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### Anthropology and Islamic Law

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### Abstract and Keywords

The anthropology of Islamic law is concerned centrally with observing and analyzing practices governed by explicit norms that are given Islamic justification, from commercial transactions to marriage and divorce to rituals of worship. This article traces the work of anthropologists in courtrooms and in informal social settings, and the process of developing collaborative relationships with text-based scholars. It highlights two recurrent tensions: one between “law” and the Islamic categories of *shari’a/fiqh/hukm*, the other between emphasizing cultural distinctiveness and emphasizing cross-societal processes of interpreting and applying Islamic texts and tradition. Included in the treatment are *shari’a* councils, fatwa bodies, mahr and marriage contracts, medical ethics, and realms of *‘ibadat*.

Keywords: anthropology, Islamic law, *shari’a*, Islam, culture, marriage contracts, Islamic councils, ethics, salat, *‘ibadat*

The anthropology of Islamic law is concerned centrally with observing and analyzing practices governed by explicit norms that are given Islamic justification, from commercial transactions to marriage and divorce to rituals of worship. Such governance may or may not involve state-empowered courts or judges. Two key questions underlie much of the divergence and debate in this field: one about “Islamic law,” the other about anthropology.

The English word “law,” even in its extended anthropological usages, is used to denote a narrow range of phenomena, whereas the relevant Islamic terms—*shari’a*, *fiqh*, *hukm*—refer both to the widest sphere of normativity—all that God commands—and to specific practices. If *fiqh* is close to the Anglo-American sense of case-law or jurisprudence, it depends on the ultimately unknowable pathway for humans in all their affairs, or *shari’a*. Consequently, a much wider range of activities than are normally denoted by “law” (or

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other European cognates) are subject to vigorous debates in Islamic contexts about their conformity to shari'a, as humans can discern it through *fiqh*. Rituals of worship, sacrifice, and pilgrimage are most clearly subject to this "legal" scrutiny, but so are everyday acts of greeting or dressing. Rarely, however, are these matters the subject of state-law proceedings; they are, however, central to anthropology.

The conceptual gap between "law," on the one hand, and shari'a/*fiqh/hukm* on the other, means that different topics fit more or less comfortably into Islamic studies or into legal studies. As we move from formal proceedings in courts or councils toward normative but extra-institutional reflections and debates about everyday activities, we move further from the usual sense of "law." Less evidently, but quite importantly, is the effect of state codification on Islamic discussions: as we move from ritual, ethics, and religious topics and toward the practices more frequently regulated by courts, such as marriage and divorce or property transactions, we often (depending on the legal regime) move away from a domain of debate governed by the texts and traditions of Islam, and toward the application of positive law, meaning state statutes and jurisprudence. In one sense, then, "law" and "Islamic" are at opposite ends of a chiasmic structure: the more state law, the less Islam.<sup>1</sup>

How then do anthropologists frame and analyze processes such as those listed above? Has the anthropological effort to extend the reach of "law" to include non-state processes and institutions resolved the issue? The second question concerns precisely the problems of such an extension within anthropology. The discipline of social or cultural anthropology focuses on dimensions of society and culture, conceived of as structures, networks, or conceptual worlds that link across domains, cohere internally, and differ from other societies or cultures. It has highlighted distinctions across spatial units, rather than continuities of supra-local traditions. How, then, does anthropology approach a field of specialized, text-based knowledge such as Islamic law, where the normative ground is based on claims of continuity and universality?

## I. Historiography

The most influential early analyses of Islamic law that resembled anthropological studies were undertaken under colonial regimes as part of efforts to dominate Muslim societies. When tasked to advise the Dutch government on its efforts to suppress resistance in Aceh, the Islamicist Christiaan Snouck Hurgronje (1857–1936) recommended that Islam's legal and political dimensions be suppressed but that its spiritual dimensions be allowed. In any case, he argued, the fixed rules of classical Islamic jurisprudence had little to do

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with shaping how Muslims actually practice their religion. Rather, local scholars accommodated local usages and ideas by baptizing them as “Islamic,” as when local ideas about spirits, *jinn*, and *aulia*, were drawn on to allow people to make extensive petitionary prayers to saints. For Snouck, doctrine was irrelevant to everyday life, but the practical judgments of scholars (“*ulama*”) did conform to “human needs.”<sup>2</sup>

A similar distinction between enunciated norms and practical resolutions of conflicts underlies the modern anthropology of law, which was inspired by the fieldwork carried out by Bronislaw Malinowski (1884–1942) in the Trobriand Islands. Malinowski used field observations to castigate Europeans for their generalizations about “primitives,” including those made about “primitive law.” His argument, here as on other topics, was that humans work out their lives in strikingly similar ways, starting from different funds of knowledge. They resolve disputes in ways that everyone can recognize as law-like. Malinowski’s attention to social process and social structure, as well as to psychology and to ways of speaking, left a strong influence on what was to develop in the anthropology of law, through such key figures as Max Gluckman and Sally Falk Moore, to most of today’s practitioners of that field.<sup>3</sup>

Early social anthropology focused on politics and social structure lying outside the state, initially as part of the colonizing mission and later in recognition of all that was left unstudied by jurists and political scientists. Insofar as they concerned Muslim peoples, anthropologists were rarely concerned with issues of *fiqh* or shari’a but focused on local mechanisms of dispute settlement, such as in E. E. Evans-Pritchard’s studies in Cyrenaica.<sup>4</sup> This concern with finding local sources of authority led British social anthropology toward an interest in the interrelationships among tribal structures, men of learning (*ulama*), and Sufi lodges in North Africa. Insofar as *ulama* pronounced on legal matters, this concern with political authority created the potential for explorations in Islamic law, but did not lead to direct engagement with the Islamic legal tradition.<sup>5</sup>

Nor did the Boasian lineage of American cultural anthropology exhibit much interest in the matter, in part because American anthropologists prior to the Second World War rarely worked in Muslim societies. Things changed somewhat with the postwar turn to studies of large-scale religious traditions in “new nations,” starting with South Asia, and, by the 1960s, to symbols and interpretations, now in an awkward Parsonian dance with the norms and structures that remained the province of sociologists. Nevertheless, the discipline remained perhaps overly respectful of a division of labor between the Islamicists’ study of the “Great Tradition” of urban, literate religious scholars and anthropologists’ focus on smaller-scale societies or nicely-bounded Sufi cults, with little attention to ways in which adepts of those “Little Traditions” tied their practices back to scripture, legal schools, and literary works.<sup>6</sup>

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Things changed on the American side when Clifford Geertz and his students ventured into the territory of Islamic law in Morocco, with studies of courts and judges.<sup>7</sup> Dale Eickelman (a student of W. Cantwell Smith as well as of Geertz) traced changes in Islamic traditions of law and learning by working with an Islamic judge, while Clifford Geertz contrasted the Islamic idiom of *haqq* (“right, just”) with its Indic and Indonesian counterparts to describe a Muslim culture of law and justice. Islamic law remained, however, peripheral to their projects. Lawrence Rosen, by contrast, endeavored to trace the articulation of Moroccan culture, Islamic legal practices, and law as a comparative domain, and was in this respect the first to construct a cultural anthropology of Islamic law.

Rosen (and Geertz) asked to what extent is what we see in Islamic legal settings the rendering of key cultural idioms in Islamic terms. This question—more explicitly posed by Rosen, less so by Geertz (for whom *haqq* somewhat confusingly stood for both Islamic and Arabic ways of seeing the world)—opened up Islamic law to anthropology.

This move, however, also created a tension between two potential starting points for an eventual anthropology of Islamic law. One such point was the Islamic tradition, which local actors understand and appropriate in locally specific ways. Across Muslim societies, people marry, divorce, pray, and so on, and some of them, *ulama* or not, specify the textual referents for these practices: how do they do these things and justify them in *this* place? This direction of anthropological inquiry facilitated exchanges with textual scholars trained in the older philological approach to the tradition, even though, by privileging the local, it was for a while seen by some of philologically-oriented scholars as a kind of shari’atic slumming. Today it makes possible close collaboration between anthropologists, historians, and legal scholars.<sup>8</sup>

The other starting point was a particular cultural order, which shapes local practices. In this society, people see the world in a certain way, and this shapes how they navigate their economic, religious, and artistic worlds; how does *this* worldview shape how they discuss Islam? This direction of inquiry facilitated exchanges with anthropologists not particularly interested in Islam, because it privileged the cultural links between law and other domains in any particular society. For example, Rosen shows how ideas about relationships and credibility pervade domains of Islamic law and market transactions in a Moroccan town.<sup>9</sup> This focus left in the background the debates among people in any one society over textual interpretation, however, and thus was less open to comparative treatments across societies wherein authorities referred to Islamic law. In this regard, Geertz’s famous Morocco/Java study provided a *contrast* of completely different cultural types, rather than a *comparison* of alternative interpretations of a shared tradition.<sup>10</sup> Paradoxically, this latter approach, which came to be called “interpretive anthropology,”

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turned out to be particularly ill-suited for studying interpretations in domains (such as Islamic law) where members of the same society arrive at quite different judgments and do so drawing on authorities from times and places distant.

One can see ensuing debates and expansions in anthropology as gradually narrowing the gap between these two directions of inquiry. By the 1990s, a growing number of anthropologists were framing the question in terms of how local legal actors interpret and practice elements of the Islamic tradition in a context that included positive law, competing understandings of *fiqh*, cultural ideas and social norms, and practical assessments of competing statements. Within the anthropology of law, this way of posing the question was banal, echoing rather classic anthropological approaches to dispute resolution as practiced by Malinowski or Gluckman. Within the anthropology of Islam, however, this framing meant that fieldworkers now paid attention to practices of justification found on multiple levels: in village forums and local mosques, by judges in courtrooms, and by muftis and scholars in national debates. Now anthropologists studied not only how people resolved a dispute, but also how people justified what they did and how they invoked multiple traditions, including that of classical Islamic jurisprudence.

## II. Judges and Courts

Even in ethnographic studies of courts and judges, we find the division between the two starting points, Islam or culture, operating in fractal fashion. Some anthropologists place Islamic tradition in the foreground, while others emphasize cultural ideas and processes. Two studies of East African courts illustrate this distinction. Susan Hirsch, working in Muslim Kenya, highlights the gendered quality of courtroom narratives. She bases her analysis on local (Swahili) categories to best capture the understanding that ordinary men and women bring to the courtroom experience. She places in the background scholarly knowledge or the sources and reasoning used by judges. By contrast, Erin Stiles, studying in a Zanzibar divorce court, highlights how judges dispense justice, justify their decisions, and respond to varied claims and complaints. The links between courtroom narratives and Islamic law are placed in the foreground.<sup>11</sup> These choices of framing make for different sets of references: Hirsch mainly to works in law and language; Stiles to scholars working in Islamic legal studies.

Both Hirsch and Stiles take note of the pluralistic legal context in which their judges operate. “Legal pluralism” has become a phrase operating as a distinct frame for studies in the anthropology of law, particularly when pursued by scholars whose initial training was in law. This approach is exemplified by the work of Franz and Keebet von Benda-

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Beckmann.<sup>12</sup> Pioneers in empirical analyses of pluralistic legal orders, the von Benda-Beckmanns highlighted the internal social logics of two or more legal orders, most prominently in West Sumatran inheritance cases, where customary *adat* law and Islamic law had provided competing normative grounds for law and social life since the early nineteenth century. By starting from these legal orders, they pay particular attention to links between social institutions and normative orders—links also pursued by other students of Sumatran history and religion. In this Weberian type of analysis, scholars show how traders supported reformist Islamic ideas and opposed *adat* law in favor of Islamic law. By the same token, these authors background the ways that judges make references to multiple types of normative or legal sources in the same courtroom. By contrast, my own work in Sumatra on similar issues examines ways that Islamic court judges have changed their tendencies to follow Islamic or *adat* law judgments over time, not because of changes in available legal repertoires but because of shifts in local power and resources. The unit of analysis thereby becomes the judge and his or her multiple sets of references and justifications, not one or more distinct legal orders.<sup>13</sup>

One finds similarly diverse analytical frames in studies of courtrooms elsewhere. Working in Iran and Morocco, Ziba Mir-Hosseini emphasizes the ways litigants strategically represent their divorce demands and the ways judges seek to bring about the outcomes they personally prefer. She shows all actors working strategically within the constraints of statutes and of the authoritative opinions (*fatwas*) of scholars. The result of her framing is that these actors appear very much like their strategizing counterparts in non-Islamic environments. Mir-Hosseini's work indeed strikes a balance in framing, showcasing a working judicial system in a classical social anthropological way, as a set of mechanisms within which people work to achieve ends, but also emphasizing the Islamic repertoire as interpreted by judges, muftis, and litigants. Arzoo Osanloo (trained as a jurist) visits similar courtrooms but as part of a study of rights discourses. She shows how women's claims to be rights-bearers are nourished in Qur'anic study groups but also by the codification of Iranian civil law that makes explicit individual rights; the framing is thus in terms of multiple pathways to asserting rights, rather than the strategic manipulation of references in the courtrooms.<sup>14</sup>

At the same time that we observe different framing effects in works by different anthropologists, we can also draw on these works to construct a comparative matrix of Islamic courts, with particular attention to the very different structures within which they function. The "Kadhi courts" of Kenya studied by Hirsch are used by an ethno-religious minority outside the state civil law system, whereas the Iranian courts studied by Mir-Hosseini and Osanloo are regulated by precisely such a state system, a difference that opens up a wider and more consequential domain-specific but yet public sphere for

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Iranian women seeking to demand rights. In such contexts, statutes may have a liberating judicial effect vis-à-vis a conservative religious establishment.

If the above studies start from the courtroom setting and then ask how judges and litigants act in that setting, another set of studies focuses on categories of Islamic law and how they are applied in those settings. Rosen and Brinkley Messick both examined the importance of “intention” (*niyya*) in courts, and the differences in their approaches returns us to the distinct starting points described earlier.<sup>15</sup> For Rosen, Moroccan (and more broadly Arabic) ideas of the person do not consider intentions to be unreadable because private, but readable because tightly tied to their actions and their social relationships. This idea does not derive from Islamic jurisprudence but from Arabic culture, as it underlies actions in other areas of life as well. For Messick, Islamic writings stress the difficulties of knowing intention but also the crucial role of assessing intention for judging the effects of an act, including a speech act; beyond that, scholars have developed diverging and contrasting opinions, in some cases influenced by the desire to model Islamic law on European commercial law, where intention can be sufficient to enforce a contract. Although Messick limits his textual exploration to the Zaydî legal school, issues raised therein surface across the Muslim world, for example, concerning whether the correct expression of a husband’s divorce pronouncement (for example, *anti taliq*, “you are divorced”), or the correct intention (as opposed to speaking in jest), or both, are required for the pronouncement to take effect. This area of the felicity conditions for an Islamic speech is understudied but central to the anthropology of Islamic law. As we shall see below, *niyya* is a central concept in judging the successful performance of a ritual obligation as well.

As we have assembled a greater number of ethnographies of courtrooms we have become better able to show the variation across traditions and sometimes among judges on these issues. For example, Clarke shows that Lebanese Sunni judges hold that they *cannot* know a person’s intentions, and therefore on the matter of a divorce pronouncement cannot invalidate it on grounds of incorrect intention. And yet sometimes a judge will sense that the general good is best served by finding another way, which some of them do by urging the couple to halt the legal proceeding (where the outcome is certain) and seek a more accommodating *fatwa* from a jurisconsult (*mufti*).<sup>16</sup>

Because “family law” is the legal domain most likely to be labeled as “Islamic” in Muslim societies today, marriage contracts deserve particular attention—and because they are sometimes cited as the solution to unequal treatment of women under Islamic family law. The Saudi case is particularly illuminating because of the importance of religious jurists’ interpretations for legal practices. Lisa Wynn shows how Saudi brides’ mothers insist on including conditional clauses (*shurut*) in the marriage contracts, mainly to ensure the right to complete higher education or to work outside the home (the proceeds of which

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would remain their own assets). They could, but rarely do, add a clause to guarantee the right to a divorce in case the husband took a second wife. Wynn also shows how the large investment by the husband in the marriage provides a disincentive to pronounce a *talaq*. Ever since the pioneering studies by Annelies Moors and Mir-Hosseini, the ways in which *mahr*, either paid or promised, strengthens women's bargaining power has become an important empirical contribution.<sup>17</sup>

## III. Normativity and Property

Islamic law (at least as studied in anthropology) is not limited to the settings of state courtrooms, but includes other settings where actors refer to Islamic normative writings (scriptures, texts of *fiqh* or *fatwas*) to justify actions.

The next most "state-like" settings are Islamic councils and *fatwa* bodies. The former developed in the British Indies in parallel to unsuccessful efforts to create Islamic courts, beginning in Bihar in 1921 with the creation of the *Imarat-i Shari'ah*, sponsored by the Jamiatul Ulema-e Hind. Today these *dar ul qazi* bring together moral and shari` concerns to hear cases of family conflicts and sometimes award a judicial divorce. They have no enforcement powers, and base judgments on their readings of *fiqh* rather than on the state personal law applied in the courts. The relationship between the shari'a councils (relying on *fiqh*) and the state courts (relying on law codes) illustrates the conceptual tension between "law" and "Islam" mentioned at the beginning of this article. It also shows the advantage for women in approaching an institution where their moral arguments are given considerable weight.<sup>18</sup> However, here as elsewhere, these two kinds of institutions do not exist in different worlds: a judge might send a case to a *dar ul qazi* precisely in order to move it from one framework for judgment to another, for example away from a dispute with criminal implications toward an effort to restore harmony (even if by divorcing the couple).

British shari'a councils are transplanted, and somewhat transformed, versions of the Indian institutions, with altered terms of trade with courts and a more international set of scholars and clients, as are their North American counterparts. In those courts the law/ Islam tension becomes not a *de facto* division of labor between institutions, as in India, but a division internal to the shari'a councils. If traditional *fiqh* allows the wife to initiate a divorce by making an incentive payment to her husband, and limits the capacity of a judge to dissolve the marriage without the husband's consent, most Islamic state legal regimes include the possibility of a judicial divorce. In Western Europe and North

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America there are no Islamic judges. A shari'a council has no enforcement power, and is not a college of *qadis*. Muslim wives have nowhere else to turn to obtain a divorce, however. Councils find themselves in an uncertain and sometimes difficult quandary, which they attempt to overcome by inducing the husband to give a *talaq*, or to not object to their action in dissolving the marriage. In much of Europe and North America, some scholars try to avoid this quandary by encouraging pre-nuptial contracts, or by arguing (in *de facto fatwas*) that civil divorce counts as Islamic.<sup>19</sup>

In nearly all anthropological studies of judges and courts, including those already mentioned, attention is also directed to extra-judicial ways of resolving disputes and regulating property transmission. Here careful ethnographic work has shown that a rule or category, such as those regarding women's rights to inheritance shares, conceals a multi-dimensional space of power and resources. Important here was the study of Palestinian women carried out by Annelies Moors, who showed that when a woman inherits property this inheritance could be a mark of her social status, that she is of a wealthy, high-status family, or it could happen because she is in a weak situation and must try to claim property to survive—but even then is likely to find herself subsequently deprived of the property by more powerful brothers or cousins. Moors's study adds ethnographic substance to Pierre Bourdieu's well-known argument that "following rules" explains little of the political economy of marriage or transfers of property.<sup>20</sup>

## IV. Law and Ethics

In the early 2000s, anthropologists writing on Islam and Christianity began to underscore the analytical importance of ethical practices in religious traditions. Talal Asad had argued earlier, and in the context of a rebuttal of Clifford Geertz's symbolic approach to religion, that for some important religious thinkers (St. Augustine principal among them) as for ordinary practitioners, religious practices and religious discipline are seen as means to instill faith and character, both seen as part of a tradition. This intervention coincided with the turn to considering Aristotelian virtue ethics and the rise of communitarian political philosophy.<sup>21</sup>

Since that intervention, and subsequent ethnographic studies on prayer and sermons by students of Asad,<sup>22</sup> other studies have sought to disentangle ethical from legal dimensions of judgments about shari'a. Hussein Ali Agrama argues that the *fatwa* should be seen as a way of "caring for the self"—an ethical discourse—at least as much as a way of judging doctrinal matters or adapting to changing contexts.<sup>23</sup> Advice-giving (to invoke a category perhaps broader than *ifta'*) surely seeks to apply a broad range of knowledge

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to a particular case. A religious leader north of Paris once described to me the way in which he distinguished between the scholarly consensus on abortion, which he saw as a blanket condemnation, and his response to a particular woman seeking advice, in which he gauges her needs and capacities, and gives advice accordingly. This scholar described the difference in terms of general principles, on the one hand, and looking to ensure the welfare of the individual, on the other, not far from the Foucauldian “care of the self.”<sup>24</sup>

Are the activities of judges so different? As Clarke points out, some judges adopt more than one discursive stance, changing from a non-legal to a legal modality as they move into the courtroom setting.<sup>25</sup> But does this mean that we need to distinguish “ethics” and “rules” as two distinct ways judges (and other scholars) approach ordinary Muslims and their questions? An alternative is to study the way individuals providing judgments (*muftis*, judges, scholars, or *imams*) combine distinct types of considerations and distinct kinds of justifications, in a single case. In studying the Islamic appellate court in Aceh, Indonesia in 2012, I found judges deciding a *talaq* case discussing the moral quality of a husband’s or wife’s behavior, the husband’s likely ability to pay, and rules in *Shafi’i fiqh*, before setting the level of payments due the wife. In their written decisions, however, they justified their awards solely in terms of statutes and Supreme Court circulars. Only through fieldwork could the difference be discerned between the multiple forms of moral and legal reasoning shaping the judgment, on the one hand, and the written, and legalistic, formal justification, on the other.

## A. Medical Ethics

By the 2000s, the fast-developing field of anthropology of biotechnology had turned to the shifting relationships between reproductive technology and Islamic jurisprudence and ethics. Abdulaziz Sachedina provided an overall analysis of the issues for Islam, and Marcia Inhorn and others studied ways in which these issues were debated and decided locally.<sup>26</sup> Inhorn worked in Egypt and Lebanon; she contrasts official Sunni and Shi’a *fatwas* on the question of in vitro fertilization (IVF). The position enunciated by Egypt’s al-Azhar and followed thereafter permits fertilization using the wife’s egg and the husband’s sperm, because these techniques respect marriage as a contract between the husband and wife. By the same token, use of surrogates or another man’s sperm is disallowed. By contrast, some Shi’a scholars have permitted the use of donated eggs or sperm, with the proviso that the child born through such technologies inherit from the donor, as the biological parent; other scholars require that a man conduct a temporary (*mut’a*) marriage with an egg donor (the issue being whether *zina* occurs only with physical intercourse) and forbid sperm donation. For some of these latter scholars, embryo donation is allowed, as it comes from one married couple to another. Inhorn

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finds, however, that despite the variation in scholarly views, most Shi'a and Sunni Muslims reject the possibility of donating sperm or eggs, because it would confuse issues of kinship and inheritance, and is a form of adultery. And yet some couples do engage in all these practices, and find ways to register babies so as to conform to the public rulings.<sup>27</sup> Here we find a divergence among practices, popular opinion, and formal religious positions.

In the most in-depth treatment of Islamic law and medical ethics and practices to date, Sherine Hamdy explores the progression of positions and debates concerning organ transplantation in Egypt.<sup>28</sup> She notes that in the cross-currents of official *fatwas* on the matter, one could miss the way a prominent television personality and preacher (*da'iya*), M. Sha'rawi, framed the issue for most Egyptians through his introduction of the phrase "our body belongs to God." Subsequent debates on all levels can be seen as a series of meditations on what that phrase means for the ethics of particular medical practices. Sha'rawi, although dismissed or reviled by many scholars, reasoned from clear principles to an outright rejection of organ transplantation. In the debate that ensued, those in official positions took pains to emphasize that his statement was not a *fatwa*, because he did not engage in the proper legal reasoning and was not a recognized *mufti*. But his followers did publish his statements as *fatwas*, in the broader sense of *ifta'* or responses to questions. They led the grand *mufti*, at the time Shaykh Tantawi, to issue a rebuttal. He started from Sha'rawi's premises, but used them to prohibit only selling organs, arguing that under conditions of necessity (*darura*) human need permits donating organs. For Tantawi, as for most other scholars, the benefit (*maslaha*) achieved through organ transplantation justified its use. As Hamdy points out, medical doctors were critical of this reasoning, having as it does the potential to justify any action that benefits someone. In the gap between Sha'rawi and Tantawi we can see the division between traditionalist and pragmatist forms of Islamic reasoning.

This contrast shows how, alongside official forms of *ifta'* are other modes of dispensing advice, which some may refer to as *ifta'*, but which follow different genre conventions. Sha'rawi's particular education, medium, and ways of arguing may have placed him outside "official *ifta'*" circles, but many Egyptians nonetheless followed his advice.

## V. Norms of 'Ibadat

Although less often involving judges and courts, the core rituals of Islam (including worship, pilgrimage, fasting, and sacrifice) are subject to similar processes of normative scrutiny and judgment. Here the Islam/culture division reappears, even as

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anthropologists are able to emphasize the creative dimensions of what seem at first blush to be the most scripted actions: the formulaic practices of ritual prayer (*salat*).

Although social anthropologists might label prayer as “ritual” as distinguished from the “legal” act of divorcing, both have tightly scripted and highly debated “felicity conditions,” or the conditions under which an act counts as accomplishing a divorce or as satisfying the requirements for prayer. These conditions are set out in similar fashion in books of *fiqh*, and justified by pointing to *hadith* attributed to the Prophet. The Prophet’s actions, including his responses to questions, provide grounds for specifying how to divorce, worship, perform the pilgrimage, or carry out a wide range of other actions. Divine retribution and reward follow proper or improper carrying out of these obligations, and so from an Islamic perspective they are all governed by law, whether or not states choose to enact statutes regarding one or another such action.

We could perhaps think (in a very non-Weberian fashion) of the opposition law/non-law as one of analytical framework rather than one that distinguishes among types of action. Viewing the question in this way helps to sort out differences among anthropologists regarding ritual. For example, prayer or *salat* can be studied for ways in which practitioners evaluate the correctness of performance. Unlike prototypical rituals in anthropology, practitioners of prayer emphasize its felicity conditions. Muslims’ disputes about *salat* concerned, for example, how to hold the arms in the correct fashion, or to formulate the right intention (*niyya*) while in prayer. Viewed from a normative Islamic perspective, in terms of its law-like properties, one could emphasize the criteria for correct performance. Because the basic ritual template is fixed, attention often is focused on minute variations in performance, allowing these variations to take on a great deal of social significance, indexing differences in theology, idea of community, or ethnic affiliation.<sup>29</sup> Other anthropologists have emphasized other dimensions of the performance; Saba Mahmood analyzes *salat* as performance of certain ethical dispositions, which are developed through repeated prayer. In other words, Mahmood investigates the interrelationship between self-discipline and ritual performance, whereas I focused on the social-performative implications of such a tightly scripted practice. My analysis situated *salat* in the domain of *fiqh*; Mahmood in the domain of worship (*‘ibadat*).

## VI. Conclusions

The advances made since the 1990s concern a rapprochement between anthropology and Islamic studies. The main elements of that change has been the willingness of Islamicists to consider seriously the interpretations and practices of the unlettered, and the

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corresponding willingness of anthropologists to trace derivations and adaptations of textual elements in specific social and cultural contexts.<sup>30</sup> Many convergences have resulted, for example about how judges and courts work in a number of contexts. This convergence is, of course, partial, as each discipline formats and evaluates work in distinct ways: anthropologists still focus on social processes and cultural ideas. But the finding that Muslims approach questions of law and religion in a wide range of ways, some more grounded in the written tradition than others, does not threaten that tradition but displays its versatility.

Anthropology is expanding its reach and, as it does so, it is adjusting its conceptual and methodological toolkits. What appear at one point to be quarrels—What is a *fatwa*? What is prayer?—will turn out to be different questions asked of the same, complex object. Fine-grained analyses of practices, interactions, and emotions allow anthropologists to, for example, appreciate the different modalities of ways a judge might speak (in and out of the courtroom, at different moments), the changes and variations in emotional dimensions of prayer (at different stages of personal development, in different circles), and the multiplicity of ways that an inheritance rule is realized in social life (by social status, wealth, and region).

This more sophisticated rendering of anthropology's conception of what it is doing—meta-theory of what an approach is and what an object is—should be accompanied by the further expansion of empirical study into areas currently only dimly illuminated: the varieties in *ifta'*, the complexities of non-state shari'a councils, the mechanisms generating different levels of *mahr*—among many others. Recursively these two movements—better grasp of variation and better appreciation of pluralism in approach and frameworks—ought to enrich and clarify how we think about “law,” “Islam,” and anthropology.

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## Notes:

(<sup>1</sup>) Baudouin Dupret, *Au nom de quel droit* (Paris: Maison des Sciences de l'Homme, 2000); Wael B. Hallaq, *Shari`a: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), 357–370.

(<sup>2</sup>) C. Snouck Hurgronje, *The Acehnese*, trans. A. W. S. O'Sullivan (Leiden: Brill, 1906), 1: 271–288.

(<sup>3</sup>) For an overview of the anthropology of law, see the annotated reader: Sally Falk Moore, ed., *Law and Anthropology: A Reader* (Malden, MA: Blackwell, 2005).

(<sup>4</sup>) E. E. Evans-Pritchard, *The Sanusi of Cyrenaica* (Oxford: Clarendon Press, 1949).

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(<sup>5</sup>) See Michael Gilson, *Recognizing Islam* (New York: Pantheon, 1982); Ernest Gellner, *Saints of the Atlas* (Chicago: University of Chicago Press, 1969).

(<sup>6</sup>) See Richard T. Antoun, *Muslim Preacher in the Modern World* (Princeton: Princeton University Press, 1989), 3–44.

(<sup>7</sup>) Clifford Geertz, “Local Knowledge: Fact and Law in Comparative Perspective,” in *Local Knowledge*, ed. Clifford Geertz (New York: Basic Books, 1983), 167–234; Dale F. Eickelman, *Knowledge and Power in Morocco* (Princeton: Princeton University Press, 1992); Lawrence Rosen, *The Anthropology of Justice: Law as Culture in Islamic Society* (Cambridge: Cambridge University Press, 1989).

(<sup>8</sup>) Evidenced in volumes such as Muhammad Khalid Masud, Rudolph Peters, and David S. Powers, eds, *Dispensing Justice in Islam: Qadis and their Judgments* (Leiden: Brill, 2006).

(<sup>9</sup>) Clifford Geertz, Hildred Geertz, and Lawrence Rosen, *Meaning and Order in Moroccan Society: Three Essays in Cultural Analysis* (New York: Cambridge University Press, 1979).

(<sup>10</sup>) Clifford Geertz, *Islam Observed: Religious Development in Morocco and Indonesia* (Chicago: University of Chicago Press, 1968).

(<sup>11</sup>) Susan F. Hirsch, *Pronouncing and Persevering: Gender and the Discourses of Disputing in an African Islamic Court* (Chicago: University of Chicago Press, 1998); Erin E. Stiles, *An Islamic Court in Context: An Ethnographic Study of Judicial Reasoning* (London: Palgrave Macmillan, 2009).

(<sup>12</sup>) See, e.g., Franz von Benda-Beckmann, *Property in Social Continuity: Continuity and Change in the Maintenance of Property Relationships through Time in Minangkabau, West Sumatra* (The Hague: M. Nijhoff, 1979).

(<sup>13</sup>) John R. Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning* (Cambridge: Cambridge University Press, 2003), 89–122.

(<sup>14</sup>) Ziba Mir-Hosseini, *Marriage on Trial: A Study of Islamic Family Law* (London: I.B. Tauris, 2001); Arzoo Osanloo, *The Politics of Women’s Rights in Iran* (Princeton: Princeton University Press, 2009). See also Ziba Mir-Hosseini, *Islam and Gender: The Religious Debate in Contemporary Iran* (Princeton: Princeton University Press, 1999); Léon Buskens, *Islamitisch recht en familiebetrekkingen in Marokko* [Islamic Law and Family Relationships in Morocco] (Amsterdam: Bulaaq, 1999).

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(<sup>15</sup>) Rosen, *Anthropology of Justice*, 51–53; Brinkley Messick, “Indexing the Self: Intent and Expression in Islamic Legal Acts,” *Islamic Law and Society* 8, no. 2 (2001): 151–178.

(<sup>16</sup>) Morgan Clarke, “The Judge as Tragic Hero: Judicial Ethics in Lebanon’s Shari’a Courts,” *American Ethnologist* 39, no. 1 (2012): 106–121.

(<sup>17</sup>) Lisa Wynn, “Marriage Contracts and Women’s Rights in Saudi Arabia: Mahr, Shurûṭ, and Knowledge Distribution,” in *The Islamic Marriage Contract: Case Studies in Islamic Family Law*, ed. Asifa Quraishi and Frank E. Vogel (Cambridge: Harvard University Press, 2008), 200–214. Mir-Hosseini, *Marriage on Trial*; Annelies Moors, *Women, Property and Islam: Palestinian Experiences, 1920–1990* (Cambridge: Cambridge University Press, 1995).

(<sup>18</sup>) Katherine Lemons, *At the Margins of the Law: Adjudicating Muslim Families in Contemporary Delhi* (Ph.D dissertation, University of California, Berkeley, 2010).

(<sup>19</sup>) John R. Bowen, *On British Islam: Religion, Law and Everyday Practice in Shari’a Councils* (Princeton: Princeton University Press, 2016).

(<sup>20</sup>) Moors, *Women, Property*, 48–76; Pierre Bourdieu, *Outline of a Theory of Practice* (Cambridge: Cambridge University Press, 1977); See also Martha Mundy, *Domestic Government: Kinship, Community and Policy in North Yemen* (London: I.B. Tauris, 1996).

(<sup>21</sup>) Talal Asad, *Genealogies of Religion: Disciplines and Reasons of Power in Christianity and Islam* (Baltimore: Johns Hopkins University Press, 1993); Alasdair MacIntyre, *After Virtue* (Notre Dame: University of Notre Dame Press, 1981).

(<sup>22</sup>) Saba Mahmood, *Politics of Piety: The Islamic Revival and the Feminist Subject* (Princeton: Princeton University Press, 2005); Charles Hirschkind, *The Ethical Soundscape: Cassette Sermons and Islamic Counterpublics* (New York: Columbia University Press, 2009).

(<sup>23</sup>) Hussein Ali Agrama, “Ethics, Tradition, Authority: Toward an Anthropology of the Fatwa,” *American Ethnologist* 37 (2010): 2–18.

(<sup>24</sup>) John R. Bowen, *Can Islam Be French? Pluralism and Pragmatism in a Secularist State* (Princeton: Princeton University Press, 2009), 83–84.

(<sup>25</sup>) Clarke, “The Judges as Tragic Hero.”

(<sup>26</sup>) Abdulaziz Sachedina, *Islamic Biomedical Ethics: Principles and Application* (Oxford: Oxford University Press, 2011); Marcia Inhorn, “Making Muslim Babies: IVF and Gamete

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(<sup>27</sup>) Morgan Clarke, "New Kinship, Islam, and the Liberal Tradition: Sexual Morality and New Reproductive Technology in Lebanon," *Journal of the Royal Anthropological Institute* (N.S.) 14 (2008): 153-169.

(<sup>28</sup>) Sherine Hamdy, *Our Bodies Belong to God: Organ Transplants, Islam, and the Struggle for Human Dignity in Egypt* (Berkeley: University of California Press, 2012).

(<sup>29</sup>) John R. Bowen, "Salat in Indonesia: The Social Meanings of an Islamic Ritual," *Man* (N.S.) 24 (1989): 299-318; Mahmood, *Politics of Piety*.

(<sup>30</sup>) An early example is Brinkley Messick, *The Calligraphic State. Textual Domination and History in a Muslim Society* (Berkeley: University of California Press, 1993).

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