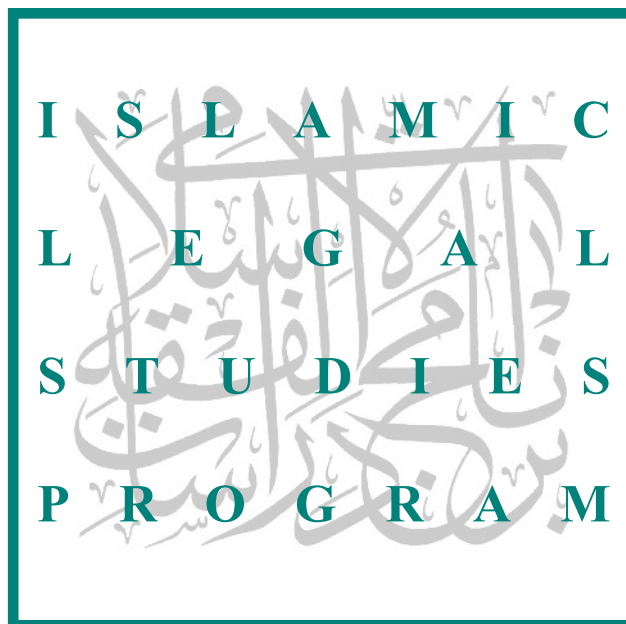


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“Islamic Law in the Law of National States in the Middle East and Southeast Asia”

Baber Johansen

Under this title I organized, on March 26 and 29, 2010, a workshop that discussed the place of Islamic law in the national codes of states with predominantly Muslim populations in the Middle East and Southeast Asia. What place do their codes assign to Islamic law? As none of the states concerned—with the exception of Turkey—declares itself to be a secular state, they can all claim that the law they enact is the law of an Islamic state and therefore Islamic law, even if the dependence of the codes on Western models often is obvious. The question is how the states’ claim to create new “Islamic law” affects the interpretation of the content of their codes that seem to be entirely “Western” and distinct from classical Islamic *fiqh*.

As written in the invitation, explained in an accompanying letter, and mentioned in my introduction to the proceedings, the workshop was to discuss constitutional law and civil law. As far as constitutional law is concerned, the participants were asked to “discuss the constitutional avatar of Islamic law: its transformation from a set of norms and principles developed by legal scholars [of classical Islamic law] into principles that guide the political legislator in her formulation and promulgation of legal norms for the national state.” As far as civil law is concerned, I had asked the participants to “discuss the status of individual laws and codes that are interpreted as representing the Islamic legal heritage within the modern national law (in particular the law of personal status and penal law).” I had underlined that another “aspect that needs clarification concerns the persons and institutions that are held to guarantee the Islamic character or norms and principles within the national law.”

The workshop brought together a group of scholars who have worked on the development of national law in the modern Middle East and Southeast Asia. The speakers were Kilian Bälz (Attorney and Legal Consultant, Frankfurt and Cairo), author of an important book on insurance law in the Middle East and a number of pioneering articles on the jurisprudence of the Constitutional Court of Egypt, Islamic finance, and legal theory; Kristen Stilt (Northwestern University), jurist and historian, working on the change of legal forms in modern national states; Iza Hussin (University of Massachusetts-Amherst), a political scientist specializing in Southeast Asian, in particular Malaysian, political and religious history; Clark Lombardi (University of Washington), author of a much discussed book on the Constitutional Court of Egypt and actually working on the training of judges in Southeast Asia; Chibli Mallat (University of Utah and Université de Saint-Joseph), author of many books on Islamic law, the modern political and religious history of Iraq, an important *Introduction to Middle Eastern Law* [Oxford University Press, 2007], and *Iraq: Guide to Law and Policy* [Aspen Publishers Wolters Kluwer, 2009]; and Baber Johansen (Harvard Divinity School). In addition, two Harvard University graduate students, both fellows of the Islamic Legal Studies Program, joined with contributed remarks on the subjects of their theses: Leonard Wood (Harvard University, Ph.D. candidate in History) whose thesis focuses on the development of a new understanding of Islamic law among Egyptian jurists in the last decades of the nineteenth and the first half of the twentieth century, and Havva Gueney-Ruebenacker (Harvard Law School, S.J.D. candidate),

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whose work on the influence of the legal institution of slavery on conceptualizations of legal relations between genders was presented to a larger audience at the end of the workshop.

Kilian Bälz focused his contribution on the transformation of Islamic law into “Islamic principles” that are integrated into the constitution of the national state as the major source of the national legislation. He opened his discussion of the subject with the questions: What is Islamic law? How do we understand the transformation of Islamic law into constitutional principles [“constitutionalization”]?

He started from the assumption that at the beginning of the twenty-first century “we do not know any more what Islamic law is,” and he held that the present debate on the content of Islamic law is characterized by the attempt (1) to understand Islamic law as being subject to change in time and space, (2) to define its continuity by the recognition of the difference between changeable and unchangeable norms, and (3) to recognize the political lawgiver as the authority who decides on the licit mode of norm production and of interpreting the Islamic principles that bind the legislature. It is not so much content but the mode of norm production that defines “Islamic law.” This requires not only a constitution, but also a constitutional court entrusted with constitutional review and a public that accepts this procedure. He concluded: “The constitutionalization was a means of the nation state to define the content of the Shari’a.” According to Bälz, this process “has reached a state of maturity” in many countries that follow the Egyptian model of integrating into the constitution an article that declares “the principles of the Islamic Shari’a” to be the major source of the national legislation.”

He admitted that this model does not exhaust the constitution of “Islamic” models in all fields of the law: “a large scale reception of mostly English common law principles” in the Gulf states “through contractual practices and “financial free zones” shows that state control is not alone to determine the outcome of the new “Islamic law” and on the societal level he sees a plurality of Islamic discourses mainly concerned with “fashion, finance, youth culture.”

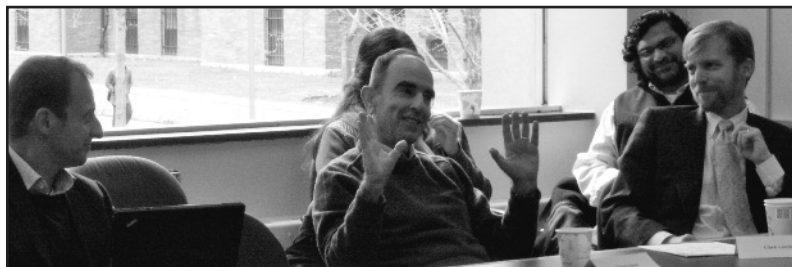
But Bälz argued that as a practitioner who now has learned to also practice Shari’a law he thinks that “it is time to transfer and use the experiences” gained in the process of transforming Islamic law into constitutional principles to other fields. He

thinks that (1) Islam in Western Europe and the US and (2) the law of Islamic finance would also profit from a process in which practices are anchored in principles recognized by the communities and reflected in their law, rather than in individual transactions that are not linked to the development of a legal system and therefore find it difficult to produce “a coherent set of ethical principles.” For Islamic finance he therefore suggests “an institutionalization of the Shari’a process and the development of Shari’a standards” through market organization.

Clark Lombardi focused on the growing role of judges in codified systems that transform Islamic law into constitutional principles that the lawgiver has to apply in the act of legislation. He doubted that Schacht’s interpretation of Islamic law as a jurists’ law is still meaningful at the end of the twentieth and the beginning of the twenty-first century. He also doubts, referring to legal scholars of the Mamluk period as counter-examples, that it was as dominant in the past as Schacht imagined. Based on recent literature on these jurists he states that they held that “one did not need to be a *faqih* to develop this type of law . . . one needed only (a) to be aware of the principles that were announced in *nusus* [foundational texts] and constituted the revealed law and (b) to be able to determine what rule would lead to the most beneficial results.”

According to Lombardi, this approach is characteristic for the approach of modern Muslims to the law of their states. The fact that the state enacts laws and that state-appointed judges, trained in this kind of law, interpret it, is widely recognized as an Islamic practice. Clark documented this statement in an analysis of the law of Egypt, Pakistan, Malaysia, and Indonesia. He concluded that in today’s Muslim states “judges will decide cases on the basis of Islamic law that comes in the form of legislation or, in some cases, judicial case law . . . and at least in the Sunni world, governments do not vest the authority to perform Islamic review (in order to ratify the government’s conclusion that the law it enacts are, in fact, Islamic) in institutions run by the ‘ulama’ or some other group of non-state Islamic thinkers. They vest it in judges who evaluate the Islamic-ness of legislation by independently determining whether the law conforms to scriptural principles (as the judges interpret it) and public interest (as the judges understand it).”

Lombardi drew two conclusions from this insight. First, “the writing of legal professionals and of judges are becoming a type of ‘Islamic’ text. Just as court opinions are increasingly being read in courses on modern Western political philosophy, court opinions should perhaps be read in courses on Islamic thought.” Second, “the behavior of states will be constrained by Islamic law as interpreted by legislators and judges—and ultimately shaped by the judicial practice of Islamic review. Those who wish to predict behavior will need to study both the



Kilian Bälz, Gideon Libson, and Clark Lombardi at the workshop on Islamic Law in the Law of National States

ILSP WORKSHOP MARCH 2010, *cont.*

evolution of jurisprudence in the hands of national judges—meaning that they must be prepared for versions of Islamic law that are quite different from one nation to another.” Those who want to exert their influence on the content of Islamic law in the future, therefore, will have to “focus their attention on shaping the training and guaranteeing the independence of judges.” According to Clarke, that is what the Islamist movements are doing when they pay attention “to reforming legal education and to forming bar associations.”

Iza Hussin presented cases brought before the secular and the Shari‘a courts of Malaysia. She showed how in the jurisprudence of the state courts Islamic law references are used and how Islamic courts place their legal arguments firmly within the context of Malaysia’s civil courts legal disputes and do not treat their decisions and Islamic law as a legal domain separated from Malaysia’s constitution, the legislation, and the decisions of the civil courts. As a result, Hussin questioned the analytical usefulness of categories such as “mixed” or “plural legal systems.” She rather focused on the evidence provided by her course cases that showed that the civil and the Shari‘a courts develop a common style, civil courts using Islamic references and Shari‘a courts referring to decisions of civil courts.

Kristin Stilt presented her research on “customary marriages” in Egypt and Saudi Arabia. She showed how, in both countries, these forms differ from those of state law and of the historical forms of Islamic law and how, in both countries, the risks of these new forms of legalization of new marital forms are borne by women. She also argued convincingly that the integration of these new marital forms into state law or Islamic law, a topic that has become the object of scholarly debates on the national and the international level, is far from being achieved. The formation of judges and the influence of the courts on the understanding of law among the majority of the citizens were objects of controversial arguments.

Chibli Mallat presented an Iraqi debate on the Islamic foundations of federalism in the work of a leading Shi‘i scholar, Hasan Bahr al-‘Ulum, a work that Chibli Mallat just helped to edit in Baghdad. In his introduction to this text, Mallat held that two conditions have to be fulfilled to render Islamic law influential in postwar Iraq. First, Islamic law has to be national law, and second, it has to be Middle Eastern in character. He underlined that in the constitutional formation, the legislation, and the judiciary of Iraq, Islamic law “has been all but absent” because in its present form it does not meet these conditions. He exemplified this thesis with regard to the federalist character of the constitution in Iraq.

After paying tribute to the role of the Bahr al-‘Ulum family as leaders of the Islamic opposition under Saddam Hussein, Chibli addressed the Middle Eastern concepts of constitutionalism. He showed how the separation of powers and the “social contract” (i.e., the contract between the people and the sover-



Baber Johansen (far right) leads a discussion at the workshop on Islamic Law in the Law of National States. Gideon Libson, Clark Lombardi, Kristen Stilt, Iza Hussin, and Evgenia Kermeli (l to r) are also pictured.

eign) have been recognized in Middle Eastern states in spite of the fact that they had no precedents in either the classical *fiqh* or in the pre-modern history of the Middle East. The same does not hold true for most of the Middle Eastern states concerning the concept of federalism. This concept was, according to Mallat, first discussed among the Iraqi Kurds during the 1980s, among Shi‘i scholars in the 1990s, and “adopted formally by the Iraqi National Congress in the Salaheddin meeting in October 1992.” Since 2003, this principle, argued Mallat, has been firmly anchored among the Kurdish and Shi‘i populations but neither in legal education at the law faculties nor in the practice of the government and the judiciary.

Introducing the intellectual genealogy of Hasan Bahr al-‘Ulum (whose father and relatives, as well as many of his teachers, were executed under Saddam Hussein during his studies, so that he had to migrate first to Iran and then to London), Mallat showed how the personal and political experience of a prominent Shi‘i family of scholars renders their scion sensible to the guarantees provided by a federal system. Hasan Bahr al-‘Ulum searches in Islamic history for “embryonic forms [of federalism] in Islam’s classical age, and within the theories of government as developed around *wilayat al-faqih* . . . which on the basis of his [Iranian] master al-Harandi he redresses significantly. This new theory, which he calls *wilayat al-insan ‘ala nafsih* ‘the persons self-governance,’ is the point of departure for the Islamic foundation of federalism in Bahr al-‘Ulum theory.”

Bahr al-‘Ulum holds that an Islamic federalism should find its justification in its capacity to protect the rights of religious minorities, their ritual, their worship, culture, and values “in a general framework that does not conflict with retaining the general outward expression of Islam.” He sees in the early Muslim Empire a precursor of such federalism. The legal foundation of such an Islamic federalism he finds in the Islamic principle that human beings should choose a system of government that best protects the individual welfare. Such a choice, according to Bahr al-‘Ulum, is required by the fundamental principle of Islamic public law that entitles the individual human being to the self-governance of his person. According to Bahr al-‘Ulum, this principle is at the basis of all public law in Islam. His approach serves the “grounding

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of federalism on that preferred governance theory.” He states: “I have discovered in the theory exposed in the ‘rule of the person over his own self,’ the one most appropriate to rest the federal system on.”

Mallat drew from this presentation the following conclusion: “The topic of a federal order has come a long way from both the theoretical and practical perspectives. Advanced as well as developing nations have adopted its mechanisms and programs, but current space and time have positioned Iraq as a particularly adequate model for it, especially in view of the confessions, nationalities, sects, and functions that comprise the country.” Islamic law, in this presentation, appeared as a theory of law that finds in Islamic principles the justification for a new constitutional order and federalism as a bridge between Western law and Middle Eastern law.

Leonard Wood brought the discussion back to the Egyptian model and to the concept of *siyasa shar‘iyya*. He argued that the post-1970 innovations in Egypt’s legal practice were envisioned by Egyptian jurists writing between the 1890s and the 1930s. He claimed that a scholarly discourse had evolved at that time which focused on the reform, revival, and application of Islamic law, and which called for the Islamization of the national legal system through parliamentary legislation and executive action. He cited contributions from early twentieth-century journals that explored the question of how

Islamic law could survive and thrive in a political and legal context that was largely formed on Western institutional models. The discussions in these forums were often technical, concerning the drafting of national Islamic legislation, the distilling of legal principles for use by the political legislator, reorienting the constitution to favor Islamic principles, and the simplification of modes of legal reasoning to assist the judges and the legislator. Writers in these journals looked for an Islamic legitimization of their suggestions to the theory of *siyasa shar‘iyya*, the relevance of which for Egypt’s legal reforms was much discussed in their publications. Leonard hypothesized that ideas of the 1930s and 1940s survived long enough in Egyptian political and legal discourse to influence practices of the 1970s and 1980s.

In our debates, the attempts to win new categories for the analysis of the meaning of Islamic and state law, of the integrative powers of constitutions and their underlying principles, of the norm-producing functions of the judiciary, were constantly and intentionally confronted with developments in practical politics, customary normativity, and cultural developments in new milieus. Workshops of this kind that try to establish the development tendencies in present Middle Eastern and Islamic law will, I hope, continue to play an important role for our understanding of Islamic law in national and Middle Eastern law. ❖

PARTING WORDS FROM THE ACTING DIRECTOR

On July 1, 2010, I ended my tenure as Acting Director of the Islamic Legal Studies Program at Harvard Law School and took over the directorship of the Center for Middle Eastern Studies at Harvard University. As of July 1, Dr. Nazim Ali will be the Acting Executive Director of ILSP.

These changes in the directorship will not diminish the important potential that ILSP has as a center for research on Islamic legal history, as a forum in which members of the legal profession of Muslim countries (the judiciary, legal practitioners, and law professors) can meet and discuss questions of common interest with members of the American legal profession. ILSP will continue to be a common ground for visiting research fellows from countries with different cultural and religious backgrounds who come to Harvard to provide, through their research, a better understanding of the development of Islamic law past and present. ILSP and its Islamic Finance Program have established a solid reputation as one of the meeting points of scholars and practitioners in this field.

In the four years that I have been ILSP’s Acting Director, I have tried to initiate new activities that make some of the program’s activities more visible. I have introduced the *Abd al-Razzaq al-Sanhuri Lectures on Legal Interpretation in the Muslim World*. This lecture was opened by the Deputy Chief

Justice of Egypt’s Constitutional Court, Dr. Adel Sharif in 2007. In the same year, Prof. Hossein Modarressi from Princeton University, one of the leading Iranian *mujtahids* and a renowned research fellow at Oxford and Columbia, gave the second lecture of this series. The third Sanhuri Lecture, in April 2008, was given by the Hon. Saadia Belmir, the first woman to serve as judge with the rank of Chamber President in the Moroccan Supreme Court, then as member of Morocco’s Constitutional Council, counselor of the Moroccan Minister of Justice, and who currently serves as the vice-president of the United Nations’ Committee against Torture. In November 2008, the fourth speaker in this series was the former Chief Justice of Malaysia, Abdul Hamid Mohamed. ILSP welcomed its fifth Sahuri lecturer, Dr. Badria Al-Awadhi, Director of the Arab Center for Environmental Law, and former Dean of the Law School at the University of Kuwait in November 2009 (see the review of her lecture on pp. 6–8). These speakers, coming from different countries and serving in different positions, have provided insight into the large variety of problems and options that face the legal profession in different Muslim countries. They have also shown the necessity and the possibilities for a closer cooperation and a more regular and recurrent debate between HLS and the legal profession in the Muslim world.

PARTING WORDS FROM THE ACTING DIRECTOR, *cont.*

ILSP is a program that presents research on both past and current Islamic law. I have therefore introduced, in 2008, the obligation for all of its fellows to present the results of their research in public lectures. These lectures inform Harvard's faculty, students, and staff as well as the general public on the spectrum of research performed at ILSP by fellows coming from countries with different religious, cultural, and political backgrounds. They provide an important source of information on the historical and present development of Islamic and Middle Eastern law and they have found an audience that is interested in these regularly recurrent presentations. (For a report on the lectures of the fellows for 2009–2010, please see pp. 16–19.)

Since the foundation of ILSP by Prof. Frank Vogel, the program has always invited important speakers to give guest lectures for the public. This tradition has continued during my tenure.

Workshops also have always played an important part in the ILSP activities. During my tenure the following workshops were organized: "Gender-Relevant Legislative Changes in Muslim and Non-Muslim Countries" (March 2007, in cooperation with Washington and Lee University, Francis Lewis Law Center); "Teaching Islamic Law at American Law Schools" (March 2008); "Joseph Schacht Revisited" (April 2008); and "The Law of *Waqf*: Modern State Control and Nationalization" (May 2008).

I organized three additional workshops. The first, with a more historical outlook, on "The *Salam* Contract," was held in February, 2007 (I hope to publish the results of this workshop in the near future). Two others followed on the present development of Islamic law. A workshop on the "Constitutional Judiciary in the Muslim World: Its Influence on the Interpretation of Constitutional and Legislative Texts, 1970–2008" took place in November 2008. During this workshop, judges from the highest courts of Egypt, Malaysia, and Morocco discussed, sometimes controversially, with representatives of the International Academy of Constitutional Law (Tunisia), professors from HLS and other American law schools, as well as a renowned British judge, the role of the judiciary for the determination of constitutional and family law. Workshop participants were welcomed by then-HLS Dean Elena Kagan. I hope that ILSP will continue to organize such encounters.

Following up on some aspects of the questions raised in the constitutional judiciary workshop, I organized, together with colleagues teaching at American law schools and with European practitioners, a workshop on "Islamic Law in the Law of National States in the Middle East and Southeast Asia." Held in March 2010, this event focused on the relation between state law and Islamic law in the constitutional and civil law of countries in the Middle East and Southeast Asia. (See the full report beginning on p. 1.)

Since February 2007, the Islamic Finance Program, under the leadership of Dr. Nazim Ali, has organized annual workshops

with the London School of Economics (LSE) on various aspects of Islamic finance. These workshops and seminars take place in London at the LSE and constitute one of the most important sources of information on Islamic finance for the public and for scholars.

In addition, the Islamic Finance Program held the 8th and 9th Forums on Islamic Finance in 2008 and 2010. A biennial event, these fora are much appreciated by the practitioners of Islamic finance, by scholars, and by the public, and they regularly attract large and enthusiastic audiences. I have participated in all of them during my tenure and have been very impressed by the controversial discussions in this field that took place at these gatherings.

During the last months of my tenure at ILSP, I was invited by the CUNY Graduate Center to participate in a panel discussion at the Great Issues Forum on *The Rise of Intellectual Reform in Islam*. Panel members were Abdulkarim Soroush and Prof. Ebrahim Moosa. The panel discussion was moderated by Talal Asad, Distinguished Professor of Anthropology at the CUNY Graduate Center. The discussion can be viewed on: http://fora.tv/2010/04/20/The_Rise_of_Intellectual_Reform_in_Islam.

On April 22–25, 2010, I participated in Berlin in a workshop on *Images of the Divine and Cultural Orientations*, organized by the Wissenschaftlich-Theologisches Seminar, Institut fuer Systematische Theologie/Dogmatik, Heidelberg. I gave a lecture on "Images on the Divine and an Islamic Protocol of the Gaze."

On May 3, 2010, I gave a lecture at the *Deutsches Orient-Institut* Istanbul on "Invisibility and Power in Islamic Religion and Culture."

I look back at the four years that I passed as Acting Director at ILSP as a very enriching intellectual and human experience. I am grateful to many colleagues at HLS, in particular to William Alford, Janet Halley, and last but not least, Duncan Kennedy, who participated in our debates and helped me to see clearer many of the problems that the research on Middle Eastern and Islamic law actually faces. I owe many thanks to Ceallaigh Reddy's discreet and competent administration of the Program.

To develop the full potential of ILSP as a forum in which American jurists can discuss questions of legal developments in the Muslim world with Muslim jurists from different countries and discuss the possibility of regular encounters, common research projects, and more regular and complete information on the legal developments in the Middle East, Southeast Asia, the Indian subcontinent, and on Islamic finance requires the continued support for ILSP's activities in these fields by HLS. I hope that HLS will continue to provide this support in the future. ♦

Baber Johansen

ABD AL-RAZZAQ AL-SANHURI LECTURE SERIES

Prof. Badria Abdullah Al-Awadhi of Kuwait gave the fifth Abd al-Razzaq al-Sanhuri lecture on Legal Interpretation in the Muslim World in November 2010.

Prof. Badria Al-Awadhi was awarded her Bachelor and Master of Law degrees from Cairo University and her Ph.D. in International Law from University College, London University. In 1979, she was appointed Dean of the Faculty of Law and Shari'a at the University of Kuwait, probably the youngest woman ever to be appointed Dean of a law faculty in the Muslim world. From 1984–1994 she served as Coordinator for the Regional Organization for the Protection of the Marine Environment (ROPME), an organization of Gulf states.

Since 1994, she has maintained her own law office, and from 2001 she has served as the Director of the Arab Regional Center for Environmental Law (ARCEL). She is a member of a wide range of international commissions and institutions, among them the International Council of Environmental Law (ICEL) and the Arab Thought Forum. She has played an active part in the Committee of Experts on the Application of Conventions and Recommendations of the International Labor Organization (ILO), in the Arab Association for International Arbitration, as well as in the Commercial Arbitration Center of the Gulf Cooperation Council (GCC) and the Euro-Arab Arbitration System. Within the framework of the International Union for the Conservation of Nature (IUCN), she has been the Vice-Chairperson for the West Asia Commission on Environmental Law.



Speaker Badria Al-Awadhi at the fifth Abd al-Razzaq al-Sanhuri Lecture on Legal Interpretation in the Muslim World

Her 12 books and more than 70 articles reflect her professional interest in environmental law and labor law as well as in international law, human rights, children's rights, and the emancipation of women.

Her first reaction when I invited her to give the fifth Abd al-Razzaq al-Sanhuri Lecture was that she could hardly treat the complex matter that she was going to present at Harvard Law School in a single lecture of one hour. We agreed, therefore, that she would give two lectures and participate in one panel.

She delivered her first lecture, "An In-Depth Study of the GCC Personal Status Law," on November 10, 2009 and her second, "Selected Progressive Issues in the Arab Family Codes," on November 12, 2009. A panel discussion with Prof. Marie-Claire Foblets (Université de Louvain, Belgium), Prof. Janet Halley (Harvard Law School), and myself took place on November 11, 2009.

Prof. Al-Awadhi's first lecture not only illustrated the interdependence of the family laws of the Gulf states but also laid the foundation for a comparison with personal status law in other Arab countries that she considers to be further advanced in the "progressive codification of Islamic jurisprudence" than the family law of the Gulf states. For this purpose, she outlined her understanding of the importance that the Islamic principles, as revealed in the Qur'an, the normative praxis of the Prophet (*Sunna*), and also in the doctrine of the classical Muslim law schools, unfold, since the 1980s, for modern

Arab legislation. She held that family law is the beginning of the codification of Islamic law in the legal system of the Gulf states. Such codification, in her view, reduces the complexities of classical Islamic law, enables jurists trained in modern law to understand and to apply those Shari'a norms contained in the Shari'a law that protect women, and also to give an appropriate place in the codes to those Islamic principles that have been neglected, to the disadvantage of women, in the present legislation of the Gulf states. She started from the assumption that "the GCC family laws" do not "achieve what Islamic Doctrine anticipated for the solid foundation of the family relations."

To make her point, she compared Kuwait's law of personal status, promulgated in 1984, with those of the other Gulf states: Oman (1997), United Arab Emirates (2005), Qatar (2006), and Bahrain (2009). She pointed out that even the codification of personal status law in Kuwait, traditionally a country dominated by the Maliki school of law, has allowed the integration of elements of doctrines of other schools of law "which in certain issues are more flexible" and adapted to "the contemporary development in the Kuwaiti society." While this family law is far from being a perfect model for the codification of Islamic principles, it at least has the advantage of establishing

ABD AL-RAZZAQ AL-SANHURI LECTURE SERIES, *cont.*

“the foundation for more significant action to combat conflicting and restraining understanding of Islamic jurisprudence (*fiqh*) on family relations.” The same can be said of the family laws of the other Gulf states. She proved this point by referring to the sources of the law that the judge has to take into consideration if and when the law in question does not give a clear rule on a matter to be decided by the court. She showed that in three of the four Gulf countries (Qatar, Bahrain, Oman) that used the Kuwaiti model of codification for establishing their personal status law, the reference was to the “general regulations of the Islamic jurisprudence (*fiqh*).”

She compared the ways in which in the laws of the five Gulf states’ fundamental principles of marriage, such as the concept of marriage, the rights and competencies of the parties to the contract, majority, and the right to choose a wife or a husband, are defined and regulated in the Gulf codes. She concluded that while these norms and regulations are based on custom and tradition, they are far from realizing Qur’anic norms such as Sura 2:234, that have been considered of fundamental importance for the codes of other Arab countries.

Prof. Al-Awadhi followed the same approach in comparing the Gulf states’ rules on polygamy, the wife’s right to maintenance, the annulment of marriage for major physical or moral defects in one of the partners, the wife’s right to divorce for the husband’s nonpayment of maintenance, separation for physical or moral abuses, arbitration between husband and wife, the wife’s right to unilateral divorce (*khul’*), maintenance after divorce and, finally, rights to child custody. She shows that in many cases the narrow rules of the codes diminish the rights that Qur’an and *Sunna* would grant to women in such situations.

She concluded that her lectures showed “the need for integration of Progressive Islamic Jurisprudence” in the codes of the Gulf states. She pointed out that all Gulf states declare the principles of the Shari’a to be “a main source or the sole source of national legislation” and, therefore, make unconstitutional any law or international convention (in an annex she documents the reservations of Arab states concerning the CEDAW convention) that contradicts “Islamic principles or Shari’a laws.” For this reason, she insists, “the Codification of Progressive Islamic Jurisprudence (*fiqh*)” should have a



Panelists Janet Halley, Baber Johansen, and Badria Al-Awadhi discuss women’s rights and nationality law in the Gulf Coast countries.

growing influence on the national legislations not only in the field of family law but also in other divisions of the law. She concluded her lecture stating, “Any endeavor for the Codification of Islamic Jurisprudence (*fiqh*) should take into consideration the fundamental vision of Islam towards the principles of equality of humankind and how the Holy Qur’an and the *Sunna* honored human beings, without any discrimination on the basis of gender or other grounds,” referring to Sura 49:113.

Prof. Awadhi’s second lecture was built on the foundations laid out in her first lecture. She referred to recent legislation in the field of personal status law by some Arab states as a model for Progressive codification of Islamic principles that “challenge the traditional concepts, which still dominate most of Arab family laws” and that should be taken as guidance by the legislators of the Gulf states. She referred in particular to Algeria’s amendments (2005) of its family law, as well as the family law of Morocco (2004), Mauritania (1998), Yemen (1992), Tunisia (1992), Mauritania (1991), Egypt (1985 and 2001), Jordan (1976), and Syria (1953).

Prof. Al-Awadhi pointed out that classical Hanafi doctrine grants women the capacity and the right to choose their own husbands and to conclude their own marriage contracts, whereas the classical doctrines of the Maliki, Shafi’i, and Hanbali schools of law grant the custodian of the woman the power to conclude her marriage contract. She held that the doctrine that restrains “the mature and discreet woman” from performing her own marriage contract without the permission of her custodian or other relatives “still dominate(s) in most Arab family laws.” The Hanafi doctrine that applies basic Qur’anic precepts, on the other hand, is neglected in this question, even by states that otherwise give great weight to the dominant opinion of the Hanafi school. It is only during the last decade that in the personal status law of

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ABD AL-RAZZAQ AL-SANHURI LECTURE SERIES, *cont.*

some Arab states the woman is seen as her own guardian and custodian, capable of choosing her own husband and of concluding her own marriage contract. Examples are the family laws of Morocco and Algeria. Other codes, such as that of Syria (1953) and the Yemen (1992) grant this competency to women only under the condition that she choose a partner who is of her standing.

The Hanafi opinion, concluded Prof. Al-Awadhi, “is supported by the evidence from the Holy Qur’an and *Sunnah*.” It ought to be considered “a progressive development in the Islamic jurisprudence to protect women’s *wilaya* in her own self to perform her marriage with or without the approval of the *Weli*. This trend [in the modern legislation of Morocco and Algeria] shows that most of the family laws do not reflect the truthful objectives of Islamic principles, in particular the principles relating to women’s human rights in the Arab countries, due to political, economic, and cultural situations, which have great influence in drafting these laws.” This assertion is then sustained by further references to polygamy and unilateral divorce of women (*khul’*) in different Arab family laws.

The discussion on November 11 featured panelists Profs. Al-Awadhi, Marie-Claire Foblets, and Janet Halley, as well as

myself, and focused on the concept of citizenship, equality of men and women in the laws of nationality of some (but by no means all) Arab states, illiteracy of citizens—in particular women—in Arab countries, and the continuing discrimination of women in many Arab states, as well as the implementation of international environmental conventions in the Arab region. The discussion was vivid, included problems of the application of legal norms of Arab states to their citizens who migrated into states with non-Muslim majorities, and showed the many complexities in the field of international cooperation.

We are grateful for Prof. Al-Awadhi’s persistent and tenacious efforts to explain her point of view, her understanding of “progressive codification of Islamic jurisprudence” as a criterion for the evaluation of legal developments in the Arab countries. We thank her for her readiness to face a public of different schools and disciplines, her willingness to meet with students, and to enter into discussion with judges of the Massachusetts Supreme Judicial Court in Boston as well as in Kuwait. We hope to see her back in Cambridge in the not-too-distant future. ♦

Baber Johansen

WELCOME, DR. NAZIM ALI

Dr. Nazim Ali is known to most scholars and practitioners in the field as the efficient director of the Islamic Finance Program at ILSP and the precise and reliable organizer of the biennial Harvard Forum on Islamic Finance. He has been appointed as Acting Executive Director of ILSP from July 1, 2010.

Dr. Ali began his academic education in 1970 in Hyderabad, India, with a Bachelor of Science degree. He took his Master’s degree at Kansas State Teachers’ College, Kansas (1975) and his Ph.D. (1983) from the Department of Information Science at the University of Strathclyde, Glasgow, U.K.

Today he can look back on 25 years of practical experience in the field of Islamic Finance. After eight years as a director of libraries at the King Faisal University (1976–1984) in Saudi Arabia, he worked from 1984–95 as Associate Professor and Head of the Information and Research Service at the University of Bahrain. It is during this period that he began to study Islamic finance and to gain his first practical experience in the field. He came to Harvard’s Center for Middle Eastern Studies in 1995, when he became the Founding Director of the Harvard Islamic Finance Program. IFP came under ILSP administration in 2003, where Dr. Ali has worked as the Director of Islamic Finance Program since.

In 1997, Dr. Ali organized the First Harvard University Forum on Islamic Finance, a biennial meeting of scholars and

practitioners in the field that has increasingly attracted representatives of Islamic finance and western financial institutions and that has become the most important academic forum of open and controversial discussions on the development of Islamic finance. He has produced—and continuously refined—a data bank on Islamic finance that has become a widely used tool. He has edited a number of books and authored a number of important articles on Islamic finance. He has organized, in cooperation with the London School of Economics, an annual seminar on Islamic Finance in London. In addition, he has organized various seminars on Islamic finance for the U.S. Treasury, the Federal Reserve Bank of New York, and several central banks.

Over the four years that I had the pleasure to have Dr. Nazim Ali as my collaborator, I have always found in him an energetic, trustworthy, intelligent, and successful organizer of ambitious and complex conferences and discussions; an author of well-planned initiatives; and a man who has a well-developed sense of human relations and of the importance of institutions. I have no doubt that he will be an excellent Acting Executive Director for ILSP and that he will do his best to protect and develop ILSP’s mission. ♦

Baber Johansen

2009–2010 EVENTS

November 10, 2009 and November 12, 2009: Fifth Abd al-Razzaq al-Sanhuri Lecture on Legal Interpretation in the Muslim World. The lecture, given by Prof. Badria Al-Awadhi, Director of the Arab Center for Environmental Law, and former Dean of the Law School at the University of Kuwait, was held in two parts. The theme was recent developments in family law in Arab countries. The first lecture was entitled, “An In-Depth Study of the GCC Personal Status Law, and the second lecture, “Selected Progressive Issues in the Arab Family Codes.” (See report on pp. 6–8.)

November 11, 2009: Panel discussion on Women’s Rights and Nationality Law in the GCC Countries and the Protection of Environment in Islam, led by Prof. Badria Al-Awadhi, with Profs. Janet Halley, Marie-Claire Foblets, and Baber Johansen. Sponsored by ILSP, the Center for Middle Eastern Studies, and the Center for the Study of World Religions.

November 17, 2009: Lecture by Guy Bechor (Lauder School of Government, Strategy and Diplomacy, The Interdisciplinary Center, Herzliya, Israel; ILSP Visiting Fellow, Fall 2009), “The Sanhuri Code and the Emergence of Modern Arab Civil Law.”

November 18, 2009: Islamic Finance Project panel discussion on Islamic Finance, Petrodollar Recycling, and Economic Development. Paper presented by Mahmoud A. El-Gamal (Professor and Chair, Department of Economics, Rice University, Houston, Texas). Panelists: Prof. Eric Chaney (Dept. of Economics, Harvard University), Prof. Samuel L. Hayes (Harvard Business School), Prof. Baber Johansen (Harvard Divinity School and Harvard Law School), and Prof. Jahangir Sultan (Bentley University). (See report on p. 15.)

November 30, 2009: Lecture by Marie-Claire Foblets (Professor of Anthropology, Catholic University of Leuven, Faculty of Law, Belgium; ILSP Visiting Fellow, Fall 2009; Visiting Professor of Law, Harvard Law School; Erasmus Lecturer on the History and Civilization of the Netherlands and Flanders, Harvard University), “Muslims under Secular Jurisdiction. A False Problem?”

January 25, 2010: Lecture by Hauwa Ibrahim (independent scholar, Nigeria, Italy; ILSP Visiting Fellow and HRP Visiting Fellow, 2009–2010), “Practicing Law in Shariah Courts: Reflections of a Legal Practitioner.”

February 8, 2010: Lecture by Gideon Libson (Professor, Hebrew University Law School, Jerusalem; ILSP Visiting Fellow 2009–2010), “Jewish and Islamic Law: The Islamic Legal Background of Maimonidean Approaches.”

February 25, 2010: “Islamic Financial Ethics and Governance,” a workshop organized by ILSP’s Islamic Finance Project in partnership with the London School of Economics, London, U.K. (See report on p. 8.)

March 10, 2010: Lecture by Iza Hussin (Assistant Professor of Legal Studies, University of Massachusetts–Amherst; ILSP Visiting Fellow 2009–2010), “Paradoxes in Islamic Law—Local Elites, Colonial Authority and the Making of the Muslim State.”

March 22, 2010: Lecture by Jiyoung Yang (Financial Supervisory Service, South Korea; ILSP Visiting Fellow, 2009–2010), “Islamic Finance: A Comparative Study of Regulation.”

March 26, 2010 & March 29, 2010: Workshop on Islamic Law in the Law of National States in the Middle East and Southeast Asia. (See report on p. 1.)

March 27–28, 2010: 9th Harvard University Forum on Islamic Finance on “Building Bridges across Financial Communities,” presented by the Islamic Finance Project. (See report on pp. 10–12.)

March 29, 2010: Lecture by Havva Guney-Ruebenacker (S.J.D. Candidate, Harvard Law School; ILSP Visiting Fellow 2009–2010), “An Islamic Legal Realist Critique of the Traditional Theory of Marriage and Divorce in Islamic Law.”

April 5, 2010: Lecture by Eugenia Kermeli (Lecturer in History, Bilkent University, Turkey; ILSP Visiting Fellow 2009–2010), “Legal Pluralism in the Ottoman Empire and the Role of Custom.”

April 12, 2010: Lecture by Leonard Wood (Ph.D. Candidate, Faculty of Arts and Sciences; ILSP Visiting Fellow 2009–2010), “Reconstructing the Golden Age of Comparative Law in Egypt, 1923–1952.”

ILSP-FUNDED ACTIVITIES

ILSP received frequent requests for funding from a wide variety of university groups. The academic year 2009–2010 was no exception. Among the requests granted, ILSP was happy to contribute to the activities of HLS’s Middle East Law Students Association, helping to support talks by As’ad Abukhalil on “Obama’s Middle East Policies: The Persistence of the Bush Doctrine” and by Joseph Massad, entitled “Pre-Positional Conjunctions: Sexuality in/and Islam.” With the Center for

Middle Eastern Studies and the Committee on the Study of Religion, ILSP co-sponsored a talk by Dr. Cornell Fleischer (University of Chicago) on “Abd al-Rahman al-Bistami (ca. 1380–1455): A Muslim Life in Occult Learning.” A contribution by ILSP also helped fund guest lecturer Talal Asad, a speaker in Prof. Janet Halley’s seminar on post-colonial feminism. ILSP continued its annual support to co-sponsor the Islam in the West lecture series. ♦

ISLAMIC FINANCE PROJECT

Ninth Harvard University Forum on Islamic Finance

The Ninth Harvard University Forum on Islamic Finance was held on March 27–28, 2010 at Harvard Law School. This forum was the culmination of efforts over the past 14 years to bring together scholars and practitioners from around the world to discuss Islamic finance's most important issues. This forum's theme was *Building Bridges across Financial Communities* and the two-day event was divided into three plenary sessions and four parallel sessions. In line with this theme, the conference addressed such questions as: How can organizations use Islamic finance as a framework for becoming more socially responsible? What are the initiatives other faiths can and have taken toward improving business practices? What does current academic research suggest about the trends and future direction of Islamic finance, particularly at this important junction after the financial crisis?

This forum stood out from past forums in its emphasis on interfaith dialogue. Speakers from different religious groups shared their faith's perspectives on finance and how Islamic finance can take a broader multifaith approach, while industry practitioners explored the possibility of adopting Islamic finance values in countries serving non-Muslim populations. The conference was also unique in its unprecedented level of international representation, with speakers from over 12 countries. The speakers' and audience's diverse perspectives contributed to a stimulating discussion on how Islamic finance should embrace lessons from the past and address present challenges to continue moving forward in the field.

The first plenary session, entitled "Islamic Finance after the Global Financial Crisis," was chaired by Samuel L. Hayes, Jacob H. Schiff Professor Emeritus at Harvard Business School. The session focused on two discussion papers: Ibrahim Warde's "After the Meltdown: New Perspectives on Islamic Finance" and Kilian Bälz's "Islamic Finance in Crisis? The Financial Crisis and the Quest for Islamic Business Ethics." Both Warde and Bälz discussed various issues with



Opening session of the Ninth Harvard University Forum on Islamic Finance

Islamic finance as an alternative to regular finance, including the industry's lack of direction in terms of balancing what is successful with what is religiously permissible and the challenge of actually putting Islamic principles to practice in businesses.

Their papers stimulated insightful discussion and comments from the four panelists and audience. Thomas Baxter of the Federal Reserve Bank of New York emphasized the similarities between regular finance and Islamic finance and outlined five universally-recognized ethical principles: honesty, responsibility, respect, fairness, and compassion. He then connected these to incentive compensation and equity participation, arguing that we need to look for principles of risk management (like prudent incentive compensation or creating a stake in enterprise) that will lead to more disciplined decision making and honest behavior by all. Bambang Brodjonegoro, Director General of Islamic Research Training Institute at Islamic Development Bank, agreed with Warde that Islamic finance is not a panacea and that there is a need to improve the efficiency of the system itself by systematizing and standardizing it and suggested retail *sukuk* and Islamic microfinance as specific areas that could improve Islamic finance. Mukhtar Hussain, Chief Executive Officer of HSBC Malaysia, argued that Islamic finance is a complement and not a competitor to conventional finance and identified the needs of the industry, including greater innovation, particularly regarding *sukuk* as Bambang had explored; the need for government sponsorship at a higher level in terms of regulation; and more counterparties and research to allow Islamic finance to develop into a global market. Nizam Yaquby, a Senior Shari'a Consultant, stated his greater agreement with Warde's stance over Bälz's. Specifically, he was skeptical of Bälz's dichotomy between business values and Islamic finance's legal application, arguing that in fact proper application of Shari'a will lead to the desirable business values.

Continuing the debate on this substantive topic, a parallel session entitled "Recovering from Recession" was also held. Moderated by Kristen Stilt, Associate Professor of Law at Northwestern University, the session featured five papers pertaining to recovery from recession. These papers provided more depth on the implementation of the theory discussed in the earlier session to practice, examining such topics as the limits of permissible hedging in Islamic finance, the performance of conventional financial institutions relative to their Islamic counterparts, and the specific mechanisms in the Islamic finance industry that can help prevent future financial crises.

The second parallel session, *Faith and Finance*, chaired by Noah Feldman, Bemis Professor of Law at Harvard Law School, discussed the potential of faith's impact on finance through the lens of two papers: Seamus Finn's "Faith and Finance: A Catholic Consideration" and Nejatullah Siddiqi's

ISLAMIC FINANCE PROJECT, *cont.*



Speakers M. Nejatullah Siddiqi, Jay M. Harris, Noah Feldman, Yusuf DeLorenzo, Seamus P. Finn, and Shahab Ahmed at the Ninth Harvard University Forum on Islamic Finance

“Faith and Finance: Value-Guided Pursuit of Interests.” M. Nejatullah Siddiqi, Professor Emeritus at Aligarh Muslim University, India, contended that faith offers universal values that can guide all people in their relationships, whether between humans, human and the environment, or human and God. Seamus Finn, Director, Justice, Peace & Integrity of Creation, Missionary Oblates, discussed the Catholic social teaching and the universal values that have emerged from these teachings. Both authors presented the following challenge to Islamic finance: How can it serve broad ethical values while meeting the more specific legal constraints?

This question was taken up in the comments and criticisms of the panelists. Yusuf DeLorenzo, Chief Shari’a Officer at Shari’a Capital, agreed with the authors that Islamic finance institutions must preserve and advance these ideals in their enterprises. To help ensure this, he asserted that Islamic finance institutions need to educate consumers, become standardized, and utilize prudent Shari’a governors to oversee activities. Shari’a board policies such as rotating board seats to incorporate younger scholars would also help the boards have greater cognizance of the impact of their activities on the next generation and will train future Shari’a scholars to recognize these universal values. Jay Harris, Harry Austryn Wolfson Professor of Jewish Studies at Harvard University, and Shahab Ahmed, Assistant Professor of Islamic Studies at Harvard University, pointed out the far-reaching consequences of a focus on universal values, showing how it would affect a country’s investments and its politics, potentially making it difficult for an investment vehicle to be successful.

Feldman framed the challenge to Islamic finance with Siddiqi and Finn’s emphasis on universal values, the puzzles Harris and Ahmed posed that complicate it, and the potential response presented by Yusuf DeLorenzo to supplement legal constraints with broader ethical considerations. The question and answer session posed even more complications to the shift towards universal values, including the increasing political instability in Muslim countries and the role of governments in working with IFIs to promote values in their economic activities.

In order to complement the above discussion, five papers were presented in a parallel session entitled “Religious

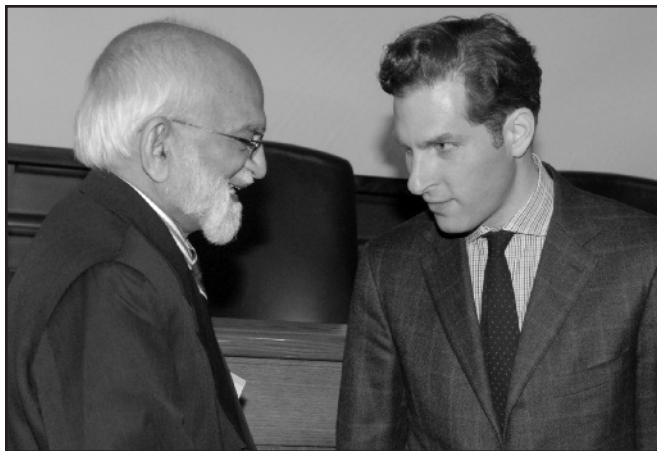
Perspectives on Finance,” which was chaired by Taha Abdul-Basser, Shari’a consultant and Chaplain of the Harvard Islamic Society. Each of the panel discussants introduced their papers and findings on how to bridge faith gaps in finance. The authors discussed specific ways in which institutions may incorporate faith or faith-based values to guide finance, including setting higher standards of transparency and accountability, specific operational strategy shifts, or developing “Abrahamic” mutual funds.

Efforts to identify potential areas of innovation in the industry coincided well with the Forum’s exploration of the industry’s level of social responsibility, the topic of Plenary Session Three. Chaired by Asim Ijaz Khwaja, Professor of Public Policy at the Harvard Kennedy School, the session featured two papers: Sayd Farook and Rafi-Uddin Shikoh’s “Integration of Social Responsibility in Financial Communities” and Marcy Murningham’s “Money and Morality: Pathways Toward a Civic Stewardship Ethic.”

In their presentation, Farook and Shikoh raised the question of how Islam can influence business strategy to affect social change and justice through financial institutions. They concluded from the empirical evidence presented that the role of financial institutions within business and industry is one of high impact, serving as engines of social responsibility and as a means of mitigating poverty and other transnational challenges such as global warming. Marcy Murningham, Senior Researcher at Harvard Kennedy School, responded that an alliance between Islamic finance and socially responsible investment (SRI) practitioners is both necessary and natural.

In response, panelist Lydenburg summarized the main assertions of their papers and the implications. Mary Jane McQuillen praised the Murningham paper for serving as a wake-up call to members of the industry to avoid complacency and bureaucratization in SRI. Laura Berry expressed optimism about the end of the financial crisis, declaring that now is a time for both the SRI and Islamic financial communities to take on roles of global leadership in light of the failures of secular finance, since both its practitioners and beneficiaries are looking for alternative practices.

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M. Nejatullah Siddiqi and Noah Feldman

The theme of cross-cultural collaboration continued in the parallel session *Social and Corporate Consciousness* which was moderated by David Ager, Lecturer on Sociology at Harvard University. While covering a wide range of issues, many of the papers emphasized the partnership potential between social responsibility and Islamic finance and the need for more effective advisory oversight.

As part of the established tradition of the IFP forum, one session was also devoted to the exploration of academic research, including both Masters-level work and Ph.D. dissertations. This session was chaired by Bambang P. Brodjonegoro, Director-General, Islamic Research & Training Institute, Islamic Development Bank, and focused on the academic research findings of its panelists' five papers. The session was particularly lively with a diversity of topics, from mobile finance to the prospect of Islamic finance in Korea, and a receptive audience was eager to evaluate and dissect the issues with the panelists.

An additional forum highlight was the dinner banquet. The banquet featured two speakers, Thomas Mullins and M. Nejatullah Siddiqi. Mullins, the former Associate Director of Harvard's Center for Middle Eastern Studies, explained that in the post-crisis financial sector, Islamic finance has a unique opportunity to take the lead. According to Mullins, we currently lack a proper vision for humankind that incorporates socioeconomic justice as part of one's unalienable human rights. If communities and executives can be on the same page, Mullins hopes, we can reconcile the fragmentation between the material and the spiritual. Siddiqi reminded the audience of firms' need to realize the consequences of their actions on both their clients and society. The quest for fairness extends beyond securing rights to also securing dignity. While practitioners of Islamic finance cannot be required to know the future, they can, by completing these obligations for fairness, aspire to create a more just socioeconomic situation for each generation.

To continue the intellectual exchange after the conference, a subset of selected papers presented at this forum will be published in a book similar to previous forum publications. For a more detailed account of the event or more information on the publication to follow, please see: ifp.law.harvard.edu. ♦

LSE-HLS Public Lecture on Islamic Finance

On February 24, 2010, London School of Economics and Harvard Law School held a joint public lecture on Islamic Finance, the fourth annual lecture in a series aimed to expand dialogue and understanding of contemporary issues in the field. The lecture was entitled "Global Perspectives on Islamic Finance" and discussed the role of faith-based finance in shaping global markets, particularly after the recent financial crises. Following a brief introduction by the Pro-Director at LSE and chair of the event, Sarah Worthington, the keynote speakers Stephen Green and Umer Chapra shared their insights and research on the topic.

Stephen Green, Group Chairman of HSBC Holdings, organized his talk around three important lessons from the recession and how they reflect the growing importance of Islamic Finance in avoiding future crises. The first lesson gleaned from the recession, he began, is that there is no alternative to market-based development; without it, unemployment, illiteracy, and poverty would plague the developing world. The second lesson he drew was that the world's economic center of gravity is moving east and south, making it all the more imperative that the world's economies work together to build common ground in response to globalization. The recession's third lesson is the need for products that meet genuine customer needs in a sustainable way instead of providing illusory profits. Drawing on the example of how HSBC applies ethical principles of Islamic Finance to its operations, Green argued that it is both possible and necessary to have an ethical approach to banking. Only then, he concluded, can we begin to contribute responsibly to the social and economic development of society.

Following Green's lecture, Umer Chapra, Senior Economist and Research Advisor with the Islamic Development Bank of Jeddah, discussed another important lesson from the financial crisis: the importance of adequate market discipline in the financial system. The absence of such discipline, he argued, leads to excessive and imprudent lending, high leverage, speculation, and debt crises, creating an inherent instability in the financial system. Although Islamic Finance is still in its infancy, he explained how certain elements of the system such as the profit-loss sharing model and the prohibition of interest can inject greater discipline into the system. He also proposed the use of *zakah* and *awqaf* resources and the integration of commercial banks with the microfinance system to ensure credit access for the poor.

ISLAMIC FINANCE PROJECT, *cont.*

After the presentations, a lively question and answer session ensued. The audience raised a number of interesting topics for discussion, such as morality, the role of the government in confronting financial problems, and a potential inconsistency between profit maximization and ethical banking. The program concluded with final comments by speakers Stephen Green and Umer Chapra, who emphasized the universality of values espoused in Islamic Finance. ♦

Workshop on Islamic Financial Ethics and Governance

The Islamic Finance Project (IFP), under the auspices of the Islamic Legal Studies Program (ILSP), and the London School of Economics and Political Science (LSE), jointly hosted their fourth annual workshop on 25 February 2010 at the LSE campus in London. Leading Islamic ethico-legal scholars (more commonly known as Shari'a scholars), Islamic economists, and Islamic finance professionals came together to address a pressing topic in the field of Islamic finance: ethics and governance.

As thought-leaders in the conventional finance sector are re-examining the relationship between ethics and governance in an attempt to repair damaged neo-liberal models, many have been considering the adoption of concepts and practices from the Shari'a-compliant financial sector. Furthermore, as institutions offering Shari'a-compliant financial products come under increasing pressures associated with product innovation and standardization, this is a watershed moment in which to examine the ongoing direction of ethical governance in modern Islamic finance and the role regulators, management, and Shari'a boards play therein.

Sir Howard Davies, director of the LSE, provided the opening remarks, commenting on the need for such discussions on ethics and governance in both conventional and Islamic finance. Any discussion on ethics, even in Islamic finance, cannot but be framed by the global impact of the current financial crisis. Issues of excessive debt, lack of liquidity, regulatory uncertainty, lack of proper risk management, and speculative transactions have all been raised as causes of this crisis. Understanding the ethical causes is one part, remedying those ethical lapses is another. He concluded by reminding the participants that how institutions are made accountable and how boards think about the external influences on themselves are the same themes that are currently in discussion in the conventional field as well. Thanking Sir Davies and Dr. Nazim Ali for their efforts, Dr. Frank E. Vogel, moderator of the workshop, then introduced the structure for the day.

In this year's workshop, participants analyzed three fictitious case-study scenarios in Islamic finance. In analyzing each scenario, participants discussed which Islamic ethical boundaries,

if any, were crossed; which Islamic standards should subsequently be prescribed; and who should be responsible for prescribing those standards in the industry and how should they be enforced at the systemic, institutional, and personal level.

The first scenario dealt with the bursting of a hypothetical regional economic bubble created by several over-leveraged and speculative real estate projects financed by a variety of Shari'a-compliant facilities and *sukuk* from Islamic banks. This scenario in many ways paralleled the evolution of today's global financial crisis and, in particular, specific instances of failure by companies and Islamic financial institutions in the Gulf.

The group came to the conclusion that the Islamic banks followed in the footsteps of the conventional banks and as a result were faced with similar risks. Participants also discussed that this situation was compounded by a regulatory system that was not geared to deal with the nascent sector of Islamic finance. There was no clear consensus as to how to avoid this scenario, but the general feeling was that the government and regulatory agencies need to step up their interaction with the Islamic financial industry to avoid such situations in the future.

The second scenario addressed Islamic ethical standards within individual Islamic finance institutions. Participants together assumed the role of the board of directors of an Islamic bank who had been presented with demands from institutional investors that the bank immediately become "strictly ethical." The shareholder's demands included changing the bank's internal structure, dealings, product lines, and marketing practices. Since the shareholders insisted on these demands, despite the risk of losing profitability, the group had to work to balance profitability with ethical considerations.

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Howard Davies and Frank Vogel

Participants recognized the contribution of industry bodies such as the Accounting and Auditing Organization for Islamic Finance (AAOIFI) to ethical codes and standardization, but participants felt that more should be done. The participants discussed the possible solutions that included developing a new, independent ethical rating agency or making Shari'a boards independent from banks. Participants agreed that if such steps must be taken, it must be in partnership with the central banks and the regulators.

The third scenario focused on Islamic ethical standards at the personal and consumer level. Here, the Islamic bank presents its customer with a variety of products that will cause him to acquire more debt. Meanwhile, the consumer receives mixed signals from both the bank and his neighbors about whether or not Islamic banks really differ from conventional banks. The participants assumed the position of both the customer and the bank's relationship manager and debated the ethical issues of offering debt-based products to customers and justifying the higher cost for Islamic products.

The participants acknowledged that as Islamic finance has grown in tandem with conventional finance, it has become difficult to distinguish between Islamic and conventional products on the basis of economic outcome. As a result, customers are often very confused as to which products are Shari'a-compliant and which are not. Additionally, there is a problem with the rise of debt culture. Participants discussed how this has developed in many communities worldwide and should be discouraged. The group concluded that education and training were essential for both bank employees and customers: employees must be able explain products to their customers, so that the customer in turn can make informed decisions.

Additionally, Shari'a boards must also be more proactive and insist that only approved products be used by Islamic banks. However, some participants mentioned that people who work for Islamic banks may not be the most suitable to decide what is ethical due to the obvious conflict of interest and the discussion returned to the need for an independent body for the oversight of ethical standards.

During the second part of the workshop, a list of action points, including a code of ethics, was presented to the group for discussion in hopes that the participants could reach a consensus on recommendations for future development in the industry. From this emerged an Islamic Code of Ethics, where the participants recommended adopting pillars of transparency, authenticity, corporate governance, and social responsibility.

- Transparency: clear and explicit explanations of profit rates and publication of Shari'a boards decisions and the underlying reasoning of those decisions.
- Authenticity: universal adoption of AAOIFI Shari'a standards and possibly mandatory reporting on the efforts to reduce *tawarruq* and other debt-based products.

- Corporate Governance: both a mandatory annual internal Shari'a audit and a comprehensive external audit.
- Social Responsibility: Islamic financial institutions must become powerful forces of change in their business and social communities.

In addition to the code of ethics, the discussion produced several recommendations for the industry's consideration, including the creation of Shari'a standards in marketing and standard terms of reference ("TOR") for Shari'a Supervisory Boards (SSBs).

The closing discussion of the day focused on the next steps necessary to implement the ideas developed at the workshop. As a first step to further the movement for standardization, it was agreed that all Islamic financial institutions should adopt AAOIFI standards. It also was decided that the committee would refine and then re-distribute the code of ethics and once 60% of the participants had provided their consent, these recommendations would be shared with AAOIFI, IFSB, and other regulatory bodies. ♦

IFP Panel on Islamic Finance, Petrodollar Recycling, and Economic Development

The Islamic Finance Project held a panel discussion on November 18, 2009, at Harvard Law School, entitled "Islamic Finance, Petrodollar Recycling, and Economic Development." The focal point of the discussion was a paper presented by Mahmoud El-Gamal, Professor and Chair of the Department of Economics at Rice University. To facilitate a holistic discussion, three experts from various fields were invited to share their perspectives and comment on the speaker's report. The ensuing debate featured a lively exchange of ideas between the panelists and the audience.

El-Gamal's report was based on the findings published in his book, *Islamic Finance: Law, Economics, and Practice* (Cambridge University Press, 2006), as well as research he is currently conducting to develop into a forthcoming book and multiple papers. Drawing on the historical correlation he has observed between petrodollars and credit crises, El-Gamal believes we are currently at a vital crossroads for determining the future of Islamic finance in the international economy, as rates of population growth are poised to outstrip the capacity for oil. He argued that Islamic finance, though based on noble objectives in principle, is reduced to legal arbitrage in practice. The approach historically taken towards Islamic finance, which he terms "the Arab-Pakistani model," is concerned with morally regulating the operations of individual businessmen rather than promoting economic growth at the macro level and distributing resources in accordance with Islamic principles of social justice. To avoid the credit crises this approach has twice led us to in the past, El-Gamal emphasized the need for economic cooperation among Middle Eastern states through

ISLAMIC FINANCE PROJECT, *cont.*



Baber Johansen, Samuel B. Hayes, and Mahmoud El-Gamal at the IFP Panel on Islamic Finance and Petrodollar Recycling

the “Malaysian Model,” which encourages otherwise divergent economies to coordinate their long-term industrial plans (e.g., through differentiating national exports in order to integrate, counter-investing funds so that growth is not procyclical, and creating credit unions through the RoscA model of lending similar to that of Grameen Bank).

To provide a broader perspective on El-Gamal’s report, moderator Samuel L. Hayes invited the three guest panelists to comment on the information and ideas presented. Jahangir Sultan, Gibbons Professor of Finance at Bentley University, agreed that regional industrialization is vital for growth and that Islamic finance has been poorly catered toward this goal; however, he believes the fault is with policymakers rather than financial institutions or the system inherently. He suggested that Shari’a standards be made more standardized and universal and that national governments focus on promoting industrialization and designing innovative products so that their investments do not divert scarce resources away from the region. Eric Chaney, Assistant Professor of Economics at Harvard University, noted that there is scant evidence evaluating the effect of Islamic banking on development and provided alternate explanations besides oil for the boom in Islamic finance. He also posed the question of whether the current system is being driven by supply-side or demand economics. Baber Johansen, Professor of Islamic Religious Studies at Harvard Divinity School and Affiliated Professor of Law at Harvard Law School, reflected on what he deemed the primary difficulties facing Islamic finance, particularly the competing definitions of what Islamic finance is among states and legislatures.

After the panelists spoke, the moderator opened the floor to questions and comments from the audience. Over 50 guests attended the presentation, many being current and future members of the industry. Indeed, the sharpest critique and strongest challenges to El-Gamal’s assertions came not from the panelists, but from the audience. One challenged the central premise of El-Gamal’s presentation, arguing that Islamic finance was an insignificant part of Malaysia’s and the GCC countries’ development; instead, Islamic finance had been

used as a strategy for cooperating and coexisting with the West. Another audience member argued that economic development was not the stated objective of the Islamic finance industry and that it was thus not proper to criticize the industry for failing to achieve regional development objectives. Various attendees also sought El-Gamal’s opinion of *takaful* and *sukuk* in the field, to which El-Gamal replied that the products

are not themselves Islamic or un-Islamic but rather their structure and what is done with them determines how Islamic they are. Together, the speakers and audience brought a wealth of knowledge, practical experience, and academic research rarely assembled but always necessary in forums such as this. ❖

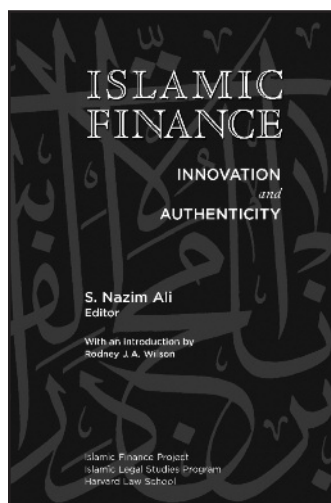
HBS Seminar on Principles of Islamic Finance

In Spring 2010, a first-of-its-kind seminar on Islamic finance was offered at the Harvard Business School. The seminar, entitled “Principles of Islamic Finance,” was lead by Taha Abdul-Basser (A.B. ’96, A.M. ’06), IFP Affiliate and former lead researcher at IFP for the Shari’a Database, the Islamic legal component of the IFP Databank. The Independent Study Review (ISR) course was initiated at the request of a group of interested M.B.A. students and was organized and sponsored by members of the Business School’s Islamic Society.

The 14 students were introduced to the theory and the practice of Islamic finance through a methodical review of the sector’s basic concepts and techniques. Course readings included articles and studies by the field’s leading theoreticians and practitioners. Furthermore, inspired by the HBS’ famed case-study method, the course featured several “mini” case studies that allowed attendees to familiarize themselves with specific deals and transactions and to understand the role of key sector participants. The goal of the course, as stated in the syllabus, was to not only to give students a “sound foundation in the field” but to prepare them “to pursue advanced studies of Islamic finance in the future, either as practitioners or informed observers.”

Student response to the course was uniformly positive. Attendees reported that after completing the course, they felt better able to critically address key issues, such as the question of the extent to which current sector practice conforms to Islamic financial ethical ideals. The students expressed an interest in seeing an expanded version of the course offered again in Spring 2011. ❖

NEW PUBLICATION



Islamic Finance: Innovation and Authenticity. Cambridge, Massachusetts: Islamic Finance Project, Islamic Legal Studies Program, Harvard Law School, 2010, 317 pp., ISBN 0970283571

This book is a compilation of selected papers presented at the Eighth Harvard University Forum on Islamic Finance held in April 2008. Edited by S. Nazim Ali, Director of Islamic Finance Project (IFP), and with an introduction by Rodney Wilson, Professor of Economics at Durham University, the publication featured ten papers from leading scholars and practitioners from the field of Islamic finance on issues related to innovation and authenticity in Islamic finance, Islamic monetary union and national financial regulation, *sukuk*, and Islamic and socially responsible investment. In addition to the papers, the keynote speech delivered by Nobel Laureate Robert Merton and the Eighth Forum Address by Umer Chapra are also included. For a table of contents, please visit <http://ifp.law.harvard.edu/login/publications8>.

Copies of the publication can be acquired from IFP for \$30. Please email ifp@law.harvard.edu to place an order. ❖

ILSP VISITING FELLOWS

During the academic year 2009–2010, ILSP hosted nine visiting fellows and one research affiliate. Scholars in residence during the academic year are required to present the results of their research activity at ILSP during the last months of their stay. ILSP thus gives students, faculty, and staff the opportunity to follow the research produced by its fellows and to see on which topics, methods, and interdisciplinary approaches our fellows focus.

Our fellows came from very different backgrounds and represent very different interests and positions. The following section introduces each visitor and contains an abstract of his or her ILSP lecture, authored by the fellow.



Guy Bechor, a visiting fellow in the fall of 2009, came to ILSP from the Lauder School of Government, Strategy, and Diplomacy at the Interdisciplinary Center Herzliya, in Israel, where he is Head of the Middle East Study Division. He is a political scientist and historian of the Middle East.

Bechor's lecture, "The Sanhuri Code and the Emergence of Modern Arab Civil Law," concerned the social vision found in Sanhuri's legal writings. One of the most prominent jurists to emerge to date in the Arab world, Sanhuri's alarm at the growing social gap in his country, Egypt, during the first half of the 20th century, fueled his vision of establishing moral social order by means of a new civil code. Although Sanhuri's chosen tool was the legal text, the lecture argued that his vision was essentially a social one: to introduce the principles of compassion, social solidarity and fairness, alongside progress and pragmatism,

into polarized Egyptian society, whereby property laws acquired a social function; the laws of joint ownership were perceived as having an educational value; and contract law was activated as a balance favoring the weaker members of society. These Egyptian socio-legal changes followed the sociological transformation in Continental and mostly French law, which happened at the beginning of the 20th century.

Bechor, while introducing his book *The Sanhuri Code and the Emergence of Modern Arab Civil Law (1932 to 1949)*, examined the drafting of the Egyptian civil code, exposing the hitherto unknown sociological strata and way of thinking, of this act of legislation.

Marie-Claire Foblets, a visiting fellow in the fall of 2009, is Prof. of Law and Anthropology at the Catholic University of Leuven, Belgium. She was also a Visiting Professor at HLS and the recipient of an Erasmus Fellowship.

Foblets' ILSP lecture, "Muslims under Secular Jurisdiction in Europe," explored the challenge of religious pluralism in contemporary Europe and addressed questions raised by conflicting views on how increasingly diversified religious and cultural patterns of behavior, loyalties, and practices can be reconciled with the requirements of secular constitutional systems in liberal democracies. The concern with religious pluralism is part of a long tradition in Europe of human rights protection and of an openness to diversity. So what is new about the contemporary situation?



ILSP VISITING FELLOWS, *cont.*

Two characteristics of religious pluralism in contemporary Europe stand out and necessitate a new and more accurate understanding. First, the assumption that secularization would lead to a decline in religion, despite the fact that faiths of all types survive and even flourish. Second, against the background of relatively massive migration from outside Europe in recent decades, preoccupation with hitherto unknown or less familiar (and therefore perceived as threatening) faiths reinforced pressure on religious groups (in particular on Muslims) to conform to liberal, secularized expectations and practices.

The challenge of maintaining freedom of religion in European secular democracies is becoming ever more urgent. How much understanding should or can secular State law show for behavior which is grounded on religion and/or belief?

Foblets' lecture examined the reasons why we should not too easily be satisfied with the argument that the new religious communities living in Europe, *in casu* Muslims, today must necessarily behave like all others and accept the separation of law and religion. Second, Foblets analyzed potential future perspectives by investigating 1) the incorporation of religious rules into civil law; (2) party autonomy in contractual relationships; and 3) recourse to alternative dispute resolution mechanisms. Material for the lecture was drawn from a flourishing literature and legal doctrines on the question of equal treatment of religions and beliefs.

Havva Guney-Ruebenacker

is an S.J.D. candidate at Harvard Law School. Her ILSP lecture also functioned as the closing session of the workshop on Islamic Law in the Law of National State. An abstract of her talk, "An Islamic Legal Realist Critique of the Traditional Theory of Marriage and Divorce in Islamic Law," follows.



Since late nineteenth century, inequality of men and women in unilateral no-fault divorce rights in traditional Islamic law has long been criticized as the most problematic area of Islamic family law. Despite some reforms, this basic inequality remains intact throughout the Islamic world.

Today's Muslim jurists define marriage as a bilateral contract between a man and a woman based on mutual consent, and a relationship of partnership based on mutual love and respect. When it comes to divorce, however, this language of partnership, bilateralism and mutuality suddenly disappears, and instead they define unilateral no-fault divorce as an exclusive right of husband alone, without explaining at all why a contract that starts with the form and content of bilateralism, mutual sharing and partnership should be suddenly transformed into

an act of unilateral right and exclusive power of the husband at the time of its termination, and why women cannot have an equal right of termination of this contract in the same way they have an equal right to its formation. If the terms of termination of this contract do not logically follow the substance and nature of that very contract itself, then what do they depend on? Where does this disparity come from?

Guney-Ruebenacker's lecture reviewed the classical legal theory of "property of marriage" (*milk al-nikah*) that lies behind men and women's inequality in their divorce rights, developed an internal Islamic Legal Realist critique of its basic premises, and examined the theoretical and historical connections between classical theory of marriage and the law of contracts, property, and slavery. Finally, it suggested a new post-slavery Islamic theory of marriage that is based on equal partnership and mutuality both at the time of its formation and termination.



Isa Hussin received her B.A. and M.A. from Harvard University and her Ph.D. from the University of Washington's Department of Political Science. Currently based at the University of Massachusetts/ Amherst, Hussin is a political scientist and historian of Southeast Asia. She teaches in the Five College Program in Middle East Studies.

Based on a book in progress, Hussin's lecture, "Paradoxes in Islamic Law: Local Elites, Colonial Authority, and the Making of the Muslim State," focused on how Islamic law has changed radically in the last 150 years. The Politics of Islamic Law focuses on the dramatic transformation of Islamic law during the British colonial period in three cases—India, Malaya, and Egypt—and its effects in the post-colonial state. It argues that colonial and local elites negotiated the scope, content, and meaning of Islamic law in each case, creating new definitions of Islamic law, family, private/public space, ethnic, religious, and gender identities. Original research shows that Islamic law is a product of political activity, and that legal norms traveled among colonial sites, limiting Islamic law to a narrow scope of private, "religious" law, and defining contemporary possibilities for change. This talk, based upon a manuscript in progress, presents a new argument: that Islamic law in the contemporary state is a modern construction with important ramifications for ethnic and religious identity, state institutions, and elite power in the Muslim world today. This study challenges the prevailing popular view of Islamic law—and Muslim adherence to Islamic law—as a monolith, offering instead a view of Islamic law as locally specific, intensely political, and richly varied.

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Hawwa Ibrahim is a jurist and practicing lawyer in Nigeria. Her international reputation rests on her successful defense of women in Nigerian Shari'a courts. She has spent 20 years working as a lawyer in Northern Nigeria, where she defended over 100 cases before the Shari'a Courts instituted in 2000. Her defense of Amina Lawal and Safiya Hussaini, sentenced to death by stoning for adultery, caught the attention of international media and human rights organizations. The reflections she shared in her ILSP lecture, "Practicing Law in Shari'a Courts: Reflections of a Legal Practitioner," focused on the case of Amina Lawal.



A Nigerian woman, Amina Lawal gave birth to a child out of wedlock and was charged and convicted of *zina* (adultery) under the Shari'a Penal Code. The trial court ruled that her conviction was based on her confession and the fact that she was pregnant out of wedlock. These are two of the grounds adultery can be proven in Shari'a law, provided the procedures for establishing the validity of the grounds are properly adhered to. The lower Shari'a courts found Lawal guilty as charged and sentenced her to death by stoning. New Shari'a law had been adopted in some Northern states of Nigeria since 2000. The principal question presented was: What procedural due process rights are available to an accused person under the Shari'a Penal Code?

The fundamental premise of Ibrahim's lecture was that, irrespective of the in-depth knowledge of Shari'a law and its application, we can all unite around our common humanity and our common need for justice and fairness. This understanding and appreciation of shared values is not only possible but indispensable. Ibrahim says that her work has led her to realize that Shari'a implies leaving behind one's prejudice and judgment, which is different from leaving behind one's human values.

Evgenia Kermeli, a Greek national living and teaching in Turkey, came to ILSP this spring from Bilkent University in Ankara, where she lectures in the History Department. Kermeli's current research focuses on the relation in the Ottoman Empire between non-Muslim minorities, their courts, and their relations with the Muslim courts of the Empire.



In her ILSP lecture, "Legal Pluralism in the Ottoman Empire and the Role of Custom," Kermeli asserted that although the scholarly consensus that the "millet system" was a latter-day Ottoman institution cast retrospectively into the past in the form of "foundation myths," the notion that non-Muslim Ottoman subjects enjoyed legal autonomy has been retained.

However the lack of their legal records led Ottomanists to challenge the existence of these venues for non-Muslims. This paper aimed at refuting both views. The extant body of ecclesiastical and communal records for Orthodox Christians kept from the sixteenth century onward attests to their role in solving family and civil disputes. Not only Orthodox but also Muslim subjects made use of these forums, as well as tools of persuasion like excommunication and the imposition of fines. Thus, it became apparent that the legal autonomy of the "millet system" was a parochial scheme unable to adequately handle the complexity of the legal behavior of Ottoman subjects, Muslim and non-Muslim alike. Instead, the concept of legal pluralism by focusing on the litigants allows us to understand a multifaceted system of various legal forums at the disposal of Ottoman subjects chosen according to their strategies.

By the end of the seventeenth century, local Orthodox communities had gradually developed and codified their own norms (*'urf*, *'adet*). This was not the result of legal autonomy as claimed by the "millet theory" but rather the outcome of Ottoman legal culture. The sultanic *'urf* determined the development of administrative law in the Empire. Local customs were tolerated until they were challenged and conformity with the Shari'a was sought. Their longevity (*kadim zamanından beri*) was the strongest argument for their recognition. This Ottoman legal culture endorsing custom allowed local communities and professional associations to have their own norms respected and accepted. In the nineteenth century, this same legal culture eventually recognized the importance of custom in the Ottoman Mecelle.



Gideon Libson, a Visiting Fellow at ILSP for the academic year, is Professor of Jewish and Islamic Law in the Faculty of Law at the Hebrew University in Jerusalem. He has written extensively on Jewish law, Islamic law, and comparative Jewish-Islamic law. While in residence at ILSP, Libson has made significant progress on his current

project, a second book on Maimonides' Halakhic writing in the context of Muslim Law and the jurisprudence of the period.

Libson's ILSP lecture, "Jewish and Islamic Law: The Islamic Legal Background of Maimonidean Approaches," focused on how Maimonides was familiar with Islamic legal sources and practices and was influenced by his contemporary Muslim legal scholars. Libson gave two examples from the variety of Maimonides' legal writings. The first example was taken from Maimonides' book of commandments, which deals with the authority of the court to command right and prohibit wrong and the function of the *muhtasib* (inspector of the market). The second example was taken from one of his legal responsum in conjunction with his codification (*Mishna*

ILSP VISITING FELLOWS, *cont.*

tora) that deals with heretics and the conditions for repentance. By comparing Maimonides' rulings in these writings to the legal literature of his time, Libson concluded that Maimonides followed in this subject the pattern, structure, legal terminology, and distinctions of his contemporaries.

Leonard Wood, Ph.D. candidate in History and Middle Eastern Studies at Harvard's Faculty of Arts and Sciences, has been an active participant at ILSP events for many years. He works on the historical development of a new understanding of Islamic law among Egyptian legal scholars from the end of the nineteenth to the middle of the twentieth century. This year, as an ILSP Visiting Fellow, he delivered a paper entitled "Reconstructing the Golden Age of Comparative Law in Egypt, 1923–1952" as part of the ILSP lecture series.



The lecture explored the history of legal education in Egypt and related developments in Islamic legal scholarship. Wood discussed how prevailing trends in present-day Egyptian-Islamic legal thought took shape in Egyptian law faculties during the 1920s, 1930s, and 1940s. He discussed, in particular, how comparative law became an arena in which scholars offered competing visions of the future of Islamic legal doctrine. The paper began with an exploration into the lost history of Egypt's law schools. Wood explained that Egypt had six distinct law schools between the 1860s and 1950s and discussed how the schools differed in their curricula and scholarly output. He then focused his remarks on the Cairo University Law Faculty and its graduate program in comparative law. He elaborated on politics at the faculty and illustrated how the professors became divided in their approaches to teaching and writing about Islamic law. Wood closed by advocating a revival of the study of writings by leading Shari'a professors who once taught at the Cairo University Law Faculty, among them Ahmad Ibrahim, Muhammad Abu Zahrah, Abd al-Wahhab Khallaf, Ali al-Khafif, and Muhammad Yusuf Musa.

Jiyoung Yang came to ILSP from South Korea, where she is Associate Deputy Director of the Financial Supervisory Service, Korea's financial regulatory authority. She has been working as a financial regulator since beginning her career at Korea's central bank, the Bank of Korea, in 1995. Prior to her arrival at ILSP, she was a member of the Islamic finance working group and played an important role in introducing Islamic finance in Korea. Islamic finance has a rather brief history in Korea, but recently has developed a strategy for Islamic finance with strong support from the government and interest from the private sector.



Yang's lecture, "Islamic Finance: A Comparative Study of Regulation," described how Islamic finance has expanded in the global market with the flow of oil money into the Islamic financial market. She outlined these trends in the global market and outlined the growth potential of Islamic finance. She also addressed important legal and regulatory issues. Many countries have developed legal and regulatory practices governing Islamic finance, but these laws may not always fully take into account the unique characteristics of Islamic finance. Furthermore, there are issues as to whether existing laws in secular jurisdictions allow Islamic financial transactions to be governed by Shari'a principles. Regarding these issues, she compared laws and regulations on Islamic finance in Islamic countries and those in non-Islamic countries that have introduced Islamic finance in their financial systems. In addition to her ILSP lecture, Yang also presented a case study of the prospect of Islamic finance in Korea at Harvard's Ninth Forum on Islamic Finance. In this presentation, she outlined legal obstacles such as those with *sukuk* in her paper "Legal Issues: Introduction of Islamic finance in Korea."

In addition to its academic-year fellows, ILSP also hosted Summer 2009 fellows **Nimrod Hurvitz** (Senior Lecturer, Ben Gurion University) and **Sadiq Reza** (Professor, New York Law School), and **Aaron Spevack** (Assistant Professor of Religious Studies, Loyola University New Orleans) in 2010.

Hurvitz's work focused on the second and third generations of the Hanbalis, as part of a larger study on the formation of the Hanbali school of law. The focus of the study was on social aspects—construction of teachers' authority and the teacher-student networks that evolved during the second and third generations.

Reza worked on the project for which he was named a 2008 Carnegie Scholar: researching rules of criminal due process in Islamic jurisprudence and practice.

Spevack spent the summer of 2010 finalizing a draft of his manuscript "The Archetypal Sunni Scholar: Law, Theology, and Mysticism in the Synthesis of al-Bajuri." He also worked on several articles for publication, including one on late Sunni traditionalism and another on *Ijihad* according to late Shafi'i doctrine.

Intisar Rabb, Assistant Professor of Law at Boston College Law School, was also in residence as ILSP Affiliate in Research. Rabb's primary research interests are in comparative law and legal history, with a focus on the intersection of criminal justice, legislative policy, and judicial process in American law and in the law of the Middle East and the Muslim world.



WELCOME TO ILSP

Visiting Fellows 2010–2011

Sanaz Alasti

Post-doctoral scholar, Golden Gate University School of Law
February 2011–May 2011

Research topic: Death Penalty in Islamic Countries

Abdurrahman Atciil

Post-doctoral scholar, University of Chicago
September 2010–December 2010

Research topic: Ottoman Law Codes and the Islamic Legal Tradition in the Early Modern Period (1450–1600)

James Baldwin

Post-doctoral scholar, New York University
September 2010–December 2010

Research topic: Islamic Law in an Ottoman Context: Resolving Disputes in Late 17th/Early 18th-Century Cairo

Kambiz Behi

Post-doctoral scholar, Harvard University
February 2011–May 2011

Research topic: Comparative Islamic Constitutionalism: A Critical Approach

Havva Guney-Ruebenacker

S.J.D. candidate, Harvard Law School
September 2010–May 2011

Research topic: Slavery and Abolition in Islamic Law: In Search of a Theory of Legal Change

Erol Ozvar

Associate Professor, Marmara University, Turkey
September 2010–May 2011

Research topic: Riba Prohibition, Legal Solutions, and Financial Practices in the Early Modern Ottoman Period

Omri Paz

Post-doctoral scholar, Tel Aviv University, Israel
September 2010–May 2011

Research topic: Criminal Procedure under Reform: Offenders, Victims, and State Officials in Mid-Nineteenth-Century Anatolia

Intisar Rabb

Assistant Professor of Law, Boston College Law School
July 2009–June 2011, Affiliate in Research

Research topic: The Internal Critique: Change in Contemporary Islamic Criminal Law

Maliheh Zare

Ph.D. candidate, University of Tehran, Iran
September 2010–May 2011

Research topic: How to Comply with Both the Contemporary Capital Market Regulations and Islamic Jurisprudence by Islamic Countries

ISLAMIC LEGAL STUDIES PROGRAM

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OBJECTIVES AND PRINCIPLES

THE ISLAMIC LEGAL STUDIES PROGRAM at Harvard Law School seeks to advance knowledge and understanding of Islamic law.

The Program is dedicated to achieving excellence in the study of Islamic law through objective and comparative methods. It seeks to foster an atmosphere of open inquiry which embraces many perspectives, both Muslim and non-Muslim, and to promote a deep appreciation of Islamic law as one of the world's major legal systems.

The main focus of work at the Program is on Islamic law in the contemporary world. This focus accommodates the many interests and disciplines that contribute to the study of Islamic law, including its writings and history.

The Program supports the needs and interests of scholars and students from all parts of the globe and endeavors to mirror the universality of Islam itself. It seeks the active participation of scholars and practitioners from outside the University, particularly from the Muslim world. The Program does so through visiting professorships, research positions, lectures, conferences, and publications. It also provides fellowships and specialized programs for students, fostering Western scholarship in Islamic law by supporting young scholars and by encouraging innovative scholarship across many disciplines.

The Islamic Legal Studies Program also collaborates with other institutions and individuals at Harvard University to advance the study of Islamic law, Islam, and the Muslim world. In addition, it aims to establish close relationships with scholars and institutions abroad.

