range of persons issuing widely-disseminated Islamic law interpretations.

Diversity, Doctrinal and Structural: Doctrinal diversity is the presentation by multiple recognized authorities of differing positions on questions of legal doctrine (for example, differing interpretations of the same scriptural source material). Structural diversity is the absence of a vertical system of centralized, final authority for identification of a single correct answer from among those differing positions. In a system of structural diversity, doctrinal authority is horizontal, or non-hierarchical.

Family Law: Rules or practices governing marriage, divorce, other family relationships, and inheritance.

Fatwa ("opinion"): A legal opinion on a question of Islamic law interpretation, usually not binding on the person asking the question. Traditionally, a mufti or other scholar-jurist recognized as authoritative provided such opinions. In this way, fatwas served as a mechanism for the transmission of Islamic law between centers of learning and local communities. In the modern era, the range of individuals or organizations issuing fatwas has expanded considerably.

Imam ("one who stands in front"): The leader of worship at a mosque, often consulted by Muslims on questions of Islamic law.

Islamic law: the divine sources comprising Sharia plus interpretations that religious scholar-jurists began to develop in the 8th century. In the modern era, others have joined scholar-jurists in presenting interpretations. The word "law" in this term will not be used to refer to a legal "code".

Jihad (in Arabic, "to strive toward some objective"): Jihad is a word with many meanings, one of which refers to an individual believer's internal struggle to be a good Muslim, and another which means an Islamic group's military action. In regard to the latter, it often is used to refer to the initiation and conduct of war in accordance with Islamic law.

Literalism: An interpretive approach to the divine sources that places great emphasis on strict reading of specific passages in the sacred texts.

Modernism: Speaking in very general terms, because it encompasses many variations, an interpretive approach to the divine sources that emphasizes a willingness to propose and explore new approaches, including contextualism (viewing a text in historical or other context) and the elucidation of general principles from the sacred texts.

Mosque: Any place of worship for Muslims where prayer is performed. Also, mosques function as centers for religious instruction, non-judicial dispute settlement, and social gatherings and celebrations.

Mufti: A scholar-jurist deemed competent to provide opinions (fatwas) on legal questions.

Qadi: A judge applying Islamic law in litigation or alternate forms of dispute resolution such as arbitration or mediation.

Quran (“recitation”): The sacred book of Muslims, revealed gradually to the Prophet Muhammad in Arabia in 610-632.

Recognition of a foreign judgment: A granting of legal effect to a judicial decision issued in a different jurisdiction; also, the process in which a court engages in deciding whether to grant such recognition.

Religious law: a system of rules or guidance comprised of divine revelation and human interpretation of those sources.

Sharia (“path”, or “way”): Comprised of the divine sources of the Quran and Sunna, the guide for Muslims for living in accordance with God’s will.

Shia-Sunni divide: The origins of the divide lie in 7th-century political controversies and conflicts over the succession to the Prophet Muhammad for leadership of the Muslim community following the Prophet’s death in 632.

Shia (or “Shiite”) Muslims hold as a basic tenet that descendants of Ali, the Prophet Muhammad’s cousin and son-in-law, possess the exclusive right to leadership of the community. The word Shia means “party of Ali”. Ali was the fourth Caliph (“successor”: leader of the community) until his death in 661. Shia reject the legitimacy of the first three Caliphs (Abu Bakr, 632-634; Umar, 634-644; and Uthman, 644-656), who were not blood relatives of the Prophet, and revere as a martyr Ali’s son, Husayn, who died in battle in 680 while seeking to reclaim the Caliphate for the house of Ali.

Sunnis (“people of custom and the community”) are the majority of Muslims. Sunnis hold as a basic tenet that the right of leadership in the Muslim community rests with the community as a whole. Over time, most Sunnis came to accept the legitimacy of Ali along with the first three Caliphs (calling the first four the “Rightly Guided Ones”), while at the same time viewing Shiites’ denunciation of the first three Caliphs as the Shiites’ chief offense. In our time, the Islamic State frequently uses “rejectionists” as a term of disparagement for Shiites.

For purposes of this course, it is important to note that while the doctrinal diversity in Islamic law includes differing positions within various Shia and Sunni schools of thought, the overall legal dialogue takes place without references to the underlying causes or manifestations of the Shia-Sunni divide.

Sufism: A widespread mystical movement in Islam with roots as far back as the 8th century CE and continuing in the modern era.

Sunna (“trodden path”): The divinely-inspired, exemplary behavior (words and deeds) of the Prophet Muhammad. Reports [*in Arabic*, “Hadith”] of the Sunna originated with companions of the Prophet and other observers, passed on by generations of transmitters, and eventually recorded in authoritative compilations in the 9th century.

Supremacy, legal: The recognition of a legal rule’s capacity to supersede any other rules that might be in conflict with it.

Traditionalism: An approach to the divine sources that adheres closely to traditional jurisprudence developed in the first centuries of scholar-jurists’ dominance, employing interpretive methodologies in addition to literal reading of the sacred texts.

V. Statement of the coordinator’s background and interest in the subject matter of the course:

In my work as a professor of comparative and international law at the University of Oklahoma College of Law, a position I held from 1991 until my retirement in 2011, I developed an interest in Islam and Islamic law. I am not an academic specialist in these fields. I have done very little original scholarship in them and do not read the relevant languages. My academic research and writing were in other legal fields, especially comparative news media law, comparative constitutional law, and the Russian legal system. I hold Ph.D. (Russian History) and J.D. (law) degrees from the University of Wisconsin-Madison.

From 1997 to 2011, I included units on Islamic law in my Comparative Law courses, and in 2011 I conducted a seminar on Middle Eastern Legal Systems. While participating as an instructor in workshops on news media law in Jordan (2005, 2007) and Egypt (2009), I learned about Islam in discussions with journalists, judges, and lawyers. Since moving to Madison in 2011, I have benefitted greatly from auditing UW-Madison courses in the History and Political Science Departments, the Jewish Studies and Religious Studies Programs, and the Law School. In 2016-2017, I made four presentations about Islamic law to community groups in Madison.

As to the particular subject matter in this PLATO Society course, I have perceived a need for further public dialogue about issues that have arisen in the context of warnings about Islamic law in the U.S legal system and legislative efforts to prohibit application of Islamic law in U.S. state courts. It’s my hope that examination of the foundations of Islamic law and its history will contribute to this dialogue, as will efforts to understand the ways in which Islamic law is developed and applied in the United States, including the growing use of Islamic law in religious arbitration.
