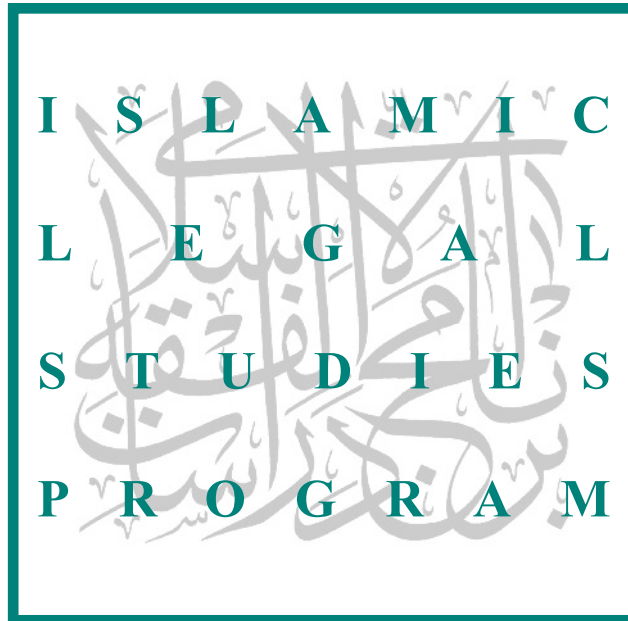


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From the Acting Executive Director

S. Nazim Ali

Greetings! This past year marked the 20th anniversary of the Islamic Legal Studies Program at Harvard Law School, and it is my pleasure to share its highlights with you. As usual, a variety of academic activities, including ILSP fellows' lectures, seminars, forums, and panel discussions, took place during the year, as well as efforts to engage with various departments across Harvard and with colleagues and organizations outside of the University.

First and foremost, we were pleased to expand our Islamic law course offerings. ILSP and the law school benefited from the knowledge and enthusiasm of two visiting professors this year. Chibli Mallat, Custodian of the Two Holy Mosques Visiting Professor of Islamic Legal Studies, taught two courses in Fall 2011: *Public International Law* and *The 2011 Non-violent Middle East Revolution Law* (seminar). Kristen Stilt,

Custodian of the Two Holy Mosques Visiting Associate Professor of Islamic Legal Studies, taught *Introduction to Islamic Law* in Fall 2011 as well as *Regulation of Islamic Finance* (seminar). She also led students in a reading group entitled *Islamic Law, Gender, and Human Rights*. This coming year, we look forward to welcoming Shahab Ahmed, who will be teaching *The Social and Cultural Lives of Islamic Law* (seminar) and *Orthodoxy: Truth, Authority, Law* in Fall 2012; Intisar Rabb, who will be teaching *Introduction to Islamic Law* in Fall 2012; and Roy Mottahedeh, Gurney Professor of Islamic History in Harvard's Faculty of Arts and Sciences, who will be joining us as an ILSP Affiliate in Research. We are also pleased to have seven new ILSP fellows joining us for the 2012–2013 academic year. Their names and research interests are listed on p. 13.

A variety of non-classroom events also brought students and faculty together at ILSP this year. ILSP fellows' lectures were major attractions. This year's lectures covered a broad range of topics in Islamic law, such as problems of authority, exceptional courts in Egypt, women's rights in Malaysia, feminism and gender justice, and dispute resolution in Islamic finance. The monthly afternoon coffee hour continues to provide students and ILSP fellows a forum for informal interaction. The ILSP opening reception during the orientation week at the beginning of the school year was another successful event, which attracted several students, faculty, and friends. These events and others have allowed students to learn more about Islamic law and develop their interest in the field. On the

continued on p. 2



FROM THE ACTING EXECUTIVE DIRECTOR, *cont.*



international front, the program director participated in the International Society of Islamic Legal Studies triennial conference on the theme “Islamic Law and the State: Doctrine and History.”

We were also pleased to hold the seventh lecture of the Abd al-Razzaq al-Sanhuri Lecture Series on Legal Interpretation in the Muslim World, entitled “The Islamic Legal System and the Quest for Transformation in the 21st Century.” Professor Dato’ Sri Zaleha Kamaruddin, Rector of the International Islamic University Malaysia, enriched her discussion of current harmonization efforts between Shari’a and civil law with insights from the Malaysian experience.

The Islamic Finance Project (IFP) of ILSP also had a busy year. The Tenth Harvard University Forum on Islamic Finance, a two-day biennial forum, was held in March 2012 on the theme “Islamic Finance and Development.” The forum attracted more than 50 speakers and over 250 attendees representing over 40 countries. IFP continued its partnership with the London School of Economics in organizing two yearly events: a workshop entitled “Islamic Financial Intermediation: Revisiting the Value Proposition” and a public lecture entitled “Calls for Economic Justice: The Potential of Islamic Finance.” In addition, a seminar entitled “Islamic Finance: Bankruptcy, Financial Distress, and Debt Restructuring” was organized to discuss issues of bankruptcy and debt in Islamic finance after three cases of *sukuk* default. Four panel discussants joined the speaker and audience in sharing their insights on the challenges and lessons of these experiences in shaping the future direction of the Islamic

finance industry. The electronic bibliography of IFP, the IFP Databank, now includes over 9,000 items that are available free of charge on the Project’s website (www.ifp.law.harvard.edu). During the year, the Project published two books: *Sharia-Compliant Microfinance* and *Building Bridges across Financial Communities*. The program especially thanks ILSP Founding Director Frank Vogel, Samuel Hayes of Harvard Business School, and Ibrahim Warde of Tufts University for their continuous support and encouragement in organizing the forums.

In addition to these recurring events, we hope to also introduce new initiatives to increase graduate student participation in ILSP activities next year. An application to form a graduate student organization, the Islamic Legal Studies Association of Harvard Law School (ILSA), is currently in progress. ILSA aims to promote academic inquiries in Islamic legal studies by fostering an ongoing conversation between academicians, students, and researchers in Islamic legal studies with their colleagues studying similar questions in other world legal systems. Plans for a student seminar series, an ILSA lecture series, and a roundtable colloquium series in which graduate students from various Harvard campuses present their research findings and share their academic interests are all in the works. In addition, we encourage students to take advantage of educational resources, such as the news site *islawmix* (<http://islawmix.org>) and the Islam in the West Program of the Center for Middle Eastern Studies, both of which ILSP sponsors annually in recognition of their important contributions to the public debate on Islamic law.

The program would like to offer thanks and well wishes to Amelia Wilbur, Islamic Law Library Assistant, who recently left to pursue opportunities in New Jersey. Replacing Amelia is George Somi, Arabic Language Library Assistant. George recently graduated from Harvard University’s Graduate School of Arts and Sciences with a Master of Arts in Middle Eastern Studies. He is assisting Yahya Melhem, Librarian for Islamic Law, in the processing of Arabic law materials.

The past year’s events are described in further detail in this newsletter, as well as in published reports online at <http://law.harvard.edu/programs/ilsp/>. We thank you for your interest in ILSP and look forward to your participation in its upcoming events. ❖

ABD AL-RAZZAQ AL-SANHURI LECTURE SERIES



Zaleha Kamaruddin delivers the seventh lecture of the Abd al-Razzaq al-Sanhuri Lecture Series on Legal Interpretation in the Muslim World.

Modern Muslim societies are now facing the challenge of applying Shari'a to contexts that have changed markedly from those that existed during the early decades of Islam. The current Islamic legal system has gone through periodic changes of growth and renewal that have not kept up with the rapid developments of the legal system in the world today. Despite reform and revitalization efforts to adapt Islamic law to contemporary issues, various Islamization and harmonization theories remain insufficient, and new challenges are continually forming.

Much of the contemporary research in this field focuses primarily on the harmonization of legal systems. However, the effort should go beyond harmonization, through unified efforts from all Islamic agencies. In her lecture for the Abd al-Razzaq al-Sanhuri Lecture Series on Legal Interpretation in the Muslim World, "Islamic Legal System and the Quest for Transformation in the 21st Century," Professor Zaleha Kamaruddin, Rector of the International Islamic University Malaysia, argued that efforts to reform Islamic law should go beyond the harmonization of legal systems, harnessing unified efforts from all Islamic agencies.

The main aims of this lecture were to identify the loopholes and challenges faced by Islamic agencies in transforming the Islamic legal system, the plausible macro and micro solutions for the problems that face legal transformational efforts, and the effective frameworks in rectifying the existing perceptions of the society in this area. Kamaruddin applied her analysis to the Malaysian context and argued that this transformation sur-

passes the well-publicized concept of harmonization between Malaysian Shari'a law and Malaysian civil law or the common practice of molding and casting modern concepts into Islamic constructs. Drawing on research supported by more than 10 agencies related to the Islamic legal system in Malaysia, she argued that reform is urgent to meet the demands and challenges of the new century. Her lecture outlined the challenges faced by these agencies and the plausible solutions to jumpstart the Islamic legal system's transformational efforts. The combined efforts of these 10 agencies, represented in a joint taskforce, are vital to the success of any action plan to initiate the transformation of the Islamic legal system in Malaysia by identifying potential challenges and recommendations for their resolution. Transformation in this context involves resolving issues through the various processes of renewal (*tajdid*), reform (*islah*), revival (*ihya'*), change (*taghyir*), migration (*hijrah*), and evaluation (*taqwim*). All of these approaches should be made through consultation (*mushawara*) and research-driven strategies.

Muslims are offered by their tradition a large and sophisticated heritage that is continually being enriched. It is in keeping with this tradition that society should be given the opportunity to listen to voices from diverse backgrounds and countries. The needs of the 21st century indicate that Islamic legal awareness should not be restricted to certain regional voices, but rather include the plurality of voices that exist in the Muslim world. Thus, organizing international discussions on the variety of interpretations and the complexity of applying Shari'a in modern Muslim societies is critical. The exchange between local and international Muslim scholars in this lecture was particularly stimulating and should continue in successive meetings. To conclude, the transformation of the Islamic legal system in Malaysia faces multifaceted challenges. These challenges can only be overcome by concerted and joint efforts of all the relevant agencies at the state and federal levels. Such work must go beyond current efforts to

harmonize Shari'a and civil law due to the rapid changes in the political, economic, and social fabrics of Malaysia and the Muslim world in general. ♦



Baber Johansen and Zaleha Kamaruddin

ISLAMIC FINANCE PROJECT

Tenth Harvard University Forum on Islamic Finance

The Tenth Harvard University Forum on Islamic Finance was held at Harvard Law School on March 24 and 25, 2012. This forum is a biennial event organized by IFP to engage practitioners, scholars, and students of Islamic finance in a critical discussion of the latest developments in the field. This year's forum, entitled "Islamic Finance and Development," included three plenary sessions on global economic development, the development of small and medium enterprises (SMEs), and faith-based investment and social responsibility. It also included two distinguished banquet speeches and four parallel sessions discussing various contemporary issues on Islamic finance and development.

The first plenary session was entitled "The Islamic Financial Sector's Contribution to Global Economic Development," chaired by Samuel Hayes, Professor Emeritus of Harvard Business School. Noah Feldman, the Bemis Professor of International Law at Harvard Law School, presented the keynote speech that began the forum. Feldman discussed three global developments that he believes will shape the Islamic finance industry in the coming years: the continuing challenges to the global economy, the rise of serious political and ethical concerns for the poorest segments of the population and the countries in which they live, and the developments of the Arab Spring, which initially offered tremendous hope but has fallen short of achieving many of its objectives. Following his introduction, Volker Nienhaus, Visiting Professor of the University of Reading, U.K., presented his discussion paper, "Islamic Financial Sector: Is It Contributing to Economic Development?" Nienhaus argued that Islamic finance does indeed generate income and entrepreneurial activities in the real economy, but that its new secular approach to derivatives casts doubt on its true potential impact on development. Neil Miller, Global Head of Islamic



Noah Feldman

Finance at KPMG, Dubai, presented the second discussion paper at the session, "The Role of Islamic Finance in Development." Miller emphasized that the fundamental tension in Islamic finance is the misalignment between shareholder expectations and community expectations and provided a series of normative parameters for evaluating the impact of Islamic finance on development. Following their presentations, the four panelists presented their responses to Nienhaus' and Miller's arguments and engaged with the audience in a discussion on how Islamic finance can create an environment for sustainable economic growth.

The second plenary session was entitled "Islamic Finance and the Development of SMEs," chaired by Asim A. Khwaja, Sumitomo-FASID Professor of International Finance and Development at Harvard Kennedy School. The first discussion paper was entitled "Islamic Finance and Entrepreneurship: Challenges and Opportunities Ahead" and was presented by Bailey Klinger, Chief Executive Officer of the Entrepreneurial Finance Lab (EFL) at Harvard Kennedy School. In his presentation, Klinger introduced a new tool to predict credit risk based on an entrepreneur's ethics, honesty, intelligence, psychological profile, and business skills. In contrast to traditional SME screening that is high-cost, high-risk, and backward-looking by focusing on "downside risk," and reliant on information that many SMEs do not have, the EFL test is computer-based and highly scalable, forward-looking in focusing on upside potential, and uses information



Opening session of the Tenth Harvard University Forum on Islamic Finance

ISLAMIC FINANCE PROJECT, *cont.*

available from everyone. Anass Patel, President of 570 Asset Management, France, presented the second discussion paper entitled “Hybrid *Sukuk* for SMEs: Financing the Real Economy through Ethical Principles.” In addressing the question of whether hybrid *sukuk* for SMEs can be a credible alternative to conventional loans, Patel had two main assertions: first, bank loans are not adapted to SMEs’ position and better rating tools are needed in light of the Basel requirements, and second, the profit and loss sharing approach for SME financing can work. After Klinger and Patel’s presentations, the four panelists offered their comments and agreed that more guidance and training is needed to help SMEs.

The third plenary session was chaired by Kristen Stilt, Visiting Associate Professor of Islamic Legal Studies, Harvard Law School, and featured two discussion papers. Sajjad Shah, Vice President at Wellington Management Company, Boston, and Jahangir Sultan, Professor of Finance at Bentley University, Waltham, Massachusetts, presented their paper, “Values-Driven and Profit-Seeking Islamic Investors.” They emphasized the importance of policymakers’ and investment managers’ understanding of the primary and secondary objectives of an investor, differentiating between investors that are values-driven and those that are profit-seeking. The authors posited that a majority of Islamic finance investors are values-driven investors, as Islamic finance investments usually avoid entire sectors such as the financial sector (none of the financial stocks are part of the Dow Jones Islamic Finance Index), making such investments unattractive for investors looking just for return, irrespective of the nature of underlying business. Umar Oseni, Visiting Fellow at the Islamic Legal Studies Program, Harvard Law School, then presented his paper, “Toward a New Global Paradigm: Faith-Based Investments and Socially Responsible Investments.” Oseni described the relationship between faith-based investments (FBIs) and SRIs and outlined the potential they hold to create bridges across different faith communities. The panelists’ comments and question-and-answer session following their presentations elaborated on the differences and similarities between FBIs and SRIs and the extent to which they may collaborate.

The forum was further enriched by four parallel sessions. Parallel session A, entitled “Islamic Finance and the Arab Spring Movements,” was chaired by Ibrahim Warde and featured five papers. These discussed challenges as well as potential growth strategies for Islamic finance in light of the new political changes after the revolutions and the greater political demand for Islamic finance across the MENA region. The ensuing question-and-answer session touched on a variety of topics, including *sukuk*, the role of technology in expanding Islamic finance, continuous engagement and collaboration between Shari’a scholars and economists, and the need for human resource development. Parallel session B was entitled “Global Perspectives on Islamic Finance” and

chaired by Shahab Ahmed, Associate Professor of Near Eastern Languages & Civilizations, Harvard University. These papers went into greater depth on the experience of IFIs in countries ranging from Nigeria and Pakistan to the Gulf countries, with the question-and-answer session focusing on how public-private partnerships may be a way for these countries to benefit each other.

Parallel session C, “Islamic Finance and Alternative Economic Thinking,” was chaired by Volker Nienhaus, Visiting Professor, University of Reading, U.K. Papers in this session compared Islamic finance with conventional finance, emphasized the need to have a pragmatic approach toward Shari’a compliance, such as that in Malaysia and its central bank’s Shari’a Advisory Council, and noted shortcomings of the microfinance industry. The ensuing question-and-answer session focused on the institutionalization of *zakat* and the proper channeling and utilization of *zakat* funds. As in past forums, a parallel session was also dedicated to the discussion of current academic research in Islamic finance. Chaired by Mehmet Asutay of Durham University, U.K., Parallel session D featured papers that proposed alternatives to debt markets, such as joint public-private activities like build-operate-transfer (BOT) and build-develop-operate (BDO) contracts, the use of a framework of collective *maslaha* rather than a legalistic or individualistic framework to help overcome the failure of banks to achieve their social objectives, a rethinking of the concept of a “just” Islamic state to ensure the stability and success of a “just” Islamic finance, and a new mathematical performance model for IFIs based on *maqasid al-shari’a*.

IFP was also honored to have two guest speakers deliver speeches during the Forum’s dinner banquet. The first banquet speech was delivered by Mahmoud Mohieldin, Managing Director, World Bank Group. Mohieldin focused on six challenges facing Islamic finance as the industry evolves into its next phase: improving regulatory oversight, rebalancing tax treatment, strengthening insolvency frameworks, promoting standardization, ensuring adequate liquidity, and establishing sound risk-management practices. He described steps the World Bank Group has taken in supporting the evolution of Islamic finance and concluded with his hope that Islamic finance will continue to play a role in broadening financial access to support sustainable development. The second banquet speech was delivered by Rashad Hussain, U.S. Special Envoy for the Organization of Islamic Cooperation (OIC). Hussain discussed ongoing efforts by the U.S. government to improve political stability and economic development in the Muslim world.

For a more detailed account of the Tenth Forum or more information on the forthcoming publication of a subset of papers presented in forums, please visit ifp.law.harvard.edu.

continued on p. 6

ISLAMIC FINANCE PROJECT, *cont.*



Participants at the Harvard-LSE workshop on Islamic Financial Remediation

HLS-LSE Workshop on Islamic Financial Intermediation

IFP and London School of Economics and Political Science (LSE) co-hosted the sixth annual workshop on Islamic finance on February 23, 2012, at the LSE campus in London. This year, participants chose “Islamic Financial Intermediation: Revisiting the Value Proposition” as the workshop topic. A diverse group of 27 individuals attended the workshop, including Shari’a scholars, academics, Islamic economists, bankers, lawyers, and representatives of standard-setting bodies.

Financial intermediation generally refers to moving funds from surplus to deficit units. There is, however, disagreement about whether institutions offering Islamic financial services can be classified as financial intermediaries in the same sense as conventional financial institutions; the general consensus at the workshop was that there may be no harm in using the term financial intermediation in Islamic finance if the required Shari’a conditions are met.

It was argued that morality is at the core of Islamic finance and its value proposition. Such morality would be expressed by serving the real economy, reaching sections of the population not served by the financial sector, discouraging debt, encouraging profit sharing, promoting development, and reducing economic inequality. An alternative view was that Islamic banking is only a part of Islamic finance, which is in turn a part of the theoretical construct referred to as an Islamic economic system. Companies offering Islamic financial services are set up to earn a competitive return for their shareholders and other relevant stakeholders like customers. It is unfair to demand that Islamic banks and Islamic finance try to deliver what is usually expected from governments and development financial institutions; Islamic banking cannot assume such moral responsibility, and expectations of morality from Islamic finance should be consistent with the role of Islamic finance. A counterargument held that if the sector cannot deliver on the expectations that it creates by using the label “Islamic,” it should perhaps scale down expectations, explaining that it is merely trying to replicate conventional

finance while complying with form-oriented technical requirements of Islamic commercial jurisprudence.

Islamic commercial banking, as described, is operating in a wider economic and financial system that creates obstacles to implementing the theory underlying Islamic finance. For instance, Islamic economic theory relies heavily on risk sharing as part of its moral appeal, but it is difficult to share risk in commercial banking, the largest segment in the sector. Those providing finance (e.g., depositors) are unwilling to accept a loss on their principal, and those receiving finance (e.g., industrialists) are unwilling to share their profits. As a result, Islamic banking, like conventional banking, also relies heavily on debt. Over the years, the stance on debt in Islamic finance seems to have softened. While debt is not preferred over profit-sharing arrangements, it is now more likely to be seen as a legitimate means of financing if the relevant conditions are met.

It was further explained that the unwillingness of parties providing and receiving finance to share business risk is due to the dominant conventional commercial banking, to which all parties have become accustomed. Commercial banking has little, if any, room for depositors and borrowers to share the risk of business outcomes. A wide range of factors—such as banking regulation, deposit protection insurance, tax deductibility of interest, and higher capital adequacy charge for equity exposure—support the practice of conventional banking. For those working in the Islamic financial sector, it is a safe strategy to continue to replicate conventional finance because if they try to innovate more authentic solutions and fail, it could cost them their jobs.

While there are important obstacles to realizing the moral value proposition of Islamic finance, a counterargument was that Islamic financial institutions are not even doing what they can within the current financial and economic system. For instance, conventional financial institutions seem to be far ahead of Islamic financial institutions in corporate social responsibility, even though morality is supposed to be at the

ISLAMIC FINANCE PROJECT, *cont.*

core of the value proposition of Islamic finance. AAOIFI already has a standard on corporate social responsibility that is not being widely followed in the sector. Despite its emphasis on morality, Islamic finance is conspicuously absent at the relevant forums, such as the World Economic Forum. Perhaps by replicating conventional finance instead of offering something more consistent with its underlying theory, Islamic finance has created the perception that it has nothing new to offer.

During the course of discussion, different participants proposed a wide range of ideas that in their view would directly or indirectly help the Islamic financial sector offer the value proposition that is expected from it and further its progress. These include: greater engagement with stakeholders, particularly shareholders of Islamic financial institutions, to amend the charters of Islamic financial institutions to sacrifice some returns for social goals; establishment of an international association of Shari'a scholars to pursue objectives such as continuing education of Shari'a scholars, increasing transparency of juristic rulings (fatwas) and underlying rationale, implementing a code of ethics, and enhancing the reputation of this profession; introduction of investment products that offer both an economic and a social return reflecting the needs and priorities of the Muslim world, such as education and low-cost housing; and more internships for students of Islamic finance in the Islamic financial sector to comprehend the practical issues encountered by the industry and to develop into a valuable human capital for the industry (for more details on the workshop, please visit ifp.law.harvard.edu).

IFP Seminar on Bankruptcy, Financial Distress, and Debt Restructuring

IFP and ILSP organized a panel discussion on September 26, 2011, entitled "Islamic Finance: Bankruptcy, Financial Distress, and Debt Restructuring." The goal of the seminar was

to create an understanding of recently reported cases of bankruptcy and debt restructuring of Islamic finance products. The discussion paper was prepared and presented by Ibrahim Warde, Adjunct Professor, The Fletcher School, Tufts University, and discussed by four panelists: Chibli Mallat and Kristen Stilt, Visiting Professors, Harvard Law School; Umar F. Moghul, Partner, Murtha Cullina LLP; and Muddassir Siddiqui, Islamic Finance Head, SNR Denton & Co., Dubai.

Warde began his presentation with a comprehensive overview of the historical development of finance in both the West and the Islamic world. He explained that the central difference between Islamic and Western approaches to insolvency lay in the absence, in classical Islamic law, of the notion of a separate corporate personality. In the West, the joint-stock limited-liability corporations slowly developed and became dominant economic actors. The corporations, in addition to enjoying legal personality, were usually established for an unlimited period of time and could, in their own corporate name, contract debt, be placed in receivership, be liquidated, etc. In contrast, with only a few exceptions (*awqaf*, *bayt al-mal*), Islamic law did not recognize partnerships as separate corporate entities. Thus, in the Islamic world until the mid-19th century, the principal form of business remained the partnership, which consisted of individuals who were personally responsible for the debts incurred. The Islamic approach, in contrast, concentrated on individual partners, their circumstances, and motivations: was the debtor trying to conceal assets or cheat the creditor, or did he fail because of circumstances beyond his control? In the latter case, the creditor was supposed to show forbearance. *Qard hasan*, the benevolent (and interest-free) loan, which is also the only form of loan provided for by Shari'a, was often extended to distressed borrowers. Incidentally, debtors are among the proper recipients of *zakat*. According to economic historian Timur Kuran, the short life of partnerships (since a partnership was dissolved whenever a



IFP bankruptcy seminar panelists Kristen Stilt, Muddassir Siddiqui, Umar Moghul, Ibrahim Warde, and Chibli Mallat

ISLAMIC FINANCE PROJECT, *cont.*

partner died) and the constant dispersion of ownership due to Islamic inheritance laws made it difficult to achieve the accumulation of capital that made the industrial revolution possible in the West.

Starting in the 19th century, however, Islamic traditions on matters of commerce and finance were overtaken by Western influences. With Islamic law generally confined to personal status and family law, most Islamic countries adopted commercial codes—including bankruptcy laws—borrowed from European (mostly French) law. The trend persisted throughout the era of decolonization. The resolution of insolvency cases, especially the significant ones, whether in Saudi Arabia or elsewhere, often took place outside the bankruptcy system. This can be explained by political and cultural factors, ranging from face saving when leading political figures and prominent citizens are involved to limiting the damage to a country's economy and reputation. Indeed, a strong stigma is still attached to the notion of *iflas*. One such example is the Kuwaiti *Souk Al-Manakh* crash in 1982, which still reverberates today.

When modern Islamic finance appeared in the mid-1970s, scant attention was paid to the questions of insolvency and debt restructuring. The founding fathers of Islamic finance envisioned a system based on the double *mudaraba* principle, which would have extended the partnership ideal to both sides of the balance sheet. With the relative failure of the equity-based model, Islamic banks moved to a different model of banking, based on replicating much of what conventional banks do, albeit via Islamic contracts. *Murabaha* became the dominant activity of Islamic banks, and debt therefore came to assume a greater role than was initially anticipated. Still, for most of its short history, modern Islamic finance paid scant attention to insolvency and its consequences.

The rapid growth of *sukuk* coincided with the recent oil boom, at a time when the possibility of default was not foremost in the minds of issuers and investors. Little thought was given to the substance of those *sukuk* and to what would happen in the case of default. The prevailing assumption was that the *sukuk* were asset-backed, meaning that their holders had claims to specific assets. In reality, the nature of the collateralization was different: *sukuk* holders had claims only on the cash flows generated by the assets, not to assets themselves. In other words, the *sukuk* were asset-based and not asset-backed. Their failures and other difficulties brought to light underlying ambiguities that had been ignored. Structuring *sukuk* properly, grounded in a deeper understanding of the differences between the outcome-oriented, conciliatory approach in the Islamic tradition to the process-oriented approach in global finance, will be the next major challenge of the Islamic finance industry.

To see the panelists' responses and more detailed information about the event, please visit ifp.law.harvard.edu.

Harvard-LSE Public Lecture on Economic Justice and Islamic Finance

The IFP and the London School of Economics and Political Science (LSE) jointly hosted a public lecture entitled "Calls for Economic Justice: The Potential of Islamic Finance" on February 23, 2011, at the LSE campus in London. This was the sixth in an annual series of public lectures aimed to expand dialogue and understanding of contemporary issues. The event was introduced by Justice Ross Cranston, a senior judge of the Royal Courts of Justice. Mr. Mukhtar Hussain, Group General Manager, CEO of HSBC Malaysia and Global CEO of HSBC

Amanah, was the main speaker. He explained how HSBC and other similar institutions are adapting to new economic realities, how they are trying to meet the intended aspirations for greater economic justice, and how the economic concerns of the public are shaping future products and services in Islamic finance. Professor Volker Nienhaus, Visiting Professor, ICMA Centre, Henley Business School, University of Reading, was the following speaker. He elaborated on how goals like socioeconomic equality, risk-sharing, and other objectives within "economic justice" are compatible with Islamic finance and highlighted the future challenges Islamic finance faces to realize those goals. ♦



Mukhtar Hussain and Ross Cranston (speaking)

ILSP-SUPPORTED EVENTS

Throughout the year, ILSP helps fund a variety of events hosted by other campus organizations, from student groups to other university programs and departments. Some of the events supported by ILSP during the past academic year are highlighted below.

In November 2011, the Harvard Law & International Development Society (LIDS) organized “Fighting for Human Rights and Press Freedom in Bahrain: Possibilities and Limitations,” a talk with Dr. Mansoor al-Jamri, Editor-in-Chief of *Al-Wasat*, Bahrain, and recipient of the Committee to Protect Journalists 2011 International Press Freedom Award. Al-Jamri called for freedom of the press and human rights in Bahrain. A lively discussion followed, with some audience members disagreeing with al-Jamri’s assessment of the situation in Bahrain.

In March 2012, ILSP was pleased to support the Global Legal Education Forum held at the law school. The purpose of the forum was to develop a richer understanding of the intellectual and professional trajectories of contemporary legal education reforms; their implications for global and national elite leadership; the potential distributive effects for law schools that lack the material, technological, or faculty resources to “go global”; and the uniqueness or similarity of these reforms relative to those being undertaken in

other professional disciplines. The forum was attended by law school deans, law professors, legal practitioners, law students, and graduate candidates and HLS S.J.D. alumni from various regions, as well as academics from other professional disciplines. Three panels, in particular, addressed content relevant to ILSP: “Legal Education and the Circulation of Critique,” “Innovation in the North and South,” and “Contemporary Challenges of Legal Pluralism.”

Also in March, ILSP co-sponsored a talk organized by HLS’ East Asian Legal Studies program entitled “Qadi Justice in Chinese Courts: The Bureaucratization of Islamic Procedural Justice in the PRC,” delivered by Matthew Erie, Ph.D. candidate in Anthropology at Cornell University. Erie’s research and dissertation, “The Prophet and the Party: Sect and Shari’a in China’s Little Mecca,” examines the status of Shari’a among China’s Muslim minorities under socialist law.

In April, ILSP was pleased to help fund a lecture by Fred Donner, Professor of Near Eastern History, University of Chicago, entitled “How Ecumenical was Early Islam?” The presentation was part of a celebration of Prof. Roy P. Mottahedeh’s contribution to Middle Eastern and Islamic studies at Harvard.

STUDENT TRAVEL GRANTS AND FACULTY GRANTS

Each year, the Islamic Legal Studies Program invites Harvard Law School students to submit travel grant proposals for the funding of research trips. During the previous academic year, ILSP was pleased to award travel grants to two Harvard Law School students. The program also awarded grants to two faculty members.

During winter term, third-year J.D. student Ramy Ibrahim conducted his research in Dubai, investigating rules and practices concerning inheritance law, in particular how they affect the lives of Muslim women. Ibrahim met with judges and sheikhs to discuss local practice and case law in order to better understand norms and expectations in Shari’a courts. He also visited mosques to see how the government might moderate the behavior and preaching of sheikhs, thus gaining an understanding of both official and on-the-ground perspectives on inheritance law. In addition, Ibrahim made contact with a number of legal actors who were able to shed light on the UAE’s constitutional structure and its federal civil code, enabling him to learn more about the legal structure in which Islamic inheritance law operates.

Third-year J.D. student Ankita Ritwik traveled to Ankara to research how the headscarf ban may have an impact on women’s economic rights and, further, how this may impact Turkey’s obligations under domestic and international law to further gender equality. Ritwik spoke with Turkish legal academics, university students and members of university administrations, researchers at think tanks, those involved in women’s organizations, and government officials.

In addition to funding student research travel, ILSP also supported two faculty projects. Noah Feldman, Bemis Professor of International Law, traveled to Tunisia over spring break to meet members of the constitutional drafting committee and advise informally on the new constitution. Jill Goldenziel, Climenko Fellow and Lecturer on Law, presented “Veiled Political Questions: Islamic Dress, Constitutionalism, and the Ascendance of Courts” at the American Society of Comparative Law Younger Comparativists conference. ♦

ILSP VISITING FELLOWS



A Spring 2012 Visiting Fellow, **Ismail Cebeci**, Researcher at Oxford's Center for Islamic Studies, spent a productive few months at ILSP, writing several articles and book reviews while participating in a wide variety of lectures and other events.

Ismail's ILSP lecture, "New Contract Types: Revisiting the Methodology of Product Development in Islamic Finance,"

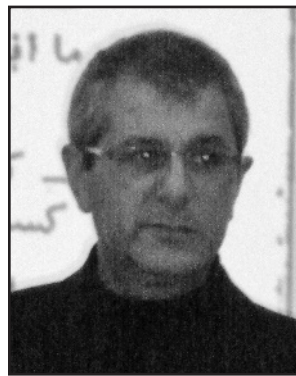
examined the process of product development in Islamic finance (through the modern experience) and analyzed Islamic finance through contracts. The contract types (*murabaha*, *mudarava*, *musharaka*, etc.), which are used in Islamic finance, illustrate the relationship between classical Islamic law and modern Islamic finance. Thus, an understanding of the process and methodology of product development in Islamic jurisprudence is enormously important to the understanding of the nature of modern Islamic finance contracts. Cebeci's presentation focused on three questions: How are modern contract models produced out of their classical forms and adapted to modern circumstances by Islamic financial institutions? What kind of reasoning and methods were used by modern scholars to produce new contracts? Is there any need for a new methodology in producing Islamic finance contracts? These questions, as well as other issues, were addressed through specific, concrete examples in the lecture.



Tamir Moustafa, Assistant Professor at Simon Fraser University School for International Studies, spent his sabbatical year at ILSP working on a book manuscript that examines public debates around the place of Islamic law in contemporary Malaysia. He also was able to lay the groundwork for a new project that uses survey research to map public understandings of Islamic law in

Muslim majority countries. Tamir was able to take advantage of one of the less tangible benefits of an ILSP fellowship, the opportunity to meet and collaborate with other academics. With Intisar Rabb, ILSP Affiliate in Research, Moustafa launched the Collaborative Research Network in Islamic Law and Society through the Law and Society Association. This organization promises to be an exciting hub for scholarship on Islamic law and society in the coming years.

Tamir's ILSP lecture, "Islamic Law, Women's Rights, and Popular Legal Consciousness," presented findings from a first of its kind nationwide survey that sought to examine how "everyday Malaysian Muslims" understand core conceptual and methodological principles in the Islamic legal tradition. The survey uncovered a substantial disjuncture between popular legal consciousness and core epistemological commitments in Islamic legal theory, with most lay Muslims conceiving of Islamic law as being fixed and purely divine in nature, with a single "correct" answer to any given question. Moustafa then examined the practical implications of these findings through illustrations of how popular legal consciousness hinders the efforts of those working to reform Muslim family law while strengthening the hand of conservative actors wishing to maintain the status quo.



Yoram Meital joined ILSP from Israel, where he is an Associate Professor at Ben-Gurion University, Middle East Studies, and Chairman of the Chaim Herzog Center for Middle East Studies & Diplomacy. Yoram spent his yearlong fellowship researching Egypt's exceptional courts and the legal developments during the revolutionary experience.

Yoram's lecture dealt with this topic, contending that despite handling thousands of cases, these courts have not yet been studied in depth. Meital pointed out while the formation of the modern Egyptian legal system (late 19th century to mid-20th century) has been widely studied, the legal developments during the revolutionary period have received little attention, even though major legal changes were introduced during that period, including the restructuring of the legislative power and the judiciary, the abolition of the Shari'a courts, and the promulgation of a new constitution. Civil and criminal procedures formally continued to follow the existing law codes, but many measures were implemented based on orders issued by the Command Council of the Revolution. Thus the Revolutionary Court (*mahkamat al-thawra*) and the People's Court (*mahkamat al-sha'ab*) were established. Meital spoke of the meanings embedded in the physical location of the courts, their internal organization, and their work procedures; the legal codices that they used; and the conduct of the judges, the prosecution, and the defense, in an effort to delineate the discursive processes in which the projects of hegemony and resistance were formed.

ILSP VISITING FELLOWS, *cont.*

A Spring 2012 Visiting Fellow, **Qudsia Mirza**, made the most of a short semester, working on several research and writing projects, including a monograph entitled *Interrogating Islamic Equality*; a book chapter (“Contemporary Interpretations of Justice and Gender Equality in Islamic Feminism” in *God Loves Diversity & Justice: Progressive Scholars Speak about Faith, Politics, and the World*, edited by Susanne Scholz, to be published by Lexington Books, 2012); and a collection of essays (*Islamic Feminism and the Law*, forthcoming from Routledge in 2013).



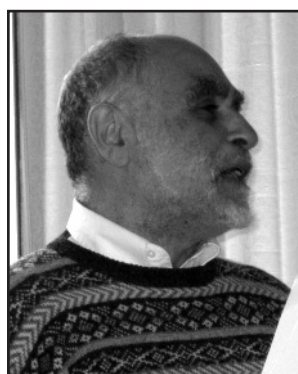
Qudsia’s ILSP lecture, entitled “Islamic Feminism and Gender Justice: Current Views,” gave a broad overview of contemporary Islamic feminist discourse and, in particular, focused on the work of those scholars who are developing new interpretive methodologies and hermeneutics in order to establish progressive and feminist interpretations of the Qur’an. Mirza pointed out that although there is great diversity in such interpretations, there are a number of common themes in the methodologies that all scholars are utilizing. The lecture offered a critique of such methodologies and argued that, in general terms, the notion of gender and of gender equality is under-theorized in many of these methodologies and resulting interpretations. In addition, feminists are also relying upon a discourse of authenticity and a “purity of origin” that is open to critique. Despite this, Mirza contends, new interpretations of the Qur’an have the capacity to effect radical change in the reconfiguration of gendered rights in Islamic law and have the potential to establish more progressive women-friendly laws in the areas of marriage, divorce, child custody, inheritance, and succession.



Umar Oseni came to ILSP from the International Islamic University Malaysia, where he was a post-doctoral scholar and lecturer. During his year at ILSP, Umar not only worked diligently on his many research projects but also was an invaluable asset as the primary contact with our Sanhuri lecturer, Dr. Zaleha Karmaruddin, and as an aide to Dr. Nazim Ali of the

Islamic Finance Project, going “above and beyond” in helping to prepare for the biennial Harvard Forum on Islamic Finance. Umar will be going back to Malaysia in the capacity of Assistant Professor. Congratulations, Umar!

Oseni’s ILSP lecture, “Dispute Resolution in Islamic Finance: Current Trends and Future Perspectives,” investigated the dynamics of the dispute resolution framework in the Islamic finance industry—a relatively new area in Islamic finance. The talk included an introduction to Islamic finance with a brief analysis of the time line of its reemergence in the modern world and an examination of the current trends in Islamic finance litigation and their implication for the future of the Islamic finance industry. Oseni emphasized the need to revamp the current practices with a clear future direction. Finally, he concluded the lecture with an emphasis on the need for an international legal framework for dispute resolution of Islamic finance disputes and the need for existing arbitration institutions to calibrate their rules to accommodate Islamic finance disputes.



While at ILSP last Fall, **Aron Zysow** spent his time working intensively on a study of authority in Islamic law, more specifically the authority to enunciate general rules of law. The focus of his research involved tracing several critical processes in the long course of thinking about authority within Islamic law. The ultimate goal in undertaking this project is to produce a book-length study of Islamic legal authority that addresses both the historical developments and the conceptual problems.

In Aron’s ILSP lecture, “Problems of Authority in Islamic Law,” he addressed the structure of authority within the Sunni schools of law (*madhahib*) as it came to be widely understood in light of the theory of *ijtihad* and *taqlid*. A detailed account of these matters can be found in his recent article, co-authored with Professor Bernard Haykel of Princeton University, “What Makes a *Madhhab* a *Madhhab*: Zaydi Debates on the Structure of Legal Authority” (*Arabica*, 58, 3–4 (2012), 332–371). In this article, the authors show the difficulty of justifying adherence to a school of law within the classical theory of *ijtihad* and *taqlid*, a difficulty acutely felt by Yemeni Zaydis over the past few centuries but also familiar to other jurists.

ILSP AND IFP EVENTS 2011–2012

September 19, 2011: ILSP Orientation and Reception. Orientation to ILSP and reception for HLS and Harvard University students and faculty.

September 26, 2011: “Islamic Finance: Bankruptcy, Financial Distress, and Debt Restructuring,” a panel discussion focusing on insolvency issues in the Islamic finance sector. Discussion paper presented by Ibrahim Warde (Adjunct Professor, The Fletcher School, Tufts University). Panelists: Chibli Mallat (Visiting Professor, Harvard Law School); Umar F. Moghul (Murtha Cullina LLP); Muddasir Siddiqui (SNR Denton & Company); and Kristen Stilt (Visiting Associate Professor, Harvard Law School).

October 31, 2011: “Problems of Authority in Islamic Law,” ILSP lecture by Visiting Fellow Aron Zysow (Associate Research Scholar, Princeton University).

November 9, 2011: “Dispute Resolution in Islamic Banking and Finance: Current Trends and Future Perspectives,” ILSP lecture by Visiting Fellow Umar Oseni (Post-doctoral Scholar and Lecturer, International Islamic University Malaysia).

February 15, 2012: “Exceptional Courts and the Making of Republican Egypt,” ILSP lecture by Visiting Fellow Yoram Meital (Associate Professor, Ben-Gurion University, Middle East Studies; Chairman, Ben-Gurion University, Chaim Herzog Center for Middle East Studies & Diplomacy).

February 22, 2012: “Global Calls for Economic Justice: The Potential of Islamic Finance,” the 2012 London School of Economics-Harvard Public Lecture on Islamic Finance. Speakers: Mukhtar Hussain (CEO, HSBC Malaysia) and Volker Nienhaus (Visiting Professor, University of Reading, U.K.).

February 23, 2012: “Islamic Financial Intermediation: Revisiting the Value Proposition,” 2012 London School of Economics-Harvard workshop, by invitation.

March 6, 2012: “The Islamic Legal System and the Quest for Transformation in the 21st Century,” the seventh Abd al-Razzaq al-Sanhuri Lecture on Legal Interpretation in the Muslim World, given by Prof. Zaleha Kamaruddin (Rector, International Islamic University Malaysia).

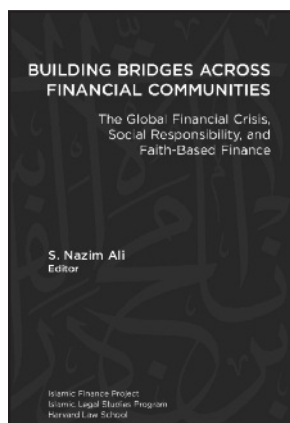
March 20, 2012: “Islamic Law, Women’s Rights, and Popular Legal Consciousness in Malaysia,” ILSP lecture by Visiting Fellow Tamir Moustafa (Associate Professor, Simon Fraser University School for International Studies, Canada).

March 24–25, 2012: The Tenth Harvard University Forum on Islamic Finance, “Islamic Finance and Development.”

April 17, 2012: “New Contract Types: Revisiting the Methodology of Product Development in Islamic Finance,” ILSP lecture by Visiting Fellow Ismail Cebeci (Researcher, Oxford Center for Islamic Studies, U.K.).

May 1, 2012: “Islamic Feminism and Gender Justice: Current Views,” ILSP lecture by Visiting Fellow Qudsia Mirza (Independent Researcher, U.K.).

NEW IFP PUBLICATION



The Ninth Harvard University Forum, entitled “Building Bridges across Financial Communities,” was held on March 27–28, 2010, and sought to explore how Islamic finance can cultivate new partnerships with other faith traditions and with other socially responsible organizations as it expands. The forum explored what conventional banks and Islamic finance institutions can learn from each other, particularly after the financial crisis. The Ninth Forum publication, a selection of 11 papers presented at the conference, investigates these questions through original research on best practices across and between industries and faith traditions. Essays consider diverse topics, ranging from the influence of religion on corporate social responsibility and individual financial choices to the parameters of hedging and portfolio diversification. To view the full table of contents, please visit the IFP website at www.ifp.law.harvard.edu. Copies of the publication can be acquired through IFP for \$40, including shipping. Please email ifp@law.harvard.edu to place an order. ❖

WELCOME TO ILSP

Scholars and practitioners from around the world are selected by ILSP in a formal competition each February to spend the coming academic year or one term pursuing an innovative research project of their own at Harvard. Next year's fellows are listed below.

Visiting Fellows 2012–2013

Olgun Akbulut

Assistant Professor and Associate Dean, Kadir Has University, Turkey

September 2012–May 2013

Research Topic: The Harmonization of Islamic Religious Rights with Secular Laws: What Does the Turkish Model Provide?

Guy Burak

Ph.D. 2012, New York University

September 2012–May 2013

Research Topic: Towards a Connected Legal History: A Comparative Study of the Ottoman, Uzbek, and Mughal Legal Systems

Mohd Na'im Mokhtar

Director, Family Support Division, Dept. of Syariah Judiciary, Malaysia

February 2013–May 2013

Research Topic: Enforcement and Execution of Maintenance Order by the Syariah Court of Malaysia: Issues of Separation of Power and Conflict of Interest

Roy Mottahedeh (Affiliate in Research)

Gurney Professor of History, Harvard University

July 2012–June 2013

Huma Sodher

Ph.D. candidate, Bangor University, U.K.

September 2012–December 2012

Research Topic: Post-Financial Crisis Legal and Regulatory Trends: Implications on Islamic Banking Laws and Regulations

Ayang Utriza

Ph.D. candidate, École des Hautes Études en Sciences Sociales, France

February 2013–May 2013

Research Topic: The Register of the Qadi Court of the Sultanate of Banten, 1754–56: Philological, Historical, and Legal Studies on the Archive of Kiyahi Peqih Najamuddin

Maaïke Voorhoeve

Researcher, Law Faculty, University of Amsterdam, Netherlands

September 2012–May 2013

Research Topic: The Sharia in the Constitution of Post-Revolutionary Tunisia

Walter Young

Ph.D., McGill University, Canada

February 2013–May 2013

Research Topic: The Dialectical Forge: On the Formative Dynamic of Jadal in Islamic Law

Luqman Zakariyah

Lecturer in the Study of Islam and Muslims, Al-Maktoum College; Honorary Teaching Fellow, School of Divinity, History, and Philosophy, University of Aberdeen, U.K.

September 2012–May 2013

Research Topic: Legal and Moral Questions in Contemporary Islamic Commercial Transactions: Comparative Analyses between Malaysia and the U.K.

INTRODUCING ISLAWMIX

A project of the Berkman Center for Internet and Society at Harvard University, islawmix.com is a new resource on Islamic law that aims to dynamically gather and contextualize trends in Islamic law in American media, policy, and legal academic circles. It is underwritten in part by the Islamic Legal Studies Program at Harvard Law School and the Interculture Foundation.

This project is timely and important, given the uptick in—and accompanying public relevance of—news stories on Islam and Islamic law, which create an urgent need to understand the issues around dinner tables, on Capitol Hill, and in the public square. Islawmix focuses on Islamic law in particular because, often, issues that seem to be about culture and theology turn out to be about competing interpretations of Islamic law. In the past decade, stories about Islam and Muslims have appeared with increasing frequency in American news media. Yet a recent Pew Research survey reveals that most Americans know little or nothing about Islam, and often what little they know is not grounded in fact. Surveys of mainstream news sources reveal a real divide between news producers and sources with expertise. To the extent that news reporting and academic discussions are ill-informed by information on the issues related to Islamic law, it is a challenge to connect academics with knowledge about the issues to the larger interests and discussions about it. Islawmix aims to bridge this divide.

The islawmix team brings together technical know-how—via advisors at the MIT Media Lab and from start-up news organizations—with subject-matter expertise—from the group of scholars who specialize in key topics within both American and Islamic law and have signed on to independently help provide content to the media and academic content emerging around Islamic law. Islawmix's team of experts represents a range of perspectives and includes 13 scholars in North America with advanced degrees in both American law and Islamic law—including recent ILSP affiliates and visiting professors Chibli Mallat, Kristen Stilt, and Intisar Rabb, as well as others from a diverse range of opinions and institutions.

Each week, islawmix gathers and highlights the most important news stories covering issues related to Shari'a in American news media. In addition to top stories, islawmix provides analysis of the issues from the scholars, as well as more in-depth “backgrounders” that feature a panel of experts who can speak authoritatively on the issues.

In the future, islawmix plans to continue the news roundups and analysis, and add to that detailed information about ongoing issues about Islamic law in legislation, in the courts, and in scholarly debates. With plans to become a clearing house for issues of Islamic law discussions and analysis in all these areas, islawmix aims to be the SCOTUSblog for Islamic law. ❖

ISLAMIC LEGAL STUDIES PROGRAM

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<http://www.law.harvard.edu/programs/ilsp>

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.

