

## FUTURE AVENUES IN THE STUDY OF ISLAMIC LAW

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### **Abstract**

*In his essay, Najam Haider calls for “more cohesive and integrated scholarly engagement with the pre-modern Islamicate world.” To that end, the author urges scholars to creatively engage and treat legal texts as valuable sources for understanding the social and political predicates of Islamic societies. For example, tracing the creation and migration of legal texts across regions can yield valuable insights into multiple ideas and ideologies across the pre-modern Islamic world, as a part of a larger intertextual world where scholars study all actors in Islamic history as interacting with, complementing, and arguing against one another.*

I should begin by noting that I am not—strictly speaking—a scholar of Islamic law. Rather, I am a scholar of early Islam who routinely draws on Islamic law as a means for excavating elements of pre-modern social history. My first book project, for example, applied a data-driven statistical model to legal texts pertaining to ritual in order to test literary narratives about the formation of communal identity in early Islam.<sup>1</sup> This monograph built on the pioneering work of Harald Motzki and Gregor who demonstrated the value of analytic methods that focused on the structure of reports preserved in legal compilations.<sup>2</sup> Specifically, they showed the utility of legal sources as reservoirs of historical information (often) protected from the polemical reworking that could characterize historical or theological texts.

Over the last decade or so, there has been a real proliferation of studies that mine legal tracts and compilations for information pertinent to broader aspects of social history. In line with the premise of this workshop, I will limit my comments to particularly fertile and exciting developments that highlight the potential of legal texts to deepen our understanding of Islamicate society in general. That is not to say that Islamicate societies are reducible to the law (a point effectively made by Shahab Ahmed) but rather to argue that legal sources—when engaged creatively—tell us about much more than just the law.

One of the most exciting new directions in the study of Islamic law involves a renewed interest in geography. In the mid-twentieth century, Joseph Schacht put forward a timeline for the development of Islamic law that highlighted geographical schools of law.<sup>3</sup> Some decades later, Wael Hallaq reconfigured Schacht's conclusion while other scholars emphasized the importance of locations such as Kūfa, Medina, and Mecca in the evolution of Islamic law.<sup>4</sup> In more recent times, geography has

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1 Najam Haider, *The Origins of the Shī'a* (Cambridge: Cambridge University Press, 2011).

2 See, for example, Gregor Schoeler, *The Biography of Muhammad*, trans. Ewe Vagelpohl (New York: Routledge, 2006) and Harald Motzki, *The Origins of Islamic Jurisprudence* (Boston: Brill, 2002).

3 Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1967).

4 Wael Hallaq, "From Regional to Personal Schools of Law?," *Islamic*

come to the fore as a primary unit of study. New studies have attempted to reconstruct local legal practices while others have placed jurists more concretely in their local contexts.<sup>5</sup> To offer one example, Behnam Sadeghi has proposed a test for evaluating the reliability of early legal traditions that involves the creation of local linguistic and legal corpora which could then be used to ascertain the likely geographical origins of all kinds of texts.<sup>6</sup> I recently peer reviewed an article that works in a similar vein for Twelver Shi'ī legal sources with a focus on texts produced in Egypt and Qumm. The truly exciting aspect of these kinds of studies is their potential to reach a stage where we could, in fact, have a clear sense of the vocabulary, syntax, stylistic elements, and argumentative preferences of specific regions/cities. This information might then, in turn, be applied to a broad variety of genres, ranging from historical chronicles and exegesis to theological missives and poetry.

Another important recent development in legal studies stems from a growing interest in the transmission of knowledge across time and space. Given the immense scope and volume of surviving legal material and new digitization efforts led by teams at AKU/SOAS (Sarah Savant and Maxim Romanov) and UCSD (Mairaj Syed), we are not so far removed from a future in which we could trace the travel history of a set of legal texts or arguments. There have been previous efforts to document the reception of certain traditions or ideas across region and period but these involved meticulous research that took years and offered only minimal conclusions. The development of software that can quickly mine thousands of sources for examples of reuse and quotation allows us to map the movement of ideas and texts from one source text to another. If we can place these sources in specific geographical locations (as I described above), then that map acquires a materiality that can highlight the main networks for the transmission of knowledge in the pre-modern

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*Law and Society*, 8 (2001): 1–26.

<sup>5</sup> Najam Haider, “The Geography of the *Isnād*,” *Der Islam*, 90 (2013): 306–46.

<sup>6</sup> Behnam Sadeghi, “The Traveling Tradition Test,” *Der Islam*, 85 (2010): 203–42.

Muslim world. Such studies might finally allow us to test our assumptions about the close links between Medina and Egypt or Mecca and Basra. Perhaps we will find other pathways for transmission that are currently obscure. I, for one, have always been curious about the connection between early Shī'ī communities in Qumm (for which we have considerable information) and those in Aleppo and North Africa (for which we have very little information).

As is likely apparent to anyone reading this, my interest in the law derives from its potential as a source for other kinds of historical information. In my current research project, for example, I am drawing on a collection of Zaydī Shī'ī legal traditions located in Kūfa in the third/ninth and fourth/tenth centuries to excavate the social divisions that characterized the city's Zaydī community. I am fairly certain that there were at least two (if not more) communal divisions among the Zaydīs that might be correlated with the neighborhood and mosque layout of Kūfa (which we know quite well through the work of Djait and others).<sup>7</sup> The legal sources do not specify these divisions explicitly but the needed information is embedded within their very structure and composition. What is needed, then, is a kind of textual archaeology that treats the legal sources as material artifacts of early Kūfan society.

I want to end by recounting an email I received a few months ago from a senior colleague whose work focuses on *adab*. He reached out to thank me for an article I wrote—drawn from my dissertation—that looked at legal debates over the permissibility of intoxicating drinks. He mentioned that he had been struggling with some of the arguments in a particular text that he was translating but that my article helped him understand the nuances of the discussion at a granular level. This reinforced for him the need for a more holistic engagement with pre-modern Islamicate scholarly production. Many of the scholars in the pre-modern Muslim world wore multiple hats from poet to jurist to theologian to historian (and more!). Their audiences (mostly

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<sup>7</sup> Hichem Djait, *al-Kūfa: naissance de la ville islamique* (Paris: Editions G. P. Maisonneuve et Larose, 1986).

other scholars) were adept at deciphering scholarly allusions that cut across fields of study. It is imperative that we begin to read these sources as part of a larger intertextual world rather than isolated within a specific scholarly discipline. A growing awareness of this intertextuality is, for me, one of the most promising developments in Islamic legal studies. Intisar Rabb has recently published a study that demonstrates how historical chronicles allude to legal issues.<sup>8</sup> Matthew Keegan has discussed legal riddles that appear in works of which assume that the reader possesses a basic level of legal knowledge.<sup>9</sup> Going a step further, a junior colleague and friend is currently working on a project to excavate the theology of al-Jāhiz through a close reading of his literary works. This is all truly exciting and groundbreaking work and bodes well for a more cohesive and integrated scholarly engagement with the pre-modern Islamicate world.

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8 Intisar A. Rabb, “The Curious Case of Bughaybigha, 661–883: Land and Leadership in Early Islamic Societies,” in *Justice and Leadership in Early Islamic Courts*, eds. Intisar A. Rabb and Abigail Krasner Balbale, (Cambridge, MA: PIL/Harvard University Press, 2017) 23–36.

9 Matthew Keegan, “Levity Makes the Law: Islamic Legal Riddles,” *Islamic Law and Society*, 27 (2020): 214–239.