Introduction

This book is an account of the social life of the sharia in Lebanon at the beginning of the twenty-first century. It draws on extensive and in-depth anthropological fieldwork in both Sunni and Shi'i Muslim settings, and seeks to describe and analyse the diverse modes and contexts in which different actors invoke the sharia, God's right path through life, as legalistically conceived within the Islamic tradition.[1] I turn from lessons in the mosque, to sessions in Lebanon's state-sponsored sharia (family law) courts, and on to the projects and institutions of one of the country's then most famous Islamic personalities, Ayatollah Muhammad Husayn Fadlallah (d. 2010). This breadth of scope seeks to capture something of the breadth of the sharia itself. It has been said that the sharia is a 'total' discourse, potentially addressing every aspect of life, even if, importantly, the sharia does not comprise the totality of Islam.[2] This book thus provides a sustained examination of what it means to take seriously a transcendent normative ideal, as a model for one's own life and as a model for the lives of others.

While often glossed as 'Islamic law', the sharia can be seen as providing not just legal, but also ethical precepts, as well as defining correct worship. Given that the content of those precepts is a matter of interpretation and debate, I thus prefer to talk of 'sharia discourse':[3] the mass of texts, conversations and institutions focused on the divine sharia. There are many excellent academic studies of the employment of such sharia discourse as law for the settlement of disputes in a wide range of historical contexts, very often based on court records. An important strand of this work has been interested in comparing the classical Islamic legal tradition with law in the West. Contemporary instances of sharia as state

[1] This is my own attempt at glossing the sharia, hopefully not too far from either Muslim or current academic understanding.
[2] Messick 1993: 3; Reinhart 1994: 8 and Hallaq 2009: 1–6. For trenchant comments on the dangers of a 'legal supremacist' view that takes sharia discourse as central to and definitive of Islam more generally, see Ahmed 2015.
[3] A term I derive from Messick (1993: 3).

law have, however, an ambivalent status. Sometimes taken as representative of the tradition, they are also often seen as distinct due to the ruptures of colonial and indigenous modernity. These contemporary instances generally take the form of the use of sharia discourse as family law within a larger, more or less secular legal system, as is the case in Lebanon. There is thus a rich literature on Muslim family law, which understandably focuses on issues of gender and reform and has more obviously pragmatic implications. For reasons I come to, Lebanon has not been so thoroughly studied as other countries in this regard, and it is one aim of this book to help address that. Among other things, I give an account of how marriage, divorce and other family legal issues are treated in the Lebanese Sunni and Shi'i sharia courts.[4] Another equally fascinating body of work, much of it by anthropologists, has examined Muslim piety and ethical practice in what is sometimes styled as 'everyday life' beyond the courts. This literature is not always interested in sharia per se, but the sharia provides a hugely important resource for Muslims seeking to lead a virtuous life and it is this aspect of sharia-minded practice that I am thinking of here as ethical.

These literatures are to a large extent separate. In this book, by contrast, I have tried to consider sharia as both ethics and law, and further, the relations between the two.[5] While a study of Lebanon's sharia courts lies at the centre of the book, I also explore the ways in which the sharia is invoked outside the courts, in the mosque and in the offices of religious authorities whose legalistic ethical interventions shape virtuous Muslim practice. I thus bring together different sorts of ethnographic material as well as different sets of theoretical concerns. My overall aim in doing so is both to make a substantial and novel contribution to the study of Islam, family law and the communitarian state in Lebanon and, more ambitiously, to address larger themes about the nature of the sharia more generally. More than that, as an anthropologist, I think my findings and ideas relevant to still more general conversations about the human condition, in particular the relationship between transcendental values – 'religious' or otherwise – and social practice.

Academic understanding of Islam has made genuine advances over the last century and more. Recent work, sensitive to the possible pernicious effects of Western depictions of Islam, has stressed the flexibility and

[4] For those who do look to this book for a guide to Muslim family law in Lebanon, I should stress, as I explain later in this Introduction, that my fieldwork mainly took place in 2007–2008 and there have been some important developments since.

[5] I am not the only person to do so. See e.g. Asad 2003: 202–256 and Agrama 2012, as well as Hallaq 2013.

progressive nature of Islamic discourse, in contrast with an alleged previous caricature of the Islamic tradition as static and conservative. This is important. But it is obvious that Islamic actors and discourse can in fact be both, sometimes rigid and unsympathetic, sometimes open-minded and flexible. How that can be so – a question not so often asked – is a key concern of this book. Instead of the sharia's flexibility, I thus like to think (loosely) in terms of what biologists call plasticity. Characteristics will be expressed differently in different environments. Some environments tend to express the sharia's flexibility, while others tend to harden it. In Lebanon, non-state, 'ethical' uses of the sharia are more likely to favour the former, I contend, and state legal ones the latter. This is therefore an ecological approach to the sharia, one with which an anthropologist, used to field study, can be happy.

However, I do correspondingly still hold that environment is not all: the sharia does have its own distinctive qualities which favour characteristic forms of expression. That is, there are some things that are crucial to it, without which it would surely be implausible to claim of something that it is genuinely of the sharia.[6] One such necessary characteristic, to my mind, is the divinity of the sharia's ultimate source: it is God's law, and thus in theory perfect. However, human attempts to understand and apply this perfect law are necessarily flawed, to a greater and lesser extent. The human science of Islamic legal studies, *fiqh*, is thereby often distinguished from its object, the divine sharia. And consequently there is an intrinsic tension between the divine ideal and its mundane instantiation whose consequences I trace through this book.[7]

This tension can be expressed in many forms and leads to others. My central organising theme is the contrast between the employment of sharia discourse within the state and outside it. This comes to me from my fieldwork: only certain portions of the sharia are applied as family law in Lebanon with the backing of the executive arms of the state; only a limited set of Lebanon's Islamic religious professionals are employed to do so. There are many who invoke the sharia in contexts outside those sanctioned by the state, and the contrast between working for the state or the state-backed official religious establishment and working independently of it is one that I found frequently discussed. Whether or not to work for the potentially unjust ruler is a long-standing dilemma in the

[6] To say so, I would argue, is not the same as to identify one particular instance of sharia practice as its essence – to essentialise it, in other words.

[7] This is what Johansen (1999) refers to as the 'contingency' of *fiqh*. On the distinction between *fiqh* and sharia see also Vikør 2005: 2–3. Some might see any claim as to something intrinsic to sharia-ness as challengeable, but I think this one relatively uncontroversial.

Islamic tradition; our contemporary environment of nation states poses the question in its own way.[8] It also provides a characteristically modern way of imagining an alternative, a putative 'Islamic state' that would in some way instead form an integrated and legitimate whole.

The tension between state and non-state does not, however, map simply onto the distinction between 'law' and 'ethics' that I have just invoked and that now needs further comment. In the modern Western tradition, now globalised in the form of the nation state, one does indeed think broadly of law as the domain of actionable norms subject to the tribunals and sanctions of the state, and ethics as the domain of personal and inter-personal norms beyond. These are the senses in which I rather loosely employ the terms in this book, and which do make sense in the context of modern Lebanon. But while this monopolisation of law by the state may be axiomatic for Western 'bourgeois legality', it is not necessarily so for other traditions, including the sharia, which gives ultimate legal sovereignty instead to God.[9] One can, for example, marry and divorce to God's satisfaction independently of the state. A key and related distinction made by the Muslim actors I worked with is thus between 'sharia' (*al-shar'*) and 'law' (*qanun*), by which they mean human-made state law. A form of law other than that of the state is not only imaginable, but readily available in sharia discourse. It can be acted upon without, even contrary to, the sanction of the state, as we will see.[10] This does not preclude the possibility that sharia discourse might itself be employed as state law, nor indeed that the sharia itself contains distinctions between different sorts of norms, ones that could be glossed as 'legal' and 'ethical' in meaningful ways. But such differentiation does not turn on the notion of the state in the same manner.[11] When I talk of law and ethics here, then, I do so in a correspondingly open-ended way, as a

[8] See e.g. Vikør 2005: v and passim.
[9] On 'bourgeois legality' see Fitzpatrick 1984, a reference I owe to Strathern 1985. On the broader point see Dresch 2012.
[10] We can thus think in terms of 'legal pluralism', both in colonial and postcolonial Lebanon and related contemporary contexts, but also in the pre-modern Muslim world. The notion of legal pluralism has generated a considerable literature, and some working on Islam and the Middle East find it helpful (see e.g. Dupret et al. 1999; Shahar 2008, 2015; Tillier 2015 and Baldwin 2017). Having noted the plurality, however, I have largely gone my own way in analysing it.
[11] Putting aside the broad distinction between matters of worship (*'ibadat*) and social transactions (*mu'amalat*), the Islamic legal tradition also differentiates between matters of inner conscience, which only God can judge, and those of outward behaviour, which are available to human judgement. See Johansen 1999; Peters and Bearman 2014 and Chapter 10 of this book.

means to expand the scope of my research into the uses of sharia discourse, rather than in a rigid or doctrinaire fashion.[12]

The distinction I heard drawn between divine sharia and human law also has its echoes in others. Through the book, I trace a ramifying series of other such binaries, many valorisations of different approaches to legal practice: flexible versus wooden; easy versus strict; humanity versus bureaucracy. In putting such contrasts and tensions at the centre of my account, I not only follow the lead of my informants, but I also foreground the dynamism that ensues. Dissatisfaction at imperfect practice of the sharia leads to attempts (not always successful) to do otherwise, which are in their turn subject to critique, in what one could see as a dialectical process.[13] I thereby seek to avoid a static depiction of sharia discourse, seen by recent academic scholarship as pejorative. However, I do so not merely by privileging examples of the sort of change and flexibility that appears attractive to a Western liberal audience. In short, I aim to provide an analysis of sharia discourse that is realistic as well as genuinely dynamic, one that I hope will resonate with similar such studies in other contexts. In the rest of this introduction, I start by expanding on these themes, before explaining more of the distinctively Lebanese context of my project and the nature of my sources.

Understanding the Sharia

To the best of my knowledge, no comparable study exists for the case of Lebanon, although there is obviously no shortage of discussion of the sharia more generally. Even restricting oneself to academic works in English – and there is no good reason why one should – one is faced with a vast literature. That literature, in one way or another, explicitly or implicitly, is written in response to a wider, non-Muslim, mostly 'Western' preoccupation with Islam and the sharia. Translated into academic terms, that amounts to a set of stock concerns, largely negative in polarity. Is religion, and *a fortiori* Islam, fundamentally non-modern? If so, how does one explain its enduring and currently highly visible power and popularity? Otherwise put, are Islam and the sharia distinctively 'other', essentially and irreconcilably different from the modern liberal

[12] I take this to be the most problematic aspect of the analytical lens of 'legal pluralism': the seemingly irresolvable debates about what makes something 'legal' or otherwise. See e.g. Roberts 1998.

[13] More in the spirit of Weber, or a micro-historical version of Marshall Hodgson's (1974: 79ff.) notion of Islamic history as a dialogical process perhaps, than Ernest Gellner's (1981) rather different dialectical account of 'Muslim society' after Ibn Khaldun. Again, see also Vikør 2005: v.

tradition (or, in vulgar terms, 'Western values')? Is Islam intrinsically and irredeemably patriarchal, for instance?[14] Can we see the sharia – so often glossed as 'Islamic law' – as law proper? If so, what might 'sharia law' look like? As 'religious law', is it based on fundamentally irrational principles? Is its (Western) reputation for harshness and arbitrariness deserved? Further, is there indeed, as the cliché goes, no distinction between religion and politics in Islam? Does the sharia amount to a totalising vision that seeks to govern every domain of life and allows no rival? And is that vision one trapped in an idealised past of religious nostalgia?

In keeping with the spirit of postcolonial times generally, and in response to the prejudice and indeed organised violence meted out to Muslims by Western liberal democracies more particularly, much of this literature takes an apologetic stance towards such suspicious interrogations. Islam and the sharia are fundamentally misunderstood. For one thing, one would want to emphasise the diversity of positions and practices across the world's more than one billion Muslims. Further, the pragmatism, openness and flexibility of sharia discourse are stressed. Despite the uncommon, horrific exceptions, one can put aside largely unrealistic fantasies of judicial stonings and amputations, which actually require improbably demanding burdens of proof.[15] And while much of the prolific field of studies of gender in Islamic contexts is critical in tone – and for good reasons – much also highlights the possibilities within the tradition for women to further their interests, and indeed also the receptivity of the largely male body of Islamic legal scholars to such projects and their ability to respond to the challenges of mundane life and its changing circumstances more generally.[16]

Again, recent scholarship on these and other issues often seeks to distance itself from an earlier 'Orientalist' literature that allegedly thought of the Islamic tradition as, on the contrary, static, rigid, hidebound and stuck in the past.[17] Rather, the sharia can 'keep up with the times', as I heard it put in Lebanon. This keeping pace with change is, in the academic literature, largely thought of as taking place through the exertions of the mufti, the Islamic legal scholar who produces fatwas, or

[14] It has of course been extensively argued that liberal modernity is itself intrinsically patriarchal.
[15] See e.g. Peters 2005.
[16] The field of Islam and gender is too vast to cite comprehensively here. But on both counts one could cite the work of Ziba Mir-Hosseini (1993, 2000), for instance. For a historical account in such a vein, see Tucker 1998.
[17] Whether fairly or unfairly, the scholars most frequently cited here are Snouck Hurgronje, Joseph Schacht and Noel Coulson.

ethical-legal opinions, in response to the questions and dilemmas of the Muslims of his (or, rarely, her) time. Such deliberations extend even to the most super-modern of ethical challenges such as cloning, in vitro fertilisation or sex-change operations, on which the 'open-mindedness' of such scholars often surprises, but are also less sensationally seen as underpinning the historical evolution of the corpus of Islamic law more broadly.[18]

In parallel with this emphasis on the flexibility of the sharia, there has also developed another, seemingly opposing theme that is rooted more in the study of 'sharia courts' and responds to a different strand of criticism of the sharia; its 'irrationality' in legal terms. Here one is faced with an almost proverbial trope of the Islamic judge's arbitrary and unfettered discretion: 'Qadi-justice', in the phrase now rather unfortunately associated with Max Weber's wide-ranging comparative investigations. A considerable literature has arisen in response to this accusation of excessive flexibility.[19] On the contrary, it is argued, sharia discourse forms (or at least formed) a coherent and predictable legal system where the judge rules according to a settled array of principles and standards and within a set of firmly established institutions that can be seen to include judicial review and courts of equity.[20] In response to the nominal 'totality' of the sharia, which overflows the bounds of what the liberal tradition denotes as law, one strand of writing thus wishes to recuperate and recognise its strictly legal part.[21]

It is important to see, then, that the sharia could and no doubt has underpinned a workable, organic legal system, worthy of respect as such. But another body of work wants to remind us that this is still not the same sort of legal system as that of the modern nation state – and indeed, some would say, all the better for it. One thinks here especially of the work of Wael Hallaq, perhaps the most prominent of contemporary academic scholars of the sharia. For Hallaq, modern nation-state rule comes from above and can thus only be realized through surveillance, discipline and punishment, not to say violence. The nation state is the creature of the post-Enlightenment tradition, a ruinous power-knowledge complex oriented towards domination and destruction, of the natural world and

[18] On the work of the mufti see Masud et al. 1996. For the super-modern examples see e.g. Clarke 2009. For the centrality of the mufti to the evolution of the Islamic legal tradition in response to changing times more generally, see Hallaq 1994 and Gerber 1998, among many others. For a critical response to this strand of literature see Calder 2010 (and Gleave's (2010) introduction to it).

[19] I discuss 'qadi-justice' at greater length below, but key references here would include Rosen 1989; Gerber 1994 and Powers 1994.

[20] On the latter points see Powers 1992.

[21] See Johansen 1999.

the human world, as in the horrors of European colonialism. Historical societies subject to Islamic law, by contrast, were largely self-governing, because the sharia constituted a non-state legal system rooted in the morality and concerns of the communities from which it sprang. Sharia was independently formulated by Islamic legal scholars and practitioners in response to popular need, and not codified and imposed by a state legislature and executive until the onset of 'modernization'. The institutions that animated this admirable grass roots, morally infused legal system were then systematically destroyed under colonial rule.[22]

Hallaq's particular, polemical expression of this position aside, the notion that the advent of modernity constitutes a historical rupture for Muslim societies and their sharia-oriented institutions is a well-established one. In Brinkley Messick's characterisation, the 'calligraphic' mode of textual domination typical of sharia-oriented society stands for the personal and open nature of sharia authority: given its transcendental, divine source, the sharia is in theory available for continuous reinterpretation by any qualified scholar and fully knowable only by God. In the resonant phrase of the Ottoman modernisers who sought to fashion a European-style code out of Islamic legal materials, sharia discourse has thus become a vast 'ocean without shores'. Contrast, however, the impersonality of the printed text of the modes of bureaucratic domination typical of modernity: set at the centre by the state, law is restricted, standardised and reproducible.[23]

And yet the notion of rupture would seem to entail the inevitable consequence that 'sharia proper' has to be regarded as something pre-, or at least non-, modern. At the present juncture, subsequent to modernization and secularization, with the educational and other institutional and moral structures that nourished the Islamic legal tradition destroyed, there can be no return to the sharia. In Hallaq's words, it is left 'in tatters'. And thus, he argues, despite the delusions of modern Islamists, current claims to Islamic Republics and Islamic States are anachronistic and doomed to failure.[24] 'The Islamic [nation] state' (*al-dawla al-islamiyya*) is a modernist fantasy.[25] By extension, those institutions that currently claim some connection to the sharia, not least the 'sharia courts' that are effectively restricted to family law across much of the Middle East, would be 'sharia' in name only.

[22] Hallaq 2004, 2009: 357–550, 2013. [23] Messick 1993: 54 and passim.
[24] Hallaq 2009: 429, 500, 549–550, 2013. On the Iranian Islamic Republic see e.g. Zubaida 1993.
[25] On the modernity of the use of the Arabic term *dawla* for 'the state', let alone the construction *dawla islamiyya* ('Islamic state'), see Hallaq 2013: 62–63, 190nn145–146.

To take up my own particular example, Lebanon's contemporary sharia courts would seem a case in point, taking their place as they do alongside other religious personal status tribunals within a civil republic founded in the twentieth century, one of the many nation states carved out of the ruins of the Ottoman Empire by the 'Great Powers'. The actual systematicity of pre-modern sharia discourse and sharia-minded polities might be worth debating.[26] But I certainly agree that one does not find much structural coherence in the social life of the sharia in present-day Lebanon: the activities of scholars generating Islamic legal discourse outside the courts seem largely disconnected from the activities within them, for example. Where I perhaps differ is in thinking that this does not render contemporary sharia discourse and the personalities who employ it necessarily inauthentic to a true, now deceased tradition, even if many of the religious professionals I worked with had an equally bleak view of Islam's current predicament.[27] As an anthropologist, working with people in person, one is in an immediate sense obliged to take one's subjects seriously, to assume the sincerity of those who seek today to live a life oriented towards the sharia, even if in doing so they move through a fragmented landscape of authority. In any case, even if a tradition has been fragmented, it does not make it any the less worth studying.[28] But I also wonder whether some sort of incoherence, between ideal and practice at least, is not inevitable for any transcendental tradition.[29]

There are good reasons to think that mass literacy, education and media have transformed the relationship between individual believer and their religion.[30] Another approach thus talks instead of Muslim modernities – different visions of what it is to be modern from the hegemonic Western version.[31] Some of the impulse to do so stems no doubt from the normative character of modernity. To be non-modern is, for moderns, to be in some sense inadequate. A sympathetic account thus insists on the recognition of co-evalness. But one should nevertheless remember that the critique of modernity has an eminently respectable genealogy in the hegemonic West too. It should not be inconceivable to sympathetic analysts that part of the appeal of sharia discourse might in fact lie in its non-, or anti-modernity, even if the theme needs careful handling.

[26] See e.g. Calder 2010. [27] Contra Hallaq, see also e.g. March 2015.
[28] As Anand Pandian (2008) has argued, with reference to India but in conversation with MacIntyre's (1981) notion of the fragmentation of the Western moral tradition in the wake of the Enlightenment.
[29] See also Laidlaw 2014: 126–137, 154.
[30] See e.g. Eickelman 1992 and Starrett 1998.
[31] See especially Deeb 2006, but also e.g. Bernal 1994 and Brenner 1996.

A different response might be to abandon particularism altogether. The focus on sharia in the legal history of the Middle East has arguably led not only to a relative lack of interest in much else of obvious importance – Ottoman Sultanic law (*qanun*), for instance, or 'custom' (*'urf*) – but has also hindered a proper comparative discussion that can place historical Muslim contexts alongside those of Europe, say, rather than seeing them as radically other.[32] To take this approach would also be to argue against the Orientalist tradition, but not through an 'Orientalism in reverse' that preserves an Occident/Orient dichotomy while reversing the moral judgements associated with it.[33] So too the particularism that the discourse of modernity and its ruptures implies. While I do find modernity more than a term of normative judgement and imagine that no one would dispute that there have been dramatic changes in Middle Eastern cultures and societies in the last few hundred years, I also agree that we need to keep continuities in mind, in time and space.[34] Tension and disconnection between sharia-minded institutions is not, I would imagine, a function of modernity per se; it surely could be found before. But there is in any case no necessity (in academic discussion at least) for any particular historical instance of the sharia tradition to stand for the paradigmatic version of it, nor any compulsion to take up such an essentialised version as a model of difference from other essentialised legal, ethical and political traditions. In sum, I accept the particularities of the contemporary Lebanese context, but would find it harder to accept that they render my findings irrelevant to broader discussions about Islamic and other legal history.

Anthropological Approaches

To turn to my own discipline, the anthropological contribution to the study of Islam has largely been seen as a matter of capturing real-life practice as opposed to mere theory and doctrine. We thus now have a set of excellent ethnographies of sharia courts to set alongside the burgeoning historical literature.[35] It has nevertheless become commonplace after Talal Asad's hugely influential proposition that Islam be seen as a

[32] See e.g. Shalakany 2008. Mallat (2007) develops instead the more capacious notion of 'Middle Eastern law'.
[33] Al-Azm 1981.
[34] For the same point in deeper historical perspective, see Baldwin 2017: 55–56.
[35] Many are referred to below, but for the ethnographies see e.g. Rosen 1989; Messick 1993; Mir-Hosseini 1993; Hirsch 1998; Peletz 2002; Bowen 2003 and Stiles 2009. For the historical accounts see e.g. the references made in Masud et al. 2006: 3–4 and Agmon and Shahar 2008 – more have of course followed since.