Index

Abduh, Muhammad 39–40, 51
Abou El Fadl, Khaled 226–7, 257
Abramski-Bligh, Irit 46
Afghanistan 4, 84
Islamic clothing/burqa wearing 243, 248, 249
Ahmed, Leila 246
al-Ahkam al-Sultaniyah (al-Mawardi) 13
al-Ashmawy, Muhammad Sa’id 257
Al-Aswani, Ahmad 274–5
al-Hibri, Azizah Y. 258–9
al-Hujailan, Maha 253
al-Mawardi, Abu Hasan 13, 39, 41, 45, 218
al-Mawdudi, Abul A’la 176, 177
al-Nabhani, Taqiyyuddin 39
al-Qaeda 38
al-Raziq, Ali Abd 17
al-Shadr, Muhammad Baqir 176
al-Shafi‘I, Muhammad Idris 45
alternative dispute resolution see mediation, arbitration and Islamic alternative dispute resolution
al-Turabi, Hasan 43–4
Anitha, Sundari 130
An-Na’im, Abdullahi A. 107–8, 110, 144, 257, 258
Anwar, Zainah 122
apostasy (riddah) 225–6
consequences of apostasy 268
as a criminal offence 268, 271
debate on 268–75
disparities in Islamic jurisprudence 269
perspectives on riddah in the primary sources 269–71
relevance of apostasy in modern times 268
in Egypt 268, 271, 273–4
in Malaysia 268, 271, 271–3
riddah as criminal offence 268
silencing opposition, role of apostasy in 271
in the West 274–5
Arab Spring 242
arbitration see mediation, arbitration and Islamic alternative dispute resolution
Aslan, Reza 246
Australia 62, 65, 71, 73, 78
clothing, Islamic/burqa wearing 252–3
divorce 139
fatwa in Australia: case study 97–8
halal food and pre-stunning animals 266, 267
indigenous peoples, concepts of property of 199
Islamic community, diversity of 97
marriage 128–9
‘limping’ marriages 139
polygyny 123–4
places of worship, building 261–2
property, concept of 195
Sharia law 74
Sharia-compliant investment and banking market 185
taxation of Islamic financial products 187
Austria 252
Ayoub, Mahmoud 225
Azad, Maulana 127
banking see under economics and Islamic law
Belgium 252
Bentham, Jeremy 194
Blackstone, William 194
blasphemy 268, 271
critical analysis of certain Islamic law principles as 10
bonds, Islamic (sukuk) 188
Bowen, John R. 168
Brown, Nathan J. 258
Caerio, Alexandre 100
caliphate 39–41, 70, 72
caliphate theory of state and governance 12–13, 15
role and powers of the caliph 13
Canada
alternative dispute resolution 165
Islamic clothing 248
citizenship ceremonies 253
polygyny 123
Chiba, Masaji 96
children, custody and maintenance 140–42
child abduction 142
custody 127, 141–2
father’s rights and duties 140–41
interfaith marriages 113
legitimacy 111, 124
maintenance 140–41
mother as custodian 141
rights 140
China 42
halal certification 56
citizenship and Sharia in modern nation-states 62–79
conclusion 78–9
dhimmah, concept of 71–2
Muslim nation (ummah) in modern era 69–71
Muslim communities 71
Muslims, citizenship and Sharia 72–8
community of Muslims, importance of 72–3
‘mainstream’ Muslim majority 77–8
‘marginal’ interpretations of the Quran: interpreting kofr 74–5
minority extremist views 74
using a negative interpretation of the Quran, Sūra Nisāa 4:141 75–7
whether Sharia practice threatens core values of democracies 73–4
nation-state, citizenship and nationality 63–5
citizenship, concept of 64–5
nationality, concept of 64
‘nation-state’, concept of 63
state, definition of 64
Sharia in a modern nation 65–7
individuals practising principles of Sharia personal law 63, 78
no separation of law and religion 65–6
tensions between Islamic traditional doctrines and nation-state concept 62–3
terms 68
versions of Islam in the West 67–8
see also Sharia and the state
Clarke, L. 123
clothing, Islamic and ahadith 247–9
burqa bans in the West 249–53
debate on the burqa 243–53
disadvantages of wearing the burqa 248
history of female veiling 244
increase in veiling 244–5
and the Quran 245–7
types of 243
women’s right to wear the burqa or nisab 248
constitutionalism principles of 40
and Sharia see Sharia and the state
contemporary debates on and within Islam 242–76, 285
apostasy, debate on see under apostasy
building places of worship, debate on see places of worship, building
burqa, debate on 243–53
competing interpretations of Islam 242–3
Index

conclusions 275–6
halal food debate 265–7
Sharia and the state, debate on see Sharia and the state
Coulson, Noel 7
criminal law, Islamic 217–37, 284
abandonment of full Islamic criminal law by most countries 217, 284
categories of crime 218–19
adultery (zina) 222, 235–6
adultery, accusations of (qazf) 223
apostasy (riddah) 225–6, 268
see also apostasy (riddah)
armed robbery 225
drinking intoxicants (shurb) 223–4
intentional killings and bodily harm 220, 237
looting 225
rebellion (bagy) 226–7
semi-intentional and unintentional killings 220–21
terrorism 225
theft (sargah or sirqah) 224–5, 231–2
conclusion 237
increase in number of countries applying Islamic criminal law 217
objectives of criminal law 217, 227–8
objectives of punishment 227–8, 230–31
reform of Islamic criminal law in the modern world 227–37
differences of fact or opinion (shubhah) 234–7
reinterpretation 229–33
repentance (tawbah) and intercession (shafa’ah) 233–4
types of punishment 218–27
categories of punishment 219–20
elastic punishments 228
firm punishments 228
hadd for accusations of adultery (qazf) 223
hadd for adultery (zina) 222
hadd for apostasy (riddah) 225–6, 268, 269–70
hadd for drinking intoxicants (shurb) 223–4
hadd for rebellion (bagy) 226–7
hadd for theft (sargah or sirqah) 224–5
hadd for waging war against God (hirabah) 225
hadd 211–2
ghararah 219, 220
qisas and diyah 220–21, 237
ta’zir 220, 227, 269
Cross, P. 123
dar al-harb (non-Muslim territory) 42–3, 72, 73, 74
dar al-Islam (Muslim territory) 42–3, 72, 73, 74, 285
dar al-sulh/dar al-hayad (territory of peace) 72
debates on contemporary issues see contemporary debates on and within Islam
defining terms 1–2, 68
Denmark
cartoons satirizing the Prophet Mohammad 84, 264, 274
forced marriage 131
dhimmah, concept of 71–2, 74
din (religion of Islam) 2
see also Islam
divorce 131–40, 142–4
children see children, custody and maintenance
contemporary issues in divorce 139–40
western and secular nations 139–40
divorce by the husband 132–4
divorce by the wife 134–8
delegated right of divorce to wife 121, 137, 144
divorce by breach of condition 136–8
divorce by redemption 134–5
fault divorce 135–6
irrevocable power of attorney on behalf of husband to divorce 120
other forms of divorce 138–9
Dworkin, Ronald 20

economics and Islamic law 175–90, 284
failure of Middle East economy to modernize 175
financial derivatives 179
global economic crisis, effects of 176–7
insurance 179, 184, 188–9
interest
banned 177
and *riba* and fatwas 181–3
Islamic financial institutions and their products 177, 183–9
differences between conventional banks and Islamic banks 185–6
Islamic bonds (*sukuk*) 188
Islamic financial institutions, opening of 183–5
Islamic insurance (*takaful*) 188–9
‘Islamic windows’ in major financial institutions 185
leasing (*ijara*) 187
profit-margin sales (*murabaha*) 186–7
trustee finance contracts/trust financing (*mudaraba*) 186
principles of Islamic economy 178–81
gambling/speculation (*maysir*) prohibited 179, 181
need for transparency and fairness 178–9
risk or uncertainty (*gharar*) prohibited 178–9, 181
surplus value without corresponding gain (*riba*) prohibited 179–81

responses to current economic conditions of Muslim world 176
*riba*, fatwas and interest 181–3
bank interest as *riba* 181, 182
Egypt 69
apostasy (*riddah*) 268, 271, 273–4
bank interest not *riba* 181

clothing, Islamic/veiling 244, 248
*dar al-ifda* 47
divorce 135, 137, 138
elections 242
fatwas 89–91
inheritance 203–4
Islamic financial institutions 183
judicial independence 46–7
marriage 120, 128
muftis 88
Muslim Brotherhood 52–3, 242
places of worship, building 259–60
Eid al-Adha 265
ElAhdab, Abdul Hamid 161–2
Engineer, Ashgar Ali 127
European Council for Fatwa and Research (ECFR) 54
fatwas, issuing 96–7

family law, Islamic 107–44, 284–5
conservative and literalist interpretations, survival of 107–8
divorce see divorce
Islamic family law promoted as bastion against secular society 109
marriage (*nikkah*) see marriage (*nikkah*)
source of contestation between conservative/modernist views 108
special significance of family law for Muslims 107, 108
many Muslims living in accordance with Islamic family laws/values 109
variance in family law and inherent adaptability of Islamic law 109–10
fatwas and muftis 78, 83–101, 155
Ayatollahs (Shia tradition) 85, 91, 155
conclusion 100–101
*dar al-ifda* (house of guidance), role of 47, 88
death sentences in fatwas 84

Modern perspectives on Islamic law

Ann Black, Hossein Esmaeili and Nadirshah Hosen - 9780857934475
Downloaded from Elgar Online at 07/25/2019 05:12:27PM via free access
fatwas, concerns in the West about 83–4
fatwas issued by scholars/jurists 83
fatwas, meaning of 83, 85
fatwas, nature of 85–6, 95–6
  compilation 86
  as positive and integral component of Islamic law 84–5
  publication 85
fatwas in non-Muslim countries 95–8
  authority for fatwa socially conferred 96
  case study: fatwa in Australia 97–8
  ECFR fatwas 96–7
female Islamic scholars issuing fatwas 96
fatwas online 98–100
  minimal quality assurance 99
  requests to foreign websites, problems with 100
  use by Muslims in non-Muslim countries 99–100
ifta, contemporary 88–95
  case example-permissibility of post-mortems 89–91
  distinction between fatwas and qada (cases) 91–2
  diversity within Muslim nations for ifta 92–5
  issues addressed by fatwas 88–9
  ifta emergence and development through centuries 86–8
  ifta as issuing of fatwas 83, 86
muftis (Sunni tradition) 86–8, 91, 155
ulama (specialist body of Islamic scholars) 83, 85, 91, 101
Fawzy, Essam 120, 128
fiqh see Islamic jurisprudence (fiqh)
Fiqh Academy 47, 183, 188–9
Fischer, Johan 55
food see halal food
Forgotten Queens of Islam (Mernissi) 41
Forte, Professor David 285
Fournier, Pascale 139–40
France 54, 71, 73
burqa banned in public places 250–53, 264
hijab banned in schools 264
fundamentalism 23, 66
Galanter, Mark 154
gambling/speculation (maysir) see under economics and Islamic law
Germany
  forced marriage 130, 131
  slaughtering animals without pre-stunning lawful 266–7
gharar (risk/uncertainty) see under economics and Islamic law
Ghazali, Imam Abu Hamid Mohammed 16, 41
Gill, Aisha 130
Gomaa, Sheikh Ali 47
hadd (specific punishment) 4
  see also criminal law, Islamic
hadiths see under Mohammad, Prophet
Hak, Nora A. 162
halal food 54–5
  halal certifiers in Muslim society 54–7
  difficulty in maintaining consistency in halal certification 55–6
  use of halal certification relatively common 56–7
  halal food debate 265–7
  prohibited food 55, 56, 265
  change of state 56
  cross-contamination 55
  slaughtering without pre-stunning, controversy over 266–7
Hallaq, Wael 12, 100–101, 157
Hamas 53
Hanifah, Abu 236
haram (forbidden acts) 4, 5
Hassan, Kamal Halili 163
Hassan, Riaz 69
Haykal, M. Husayn 39, 40
Hazm, Ibn 178
Heath, Jennifer 244
Houri, Albert 244
human rights and justice 20–22, 24
  as contentious area of Islamic law 21–2
and criminal law 237
fatwas 84
female oppression and wearing
Islamic clothing 249
introducing human rights into
Muslim world, ways of 22
Islam and human rights 20–21
as part of the rule of law 20
respect for religious figures to be a
human right 275
traditional Islam/historical Sharia,
human rights not central focus
under 21

*ibadat* (ritual) 3, 5
*iijtimad* (scholars inferring rules of
Sharia), concept of 17–20, 283
collective *iijtimad* 83, 85, 101
ECFR 96–7
Indonesia 87, 94–5
fatwa as product of 91
importance as concept and in
developing Islamic law 17, 19,
20
independence of judiciary in
reasoning 45
not reversible 94
origins 17–19
role 19
three stage classification 19

*Imamat* see under theories of state in
Islamic law
India 42, 77
burqa wearing 243
divorce 144
inheritance 203
Indonesia 42, 69, 242, 283–4
bank interest as *riba* 181
clothing, Islamic 249
Constitution 53
fatwas/ifta 85, 87, 93, 94–5
voluntary nature 93
*halal* food and pre-stunning animals
266
*halal* certification 57
inheritance 203
Islamic parties 53–4
*pesantren* (Islamic school) 50–51
places of worship, building 260–61
‘third way’ of constitutionalism, as
example of 259
traditionalist and modernist Muslims
52
‘unity in diversity’ 283–4
inheritance law 200–204
basic principles 202–4
Shia law of inheritance 203
Sunni law of inheritance 202–3
inheritance law of modern Muslim
countries 203–4
pre-Islamic Arabian custom of
inheritance 200–201
Quranic principles of inheritance
195, 201–2
see also property rights, inheritance
law and trusts (*waqf*)
institutions and Islamic law see Islamic
law and institutions
insurance 179
and *gharar* and *maysir* 189
Islamic insurance (takaful) 184,
188–9
intercession (*shafa’ah*) see under
criminal law, Islamic
International Monetary Fund 177
interpretations of Islam
conservative and literalist
interpretations of family law,
survival of 107–8
different/competing interpretations
of Islam 66, 242–3
interpretations of the Quran
debates about 7, 9, 24
‘marginal’ interpretations of the
Quran: interpreting *kofr* 74–5
using a negative interpretation of
the Quran, Sura Nisa 4:141
75–7
original sources of law, new methods
of interpreting 11
reinterpretation of criminal law
229–33
Iqbal, Walid 159
Iran 243
children, custody of 141
clothing, Islamic/veiling 248–9
Index

Ann Black, Hossein Esmaeili and Nadirsyah Hosen - 9780857934475
Downloaded from Elgar Online at 07/25/2019 05:12:27PM
via free access
property rights see property rights, inheritance law and trusts (waqf)
and religion see religion and law
sacred legal system 10
and Sharia 3
see also Sharia
sources see sources of law
theories of state see theories of state in Islamic law
tribal and moral norms of different Muslim societies 33
trusts (waqf) see trusts, Islamic (waqf)
Islamic law and institutions 38–58, 283
conclusion 57–8
dar al-ifta in Islamic governance, role of 47–8
halal certifiers see under halal food
Islamic organisations and political parties 51–4
the Islamic state and Islamic political leaders 39–43
constitutionalism, principles of 40
female leaders 41–2
no single model of state-religion relationship in Muslim world 42
pre-conditions for becoming an Islamic political leader 41
whether khilafa is the only valid type of Islamic government 39–40
world divided into Islam territory (dar al-Islam) the rest (dar al-harb) 42–3
judiciary in Islamic governance 45–7
madrasa and Islamic university, role of see madrasa and Islamic university
mosques (masjid) in Islamic community, role of see under mosques (masjid)
shura in Islamic governance, role of 43–4
shura membership 44
shura role and functions 43, 44
Italy 252

jihad (warfare) 74, 77
Jordan
divorce 136
hijab wearing 245
inheritance 203
marriage 117
polygyny 123

judiciary
independence of judiciary, arguments in support of 45
role of judiciary in Islamic governance 45–7

Kadivar, Mohsen 21
Kamali, Mohammad Hashim 45, 270
Katouzian, Professor Nasser 197
Khadduri, Majid 15, 21, 65, 70
Khallaf, Abd al-Wahhab 40, 44, 45, 258
Khomeini, Ayatollah 15
fatwa on Salman Rushdie 84, 274
Kitab al-Kharaj (Abu Yusuf) 13
Krivenko, Ekaterina Yahyaoui 144
Kuran, Timur 175, 210
Kuwait
divorce 136
hijab-wearing 245
polygyny 123

land see under property rights, inheritance law and trusts (waqf)
law and religion, Islamic see religion and law
leasing (ijara) 187
Lebanon 77
inheritance 203
state muftis 88
Lewis, Bernard 70

Long Divergence: How Islamic Law Held Back the Middle East, The (Kuran) 175

madrasa and Islamic university 50–51
Islamic universities 51
origin of the madrasa 50
Mahmud v Mahmud case 130
Maitland, Frederic 204
makruh (disliked acts) 4
Malaysia 55, 69, 242, 283
Index

apostasy (riddah) 268, 271, 271–3

see also divorce

Maududi, Abul A’la 44

clothing, Islamic/veiling 245, 249

mediation, arbitration and Islamic

alternative dispute resolution 154–68

collection 168

clothing resolution dispute 164–8

Islamic ADR in the UK 165–8

foundations in Islam for dispute

resolution 156–64

arbitration (tahkim) 160–64

features of tahkim 161–34

mediation (sulh) 156–60

intercession (wasita) 155

international arbitration 155

long tradition of alternative dispute

resolution 154, 167–8

representation (wakalah) 155

Medina, Charter of 69

Menski, Werner 110

Mernissi, Fatima 41–2

Messick, Brinckley 87

Mir-Hosseini, Ziba 125, 138

Mohammad, Prophet 6, 9

allegiance, swearing 17

commercial transactions, fairness in

178

divine revelation guiding 7–8

early sayings (hadiths) 206

call to prayer 263

continuous charity (waqf) 206

crime 218–19, 230–31, 234

family matters 107, 115

first treaty of Islam 69

marriage 111

Medina, head of 15

Quran and Sunna 1, 7–8

see also Quran; Sunna

Morocco 87, 243

apostasy (riddah) 268

divorce 136

mediation 158

mosques (masjid)

controversies regarding mosques in

the West 49

female leadership 48

features of marriage 111–14

legal contract 111–12, 114

legal impediments to marriage 112

mutual rights and obligations 111

religious requirements 112–14

sexual relations only within

marriage 111

inter-faith marriages 112–13

the marriage contract 114–21, 143

conditions (shurur) 119–21

dower (mahr) 117–19, 139–40

legal capacity 116–17

offer and acceptance (ijab and

qabul) 115–16

witnesses 119

other forms of marriage

polygyny 120, 121–4, 143

temporary (muda) and ambulant

(misyar) marriages 124–5

rights and duties within marriage

125–7

wali, role of 115–16, 118, 143

forced marriages 116, 130

features of marriage 111–14

legal contract 111–12, 114

legal impediments to marriage 112

mutual rights and obligations 111

religious requirements 112–14

sexual relations only within

marriage 111

inter-faith marriages 112–13

the marriage contract 114–21, 143

conditions (shurur) 119–21

dower (mahr) 117–19, 139–40

legal capacity 116–17

offer and acceptance (ijab and

qabul) 115–16

witnesses 119

other forms of marriage

polygyny 120, 121–4, 143

temporary (muda) and ambulant

(misyar) marriages 124–5

rights and duties within marriage

125–7

wali, role of 115–16, 118, 143

forced marriages 116, 130
minarets 49, 263–4
debate on 49, 264
mosque building in the West 261–3
role in Islamic community 47–9
information and education 48
prayer 48, 49
muamalat (transactions) see under Sharia
mubah (permitted acts) 4
mudaraba (trustee finance contracts/trust financing) 186
muftis
and fatwas see fatwas and muftis
state muftis 88
Sunni tradition 86–8, 91, 155
mustahabb/mandoub (recommended acts) 4
Mutazila 7
mystical Islam (Sufism) 66, 67
Nasr, Muneeb 248
Nasr, Seyyed Hossein 4, 6–7, 23, 66
nation-state and nationality see under citizenship and Sharia in modern nation-states
Netherlands 252
New Zealand
clothing, Islamic/burqa wearing 252
halal food and compulsory
pre-stunning animals 267
Nigeria 217
Normani, Asra 48
Norway 131
Nottebohm case 64
Organisation of Islamic Cooperation (OIC) 70
insurance (takaful) as Sharia compliant 184
membership 47, 54
paper money considered as ‘real’ money 183
role and function 54
Osman, Fathi 17
Othman, Aida 154, 159
Ottoman Code (Majelle) 157, 159
Pakistan 69

bank interest as riba 181
burqa wearing 243
divorce 135
inheritance 203
madrasa 50
Peters, Professor Rudolph 229
philosophical Islam (hikmat) 66, 67
places of worship, building 259–64
minaret debate 263–4
mosque building in the West 261–3
see also mosques
political leaders see under Islamic law and institutions
Poultier, Sebastian 107
profit-margin sales (murabaha) 186–7
property rights, inheritance law and trusts (waqf) 194–211
basic concepts of property law in Islam 196–7
ownership (milk or malikiat) 197–8
private and public land 198
property (mal) 197
concept of property 194–5
conclusions 211–12
doctrine of tenure 198–9
fundamental principles of Islamic land law, development of 195
inheritance see inheritance law
property law in Islam 196–200
type and principles of Islamic property law 199–200
trusts (waqf) see trusts, Islamic
(waqf)
Protestant Ethic and the Spirit of Capitalism (Weber) 175

Quran
agreements and contracts, observance of 74
animals, treatment of 265–6
apostasy 269–71
arbitration 160–64
basic principles expressly mentioned as divine 9
and basic principles for constitutional democracy 40
children 140
clothing, Islamic/veiling 245–7
content 11
criminal law 218–33, 237
dar al-Islam 42
debates about interpretation of 7, 9, 24
dietary standards 54–5
inheritance 201–2
interpretations
‘marginal’ interpretations of the Quran: interpreting kofr 74–5
using a negative interpretation of the Quran, Súra Nísáa 4:141
75–7
Islamic law based on 8, 20, 68
legal principles immune from critical evaluation 1
marriage and divorce 107, 111–14, 116, 119–21, 125–7, 132–4, 137–8
see also family law, Islamic mediation (sulh) 157–8
as most important source of law 10–11
pluralism within societies 74
property 196–7, 198
religious freedom 269, 270–71
riba, prohibition of 179
shura 43
specific punishment (hadd) 4
see also criminal law, Islamic ummah, doctrine of 69
as word of God 6–7
Qutb, Seyyed 66, 176, 177
Rahman, Fazlur 43, 44, 108, 144, 270
Ramadan, Professor Tariq 63, 217, 270
Raz, Joseph 20
Raziq, Ali Abdur 39, 40
Reiss, Maria 168
religion and law 1, 4–10, 24
acts/human conduct divided into five classes 4–5, 66
close interrelationship/overlap 1–2, 5, 65
interpretations of Quran/sources of Sharia subject of contested views 9
law as divine, and the nature of revelation 1, 2, 4, 6–8, 65
legal system of Islam based on religion of Islam 4
omission of obligatory duties/commission of forbidden acts
illegal 4, 5
religion as divine law 4
religious authorities, special status of 5–6
rules applying to conduct that is not prohibited or obligatory 5
sacredness of law 10, 65
sovereignty of God 8–9
differences of opinion about how will of God applied 8–9
progressive view of applying principles using human wisdom 9
traditional Islamic law and modern law, relationship between 5
repentance (tawbah) see under criminal law, Islamic
revelation (wahy) 20, 254, 257
cessation of 9
nature of revelation 6–8
main views on 7–8
riba (unjustified surplus) 179–81
classes of riba 180
reasons for prohibition of riba 180
riba, fatwas and interest 181–3
see also economics and Islamic law
Rispler-Chiam, Vardit 89
Rosen, Lawrence 158
rule of law 15, 24, 208
human rights and justice 20
meaning 2
rule of law system lacking in Muslim world 209
waqf as a factor in lack of rule of law 209–10
see also Sharia and the state
rule of law-based systems in Muslim countries, developing 1, 2, 22–3, 24–5
challenges to law as divine 6–7

Ann Black, Hossein Esmaeili and Nadirsyah Hosen - 9780857934475
Downloaded from Elgar Online at 07/25/2019 05:12:27PM
via free access
special status of religious authorities 5
human rights in Muslim world, introducing 22
and theories of state in Islamic law see theories of state in Islamic law
Rushd, Ibn 218
Rushdie, Salman 85, 274
Russia 42
Saeed, Abdullah 270
same-sex relationships 112
Satanic Verses (Rushdie) 84
Saudi Arabia
authoritarian view of the state 256
clothing, Islamic/veiling 244, 248
dhimmah, application of 72
dispute resolution/mediation 158–9, 160
divorce 132
fatwas/ifta 47, 85, 93–4, 259
women banned from driving cars 84, 92
haram or wajib parts of legal system 5
inheritance 203
Islam as source of law 71
judicial independence 46
legal system based on religious sources 11–12
marriage 118, 120, 144
polygyny 123
places of worship, building 259
religious rituals, enforcing 4
Sharia law
importance of 243
Sharia criminal law applying 268
state muftis 88
state ownership of land 198
Schacht, Joseph 4, 195
Scott, Austin W. 205–6
Shah, Nik Norani Nik Badli 120
Shah, Sayed Sikander 161, 162
Sharia
basic principles expressly mentioned in Quaran, divine nature of 9
and citizenship see citizenship and Sharia in modern nation-states
developed over centuries 12, 67–8
human rights 21–2
Ijtihad (inferring rules of Sharia), concept of 17–20
Islamic law and institutions see Islamic law and institutions
and modern concept of Islamic law 3
diverse views as to how Sharia applies to an individual’s life 5
more general than Islamic law 2
non-legal principles/elements, including 2, 3
principles subject of contested views 1
punishments (uqabat) 3
see also criminal law, Islamic ritual (ibadat) 3, 5
rules (asul al-fiqh) developed to infer principles of Sharia 3
sacredness of Sharia, attempts to limit 10
Sharia-oriented Islam, nature of 66–7
sources 3, 68
and the state, debate about see Sharia and the state strengths 23
traditional principles 10
religious and divine duties emphasised 21, 23, 24
transactions (muamilat) 3, 5
Sharia and the state 253–9
authoritarian or traditionalist perspectives 254–5
secularist perspectives 255–7
third way 257–9
Shia jurisprudence see under theories of state in Islamic law
shura (councils/deliberation) see under Islamic law and institutions
Singapore
family law 109, 144
divorce 135
marriage 113
halal food 56
Shahs in Islam 276
Skovgaard-Petersen, Jakob 88
Sonbol, Amira el-Azhary 138
Index

sources of law 10–12
  original sources
    analogical reasoning (qiyas) 10
    consensus of opinion (ijma) 10, 11
    Quran 10
    Sunna 10, 11
  original sources, new methods of interpreting 11
  secondary sources 11

South Africa 56

sovereignty of God 8–9, 12, 13
state, the see citizenship and Sharia in modern nation-states, Sharia and the state and theories of state in Islamic law

Sufism (mystical Islam) 66, 67

suhl (mediation) see under mediation, arbitration and Islamic alternative dispute resolution

Sunna
  agreements and contracts, observance of 74
  conditions for leadership 41
  criminal law 218, 222, 224, 237
  divorce 132
  inheritance 202
  Islamic law based on 8, 68
  as a source of law 10, 11
  legal principles immune from critical evaluation 1
  property law 196
  as sayings of Prophet Mohammad 206
  specific punishment (hadd) 4
  Sunni jurisprudence see under theories of state in Islamic law

Switzerland
  referendum on minarets on mosques 49, 264

Syria
  clothing, Islamic/niqab wearing 249
  divorce 136

Tahkim (arbitration) see under mediation, arbitration and Islamic alternative dispute resolution

Takaful (Islamic insurance) see under insurance

talaq 132–4, 143
  Taliban 38, 101
  failure to follow rituals as a sin 4
  tazir (punishment where no specific punishment provided) 4

see also criminal law, Islamic theological Islam (kalam) 66, 67

theories of state in Islamic law 12–15
  God as sovereign law-maker and judge 12
  Islamic theories of state in a modern context 15
  Shia jurisprudence 13, 14–15, 19
  Imam as continuity of rules of the Prophet 14
  Imam theory of state and governance 13, 14–15
  Velayat Faghih theory 15
  Sunni jurisprudence 12–14, 19
  caliphate theory of state and governance 12–13, 15
  role and powers of the caliph 13
  trustee finance contracts/trust financing (mudaraba) 186
  trusts, Islamic (waqf) 204–11
  basic principles of waqf in Islam 195, 206–7
  development of waqf institution as economic instrument in Middle East 207–9
  historical background of waqf in Islam compared with common law trust 204–7
  development of the trust in common law system 204–6
  historical background of waqf in Islam 206
  waqf and the rule of law 208–11
  waqf as a factor in lack of rule of law in Muslim world 209–10
  waqf as a social institution and welfare mechanism 210–11
  see also property rights, inheritance law and trusts (waqf)

Tunisia 242–3
  divorce 136, 143, 144
  Islamic clothing/veiling 245, 248
  polygyny 121, 123, 143
Modern perspectives on Islamic law

Turkey 69, 108, 109, 242, 243
clothing, Islamic/veiling 245, 248–9
divorce 139
marriage 121, 123, 128
‘limping’ marriages 139
polygyny 122, 123
secular state 243, 256–7

ulama (specialist body of Islamic scholars)
family law 108
fatwas 83, 85, 101

ummah, doctrine of 69–71, 73, 74, 247, 283
concept in modern world 70
unbelievers (kofr) 74, 75, 271

United Kingdom 54, 71, 73
children, custody of 167
clothing, Islamic/burqa wearing 252
dispute resolution
Islam ARD in the UK 165–8
Muslim Arbitration Tribunals 155, 166–7
divorce 139, 167
halal food 56
marriage
forced marriage 131
‘limping’ marriages 139, 167
polygyny 123–4
Sharia Councils 155, 165–6, 167–8
Sharia law 74, 167
English Sharia 96
tenure, doctrine of 198
trust in the common law system, development of 204–7

United Nations 64
Muslim countries as independent members 70

United States
global economic crisis, effects of 176–7
gold standard, abolition of 182–3
halal certification 56–7
Islamic community centre near Ground Zero, controversy over 49, 262–3
subprime mortgage crisis 181–2
universities 51

uqabat (punishments) 3
see also criminal law, Islamic
usul al-fiqh (principles of jurisprudence) see under Islamic jurisprudence (fiqh)

van Gogh, Theo 264, 274
Vogel, Frank E. 158–9

Waardenburg, Jacques 87–8
wahy (revelation) see revelation (wahy)
wajib (obligatory acts) 4, 5
waqf (trusts) see property rights, inheritance law and trusts (waqf)
Weber, Max 175
welfare mechanism, waqf as 210–11

Western world and Muslim citizenship
see citizenship and Sharia in modern nation-states

women
as arbitrators 162
banned from driving in Saudi Arabia 84, 92, 120
Convention against discrimination 10
and family law see family law
fatwas 84, 92, 101
female Islamic scholars issuing 96, 101
online requests 100
inheritance 200–201
excluded from under Arab customary law 200
see also inheritance law
Islamic clothing see clothing, Islamic
leadership in mosques 48
as political leaders 41–2
Wynn, Lisa 118, 120

Yemen 243, 244
marriage 117
state muftis 88
Yilmaz, Ihsan 168

Zahraa, Mahdi 162
Zahrah, Abu 218
Zayd, Nasir Abu 275
Zulficar, Mona 134, 144

Ann Black, Hossein Esmaeili and Nadirsyah Hosen - 9780857934475
Downloaded from Elgar Online at 07/25/2019 05:12:27PM
via free access