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## Why Study Islamic Legal Professionals?

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# WHY STUDY ISLAMIC LEGAL PROFESSIONALS?

Clark B. Lombardi<sup>†</sup> and R. Michael Feener<sup>‡</sup>

*Abstract:* In many countries today, including the Southeast Asian nations of Indonesia, Malaysia, and Singapore, governments regulate some aspects of Muslim life according to Islamic law. The administration of Islamic law in these states is carried out by modern courts that are structured differently and staffed by different types of figures than were earlier institutions for the implementation of Islamic law. Prior to the modern era, courts tasked with the job of resolving cases according to Shari'a were staffed by judges with a particular type of training, and litigants appearing before these judges were generally not represented by a specialized class of lawyers. In the modern era, Shari'a courts have undergone radical changes in many countries. Modern Shari'a court judges are trained to find Islamic rules of a decision in ways that differ significantly from that of classical jurists. To varying degrees, these judges are also taught to apply Shari'a law in a manner similar to that of judges who apply non-religious law outside the Islamic court system. At the same time decisions are rendered in an environment in which litigants who appear before these judges are increasingly coming to be represented by lawyers who advise on questions of law and procedure, advocate for them and appeal cases. These differences in both training and professional practice affect the way in which the court engages with the Islamic tradition and thus affects the way that Islamic law is interpreted and applied. This article argues for new attention to be paid to the educational backgrounds and professional practice of the judges and lawyers who work in Shari'a courts to further our understanding of the practice of Islamic law in contemporary societies.<sup>††</sup>

## I. INTRODUCTION

Since the twentieth century, modern states in many parts of Asia, Africa, and the Middle East have appealed to various conceptions of Islamic law as a means to regulate important aspects of the lives of their Muslim

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<sup>††</sup> In accordance with the policies of the *Pacific Rim Law & Policy Journal*, foreign words that have entered common English usage will not be italicized. Foreign words that are not in common usage will be italicized. Arabic words will not use diacritical marks such as macrons. However, apostrophes and reverse apostrophes will be employed to signal the letters *hamza* and *'ayn*, respectively.

citizens.<sup>1</sup> In many countries, though not all, Islamic law is administered through a body of special courts that are often referred to as “Shari’a courts.”<sup>2</sup> These specialized Shari’a courts have jurisdictions clearly delineated from other courts or tribunals in the national legal systems where they operate.<sup>3</sup>

The roots of Islamic court systems as they operate in many modern states stretch back centuries to traditions of administering justice within Muslim polities, many of which were dramatically transformed under the experience of Western colonial rule in the nineteenth and early twentieth centuries.<sup>4</sup> Upon achieving independence, many of these states worked to integrate those colonial institutions into new state structures that have continued to evolve. Over the past forty years Islamic judiciaries have

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<sup>1</sup> For a broad overview of several contemporary Islamic legal systems, see JAN MICHIEL OTTO, ED., *SHARIA INCORPORATED: A COMPARATIVE OVERVIEW OF THE LEGAL SYSTEMS OF TWELVE MUSLIM COUNTRIES IN PAST AND PRESENT* (2010).

<sup>2</sup> Shari’a refers to the rules of behavior that Muslims believe were laid down in scripture by God and that men must follow if they are to go to heaven. The Qur’an states that God has sent a “Shari’a” that men are obliged to follow in verse 45:18. On the concept of Shari’a, see, BERNARD WEISS, *THE SPIRIT OF ISLAMIC LAW* 7-8 (1998), Norman Calder and MB Hooker, *Shari’a*, in 9 *THE ENCYCLOPEDIA OF ISLAM* 321 (2d ed., 2002), available at [http://www.brillonline.nl/subscriber/uid=1355/entry?entry=islam\\_COM-1040&authstatuscode=202](http://www.brillonline.nl/subscriber/uid=1355/entry?entry=islam_COM-1040&authstatuscode=202).

<sup>3</sup> See, e.g., Butti Sultan Butti Ali Al-Muhairi, *The Development of the UAE Legal System and Unification with the Judicial System*, 11 *ARAB LAW Q.* 116, 129-132 (1996) (United Arab Emirates); A. Nizar Hamzah, *Qatar: The Duality of the Legal System*, 30 *MIDDLE EASTERN STUD.* 79 (1994) (Qatar); Lamia Rustum Shehadeh, *The Legal Status of Married Women in Lebanon*, 30 *INT’L J. MIDDLE EAST STUD.* 501, 503-04 (1998) (Lebanon); Rudolph Peters, *The Re-Islamization of Criminal Law in Northern Nigeria and the Judiciary, the Safiyyatu Husaini Case*, in *DISPENSING JUSTICE IN ISLAM: QADIS AND THEIR JUDGMENTS* 219-21 (Muhammad Khalid Masud et al. eds. 2006) (Nigeria); Abdulkadir Hashim, *Servants of Shari’a: Qadis and the Politics of Accommodation in East Africa*, 16 *SUDANIC AFRICA* 27, 30-32 (2005) (Kenya); Erin Stiles, *Broken Edda and Marital Mistakes: Two Recent Cases from an Islamic Court in Zanzibar*, in *DISPENSING JUSTICE IN ISLAM: QADIS AND THEIR JUDGMENTS* 95-97 (Muhammad Khalid Masud et al. eds., 2005) (Zanzibar). In Southeast Asia, Shari’a courts are found, among other places, in Malaysia, Indonesia, and Singapore. See sources cited *infra* notes 6-8 and 10.

In other countries, Islamic law is not administered through a special court system. In these countries Islamic law is interpreted and applied by the courts of general jurisdiction. One example is Egypt where the Shari’a courts were dissolved in the 1950s under President Nasser and their jurisdiction transferred to the regular courts. Although there are special benches that hear questions of Muslim personal status law, these are merely benches of the courts of general jurisdiction. They are staffed by regular judges and are under the administrative supervision of the regular courts. Similarly in Afghanistan, the courts of general jurisdiction have jurisdiction over cases involving questions of Islamic law. In Pakistan, most issues involving Islamic law are similarly handled through the courts of general jurisdiction, although there are a handful of issues—including questions of Islamic review and application of the controversial “hudood” statutes—that are handled in a special court system.

<sup>4</sup> For examples of these processes in the Middle East, see generally HAIM GERBER, *ISLAMIC LAW AND CULTURE, 1600-1840* (1999), and NATHAN J. BROWN, *THE RULE OF LAW IN THE ARAB WORLD* (1997). For examples of these processes in colonial Southeast Asia, see KAREL A. STEENBRINK, *BEBERAPA ASPEK TENTANG ISLAM DI INDONESIA ABAD KE-19*, 211 (1984), and William R. Roff, *The Origin and Early Years of the Majlis Agama Kelantan*, in *STUDIES ON ISLAM AND SOCIETY IN SOUTHEAST ASIA* 179 (2009). Elsewhere, centralizing trends within early modern Muslim states had equally transforming consequences for the Islamic legal tradition.

become increasingly important in many countries. Their jurisdictions have expanded and they have gained new powers to enforce their judgments in some countries over recent decades.<sup>5</sup>

In countries with specialized Shari'a courts, those courts are today staffed by judges who are specially tasked with the job of resolving legal issues according to the State's official interpretation of Islamic law on such important legal issues as marriage, divorce, child custody, inheritance, pious foundations (*waqf*), and in some countries punishment for certain offenses against Islamic morality.<sup>6</sup> Over recent years, Shari'a court judges have also increasingly found themselves in situations where they are working with a new type of Islamic legal professional: lawyers who are hired by litigants to help them in cases involving Islamic law. As the jurisdiction and power of the courts have grown, the cases have become both more numerous and, in many instances, more important. This in turn has prompted further evolution in the Shari'a courts and in the figures who work within them.<sup>7</sup> It has led some countries to require new types of judicial training for the judges who will preside in the Shari'a courts.<sup>8</sup> It has also led to the rise of what might be termed "Islamic lawyering" as an increasingly important aspect of the ways in which issues of Islamic law are dealt with by the courts. Historically, most Muslims with business before the Shari'a courts were unrepresented.<sup>9</sup> Increasingly, however, parties appearing before the Shari'a courts are coming to be represented by lawyers, and in some

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<sup>5</sup> On developments along these lines in Southeast Asia, see FARID SUFIAN SHUAIB, POWERS AND JURISDICTION OF SYARIAH COURTS IN MALAYSIA (2nd ed. 2008), and ISLAMIC LAW IN CONTEMPORARY INDONESIA: IDEAS AND INSTITUTIONS 146, 146-69 (R. Michael Feener & Mark E. Cammack eds., 2007).

<sup>6</sup> For the history of the Shari'a (or "Syariah") courts in what is today Indonesia and a description of their current jurisdiction, see Farid Sufian Shuaib, *The Islamic Legal System in Malaysia*, 21 PAC. RIM L. & POL'Y J. 85 (2012). For the history of the Syariah courts in Singapore, see Ahmad Nizam Abbas, *The Islamic Legal System in Singapore*, 21 PAC. RIM L. & POL'Y J. 163 (2012).

<sup>7</sup> Michael Feener has been tracking these developments in his ongoing work on Shari'a courts in contemporary Indonesia. Analogous developments in neighboring Malaysia have been commented upon by MICHAEL PELETZ, ISLAMIC MODERN: RELIGIOUS COURTS AND CULTURAL POLITICS IN MALAYSIA 74 (2002).

<sup>8</sup> For a discussion of this phenomenon in the Shari'a courts of contemporary Southeast Asia, see Euis Nurlaelawati & Abdurrahman Rahim, *The Training, Appointment, and Supervision of Islamic Judges in Indonesia*, 21 PAC. RIM L. & POL'Y J. 43 (2012), Najibah Mohd Zin, *The Training, Appointment and Supervision of Islamic Judges in Malaysia*, 21 PAC. RIM L. & POL'Y J. 115 (2012), Sharifah Thuraiya Su'ad Ahmad Alhabshi & Muhammad Haniff Bin Hassan, *The Training, Appointment, and Supervision of Islamic Court Judges in Singapore*, 21 PAC. RIM L. & POL'Y J. 189 (2012).

<sup>9</sup> The role of advocates at work in pre-modern Shari'a courts is still vastly under-researched. However, significant early explorations of the topic can be found in Edgar Pröbster, *Die Anwaltschaft im islamischen Recht*, 5 ISLAMICA 545 (1932); EMILE TYAN, HISTOIRE DE L'ORGANISATION JUDICAIRE EN PAYS D'ISLAM, 262-75 (1960). More recently, Bernard Botiveau has commented on the modern development of advocates in mixed jurisdiction courts of the modern Middle East in relation to broader modernizing trends within Islamic legal practice. BERNARD BOTIVEAU, LOI ISLAMIQUE ET DROIT DANS LES SOCIÉTÉS ARABES 160-65 (1993).

countries, specialized courses of study are being established to help prepare people for practice before the Shari'a courts.<sup>10</sup>

Over the past forty years the Islamic legal systems of many modern states have changed in significant ways and new sorts of Islamic legal professionals have begun to operate within them. Moreover, these modern Shari'a court judges and lawyers not only find themselves working in new and evolving institutional contexts, they also come to that work with backgrounds in novel types of training that differ significantly from those of classical Islamic jurists. In this collection of papers, we will refer to the judges and lawyers who operate in these Shari'a courts as "Islamic legal professionals."

The emergence of these new types of Islamic legal professionals has arisen within the broader context of wide ranging debates on basic questions of Islamic legal interpretation. Since the late nineteenth century, Muslims around the world have become increasingly engaged in new kinds of discussion that call into question not only established methods of interpreting Islamic law, but also the very types of people who are authorized to carry out such work.<sup>11</sup> Over the past four decades, Muslim citizens in many states who were inspired by such reimaginings of Islamic law have come to express, in diverse ways, ideals of and aspirations for a state that governs its Muslim citizens in accordance with some understanding of Shari'a norms.<sup>12</sup> Even among them, however, there remain significant differences of opinion over what, precisely, the Shari'a requires.<sup>13</sup>

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<sup>10</sup> The phenomenon is largely understudied everywhere. One of the goals of this special issue of the *Pacific Rim Law & Policy Journal* is to document and analyze it in Southeast Asia. The evolution of specialized training and organization among lawyers practicing before the *Syariah* courts is the subject of several articles in this volume. See, e.g., Ratno Lukito, *The Training, Appointment, and Supervision of Islamic Lawyers in Indonesia*, 21 PAC. RIM L. & POL'Y J. 65 (2012), Nik Hasyila Bte Nik Ibrahim, *The Training, Appointment, and Supervision of Islamic Lawyers in Singapore*, 21 PAC. RIM L. & POL'Y J. 215 (2012), Amanda Whiting, *The Training, Appointment, and Supervision of Islamic Lawyers in the Federal Territories of Malaysia*, 21 PAC. RIM L. & POL'Y J. 133 (2012).

<sup>11</sup> OUSSAMA ARABI, *STUDIES IN MODERN ISLAMIC LAW AND JURISPRUDENCE* 19-38 (2001).

<sup>12</sup> Nathan J. Brown, *Shari'a and State in the Modern Muslim Middle East*, 29 INT'L J. MIDDLE EAST STUD. 359-76 (1997).

<sup>13</sup> For examples of the types of debate that evolved in different societies, see R. MICHAEL FEENER, *MUSLIM LEGAL THOUGHT IN MODERN INDONESIA* (2007) and Clark B. Lombardi & Nathan J. Brown, *Do Constitutions Requiring Adherence to Shari'a Threaten Human Rights? How Egypt's Constitutional Court Reconciles Islamic Law with the Liberal Rule of Law*, 21 AM. UNIV. INT'L L. REV. 379 (2006) (describing the history of the collapse of consensus and a variety of competing modern methods of interpreting Shari'a in Egypt).

## II. MEDIEVAL TRADITIONS AND MODERN TRANSFORMATIONS

Debates of this kind are rooted in the collapse of established mechanisms for the management of Islamic jurisprudence that had maintained traditional systems for the administration of law in Muslim lands. Although for the first three centuries of Islamic history (seventh to tenth centuries C.E.) Muslims strenuously disagreed about what exactly God's law was and how it could be determined,<sup>14</sup> some consensus did begin to form thereafter that helped to shape popular understandings of Islamic law for nearly a millennium.<sup>15</sup> During this period, scholars established models of epistemic authority, methods of jurisprudence, theories of legitimacy, and institutional formations that determined Islamic law as it was applied in Muslim societies.<sup>16</sup>

From roughly the tenth to the twentieth century C.E., Sunni Muslims came generally to agree upon the basic sources and methods for formulating Islamic law. The consensus came to be held that the interpretation of the Shari'a was the preserve of professional scholar-jurists associated with four schools of law ("*madhhabs*"), which resembled, in many respects, trans-regional guilds.<sup>17</sup> These *madhhabs* were associated with eponymous founders, and membership within them was acquired through training in a specified textual canon under the personal tutelage of a recognized scholar.<sup>18</sup> Recognition of one's acceptance as part of a *madhhab* came in the form of a

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<sup>14</sup> For some of the debates, partly outdated, see, among others, JOSEPH SCHACHT, *THE ORIGINS OF MUHAMMADAN JURISPRUDENCE* (1950). While some of Schacht's conclusions in this work, particularly with respect to the authenticity of the *hadith* literature, are controversial and others have been shown to be wrong, it remains a valuable introduction to debates within the Muslim community prior to the formation of a Sunni consensus. For more recent works on the subject, discussing some of Schacht's errors and clarifying some points, see WAEL HALLAQ, *THE ORIGINS AND EVOLUTION OF ISLAMIC LAW* (2005).

<sup>15</sup> On the formation of consensus, compare generally CHRISTOPHER MELCHERT, *THE FORMATION OF THE SUNNI SCHOOLS OF LAW, 9TH-10TH CENTURIES C.E.* (1997) with HALLAQ, *ORIGINS*, *supra* note 14 at 150-77. See also DEVIN STEWART, *ISLAMIC LEGAL ORTHODOXY: TWELVER SHIITE RESPONSES TO THE SUNNI LEGAL SYSTEM* 25 (1998).

<sup>16</sup> See generally, WAEL HALLAQ, *AUTHORITY, CONTINUITY AND CHANGE IN ISLAMIC LAW* (2001).

<sup>17</sup> For the rise of the *madhhabs* to dominance in the Sunni world, see STEWART, *supra* note 15 at 25-59. For more exhaustive accounts, see generally, for example, HALLAQ, *ORIGINS*, *supra* note 14 at 150-77, George Makdisi, *The Significance of the Sunni Schools of Law in Islamic Religious History*, 10 *INT'L J. MIDDLE EAST STUD.* 1-8 (1979), Bernard Weiss, *The Madhhab in Islamic Legal Theory*, in *THE ISLAMIC SCHOOL OF LAW: EVOLUTION, DEVOLUTION, AND PROGRESS* 1, 1-9 (Peri Bearman, Rudolph Peters, & Frank E. Vogel eds., 2005).

<sup>18</sup> There were several other *madhhabs* during the early centuries of Islamic period, but from the classical period four survived as authoritative schools of interpretation in the Sunni tradition. These were associated with: Abu Hanifa (d. 767), Malik ibn Anas (d. 796), Muhammad ibn Idris al-Shafi'i (d. 820), and Ahmad ibn Hanbal (d. 855). For the crystallization of popular support for the four Sunni schools of law, see STEWART, *supra* note 15, at 25. For the process by which scholars gradually came to abandon the practice of recognizing multiple authorities and instead came each to focus on the tradition emanating from a single one, see HALLAQ, *AUTHORITY AND CONTINUITY*, *supra* note 16 at 57-65.

license (*ijaza*) to transmit and further elaborate upon legal rulings consistent with the established precedents of a particular *madhhab* tradition.<sup>19</sup> For example, a scholar associated with the Shafi'i *madhhab* would receive a certificate certifying that he had learned the rules established by earlier generations of authoritative Shafi'i scholars and, ideally, in the methods that Shafi'is believed the earlier scholars had used when they derived those authoritative rulings.<sup>20</sup>

The jurists within each *madhhab* agreed in most respects about which texts one should look at to find Islamic law, about what methods could be used to interpret those texts, and about who had the qualifications to engage in Islamic legal interpretation.<sup>21</sup> Indeed, beyond this *madhhab* specificity, the scholars associated with all four authoritative Sunni schools agreed on a common approach to legal interpretation—even though they sometimes reached different conclusions about what God had, in fact, commanded. Thus, they recognized one another's competing interpretations as plausible, valid, and legitimate interpretations of God's law.<sup>22</sup>

Under this broad consensus, legitimate authority for determining matters of Islamic law came from being recognized as a member of one of the established *madhhabs*. Within this system, no interpretation of Islamic law could be considered legitimate if it was not determined by a recognized jurist elaborating upon the precedents of an established *madhhab*.<sup>23</sup> Thus, those authorized to speak on questions of Islamic law were expected to have classical training as jurists and, professionally, to identify themselves as members of the guilds of classical Islamic legal scholars. An individual jurist might be appointed to serve as a judge (“*qadi*”) for the court of a

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<sup>19</sup> Daphna Ephrat, *Madhhab and Madrasa in Eleventh-Century Baghdad*, in *THE ISLAMIC SCHOOL OF LAW*, *supra* note 17 at 77-93.

<sup>20</sup> For a statement of this general rule, but also a discussion of the complexities within the system and the gradual breakdown of it in much of the Muslim world, see WAEL HALLAQ, *SHARI'A: THEORY, PRACTICE, TRANSFORMATIONS* 135-54 (2009). For a discussion of the training of Shafi'i jurists in Indonesia through the present day, which resonates strongly with Hallaq's more general description, see, for example, Martin van Bruinessen, *Traditionalist and Islamist Pesantrens in Modern Indonesia*, in *THE MADRASA IN ASIA: POLITICAL ACTIVISM AND TRANSNATIONAL LINKAGES* 217, 220-22 (Farish A. Noor, Yoginder Sikand & Martin van Bruinessen eds., 2008).

<sup>21</sup> See generally BRANNON WHEELER, *APPLYING THE CANON IN ISLAM: THE AUTHORIZATION AND MAINTENANCE OF INTERPRETIVE REASONING IN HANAFI SCHOLARSHIP* (1996). See also HALLAQ, *AUTHORITY AND CONTINUITY*, *supra* note 16; SHERMAN JACKSON, *ISLAMIC LAW AND THE STATE: THE CONSTITUTIONAL JURISPRUDENCE OF SHIHĀB AL-DĪN AL-QARĀFĪ* 69-112 (1996).

<sup>22</sup> This acceptance of “mutual orthodoxy” is, indeed, a distinctive and much commented upon fact of pre-modern Islamic legal theory. For rich and extended discussions both of the fact and its implications, see, for example, BABER JOHANSEN, *CONTINGENCY IN A SACRED LAW: LEGAL AND ETHICAL NORMS IN THE MUSLIM FIQH* 1-72 (1999); BERNARD WEISS, *THE SPIRIT OF ISLAMIC LAW* 88-144 (1998).

<sup>23</sup> See, e.g., STEWART, *supra* note 15, at 30; JONATHAN BERKEY, *THE TRANSMISSION OF KNOWLEDGE IN MEDIEVAL CAIRO* (1992).

particular sultanate, but that was considered to be an appointment of state.<sup>24</sup> As such, this office bestowed a degree of power, but not necessarily religious authority, on those who held it. Moreover, when a jurist ceased to hold the office of *qadi*, he would continue to be a licensed expert in Islamic law and maintain his *madhhab*-based authority to interpret the Shari'a.<sup>25</sup>

In the modern period, the traditional consensus based upon the *madhhab* model of legal authority has broken down across much of the Muslim world. In the wake of this, classically trained scholars who are committed to elaborating Islamic law according to traditional methods are no longer recognized as the only authoritative interpreters of God's law. In fact, increasing numbers of Muslims have come to reject the *madhhabs* as legitimate in any sense.<sup>26</sup> In such contexts, charged debates have broken out all over the Muslim world about whether the traditional methods of interpretation are appropriate in the modern world, as well as about whether jurists trained in the traditional *madhhab* system can be trusted to interpret and apply Islamic law for Muslims today.<sup>27</sup> The collapse of the traditional agreement on the authority of traditional scholars and their established methods of interpretation has had serious ramifications for modern governments that wish to legitimize their rule in the eyes of their Muslim citizens by applying Islamic law in some form.<sup>28</sup>

Paradoxically, perhaps, vigorous national debates about Islamic law seem to have promoted the Islamization of legal systems in many countries over recent decades.<sup>29</sup> It is indisputable that even as the debate about basic questions of Islamic legal authority and Islamic legal interpretation has continued, many majority Muslim states have increased significantly the role

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<sup>24</sup> For more on the office of *qadi*, see, for example, KNUT VIKØR, *BETWEEN GOD AND THE SULTAN: A HISTORY OF ISLAMIC LAW* 168-84 (2005). Compare with MAURICE GAUDEFROY-DEMOMBYNES, *MUSLIM INSTITUTIONS* 148-58 (John P. MacGregor trans., 1950).

<sup>25</sup> See, e.g., HALLAQ, *AUTHORITY AND CONTINUITY*, *supra* note 16, at 167-74.

<sup>26</sup> WAEL HALLAQ, *A HISTORY OF ISLAMIC LEGAL THEORIES: AN INTRODUCTION TO SUNNI USUL AL-FIQH* 209-54 (1997).

<sup>27</sup> For a discussion of these debates as they have taken shape in Southeast Asia, see R. MICHAEL FEENER, *MUSLIM LEGAL THOUGHT IN MODERN INDONESIA* (2007); for a discussion of the debates as they have taken place in Egypt, see Lombardi & Brown, *Constitutions?*, *supra* note 13.

<sup>28</sup> HALLAQ, *SHARI'A*, *supra* note 20, at 443-99.

<sup>29</sup> The literature on Islamic revival and its impact both on legal systems and on society more broadly is voluminous. For slightly outdated but extremely valuable bibliographies of the Islamic revival, see generally *THE CONTEMPORARY ISLAMIC REVIVAL: A CRITICAL SURVEY AND BIBLIOGRAPHY* (Yvonne Y. Haddad, John O. Voll, & John L. Esposito eds., 1987) and its successor, *THE ISLAMIC REVIVAL SINCE 1988: A CRITICAL SURVEY AND BIBLIOGRAPHY* (Yvonne Y. Haddad, John O. Voll, & John L. Esposito eds., 1997).



that Islamic law plays in their national legal systems.<sup>30</sup> As Islamization has spread, the debates about who can interpret Islamic law, what methods they should use, and what Islam actually requires have become even more urgent. Some Muslims continue to claim that Islamic law can only properly be interpreted by traditionally trained scholars who devote themselves to expanding systematically upon the authoritative works of established *madhhabs*.<sup>31</sup> A great many others, however, including those associated with politically powerful Islamic organizations, reject that idea. They propose instead that people with other kinds of educational backgrounds should be allowed to use radically new methods of ascertaining God's will and determining questions of Islamic law. Among those who reject the authority of the traditional *madhhab* jurists and their methods of Islamic legal interpretation, however, there continues to be deep disagreement about precisely what types of new methods should be used.<sup>32</sup> The explosion of debate about these questions reflects the importance that Islam continues to have for Muslims and the sense of urgency that is expressed through agendas for the formal implementation of Islamic law through the apparatus of the modern nation-state.

Since the early twentieth century, legal codification was increasingly seen to promise a solution to the problem posed by the dearth of universally respected interpreters of Islamic law in Muslim societies.<sup>33</sup> State programs of codification, however, also fostered reconceptualizations of Islamic law that were in significant tension with the model of *madhhab*-oriented scholar-jurists. The situation was sometimes resolved through recourse to long-standing doctrine within Sunni political theory (*siyasa shari'iyya*), through which a Muslim ruler could select from among plausible interpretations of

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<sup>30</sup> For one example of the impact, one can note the remarkable trend towards amending constitutions to require that all state laws be consistent with Islamic law and, if not, allowing courts to void them. See Lombardi & Brown, *Constitutions?*, *supra* note 13, at 381-82.

<sup>31</sup> MUHAMMAD QASIM ZAMAN, *THE ULAMA IN CONTEMPORARY ISLAM: CUSTODIANS OF CHANGE* 38-59 (2007).

<sup>32</sup> For a brief outline of major contours of these debates, see Sami Zubaida, *Contemporary Trends in Muslim Legal Thought and Ideology*, in 6 *THE NEW CAMBRIDGE HISTORY OF ISLAM: MUSLIMS AND MODERNITY: CULTURE AND SOCIETY SINCE 1800*, 270 (Robert W. Hefner ed., 2010). For more detailed analysis of the debates in Southeast Asia and Egypt, respectively, see generally FEENER, *MUSLIM LEGAL THOUGHT*, *supra* note 13, CLARK B. LOMBARDI, *STATE LAW AS ISLAMIC LAW IN MODERN EGYPT: THE INCORPORATION OF THE SHARI'A INTO EGYPTIAN CONSTITUTIONAL LAW* 78-118 (2006), Lombardi & Brown, *Constitutions?*, *supra* note 13, at 406-14.

<sup>33</sup> For an introduction to modern codification projects in Muslim societies, see N. J. COULSON, *A HISTORY OF ISLAMIC LAW* 149-81 (1964). For a critical view of the codification project, see Ann E. Mayer, *The Shari'ah: A Methodology or a Body of Substantive Rules?*, in *ISLAMIC LAW AND JURISPRUDENCE* 177 (Nicholas Heer ed., 1990).

Islamic law, codifying the interpretation that he prefers and applying it as law in the interest of public order.<sup>34</sup>

Various states have enacted statutes that encapsulate their official understandings of Islamic law, and in doing so they have introduced new dynamics into the ways in which Islamic law is interpreted and applied by Islamic legal professionals. In this way, these states have had to either create for themselves, or encourage others to create, shared visions of Islamic law to unite the legal experts who can operate the new legal system. Such shared visions must, of course, point toward a set of rules that are—or could be made to be—acceptable to both the state and the public. The legal professionals who are to be tasked with administering this new form of Islamic law must then be taught not only to implement it (thus demonstrating its efficacy), but also to proselytize for it against the challenges of those who would argue for alternative, or oppositional, understandings of Islamic law.<sup>35</sup>

### III. ISLAMIC LAW IN SOUTHEAST ASIA

This special issue of the *Pacific Rim Law & Policy Journal* contains nine other articles that examine the implications of these broader historical developments for the development of new types of Islamic legal professionals. They all focus on one geographic area of the contemporary Muslim world: Southeast Asia. Although this region is often overlooked in broader studies of Islamic law, there are compelling reasons to focus attention precisely here for a preliminary examination of the development of new types of Islamic legal professionals in the modern world. First, there is simply the demographic weight of the area. Indonesia is the world's largest Muslim majority country,<sup>36</sup> and it anchors a broader band of significant Muslim populations in the region. In addition to Indonesia, the studies in this volume will examine developments in two neighboring countries:

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<sup>34</sup> LOMBARDI, STATE LAW AS ISLAMIC LAW, *supra* note 32, at 51-58, 63-67. For a discussion of one influential formulation of this classical doctrine, see Baber Johansen, *A Perfect Law in an Imperfect Society: Ibn Taymiyya's Concept of 'Governance in the Name of the Sacred Law'*, in THE LAW APPLIED: CONTEXTUALIZING THE ISLAMIC SHARI'A: A VOLUME IN HONOR OF FRANK E. VOGEL 259 (Peri Bearman, Wolfhart Heinrichs, & Bernard G. Weiss eds., 2008).

<sup>35</sup> Perhaps the most ambitious state program to pursue these goals in a unified way today is that of the International Islamic University Malaysia (IIUM), which has succeeded in making itself the near-exclusive custodian of credentials for Islamic legal professionals in that country. The role of IIUM is discussed extensively in the chapters on Malaysia included in this volume. See, e.g., Najibah, *supra* note 8.

<sup>36</sup> See Central Intelligence Agency, *Indonesia: Introduction*, THE WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/id.html> (last visited September 25, 2011).

Malaysia, which is a Muslim majority country,<sup>37</sup> and Singapore, which is not a Muslim majority country, but has a significant Muslim minority.<sup>38</sup> The particular combination of these three countries here reflects methodological choices to highlight comparative reflections on the broader phenomenon of new Islamic legal professionals in the modern world. One important factor is the diversity of colonial legal legacies across the region, in which Indonesia inherited a system of continental civil law from the Dutch, whereas Malaysia and Singapore have maintained a British model of common law as their own dominant national traditions since independence.<sup>39</sup> Furthermore, another important comparative axis opens within these two common law traditions, with Malaysia and Singapore presenting cases of special Islamic jurisdictions within states home to Muslim majority and Muslim minority populations, respectively.

Prior to these colonial histories, Islam had come to Southeast Asia along a number of diverse trajectories. Over the thirteenth to the nineteenth centuries, however, local forms of Islam tended to adhere to the Shafi'i *madhhab* in matters of Islamic jurisprudence, which became the dominant school of Islamic law in the region.<sup>40</sup> Through the early modern period, rulers in Southeast Asia, both indigenous and later colonial, came to carve out specially defined roles for Islamic law in the formal legal systems of their realms.<sup>41</sup> Often this was done by identifying specific types of legal questions that would be decided by Islamic law, sometimes by setting up designated Shari'a courts to decide those particular types of questions. Across the region, the Islamic law that was applied in these courts was recognizably derived from the jurisprudence of the Shafi'i *madhhab*.<sup>42</sup> In keeping with Indonesian and Malaysian renderings of Arabic, these Shari'a courts are locally referred to as "Syariah" courts, and this term will be used when referring to them.

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<sup>37</sup> See Central Intelligence Agency, *Malaysia: People*, THE WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/my.html> (last visited September 25, 2011).

<sup>38</sup> See Central Intelligence Agency, *Singapore: People*, THE WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/sn.html> (last visited September 25, 2011).

<sup>39</sup> See generally M.B. HOOKER, A CONCISE LEGAL HISTORY OF SOUTHEAST ASIA (1978).

<sup>40</sup> See R. Michael Feener, *Southeast Asian Localisations of Islam and Participation within a Global Umma, c. 1500-1800*, in 3 THE NEW CAMBRIDGE HISTORY OF ISLAM 470-503 (Anthony Reid & David Morgan eds., 2010).

<sup>41</sup> See, e.g., DENYS LOMBARD, LE SULTANAT D'ATJÉH AU TEMPS D'ISKANDAR MUDA: 1607-1636, 79-81 (1967); Martin van Bruinessen, *Shari'a courts, tarekat and pesantren: Religious Institutions in the Banten Sultanate*, 50 ARCHIPEL 165, 165-200 (1995).

<sup>42</sup> DANIEL S. LEV, ISLAMIC COURTS IN INDONESIA: A STUDY OF THE POLITICAL BASES OF LEGAL INSTITUTIONS 8-30 (1972).

After achieving independence in the mid-twentieth century, the modern states of Indonesia, Malaysia, and Singapore maintained within the frameworks of their broader national legal systems courts with specialized jurisdiction over questions that were to be resolved according to Islamic law.<sup>43</sup> Over the decades that followed, all of these states have also instituted changes to the definition and administration of the jurisdictions of their Syariah court systems. In Indonesia and Malaysia there have been numerous attempts—some, but by no means all, successful—to expand the jurisdiction of Syariah courts over the past forty years.<sup>44</sup> Furthermore, the mechanisms of appellate review have been modified so that in Malaysia their decisions in many areas are effectively unreviewable, whereas in Indonesia Syariah court decisions are now reviewable by the Supreme Court (Mahkamah Agung) rather than by political appointees tasked with the administration of religious affairs. In both countries, the state has acceded to the demands of certain regions to give Islamic law a greater role in the formal legal system. In addition to this, over recent years Indonesian and Malaysian law more broadly has been increasingly taking “Islamic values” into account, even on matters of law that fall outside the technical jurisdiction of their Syariah courts.

#### IV. THE STUDY OF ISLAMIC LEGAL PROFESSIONALS

While there have been several studies of the evolution of the Islamic legal systems in Indonesia, Malaysia, and Singapore, most of this work has focused simply on issues of the jurisdiction, structure, powers, and procedures of their Syariah courts.<sup>45</sup> This oversight is not unusual. There has been surprisingly little published on the training and professional culture of judges and advocates working in the Islamic sectors of the legal systems of modern Southeast Asian states, or anywhere else for that matter. This collection of studies builds upon the existing foundation of work on Islamic law in Southeast Asia in a number of new ways. First, it presents a new attempt at developing comparative perspectives on contemporary developments in three important Islamic legal systems of contemporary

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<sup>43</sup> For the history of the Syariah courts in what is today Indonesia and a description of their current jurisdiction, see R. Michael Feener & Mark E. Cammack, *The Islamic Legal System in Indonesia*, 21 PAC. RIM L. & POL'Y J. 13 (2012). For the history of the Syariah courts in what is today Malaysia, see Farid, *The Islamic Judicial Structure in Malaysia*, *supra* note 6. For the history of the Syariah courts in Singapore see Ahmad Nizam Abbas, *Judicial Structure in Singapore*, *supra* note 6.

<sup>44</sup> These developments are discussed in the overviews of the Islamic legal systems of these countries published in this volume.

<sup>45</sup> This material is cited and reviewed at length in the articles on the Indonesian, Malaysian, and Singaporean Islamic legal systems published in this volume.

Southeast Asia. Those interested in understanding how Islamic legal systems respond to diverse political and social conditions will find in the material collected here a clearly organized overview of both similarities and differences between the Syariah court jurisdictions of Indonesia, Malaysia, and Singapore.

More importantly, however, the studies commissioned for this volume direct attention toward aspects of the legal systems in these countries that have not been highlighted in previous work on Islamic law in contemporary societies. Placing focus squarely upon the training, professional development, and everyday practice of the judges and lawyers who work within the Syariah court systems of contemporary nation-states opens a new field in which to further refine our understandings of how Islamic law is understood and experienced today.<sup>46</sup> In Indonesia, Malaysia and Singapore—as elsewhere in the Muslim world—the state’s official interpretation of Islamic law is mediated to the citizenry by judges and lawyers who comprise new classes of legal professionals. These new Islamic legal professionals meet in the context of litigation and engage in discourse about how the state’s official version of Islamic law is to be interpreted and applied—a process that is resolved by judges. This discourse shapes the ongoing evolution of the state’s understanding of Islamic law and determines the implications of Islamization for the citizenry. While it has long been understood among specialists in the field that these new Islamic legal professionals have different training and are organized differently than the figures who mediated official state versions of Islamic law in the past, there has not, to date, been any systematic study of the ways in which contemporary Islamic judges and lawyers are prepared for and professionalized to perform the work of the interpretation and application of Islamic law in modern Shari’a courts. By better understanding the background, training, intellectual assumptions, and work experience of these judges and lawyers in Indonesia, Malaysia, and Singapore, we may better understand some of the directions along which Islamic law might develop in the twenty-first century.<sup>47</sup>

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<sup>46</sup> See *supra* text accompanying notes 6-13.

<sup>47</sup> This preliminary study focuses only on the training of Shari’a court judges and lawyers. To expand our comprehension of the ways in which Islamic law is made in contemporary societies, future work should also be done on the educational backgrounds and working experience of other state functionaries involved in these processes, including legal advisors who draft statutes, court clerks, alternative dispute resolution mediators, and law enforcement officials. Some work along these lines has already begun. See e.g., PHILIP OSTIEN, *SHARI’A IMPLEMENTATION IN NORTHERN NIGERIA* (2007), available in five parts at <http://www.sharia-in-africa.net/pages/publications/sharia-implementation-in-northern-nigeria.php>. See also R. MICHAEL FEENER, *SHARI’A AS SOCIAL ENGINEERING* (forthcoming), for a study of Islamic law and the evolving Islamic legal system in contemporary Aceh.