Muḥammad al-Marwazī's treatment of Sufyān al-Thawrī in his *Ikhtilāf al-fuqahāʾ*

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Muḥammad b. Naṣr al-Marwazī (d. 294/907) was a Shāfiʿī legal scholar who spent much of his life in the Samanid court at Samarqand. He is noted for several works on aspects of law and ritual, as well as for his *Ikhtilāf al-fuqahāʾ*. Despite being among the earliest surviving works in the *ikhtilāf* genre, it has not been studied intensively. One striking feature of the work is the prominence al-Marwazī grants to Sufyān al-Thawrī (d. 161/778), who is the first authority cited in virtually every entry. While later *ikhtilāf* works occasionally cite al-Thawrī, none does so in such a consistent and prominent way. This paper focuses on the role al-Thawrī plays in al-Marwazī's *ikhtilāf*, pursuing three lines of inquiry.

First, I consider what al-Marwazī's work can tell us about Sufyān al-Thawrī's views and legal methods. I explain what can (and cannot) be reconstructed of al-Thawrī's *fiqh* based on al-Marwazī, comparing the material presented in his *ikhtilāf* to citations in other sources where possible.

Second, I address whether or not al-Marwazī's work suggests that al-Thawrī's "*madhhab*" persisted longer in the East than in other parts of the Islamic world. There are hints that al-Marwazī received his material on al-Thawrī from a single written source. The paper explores the possibility that such a text existed, the extent to which it might be reconstructed, and whether al-Marwazī's sources were eastern in origin.

Finally, I discuss the significance of al-Marwazī's decision to privilege al-Thawrī in his *ikhtilāf*. Later *ikhtilāf* works typically begin entries with the position of the eponym of the author's *madhhab*, then catalogue those who agree or disagree. While the genre and its conventions were still fluid in al-Marwazī's time, it is important to consider why he always begins with al-Thawrī. Does this underscore al-Thawrī's regional importance? Does it reflect al-Marwazī's affinity for al-Thawrī despite his own professed Shāfiʿī leanings? Does it suggest an effort to appropriate al-Thawrī as some sort of proto-Shāfiʿī scholar? The paper examines each of these possibilities.

An Empire of Laws: The View from the Province

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This paper argues that a comprehensive social and political history of the early Islamic empire and its provinces must incorporate published and unpublished legal texts written in Khurāsān and Transoxiana during the ninth-eleventh centuries (in manuscript: al-Marwazī [d. 334/945-6], *al-Kāfī*; al-Zandawasītī [d. 382/992], *Rawḍat al-ʿulamāʾ wa nuzhat al-fuqahāʾ*. Published legal texts: al-Sughdī [d. 461/1068], *al-Nutaf fī al-fatāwā*; al-Sarakhsī [d. 483/1090], *Kitāb al-Mabsūṭ*).

In my current research on the early Islamic empire (eighth-tenth centuries), I combine three sets of sources to explain how the empire operated and functioned in the life of the provinces of Transoxiana and Khurāsān: documentary sources (Arabic and Bactrian); general and local histories (Arabic and Persian); and legal texts (Arabic). I show that the same concerns and specific issues permeate documentary sources, historical texts, and legal literature composed during the eighth-eleventh centuries. Taxation, marriage, slavery, land laws, conversion,

contracts, and legal witnessing are discussed in newly discovered documentary, historical, and legal sources.

In studying these sources together I am proposing to bridge the disciplinary divide that places legal sources within the purview of the legal historian and documentary and historical sources within the realm of the political historian. There is a considerable weight of scholarship documenting the distance between legal texts and the social and political circumstances during which they were composed. This view has gained ground in recent years with Norman Calder's magisterial account of the literary nature and preoccupations of medieval legal writing.

This paper will illustrate how legal texts from the ninth-eleventh centuries address directly questions relating to the authority of the ruler, the legitimacy and sovereignty of the early Islamic empire in the provinces of Khurāsān and Transoxiana, and how the authority of the state, represented by governors and judges, extended into these provinces and impacted the everyday lives of its subjects.

This scholarly inquiry has important implications for the study of medieval Islamic history and law. Its close reading of unpublished and neglected legal texts places the spotlight on the development of Islamic law in Khurāsān and Transoxiana; and its bringing into conversation documentary, historical, and legal texts to write the history of the early Islamic empire in the eastern provinces represents an alternative approach. Together, this constitutes a significant intervention into debates concerning where legal texts can and cannot aid the study of social and political Islamic history.

Is Marriage Really Like a Sale? Marriage and Its Metaphors in the Fifth-Sixth Century AH/Eleventh-Twelfth Century CE

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Ever since the publication of Kecia Ali's groundbreaking work *Marriage and Slavery in Early Islam* (2010), it has been a commonplace of the western academic literature on the fiqh of marriage that jurists fundamentally conceptualized the marriage contract as a sale, with the woman exchanging symbolic ownership of her sexual capacities (metonymically designated as the *buḍʿ*, or vulva) for the husband's payment of *ṣadāq*. While this model illuminates the legal logic underlying a wide range of specific legal doctrines, however, it was historically neither an undisputed paradigm for the analysis of the marriage contract nor the sole framework used to parse the exchange of rights and duties between the spouses.

This paper moves beyond the formative-period sources that were the focus of Ali's work to examine the approaches of a selection of major jurists of the fifth-sixth century A.H./eleventh-twelfth century C.E., including Abu'l-Hasan al-Mawardi, Imam al-Haramayn al-Juwayni, and Ibn Rushd al-Jadd. While acknowledging the enduring and central role of the model in which a wife "sold" her sexual capacities to her husband, it examines the role of other models for the contract itself, including the paradigm of the wife as a proprietor "renting" the use of her capacities to her spouse. While the marriage-as-sale model places the wife in a position analogous to that of a slave (as elegantly analyzed by Ali), argumentation around specific legal issues could also be based on other analogies, such as that between a wife and a judge.

The different paradigms used to analyze the marriage contract on one level reflect the technicalities of argumentation around concrete legal issues, not all of which were best illuminated by a single master analogy. However, different underlying models also sometimes

corresponded to substantively different understandings of exchange of rights and duties between the spouses; as Karen Bauer has demonstrated, these were not static over time. Broadening our understanding of the models and analogies in play in the legal argumentation of jurists in different periods and places raises questions about the gendered values and assumptions that informed the law.

Divorce Gaza style: The *taʿmīm* of 2016

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In my paper read at the last ISILS conference, I investigated the new *khulʿ*-regulation (*taʿmīm*) issued by the Supreme Judge of the West Bank, Yūsuf Idʿīs in 2012. In this paper I shall turn to the corresponding legal debates and regulations in Gaza and relate them to the discussions in the West Bank.

When the 2012 regulation with regard to *khulʿ*-divorce against the husband's wish – giving women the right to restitution only before consummation of marriage – the Supreme Judge of Gaza, Hasan al-Jūjū, announced in the media that this regulation was not legitimate as there is no common Palestinian parliament and hence no legislation since 2007. He obviously saw no need to improve the situation of women in the Gaza strip. Currently, an old version of the Egyptian PSL is applied in Gaza and an old version of the Jordanian PSL in the West Bank. However, there are efforts towards creating a Palestinian Personal Status law.

Not long after the West Bank regulation, a heated debate started in the media and among women's organizations with the aim to pressure the Gaza government to reform the law on *khulʿ* in Gaza, too. No such regulation was issued. Instead, the Supreme Judge issued a *taʿmīm* in 2016 that men should have the right to apply for divorce based on "dispute and discord" (*shiqāq wa-nizāʿ*) – a form of divorce that was originally used only by women.

In my paper I analyze this ruling, compare it to the *khulʿ*-ruling in the West Bank, and follow the debates between representatives of the Sharia establishment and women's organizations. Focusing on the language, terminology and the arguments, I ask whether and how classical Islamic sources were referred to in order to justify this ruling that clearly privileges men. How do representatives of the Sharia establishment and of the civil society structure their arguments? How do they refer to the past? Which gender relation is reflected in the regulation and how does it differ from the gender relation reflected in the West Bank debates? My sources are reports in the media and information material on the website of the Gaza government as well as conference reports on the website of women's organizations and videos of the debates.

Legal views on the duration of pregnancy and their impact on Islamic notions of paternity (*nasab*): past and present

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A radical divergence between the family legislation in force in most Muslim majority countries and the classical Islamic legal system occurs when the prohibition to establish paternity out of wedlock is maintained, whatever the evidence provided by genetic testing, but the maximum legal duration of pregnancy is shortened to either ten months or one year to make it accord with medical standards. This fact is not consistent with the image that

contemporary family law in those countries comes from classical *fiqh* since unlawful relationships (*zinā*), pregnancy as evidence of *zinā*, and the rules governing paternity were conceived by the *fuqahā'* in the assumption of much longer pregnancy time spans. The shortened limit of pregnancy fosters claims that family legislation there exacerbates the gender bias already present in classical *fiqh.* It adds to the vulnerable position in which widowed, divorced and abandoned women have traditionally found themselves, and sounds too conspicuously to selecting only those parts of the tradition and of modern medicine that are most detrimental for them.
My presentation will examine relevant legal assessments by contemporary Sunni *fiqh* experts and their treatment of pre-modern precedents showing that, for different reasons, the view that pregnancy should be considered according to medicine and the laws of nature entered the Mālikī, the Ẓāhirī and the Ḥanbalī schools long before the 20th century. Turning to classical Islamic legal literature to elucidate the relationship between the sacred, the legal-social and the experiential in the light of the evidence provided by modern medicine may challenge the methodological foundations of classical legal doctrines on the duration of pregnancy and increase the vulnerability of those who may result pregnant from non-marital intercourse. By the same token, however, legal opinions reflecting an early awareness of the force of the natural world should also lead to reconsider the whole argumentative structure underlying the "mixing of genealogies (*ikhtilāṭ al-ansāb*)" principle. This principle was used by pre-modern Muslim jurists to construct the shift from sin to public crime in the case *zinā* and to deny paternity rights to its offspring, sometimes on the grounds of a physical concept of procreation where the symbolic or the ritual have no place and where the woman is attributed a secondary role limited to reception and gestation of an embryo created out of the man's sperm.

Al-Tahtawi "Translating" the 1814 French Charter: Crafting a New Semiotics of Law and Governance in 19th Century Egypt

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The paper offers a reading into one of the first recorded reactions of a kuttab-then-Azhar-trained Egyptian scholar (al-Tahtawi, 1801-1873) to a 19th-century European governance system (France, 1820s). Al-Tahtawi's reactions offer insights into the dynamics of the traveller's agency in vernacularising the theory, his partly colonized and partly colonial mindset, and his perception of the centre/periphery dychotomy. Within this framework, and in line with the conference keynote, the presentation will emphasise the articulation of a (new) vocabulary for the relationship between ruler and ruled in Tahtawi's 'translation'.

After returning from Paris to Cairo, al-Tahtawi published his memoirs in a collection titled: *Takhlis al-ibriz* (1834). In it, one of the chapters is devoted to the French governance system (*tadbir dawlat al-Faransis*); the author wanted to describe this odd constitutional arrangement to his fellow contemporaries in Egypt, and experimented with language.

Al-Tahtawi's linguistics was only instrumental to his final goal: rallying his audiences behind 'his' idea of hegemonic legal modernity, which he later summarised as *manhaj al-sharʿ* (rule of law). Through the language of Islamic law, al-Tahtawi aimed at speaking to his fellow traditional intellectuals (already on the verge of marginalisation), and through the language of Empire to his patron and his circle (not too keen on listening in this area). He also had something to say to French Orientalists: Arabic can be bent to modernity just as easily as French has.

The chapter on the French governance system also contains a true Rosetta stone: a translation of the French Charter of 1814. Comparing al-Tahtawi's first account of the governance system with his translation of the Charter, and latter's original text in French illuminates the analysis. The 'translation' of the Charter offers a privileged observation point on al-Tahtawi's group and class politics, because it allows us to appreciate what he decided to translate, what to emphasise, what to omit, and what to add.

Al-Tahtawi's role in informing the Egyptian debate and connecting it with the outer world will manifest itself chiefly in his later involvement in kick-starting (and shaping) the translation movement that structured 19th century (Egyptian) Arabic: the very translation movement that set the foundations for the construction of the system of signs of positive law in Arabic that is still currently constraining the scientific, technical language of governance.

Legal Maxims (*Qawa`id Fiqhiyya*) in Yusuf al-Qaradawi's Jurisprudence and legal opinions

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It is a common wisdom that Islamic *fiqh* does not have general theories (e.g. a theory of contracts), but has a casuistic character that focuses on treatment of individual cases and scenarios. Subsequent to the crystallization of the law schools, jurists felt the need to consolidate the huge corpus of the *fiqh* in the form of concise theoretical statements, for aiding students and practitioners of the law. The result was legal maxims or precepts (*qawāʿid fiqhiyya*), defined as "theoretical abstractions in the form usually of short epithetic statements that are expressive, often in a few words, of the goals and objectives of Shariʿah" (Kamali, *Shariʿah Law: An Introduction*, 142). An example for such a general maxim is "damage must be removed" (*al-ḍarar yuzāl*), which is based on the hadith *lā ḍarar wa-lā ḍirār*.

In Western scholarship, the number of studies on legal maxims is limited (one example is Sherman Jackson's work on the role of *qawāʿid* in al-Qarāfī's jurisprudence). The maxims are often discussed in the context of "the purposes of the sharīʿa" (*maqāṣid al-sharīʿa*), which is a related topic. The ninety-nine maxims included in the preamble of the Ottoman Mecelle have gotten some scholarly attention. As far as I know, there are no integrative studies dealing with the actual use of legal maxims by qadis and muftis along Islamic history. In the Islamic world, a considerable number of authors have recently published works in Arabic on legal maxims, demonstrating the modern interest in this topic, resulting perhaps from comparisons between Islamic law and Western codified laws. These works however follow the traditional technical juristic style.

Sheikh Yūsuf al-Qaraḍāwī (b. 1926 in Egypt) is one of the most popular jurists in current Sunni Islam. My study aims to analyze the role of legal maxims in his jurisprudence as well as in his legal opinions. My sources are the numerous books, articles and legal opinions that he has published along his career. The preliminary assumption of this study is that Qaraḍāwī uses legal maxims for controlling and systemizing the use of considerations of public welfare (*maṣlaḥa*), especially in the field of "the *fiqh* of reality" (*fiqh al-wāqiʿ*). This field--dealing mainly with political topics, on which there are hardly any guidelines in scripture, and therefore is mainly based on non-textual benefits (*maṣāliḥ mursala*)—is prone to undisciplined use of utilitarian considerations by jurists. Legal maxims come in handy for weighing the relevant benefits and damages related to each topic.

Women, Right to Sexual Pleasure, and "*Malu*": Sexual Enjoyment, Impotence, and Modesty in Indonesian Religious Courts

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There are things going on in Indonesia much deeper than what the surface of the media and the political science seems to indicate (that Indonesian Islam turns into conservatism). The transformation of Indonesian society goes to the emancipation of women and the increase of women's rights, but not with less headscarf in the streets. This is manifested at other levels one can observe in Indonesian judicial practices. Contrary to the rest part of Muslim world where right to sexual pleasure is still considered a taboo, it seems that the Indonesian women are aware of their rights and conscience about it. This hypothesis comes from the cases filed by women for divorce to religious courts for ground of the absence of sexual enjoyment and impotence. Based on cases, I will try to show the evolution of Indonesian judicial practices before the independence, after the independence and nowadays on divorce for absence of sexual enjoyment and impotence. The dynamic of Indonesian judicial practices are in favor for the women where judges adjudicated on these two issues to attain an equality and justice to pursue pleasurable sexual life and private life happiness of women.

I am using the history and legal anthropology research methodology in this presentation. First, the history methodology is employed in order to answer question: when did cases of divorce for ground of the absence of sexuality and impotence appear for the first time in Indonesian courts? Second, I use anthropology of legal practice (ethnomethodology) with an ethnography study in Indonesian religious courts judicial practices in order to show "law in action" on these two issues. I try to answer questions through legal methodology on divorce for ground of the absence of sexual enjoyment and impotence, such as what language used by judges and women in judicial process on these two issues? What Indonesian laws say about these? When the Indonesian legislations are in fact silence on these two issues: the absence of sexual enjoyment and impotence, how judges adjudicated these two issues and on what source they reasoned legally for their decision? What and how the parties argued and told judges about their private life through judicial process? How Indonesian women manage and handle their '*malu*' (modesty) by revealing their intimacy in religious courts hearing and how these women must prove their problems before judges?

To reply those questions, I conducted a research in the religious court of South Jakarta where I found then followed some interesting cases. I also collect complete religious courts decisions from the surrounding cities of Jakarta, work on Indonesian newspaper, and gather Indonesian religious courts decision from the archives database of the Indonesian Supreme Court.

The Concept of the "Best Interests of the Child" in Saudi Arabian Courts

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Western scholars studying the Saudi legal system have long been limited by the scarcity of available sources. However, during the last decade, the Saudi Ministry of Justice has started to release substantial amounts of court records that contain detailed protocols of the court sessions, including the judges' legal reasoning. Today, judges, university professors and even

more traditional scholars regularly publish books or articles in the kingdom's legal journals that, also due to an open attitude towards digitalisation, are increasingly accessible to outsiders.

Based on these sources, this paper explores the Saudi legal discourse surrounding the concept of custody *(ḥaḍāna)* and its application in court. I thereby follow a growing interest among scholars of Islamic law in the legal status of the child (see Ibrahim 2018 (forthcoming), Yassari/Möller/Gallala-Arndt 2017). Saudi courts, contrary to the practice in many other contemporary jurisdictions in the Middle East, are led to a large extent by the concept of the "best interests of the child" *(maṣlaḥat al-ṭifl)* when they allocate custody. The courts' understanding of the best interests of the child is informed by their unique approach to the tradition of Islamic jurisprudence *(fiqh)*. Saudi scholars and judges generally reject the notion of following a distinct legal school *(madhhab)*. Instead, they claim to rule solely according to the "evidences" *(adalla)* in Qur'an and Sunna.

By analysing the understanding of the best interests of the child, I will trace how Saudi judges engage with the tradition of *fiqh* in the context of the modern Saudi state and demonstrate how their critique of the "blind" following of the legal schools finds its expression in present- day court practice. Furthermore, I will analyse how the legal system thereby adapts to the challenges of modernity in the context of family life and how new technologies and other aspects of modern life are articulated into legal arguments. Using the example of custody, this paper aims to give a deeper insight into the inner workings of this understudied contemporary Islamic legal system.

Imamate and sultanate in twentieth-century Ibadi thought

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One of the most striking conflicts in twentieth-century Oman was the division of the country 1920-1955 into a sultanate in Musqat and an imamate in Nizwa, both of which considered itself to be dominant over the other.

This paper will focus on how the office of imam is discussed in contemporary Ibāḍī scholarship. The issue is, then, not devoid of contemporary significance, and is also easily contrasted to the functioning Shīʿī-Zaydī imamate in neighbouring Yemen for much of the period. Unlike the Shīʿīs, the Ibāḍīs do not, as we know, pose any genealogical demands for the imamate, but it does ask for competence, similarly to what the Zaydī demands for their successful claimant to the imamhood. The medieval Omani imams were also genealogically linked, while the imami revolts of the nineteenth century moved from promoting a relative of the reigning Busaidi sultan, to unrelated scholars.

This paper will study a selection of works from the Ibāḍī tradition from the nineteenth and twentieth century, to focus on the requirements made for an imām of the various well-known categories of imam that Ibāḍism operates with (*imām al-difāʿ, imām al-kitmān, imām al-shirāʾ*, etc.), to seek chronological and contextual patterns of thought.

Your Marriage Contract is Unlawful: The Validity of Virtual Communication Technology in Islamic Law

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Problems pertaining to Islamic law and society are often framed in terms of a tension between theory and practice, or theory and context. Yet modern technologies and the flexibility they provide challenge common notions of "context" for both Islamic jurists and Western academics alike. For example, advances in communication technologies can on the one hand facilitate the drawing-up of new contracts while also raising questions about their lawfulness.

In *Shari'a*, the marriage contract *('aqd an-nikāh*) presents a particular challenge through the principle of *wihdat majlis al-'aqd* (the contract's council unity), one of the conditions (*shurūt*) the contract must fulfill in order to be sound (*sahīh*). According to *wihdat majlis al-'aqd*, the two parties of the contract and the witnesses have to be in the same place and time when *al-iījāb* (the proposal) and *al-qabūl* (the acceptance) of marriage happen. Modern communication technologies thus present jurists with new questions: Is a *nikāh* contract held via Skype, Messenger, or even phone, or other similar technologies *sahīh*? Do communication platforms constitute a virtual "space" through which witnesses and parties to the contract can satisfy the condition of *wihdat majlis al-'aqd*? In a broader sense, what constitutes "presence" in a virtual context? The answers to these questions vary. In this paper, I will examine *fatawa* relevant to *'aqd an-nikāh* from the classical canon, contemporary *fatawa* that directly tackled the issue of virtual communications and marriage contracts (both those that legalize and those that prohibit), and how they reached these conclusions.

The International Islamic Fiqh Academy issued a *fatwa* recognizing the lawfulness of the issue for many contracts except for *nikāh* as "it requires witnesses". However, some other eminent scholars, such as al-Zuhayli, al-Qaradawi, and the Saudi jurist al-Sanad, and others believe that such contracts are sound. This paper argues that the methods of legal reasoning employed by these scholars who confirm the lawfulness of marriage contracts held via modern technologies are intact. As a *nāzila*, this issue has certain references in *Shari'a.* Take the opinions of the classical jurists al-Sarkhasi and al-Kasani. Both confirmed that when *al-iījāb* and *al-qabūl* are done through correspondence, either in writing or verbally, with the presence of witnesses, the contract is sound.

Who is an Heir? Legal Pluralism and Inheritance Disputes in and out of Zanzibar's Islamic Courts

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In this paper, I consider disputes over inheritance in rural Zanzibar through a framework of legal pluralism. In Zanzibar, a semi-autonomous island state of the United Republic of Tanzania, Islamic courts are part of the state legal system and have jurisdiction over family law matters for Muslims, including matters of inheritance. This paper is a preliminary examination of inheritance disputes based on data that I collected in past research trips and sets the stage for further ethnographic research on this topic, hopefully to be conducted in late 2018. My analysis indicates that rural Zanzibari Muslims generally agree that inheritance shares must be divided according to Islamic law. However, disputes over inheritance are handled in variety of ways, and people may seek advice or resolution in a number of venues or from different types of authority figures, only one of which is the district Islamic court staffed by a *kadhi* (<Ar. *qadi*) trained in Islamic law. Depending on the nature of the disputes, most of which concern questions about heirship and the ownership of farms, disputants may also consult elders, state-appointed *shehas* (community leaders), or state-appointed inheritance officers. I propose that there is thus a pronounced legal consciousness of legal pluralism with regards to the resolution of disputes

surrounding inheritance. The paper is based on data collected through ethnographic fieldwork in two district level rural Islamic courts and from numerous interviews with lay people and local leaders in a rural community; fieldwork was conducted between 1999 and 2008. In addition, I draw on court documents produced by the district *kadhi*'s courts, and from more recent appeals cases that the Zanzibari High Court has made available online.

An Islamic Legal Debate on "Anchored" Women in the Russian Empire

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In the nineteenth century, the Volga-Ural Muslim community of the Russian empire confronted a serious social and religious problem. Many Muslim women petitioned the Orenburg Muslim Spiritual Assembly (a Muslim court of appeal created by the Russian state) requesting divorce from their husbands who disappeared due to exile, war or for other reasons. Although Muslim marriage and divorce issues had to be resolved according to Islamic law, the Assembly officials utilized Russian imperial law in answering these women's petitions. Some women could obtain divorce while many others remained "anchored" in their marriages, were left without provision, and unable to remarry. Mahalla imams and *ākhūnd*s (ulama with legal authority) were not able to help them out because the Orenburg Assembly prohibited them to deal with these cases.

The historiography of Islamic family law in the Russian empire is still in its infancy. This paper is the first attempt to look at the impact of imperial governance on the functioning of Muslim family law. It also expands the field of Islamic legal history by looking at how change in the balance of religious authority affected Muslim family. The above-mentioned problem is one of the bigger changes in the implementation and formulation of Islamic law which transformed under the influence of imperial policies. The creation of the Orenburg Assembly, a colonial institution, the decrease in the religious authority of *ākhūnd*s and imams responsible for solving family problems, obligatory registration of Muslim marriages and divorces, and the introduction of imperial laws into the Muslim community all had an impact on Muslim family. I argue that Russian state intervention in Islamic law that was supposed to strengthen and stabilize the Muslim family as a foundation of the imperial domestic order caused serious confusion in the established legal practices of the community.

The Muslim community tried to resolve this confusion within Islamic tradition. This paper is based on a Muslim manuscript, titled *Intiqād al-aqwāl bi al-taḥqīq fī tajwīz al-nikāḥ bi al-ta'līq* [Critical examination of the statements concerning the performance of marriage under certain conditions] and dated 1901. It will present a historical analysis of an imperial *shar'i* discourse and, in particular, the opinions of prominent *ākhūnd*s and *imams* from different parts of the Russian empire, including those of Mufti of Tauride and Mufti of the Caucasus, on the permissibility of marriage contract to facilitate women's protection of marital rights.

Eunuchs in Islamic Law: The Gender of Castrated Men in the Islamic Legal Discourse

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During the medieval period and beyond, eunuchs held a central position in the Courts of different Islamic dynasties, notwithstanding being castration unanimously prohibited in Islamic

Law. Nevertheless, in the field of marginal groups within Islam, and especially in the field of Islamic Law, the history of eunuchs is still neglected. For example, while some articles have explored in a systematic way the status of the hermaphrodite in Islamic law (Cilardo 1986, Sanders 1991), a similar work has not yet been done with regards to eunuchs, even though they were much more prominent in Islamic medieval societies than hermaphrodites.

From a biological point of view, a man, when castrated, lost something which was considered a fundamental part for the coeval understanding of masculinity. Still, eunuchs were considered in some aspects men: thus, they had offices such as army commanders, governors, caliphs' counselors, educators of future caliphs etc. However, for other aspects they were not considered complete men, which allowed them to have access to the harem, playing one of their main roles in Islamic history, that of harem guardians. Moreover, the peculiarity of having access to both men and women's world, gave them a particular power in Islamic courts.

In this paper I will discuss how Sunni jurists dealt with the gender of the eunuch. Even though this was not clearly discussed in the sources, a review of some of the most influential books of the four sunni *madhāhib* (i.e. al-Shaybānī's *al-Jāmi' al-kabīr;* al-Sarakhsī's *Kitāb al-Mabsūṭ*, al-Qudūrī's *Mukhtaṣar*; al-Marghīnānī's *Hidāya*; Saḥnūn's *Mudawwana*; Ibn 'Abd al-Barr's *Kāfī*; Khalīl's *Mukhtaṣar*; al-Shāfi'ī's *Kitab al umm*, al-Nawawī's *Minhāj al-ṭālibīn*; Ibn Qudāma's *Mughnī* etc.), with regard to those fields where a division female/male was more significant, can reveal something on how eunuchs were gendered: while examining what jurists said on issues like marriage, *mahr*, *ṭalāq*, *īlā'*, '*idda* etc., I will attempt to reconstruct how Sunni jurists gendered eunuchs and whether they considered them still as "men" or as something else.

The Salafi Conception of *al-Walā' wa'l-Barā'* and Muslims Integration into Western Societies: A Negative Impact

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The purpose of my paper is to look at the presence of Muslims in the West from the viewpoint of Islamic rules elaborated by contemporary Muslim jurists who live or have lived in Islamic lands. It is possible to divide these *fuqahā'* into two main groups. The first main group consists of those jurists who have adopted an integrazionist/interactionist approach. In fact, they developed a set of rules that govern the conditions of Muslims living in non-Islamic contexts (*fiqh al-aqalliyyāt*), whose aim is to discipline the behavior of Muslims so as to safeguard their identity, and to review the modes of relat- ing to the non-Islamic State in which they live by encouraging them to develop a sense of belonging and respect for it. Such development is, according to these jurists, an essential step toward ensuring that Muslims think of themselves and behave as active citizens of the Western countries where they live. The second main group consists of those jurists who belong to the Salafi purist current. Because of their interpretation of *al-walā' wa'l-barā'* doctrine [loyalty (to Muslims) and dissociation (from non-Muslims)], they have adopted a separatist approach. Indeed, these *fuqahā'*, no differently from their colleagues who proposed the integrationist/interactionist perspective, identified Western coun- tries as places of moral and spiritual perdition, with the difference, however, that they, in contrast with the former, believe that Muslims should not live in them and should stay clear of them or, if they cannot do so, to minimize relations with the surrounding society (limit contact with the disbelievers to only when one tries to convert them to Islam, criticize them openly without offending, etc). These circumstances add up to explain why the tendency to isolate themselves, is seen among Muslim com- munities in the West who make reference to Salafi purist doctrine.

Despite the importance of this topic, little attention has been paid to the jurisprudence elaborated by these jurists. Because of this, the aim of my paper is to analyse the *fatāwā* that they issued concerning to the Muslims in the West. In particular, I will examine the responses of Ibn Bāz (*Majmūʿ fatāwā wa-maqālāt mutanawwiʿa*), Ibn ʿUṯaymīn (*Majmūʿ fatāwā wa-rasāʾi*), Fawzān (*Al-Muntaqā*, 2 vols.), and of the Saudi Permanent Committee for Scholarly Research and Fatwas (*Fatāwā al-laǧna al- dāʾima liʾl-buḥūṯ al-ʿilmiyya waʾl-iftāʾ*).

The Persian influence on the Iraqī Ḥanafī Law: Some Notes on its Literary Aspect

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At the Third International Conference on Islamic Legal Studies (Harvard, 2000), Eyyup Said Kaya presented a paper discussing the contribution to Ḥanafī doctrine of legal opinions issued between the 2nd/8th and the 4th/10th centuries by two distinct groups of scholars, from Balkh and Bukhārā. These legal opinions are very important. Integrated to the standard Ḥanafī law that developed in Iraq, they extended it in response to life exigencies, thereby adapting the theoretical law to a more varied practice. Taking Kaya's paper as a point of departure, my paper addresses the literary aspects of the process by which the legal opinions, or *fatwā*s, of the Eastern Iranians were preserved, transmitted and integrated to the standard law. I trace particular *fatwā*s from their compilation in the earliest Ḥanafī *fatwā* collection, *Nawāzil fi al-fatāwā*, by Abū al-Layth al-Samarqandī (d. 373/983 or 393/1003), to their complete assimilation into the Shariʿa. I demonstrate that while Eastern Iranian opinions started being introduced into standard Ḥanafī law by the 5th/11th century, at that time they only appeared in the *shurūḥ* (commentaries). Only in the 7th/13th century did such opinions penetrate into *mutūn* -- the *compendia* containing the most authoritative law -- thus acquiring the ultimate legal authority.

I suggest that a major role in the process that promoted the status of this Eastern Iranian material and its integration into standard Ḥanafī doctrine was played by a series of works written specifically for this purpose. They were all authored in the 6th/12th century by East Iranian jurists, and constitute a sub-genre of Ḥanafī literature. Each of these works, the most famous being *al-Fatāwā al-Khāniyya* by Qāḍīkhān (d. 592/1196), is a mixture of mainly East Iranian *fatwā*s with standard Ḥanafī doctrine. I argue that the strategy of combining the two kinds of material into a single legal discussion aimed at putting the *fatwā*s on an equal footing with the authoritative opinions of the school's founders, thus enabling their seamless integration into the standard doctrine.

The influence of these works was coupled with and perhaps strengthened by the preference of the Turks -- the Saljūqs and then the Mongols, who were advancing from Central Asia into the central Islamic lands -- for the uniquely eastern Ḥanafī doctrine, which they made efforts to establish. This specific historical context illustrates how the legal tradition of eastern Iran could make inroads into standard Ḥanafī law.

Contesting Anglo-Muhammadan Law in Colonial Courtrooms

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The creation of Anglo-Muhammadan law in colonial India based on translations of prominent books of Ḥanafī *fiqh* has been understood as inherent to the British colonization project that

aimed at displacing traditional sources of authority. Instead of Muslim actively resisting Anglo-Muhammadan law, Muhammad Qasim Zaman, in his seminal book, *The Ulama in Contemporary India,* demonstrates how Islamic scholars responded to the onslaught of the British legal project by fashioning their own institutions that would enable them to both resist the colonial project, and also reassert their authority within society. While academics have long recognized the modes of resistance fashioned by these institutions and their leaders, the role played by Muslim judges in the British colonial legal system has largely been ignored.

In the 1860s, the position of court advisors held by the *qāḍiṣ* of the foregone Mughal Empire was abolished. While this further isolated the traditional *muftī* class, at the same time the British allowed for Muslim judges to be admitted as judges to the High Courts. In this paper I will explore the first Muslim judge to be appointed to the British High Courts in India, Syed Mahmood Khan, son of the famed Syed Ahmed Khan. Though Syed Mahmood was educated in the UK, he received a rigorous religious education at the hands of his father, and was committed to the religious and political rights of Muslims. My research, based on transcripts and judgements of the Allahabad High Court, will focus on a particular case that was adjudicated in four separate instances, with the last instance being in front of Mahmood. The case demonstrates the way in which Mahmood resisted the British interpretation of Islamic law, provided arguments from classical Islamic legal sources to support his opinion, and successfully challenged the Privy Council thereby creating *ratio decidendi* in the process. By analyzing this case, and alluding to other judgements, this paper will argue that Muslim judges sitting on British benches were both resisting and refashioning Anglo-Muhammadan law by utilizing classical Islamic legal sources and principles within a modern British legal framework.

Functionalization of the Moroccan *Qāḍī*: The *Statut des Cadis* Decree of 1937-1938

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The imposition of the French Protectorate in Morocco (1912-1956) brought sweeping reforms to the status of the Islamic legal system in the country. My paper examines the structural and epistemological impact of such reforms through the lens of its traditional adjudicators, the *qāḍī*s (judges). In particular, the paper focuses on a 1937 Sharifian Decree that fixed the professional status of Moroccan shariʿa *qāḍī*s and implemented a state competitive exam (*concours*) by which they were evaluated. My paper first uses French archival sources to explain this Decree as an extension of the administration's myth of both respecting and controlling the shariʿa system. The Decree's authors outwardly promised to leave alone the "doctrine" of shariʿa while simultaneously imposing a hierarchical professional cadre reinforced by the *concours*. This indicates a crucial underlying assumption that shari'a consisted of fixed "doctrine" that could remain unaffected by manipulating its adjudicators. I then discuss the contemporaneous writings of certain Moroccan Islamic legal intellectuals (e.g. al-Hashimi al-Filali) who likewise implored the administration to improve the practices of shariʿa courts in the Moroccan legal system. However, this outward concurrence with French administrators was rooted in an Islamic legal revivalist discourse that French administrators never truly entertained. The Decree indeed shifted the extent to which Islamic legal discourse (in this case the Maliki *fiqh* tradition) could dictate the qualification of its adjudicators.
My paper thus uses the text of the Decree and its 1938 *concours* provisions to demonstrate a broader shift in the twentieth-century Moroccan *qāḍī*s' relationship to Islamic legal authority. The new methods of vetting candidates and classifying/disciplining their performance ensured

that the *qādī* could only perform his function within the confines of state authority. As seen in the 1937 documents, directing candidates to study state-legislated legal documents—with only vague reference to standard pedagogical *fiqh* texts—reinforced the shifting expectation of *qādī*s as state functionaries rather than adjudicators of a discursive jurisprudential tradition. The Decree did not, in fact, change the content of Islamic jurisprudential norms *per se* and their historical epistemological underpinnings. Rather, the French administration's stipulations subsumed the shariʿa judges into a nascent functionalized professional cadre under the auspices of bureaucratic regulation. This process presents a particularly clear paradigm of a much broader and deeper shift in the epistemology of Islamic legal adjudication in the twentieth-century nation state.

Featuring Fiqh

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Living in modern states with a centralized legislature, most contemporary Arab Muslims have scant knowledge of classical *fiqh*, as it was practiced in pre-modern times. Apart from the bits of fiqh they may have picked up at home and in school, they have recourse to religious figures with some training in modern versions of fiqh. However, when it comes to imagining and understanding the role of fiqh in earlier Muslim societies, most contemporary Muslims will largely be fictional treatments, in particular in films and television dramas. For Arab Muslims, the relevant medium here will be the 30-episode Ramadan drama, the *musalsal.*

This paper proposes to investigate the role of fiqh in the Arab historical *musalsal*, a job that has never been undertaken. Building on an earlier study I did on caliphal authority in historical *musalsalat*, this paper will concentrate on dramas set in the Abbassid period. It will collect scenes of *fiqh* – judges passing sentences, muftis giving fatwas, teachers instructing and students discussing – identify the issues at stake and assess the style of argumentation, the exercise of authority and the general image of a fiqh-based society created in the dramas.

The *musalsal* as a television genre had its modest beginnings in the 1970s and reached a stable level of production and professionalism in Egypt in the 1980s, and in Syria from the 1990s. It is thus more or less contemporaneous with the Islamic awakening (*al-sahwa*) in these countries, and scholars have demonstrated that producers and directors have responded to the *sahwa* and aimed at influencing, or even curbing, it (Abu-Lughod, Armbrust, Salamandra). A minor genre in terms of the numbers of *musalsalat* (but not in terms of expenses), this paper argues that the historical drama has had a special role in this cultural endeavour in that it creates the *imaginaire* of the truly Muslim society in contrast to modern realities. Focusing on the 2016 serial *Quda `Uzma* about the ten greatest Abassid judges, the paper points to the relevance of these judges' lives and learning for a disoriented Egyptian audience after the revolution of 2011, the short reign of the Islamists and the military coup of 2013.

Preserving Right, Forgiving Wrong: Mercy's Law in Iranian Criminal Sanctions

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Iran's criminal justice system affords victims of crime the right of retributive sanctioning. At the same time, the law encourages victims to forgo that right. The penal code also compels judicial

officials to attempt to achieve reconciliation. However, the law provides little guidance, either to victims or judicial officials, on how to bring about reconciliation. This compulsion without regulation, I suggest, sets into motion a semi-autonomous social field that generates a cottage industry of mercy and forgiveness work involving numerous and diverse agents. The different actors, sometimes competitors with varying motivations, forge and participate in this loosely regulated marketplace of reconciliation and settlement (solh va sauzesh).

This paper is part of a larger project, which is based on over sixteen months of research in Iran's criminal courts and the wider social field of forgiveness, including among the families of victims who are legally bound to make such decisions. I draw from archival and ethnographic research, on legal texts and judicial opinions, and participant-observation, interviews, and life histories conducted with over fifty family-members of victims, as well as numerous interested parties who make up this cottage industry, including judges, lawyers, prosecutors, NGO actors, social workers, community elders, and religious leaders.

In this paper, I seek to explore some of the ethico-religious dimensions and foundational logics of these laws. Of particular interest are the scriptural revelations addressing both retribution and forbearance, on which the laws are said to be based. These include the Qur'anic verses pertaining to exact retribution (5:45 and 2:178-9) that serve to limit the excessive use of violence (or vengeance), but also the Qur'anic directive that enjoins Muslims to command right and forbid wrong: amr be ma'ruf va nahi az monkar, which can be found in eight Qur'anic verses. To make sense of the relationship between the principle and the act of forbearance, I draw from a particular case in which the family of the victim consented to forgo retribution as part of a performative offering of this principle's first phrase, "amr be ma'ruf." To consider this work, I examine the scholarship on the topic, which includes Michael Cook's treatise on the subject (2000), as well as interviews I conducted with judges, social workers, legal experts, and several mojtahed in Qom.