Sharīʿa

In recent years, Islamic law, or Sharīʿa, has increasingly occupied center stage in the languages and practices of politics in the Muslim world as well as in the West. Popular narratives and quasi-scholarly accounts have distorted Sharīʿa's principles and practices of the past, conflating them with distinctly modern, negative and highly politicized reincarnations. Wael Hallaq's magisterial overview sets the record straight by examining the doctrines and practices of the Sharīʿa within the context of its history, and by showing how it functioned within pre-modern Islamic societies as a moral imperative. In so doing, Hallaq takes the reader on an epic journey, tracing the history of Islamic law from its beginnings in seventh-century Arabia through its development and transformation in the following centuries under the Ottomans, and across lands as diverse as India, Africa and South-East Asia, to the present. In a remarkably fluent narrative, the author unravels the complexities of his subject to reveal a love and deep knowledge of the law which will engage and challenge the reader.

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Sharīʿa

Theory, Practice, Transformations

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Preface and acknowledgments

Following the collapse of the Soviet Union, Islam has come to fill a pivotal conceptual role of an antithesis to the West, the self-described abode of liberal democracies and the rule of law. With the widespread rise of the Islamist movements during the last three or four decades, so-called Islamic law, or Sharīʿa, has increasingly occupied center stage in the languages and practices of politics – mainly in the Islamist camp itself, but also in the Western world. Popular narratives and a staggering array of quasi-scholarly accounts have distorted Sharīʿa beyond recognition, conflating its principles and practices in the past with its modern, highly politicized, reincarnations. This book is about distinctions; about what Sharīʿa – as doctrine and practice – represented in history; how it functioned within society and the moral community; how it coexisted with the body-politic; and how it was transformed and indeed appropriated as a tool of modernity, wielded above all by the nation-state.

Although this book has, in many ways, been in the making for over two decades, it was written between 2004 and 2008, during which period much in my thinking on the subject continued to change and develop. Over time, this thinking and the resultant book became increasingly grounded in frameworks of enquiry beyond the field of law in general and Islamic law in particular. And like many other books, its several chapters and sections were written under variable conditions. In part owing to these variations, and in part because of the inherently diverse nature of its subject-matter, the book deals with issues at various levels of description and analysis, and can therefore be read on more than one plane. Students beginning their exploration of the Sharīʿa and its history as well as readers peripherally interested in theoretical moorings may ignore the theoretical parts of the book, especially the second section of the Introduction and perhaps chapter 13 – a license that neither the specialist nor the advanced student might want to take.

I am fully aware that some readers might find the second section of the Introduction difficult to negotiate, even misconstruing its relevance to the work as a whole. This latter impulse should be resisted, since that

theoretical section is vital to positioning the work in the larger context of scholarship and the manner in which academic discourse has shaped modern politics and, importantly, our conceptions of law. This positioning is normative practice in such fields as anthropology, but has yet to be attempted in Islamic legal studies. Its value resides in depriving scholarly work of a claim to authoritative knowledge, in creating a dialectic between authorial intention and readership, and – more crucially – in positioning scholarship in a specific and highly localized context from which an attempt is made to understand the Other, the Subject. This positioning, which relativizes scholarly discourse, tends to reduce the risk of reconstituting the Other, which has thus far been a problematic enterprise in modern academia. This section, heavily Foucauldian, is therefore *not* about my ways of analyzing the subject-matter of Islamic law throughout the book (although I am no doubt indebted to Foucault, among many others, for certain analyses in Part III), but rather about the *book itself* and its place in the knowledge that has been generated in the field.

In the Introduction, I also point to the Bibliography at the end of this book as a register of the extensive debt I have incurred to others, be they legal historians, legal anthropologists, philosophers or thinkers from other disciplines. I learned a great deal from them even in those cases where I vehemently disagreed with much of what they had to say. Not to be excluded from this register of debt are my "*aṣḥāb*," the traditional Muslim jurists whose brilliant intellects and erudition continue to instruct in the exquisite art of methodical reasoning and systematic thinking. More personally, I have also incurred numerous debts to various individuals at McGill University, the most notable being Robert Wisnovsky, Laila Parsons, and Rula and Malek Abisaab – all of whom challenged my thinking and imagination on various issues of scholarship, and offered their friendship and care. With these colleagues, good dinners invariably turned into intellectual feasts.

My students deserve a special note of thanks for assisting me in the preparation of this book. Walter Young has been a magnificent assistant and a joy to work with. He checked the manuscript for consistency of footnotes and other technical errors, and supplied the great majority of references to three English translations of *fiqh* works in Part II (cited in square brackets). Fachrizal Halim, Ratno Lukito, Gregory Mack, Junaid Quadri, Aida Setrakian and Mida Zantout have all been very helpful in providing me with research materials. Emily Zitter-Smith, a finely trained lawyer and scholar, made valuable cautionary remarks that drew my attention to the various ways a Western lawyer might misinterpret what I have to say.

To Steve Millier I record here my continuing debt for his editing of my writings. Marigold Acland (of Cambridge University Press) has been a

model of generosity, efficiency and perspicacity, to whom I have accumulated a large debt over the years. An anonymous reader of the Press made a host of constructive and thoughtful comments, from which the book benefited. To her/him, I am deeply grateful. As Dean of Arts at McGill, the magnanimous John Hall has created an academic environment from which I have reaped great benefit. His successor, Chris Manfredi, admirably continues his unwavering support to a scholarly tradition otherwise increasingly under attack in North American academia. To both of them, I am immensely grateful. Last but not least, I record my profound debt to Charry Karamanoukian for her patience, immense kindness and moral support, as well as, no less, for her habit of engaging me in the larger theoretical issues that underlie this book.