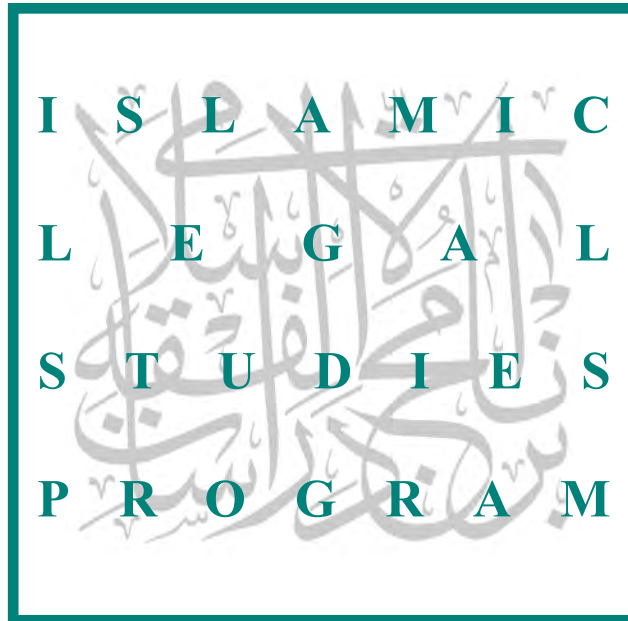


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### *From the Acting Executive Director*

S. Nazim Ali

This year, ILSP was fortunate to relocate from Mount Auburn Street back to the Harvard Law School campus, after a hiatus of seven years. Our new headquarters in historic Austin Hall have brought us closer to HLS students, faculty, and other resources. The Islamic Finance Project (IFP), a subsidiary of ILSP, also moved into Austin Hall from its previous location in Holyoke Center. Our move, which took place in March, was hectic, but having the IFP and ILSP under one roof has allowed us more control, smoother communications, and valuable integration.

During the past academic year, ILSP hosted seven fellows. They were a vibrant and diverse group of individuals from Canada, Indonesia, Malaysia, the Netherlands, Nigeria, Turkey, and Pakistan. Their research projects were varied and encompassed a broad spectrum of topics within the field of Islamic legal studies. Each fellow prepared a lecture on his or her research topic; these lectures attracted a wide variety of students, faculty, and community members and spurred some excellent academic discussions. More information on each scholar can be found in this newsletter on pages 11–13.

As part of ILSP's core mission, the program continues to support faculty and other researchers as they pursue their interest in Islamic law. Most notably, two visiting faculty members served as Custodian of the Two Holy Mosques Visiting Associate Professor of Islamic Legal Studies during the most recent academic year. Shahab Ahmed, of Harvard's Department of Near Eastern Languages and Civilizations, offered two courses during the academic year: *The Social and Cultural Lives of Islamic Law* and *Orthodoxy: Truth, Authority, Law*. Intisar Rabb, of New York University School of Law,

taught *Introduction to Islamic Law* in fall of 2012. Professors Ahmed and Rabb were wonderful assets to ILSP, often engaging with staff and fellows in both formal and informal discussions on Islamic law.

Since 2006, ILSP has hosted the annual Abd al-Razzaq al-Sanhuri Lecture Series on Legal Interpretation in the Muslim World. For the eighth lecture of this series, HE Muhammad Jamiruddin Sircar, Member of Parliament and Former Speaker, Bangladesh Parliament, lectured on "Shari'ah and the Law in Bangladesh: Understanding the Critical Conjunctions and Disjunctions." Mr. Sircar shared his rich experiences working in three different eras: British India, East Pakistan, and the Republic of Bangladesh. The lecture and the following discussion addressed many common issues in South Asian Muslim culture. For more on the lecture, please see page 3.

Another interesting seminar hosted by ILSP was "United Nations and Islamic Law: Using Islamic Strategies to Achieve Universal Development Goals?" This lecture and discussion was led by Mohammed Siraj Sait, Reader and Head of Research, School of Law and Social Sciences, University of East London. Mr. Sait is a former human rights prosecutor in India and legal officer with UN-Habitat in Kenya, and recently led the evaluation of the United Nations Development Programme in Iraq. The lecture sparked much interesting discussion.

The Islamic Finance Project (IFP), a subsidiary of ILSP, also held several interesting events this year. This year's workshop

*continued on p. 2*

## FROM THE ACTING EXECUTIVE DIRECTOR, *cont.*

on Islamic Finance, in partnership with the London School of Economics, was entitled *Insolvency and Debt Restructuring in Islamic Finance*. This annual workshop strives to bring together major stakeholders (shari'a scholars and academics) in Islamic finance to discuss the issues confronting the industry. The public lecture on "Islamic Finance and Shari'a Compliance: Reality and Expectations" was delivered by Tan Sri Dato' Azman bin Hj. Mokhtar of Khazanah Nasional Berhad, Kuala Lumpur and Frank E. Vogel, ILSP Founding Director. In addition, a seminar entitled "Shari'a-Compliant Home Financing in the United States" stimulated dialogue and addressed the misconceptions, mistrusts, and perceptions that revolve around Islamic home financing. Islamic finance products are often labeled as conventional products with an Islamic wrap. Various panelists from both the Islamic finance sector and academia provided their perspectives on the paper presented by Shaykh Yusuf DeLorenzo, a highly respected scholar in the field of Islamic finance. The IFP DataBank, an electronic bibliography of primary sources, continues to grow and is available free of charge on the Project's website ([www.ifp.law.harvard.edu](http://www.ifp.law.harvard.edu)). IFP is in the process of reviewing paper proposals for the next biennial forum (the Eleventh Harvard University Forum on Islamic Finance), to be held in April 2014, and is also compiling the papers presented in the Tenth Forum to be published as a book.

The ILSP opening reception, held early in the fall semester, was an opportunity for students and faculty interested in Islamic law to connect with each other and learn more about program activities, as well as to meet the new visiting scholar. Another event which continues to draw attention and interest from students and faculty members is the monthly coffee hour, which provides an informal opportunity for students, ILSP fellows, faculty, and staff to meet on a regular basis to engage in stimulating conversation and to exchange ideas about their projects and academic pursuits.

ILSP continues to collaborate and stay connected with other departments at Harvard. For example, this year ILSP co-sponsored a major conference with the Prince Alwaleed Bin

Talal Program on Islamic Studies, "Communities like You: Animals and Islam." This conference featured a session devoted to animals and Islamic law, chaired by former HLS Visiting Professor Kristen Stilt. ILSP also provided support to the Islam in the West Program (<http://cmes.hmdc.harvard.edu/research/iw>), and islawnmix (<http://islawnmix.org>) founded at Harvard's Berkman Center for Internet and Society. In addition, ILSP was again pleased to fund student research through its annual travel award program (for a description of this year's awards, please see the article on p. 4). ILSP also continues to provide substantial support to LL.M. and S.J.D. students from the Muslim world through scholarships administered by the HLS Graduate Program and International Legal Studies.

During the academic year, the program received several visitors from both the United States and abroad. The purpose of these visits was to learn more about the program and the law school, as well as to build bilateral relations. Most noteworthy among them were delegations from Saudi Arabia, Oman, Indonesia, Malaysia, India, Pakistan, Brunei, France, and Great Britain. The program continues to answer inquiries received from prospective students and other individuals interested in the program, in addition to playing an active role in advising current students in terms of career opportunities in related fields.

The Islamic law collection at Langdell Library continues to increase and is a vital resource for those conducting research in Islamic legal studies. Currently, its holdings represent some 42,000 volumes, several hundred serials, and a number of electronic databases that assist researchers in acquiring material on both classical and contemporary aspects of Islamic law. Materials not available at Langdell can be ordered from other collections. ILSP would like to take this opportunity to acknowledge a generous gift from alumnus and longtime friend and supporter Dr. Richard Debs to the library's Islamic collection.

Harvard Law students Leonard Wood (J.D. '13, Ph.D. '10), Erum Sattar (S.J.D. candidate), and Sarah Al-Nagggar (S.J.D. candidate) have helped to formally establish the Islamic and Comparative Legal Studies Association (ILCSA) at Harvard Law School. Professor Janet Halley has agreed to serve as the advisor. The outlook for the 2013-2014 academic year is bright. We are looking forward to working with the newly established group, initiating graduate student colloquia, the Eleventh Harvard University Forum on Islamic Finance, and the next Abd al-Razzaq al-Sanhuri Lecture, among other activities. We are open to suggestions on how we can improve both program content and activities, especially those that encourage greater participation from faculty and students at the law school and the university in general. ❖



ILSP holds a yearly or biannual lecture in which judges from one of the high courts in the Muslim world or prominent law professors lecture on the ways in which adjudication and doctrine rely on comparative approaches in their interpretation of the law. The Abd al-Razzaq al-Sanhuri Lecture Series on Legal Interpretation in the Muslim World is named in honor of Abd al-Razzaq al-Sanhuri (1895–1971), the most influential Arab jurist of the twentieth century. On November 12, 2013, the Islamic Legal Studies Program was pleased to present HE Muhammad Jamiruddin Sircar as the speaker for the eighth lecture in this series. Mr. Sircar, a distinguished jurist and former Speaker of the Bangladesh Parliament, lectured on the links between shari‘a and the law in Bangladesh. An abstract of his presentation follows.

### Shari‘a and the Law in Bangladesh: Understanding the Critical Conjunctions and Disjunctions



Bangladesh, a Muslim-dense democratic state in South Asia, represents a curious dichotomy between the belief system of the Muslim majority (shari‘a) and the existing legal system of the country. However, underneath this apparent dichotomy, there exist certain crucial interlinkages between shari‘a and the law. This dichotomy and the linkages merit a careful scrutiny, though they have never been subjected to any systematic academic analysis. This paper therefore seeks to examine the conjunctions and disjunctions between shari‘a and the law in Bangladesh and point out the key challenges of integration of shari‘a and its mainstreaming in the legal system of Bangladesh.

Bangladesh has an almost secular legal order with a written constitution that refers to shari‘a as a belief system, but not as a source of law or an overriding mandatory norm. The application of shari‘a in Bangladesh, therefore, does not enjoy any constitutional sanction; the historical legal basis for applying shari‘a is furnished by an antiquated law from the British colonial period viz. the Shariat Application Act, 1937.

Shari‘a-remoteness is the central theme of the legal system of Bangladesh, though traditionally shari‘a has always been predominant as a source of prescriptive rules governing family relations and, to some extent, property rights. However, with the creeping increase of legislative activity in these areas, shari‘a is no longer the sole and exclusive source of law. In fact, a considerable volume of law governing these areas now consists of the acts of parliament.

One of the reasons why legislative intervention was called for was the non-formal and somewhat indeterminate nature of shari‘a law; non-formal in the sense that the sources from which it derives are not the constitutionally recognized sources of law, and indeterminate because there exists no official body or authority to determine what would be “the right thing to do” in case of a divergence of opinions on what the law is or what it should be. Some sort of legislative intervention in the form of declaratory and clarifying laws was therefore necessary and there are growing demands for more legislative activity of this sort.

Bangladesh does not have any family code; the law governing family relations consists of a set of conventional shari‘a principles (as and to the extent modified by statutory law). Since both shari‘a and the statutory laws are running side by side, the boundaries of conventional shari‘a as a non-formal source of law and statute as a formal source are not quite easy to draw. Determination of the “applicable law” in a concrete case becomes problematic particularly when application of shari‘a and state law in the given set of facts would lead to different outcomes.

The courts are often torn between shari‘a and the statutory law in a case which calls for determination of the law “applicable.” Questions like whether a *talaaq* (divorce) pronounced by the husband but not communicated to the local authority, as required by the Muslim Family Laws Ordinance of 1961, operates to dissolve a Muslim marriage, or whether second marriage by the husband without obtaining permission from the first wife and the local authority as required by the said law is a valid marriage, or whether after the said law coming into force the traditional forms of *talaaq* still exist, are bound to elicit conflicting judicial responses. Such conflict arises not only from what may be perceived as usual interpretative differences but also from the judicial dilemma of choosing between the progressive and the perceived version of a principle of shari‘a when such a principle is capable of having dual meaning.

Furthermore, there also exist some discontents about and growing demand for rationalizing principles like the daughter’s entitlement to half the son’s share in inheritance, or a divorced woman’s right to maintenance for three months only. In the near future, addressing these discontents should be high on the agenda for strengthening the role of shari‘a as the governing law of family relations.

*continued on p. 4*



Outside the realm of family law, there is, however, one area in the Bangladeshi legal system that symbolizes the confluence of shari'a and the ordinary state law: Islamic banking and finance. The emergence of Islamic banking in Bangladesh has provided a new framework for association of banking laws and shari'a. Association of law and shari'a within this non-legislative, mostly private framework takes place at three levels.

First, at the level of structuring the shari'a-compliant products and services by the Islamic banks, insurances and financial institutions, which involves coming up with products and services that fully comply with the principles of shari'a and the statutory laws of the land. This ensures that products and services offered by the Islamic banks and financial institutions in Bangladesh are compliant with both shari'a and the statutory law.

Second and more important is the association of law and shari'a that takes place at the regulatory level. Bangladesh Bank, the central bank of Bangladesh, constituted a focus group to formulate an "integrated guideline" for conducting the banking business of the Islamic bank and Islamic window in the conventional banks. Based on the recommendations of the focus group, the Central Bank formulated *Guidelines for Conducting Islamic Banking*, described the different terminologies used in Islamic banking operations, shari'a supervision, and the principles and modes of deposits and investments.

Third, confluence of shari'a and statutory law takes place at the level of judicial enforcement of claims and disputes arising out of Islamic banking and finance. Products and services documentation and agreements between the Islamic bank and

the customer often specify shari'a as the governing law, i.e., the law according to which the agreement should be interpreted and the rights and obligations of the parties determined. Therefore, when a court set up under statutory law is confronted with a dispute arising out of contractual relation governed by shari'a, the court becomes bound to explore and give effect to the choice of law made by the parties and decide the case in accordance with the principles of shari'a. This way of private self-legislation is a prospective avenue for further integration of shari'a in the legal system of Bangladesh, at least within the ambit of contractual and commercial relations.

This trend of choosing shari'a as the governing law for resolution of disputes has its significance in the fact that through this instrumentality shari'a has travelled beyond its traditional territory (i.e., family relations) and already permeated the area of commercial transactions.

In fine, there exist both conjunctions and disjunctions between shari'a and the law in Bangladesh. Although the disjunctions apparently outnumber the conjunctions, scope and potential are there for further integration of shari'a and its mainstreaming in the legal system of Bangladesh. This remains unexplored because Bangladesh does not yet have any institutional framework in place for managing development and adaptability of shari'a. Once the framework is in place, and a congenial political environment develops, Bangladesh will be in a position to work on mainstreaming shari'a in its legal system. ❖

## 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 proposed research trips. During the previous academic year, ILSP was pleased to award travel grants to two Harvard Law School students. The program also awarded a grant to an HLS faculty member.

During the summer of 2012, HLS J.D. student Daniel McMann spent two months with Justice Khawaja of the Supreme Court of Pakistan interning as a foreign law clerk. He conducted research and wrote memoranda for Justice Khawaja, working on several high-profile cases in addition to the more mundane tasks of summarizing case files for the lower court. Along with the other law clerks, he was also given the opportunity to sit for lunches daily with justices. Outside the court, McMann had the opportunity to intellectually engage with Pakistan's best lawyers and greatest legal academics.

Over January term, second-year student Anna Gressel traveled to Morocco to find the sources necessary for her project

on developing a bibliography of Morocco's criminal procedure (as well as related sources on the legal system, legal history, and anthropology of Morocco generally). Gressel is particularly interested in the topics of confessions and criminal evidence within the Moroccan Penal Code and judicial practice. Gressel's bibliography of books on French colonial legal policy, Maghrebi pre-colonial Islamic law, and Moroccan constitutional law and legal reform was helpful in her spring independent study under the supervision of Prof. Noah Feldman on the historical development of Morocco's criminal legal system during various legal regimes (i.e., under Maliki law, French colonial law, and modern Moroccan criminal law). Gressel hopes to expand this work into a paper to be submitted for publication.

In addition to funding student research travel, ILSP was pleased to support Prof. Mark Tushnet's participation in a conference entitled "Constitutional Development, Economic Change, and Democratic Stresses in South Asia," held in Delhi in May. ❖

## MOHAMMED SIRAJ SAIT LECTURE

United Nations agencies exhibit complex and divergent attitudes in exploring Islamic law as a potential complementary source toward achieving universal development and human rights goals. With Muslims constituting over 20 percent of the world's population, accommodating demands for authentic approaches and community solutions among Muslims are often framed as ownership, effectiveness and sustainability questions. However, Mohammed Siraj Sait, HLS '89, head of research, School of Law, University of East London (UEL), lecturing at Harvard Law School in September 2012, argued that ambivalence and opportunism characterizes UN outlooks, rather than systematic and consistent methodologies. Using his experience as a former UN official, Sait discussed UN practices in his ILSP Public Lecture entitled "United Nations and Islamic Law: Strategies to Achieve Universal Development Goals and Human Rights in the Muslim World?"

### United Nations and Islamic Law: Strategies to Achieve Universal Development Goals and Human Rights in the Muslim World?

A common dilemma confronting post-conflict interventions in Muslim societies is whether, or to what extent, to engage with Islamic normative systems and perforce Islamic political dynamics. Will entertaining Islamic arguments add another layer of volatility, frustrate reform, and embolden radicals? Will canvassing medieval Islamic doctrines, like other customary norms, unravel the hard-won development consensus and jeopardize human rights? Widespread anxieties such as these may reflect the false premises and dichotomies—universal versus Islamic, secular versus faith-oriented, modern versus traditional—that sometimes permeate development discourses. UN agencies seeking to harness authentic Islamic ideas do not advocate for exclusive or automatic Islamic solutions where Muslims live. Instead the quest is for Islamic components that can be fitted into overall universal strategies.



Islamic practices are often dismissively relegated to the general and vague "customary, informal, and alternative" category by UN and other commentators. Yet, Islamic sources provide a distinctive foundation with well-developed methodology. At the same time, the role of Islamic ideas should not be exaggerated, given the dynamic relationship between Islamic, secular, customary, and state norms where there is legal pluralism. They are deployed as appropriate, accompanied by a realistic political assessment of the risks and opportunities.

For example, in the UNHCR study "The Right to Asylum Between Islamic Shari'a and International Refugee Law" (2009), High Commissioner Guterres states "more than any other historical source, Islamic law and tradition underpin the modern-day legal framework upon which UNHCR bases its global activities on behalf of tens of millions of uprooted people." UNDP, UNEP, and global organizations such as the Alliance of Religions and Conservation (ARC) have worked with Muslim and other faith-based actors and perspectives to further the environmental and climate change agenda. From regulating Islamic finance to interventions in post-conflict countries, UN agencies adopt pragmatic Islamic dimensions on a country-to-country assessment.

UN-Habitat, the global UN agency for sustainable human settlements, engages with different regions and diverse legal systems. However, during its work in many Muslim countries from Afghanistan to Indonesia and Somalia to Iraq, UN-Habitat has become increasingly aware of the significance of the distinctive and complex Islamic land tenure concepts and land rights as well as gaps in our understanding of their practical applications. Well-intended development interventions, which are uncompromisingly secular, often miss potential breakthrough strategies. In Afghanistan, the Islamic redistributive mechanism through *mawat* (empty) land perished without the support of interveners. In Iraq, heavily funded experts lacked understanding of Ottoman Islamic land tenures. In Aceh, fatwas were generating creative endowment solutions while the international community's attention was elsewhere, and Somali cooperatives have been similarly overlooked.

This engagement with Islamic land law has been taken up by the Global Land Tool Network (GLTN), a multi-sector and multi-stakeholder partnership of over 50 key global layers focused on establishing a continuum of land rights and the creation of innovative, pro-poor, scalable and gender-sensitive land tools. Appreciating the importance of Islamic dimensions, GLTN explicitly recognizes Islamic mechanism as a cross-cutting issue. An important part of GLTN research on Islamic land law was developing consensus on core material, produced by UEL, through validation by a range of stakeholders including Al Azhar in Egypt, professional organizations, and civil society.

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## MOHAMMED SIRAJ SAIT LECTURE, *cont.*

Since 2005, GLTN partners—who include UN agencies and the World Bank, policy makers, professionals, and civil society networks—have set about creating a multi-pronged strategy to ensure that Islamic dimensions are appropriately addressed where relevant. A key aspect of this approach is demystifying Islamic law for a range of users through development of training packages as well as learning events in various parts of the world. Upstream change agents, Muslims and non-Muslims, women and men in over 25 countries—including specific training for Kuwait, Egypt, Iraq, Somalia, and Malaysia—have benefited.

Four key UN-Habitat documents which emerged out of stakeholder consultations—the Cairo Initiative on Islamic tools (2005), the East London Principles (2007), the Kuala Lumpur Action Plan (2009) and the Cairo Resolution (2013)—have set the agenda for Islamic land law. The work program also prioritized thematic areas including gender equality, access to land, Islamic endowments (*waqf*), Islamic finance, and post-conflict contexts. Tools in these areas are being implemented

by several partners. The Islamic law training has also been used alongside gender equality training, harmonizing universal and Islamic rights. Results of these exercises have been shared at the UN Commission for Sustainable Development, various World Urban Forums, and World Bank conferences.

In the process, UN-Habitat and GLTN have contributed to the development of an emerging unified and systematic field of Islamic land law. The research has underlined new global agendas and action plans, such as the UN flagship State of the Arab Cities Report (2012) and the GLTN strategic appraisal Handling Land: Innovative Tools for Land Governance and Secure Tenure (2012). However, the existence of tools of Islamic land law does not guarantee their success. The tools have to be located within the dynamic interplay between ideas, customary practices, and formal prescription that is the hallmark of an inclusive, flexible, and results-driven methodology. UN agencies working on potentially cost-effective Islamic tools that are innovative, pro-poor, and gendered need to generate the credibility and inclusiveness to upscale and implement for real rights, empowerment and change. ❖

## ISLAMIC FINANCE PROJECT

### Harvard-LSE Public Lecture on Islamic Finance and Shari'a Compliance: Reality and Expectations

The seventh annual public lecture on Islamic finance was jointly organized by Harvard Law School (HLS) and the London School of Economics and Political Science (LSE) on Wednesday, February 27, 2013. The aim of the lecture

series is to expand dialogue and understanding of contemporary issues in Islamic finance. A large number of students and professionals attended this year's lecture at LSE's Hong Kong Theatre.

The lecture was chaired by Sir William Blair, a high court judge in England and a visiting fellow at the London School of Economics. The two speakers were Mr. Tan Sri Azman Mokhtar, CFA, Chief Executive Officer of Khazanah Nasional Berhad, and Professor Frank Vogel, founder of the Islamic Legal Studies Program at HLS.

In his opening remarks, Blair welcomed the attendees and said that the idea of ethics in finance has become much more important since the financial crisis that began in 2008 and that in terms of ethical approaches to finance, Islamic finance has taken the lead.

Azman said that Karl Marx was more or less of the view that all property is theft and that classical economists take the view that property is an individual's right. However, in Islam, man is *khalifah* (or vicegerent) of God on earth and therefore, according to Azman, all property is neither theft nor absolutely owned: all property is trust. Ownership is never absolute but only held in trust to be used for the benefit of society, to be enjoyed and consumed in moderation and with gratitude.

Azman explained that Islamic finance has only emerged during the last fifty years, and it is both revivalist and modernistic. He added that Prophet Mohammad is described by



Justice Blair, Tan Sri Azman Mokhtar, Frank Vogel



## ISLAMIC FINANCE PROJECT, *cont.*

the Quran as mercy for mankind and not just for Muslims. He emphasized that one needs to understand the distinction between Islam and Muslims because there can be a gap between what Islam teaches and what Muslims practice.

Describing the progress of Islamic finance, Azman said that there have been three waves. The first wave took place in the 1980s when Bank Islam was founded in Malaysia. During the second wave in the 1990s, the focus was on capital markets and *sukuk*. We are currently in the third wave of Islamic finance in which there are more comprehensive financial services, including *takaful* (or Islamic insurance) and non-banking financial institutions. Azman contended that what is needed in Islamic finance is a fourth wave that will contribute more towards society.

Sharing his own experience with reality and expectations in Islamic finance, Azman said that he enthusiastically opened an account in an Islamic bank when it commenced operations in Malaysia, but for quite some time the bank could not meet his basic service expectations, such as an ATM to operate his account. Because of the inconvenience of accessing this bank account, he had to open another in a relatively large conventional bank for better service.

Azman suggested that proponents of Islamic finance are chasing a utopian vision of shari'a in a deeply dystopian world. It is difficult to achieve the ideals of Islamic finance in a world of finance characterized by fiat money, credit creation, inflation, and zero-sum financial speculation. For example, the conventional financial system can create food price inflation, forcing the poor to cut down their food consumption.

Azman concluded that Islamic finance is not part of the problem, nor is it yet part of the solution. It is free from many of the excesses of conventional finance, such as financial speculation through derivatives, but it currently relies largely on debt financing products whereas it ought to be doing more equity-based financing.

Speaking next, Frank Vogel addressed expectations of Islamic finance and shari'a compliance. Vogel is a comparative lawyer who was attracted to Islamic finance as a case study of the application of Islamic law.

Vogel explained that shari'a is much more than law as nowadays ordinarily understood, encompassing not only belief and ritual, but also ethics, communal mores, economic welfare, social justice, constitution, politics, and governance. He added that shari'a addresses not only believing individuals but also groups—family, community, state, the Muslim nation, and, indeed, all of humanity. He clarified that shari'a—as the perfect divine law—is distinct from *fiqh*, the human effort to understand shari'a.

Vogel's theory is that as one strives to understand and apply the *fiqh* that was written in earlier centuries, one should also study the legal system—the system of application—for

which that *fiqh* was written. If we consult what *ulama* (scholars) of the time wrote about specific rulings, we should consider what they wrote and did about the system that was to apply those rulings. Because of historical developments such as the colonization of Muslim countries, that system of application of *fiqh* largely does not exist anymore.

He suggested that too often in Islamic finance the role of shari'a is understood as merely the application of *fiqh al-mu'amalat* (Islamic commercial jurisprudence) to the acts of private individuals and institutions at micro levels, where seemingly the rest is to be accomplished using conventional forms of regulation and governance. But Islamic commercial jurisprudence was written as only a part of a larger legal system that implemented the economic teachings of shari'a at other levels, macro as well as micro.

Vogel said that in home countries of Islamic banks, international entities are performing functions that once occurred within an Islamic legal system regulated according to shari'a. In the absence of the larger system that helped apply shari'a, Islamic finance faces the risk of becoming a disembodied algorithm, a set of consumer restrictions in a way of financing that otherwise is an indistinguishable part of the global legal and financial system.

He elaborated that in the former Islamic legal systems, *fiqh* scholars, other than those delivering religious rulings for micro compliance, advised on macro legislation, regulation, and policy. Actors other than scholars performed key shari'a economic roles (policy, administration, regulation, enforcement), pursuant to delegation from *fiqh*. They didn't apply scholarly methods but were influenced by underlying shari'a principles and by scholars.

Vogel was of the view that the full evaluation and implementation of *masalih* (utility) and *maqasid* (divine objectives) implicit in the Islamic economic system will demand not only the textual perspective but also macro knowledge and expertise that shari'a scholars working on micro issues may not command. Similarly, any standards beyond the scope of the private fatwa—such as shari'a ethical, prudential, or welfare-enhancing standards—need to be articulated and enforced by private and public entities as well as scholars performing private advisory roles.

Vogel suggested that the industry organizations in Islamic Finance (AAOIFI, IFSB, IIFM, CIBAFI, etc.) can help fulfill macro roles of shari'a enforcement such as generating and enforcing—by means of industry discipline and enforced customary norms—shari'a-inspired best practices involving higher ethical standards, consumer protection, and contributions to social welfare.

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## ISLAMIC FINANCE PROJECT, *cont.*

### HLS-LSE Workshop on Insolvency and Debt Restructuring in Islamic Finance

The Islamic Finance Project (IFP) of the Islamic Legal Studies Program (ILSP) of Harvard Law School, along with the London School of Economics and Political Science (LSE), co-hosted the seventh annual workshop on Islamic finance on February 28, 2013 at the LSE campus in London. Against the backdrop of a global economic slowdown, shari'a scholars, industry practitioners, economists, lawyers, and representatives of Islamic finance industry organizations discussed the implications of insolvency and debt restructuring mechanisms for Islamic finance institutions. In recent times, some prominent Islamic finance participants have faced difficulties in meeting their financial obligations and a few have had to file for bankruptcy.

Professor David Kershaw of LSE welcomed the participants and highlighted the importance of Harvard and LSE's joint efforts in conducting such programs and thereby building the capacity of LSE in Islamic finance. Frank Vogel, workshop moderator, reemphasized the importance of gathering thought leaders in the Islamic finance industry and conducting off-the-record discussions to elicit more frank and fruitful exchange of thoughts.

The workshop focused on the theme from the following angles: defaulting individuals; defaulting corporate transactions (insolvent corporate borrowers and *sukuk*); distressed financial institutions; national and cross-border bankruptcy and insolvency legislation, rules, and regulation; and Islamic finance industry bodies (evolving standards, model laws).

The workshop began with the question of whether a new regime or law is more suitable to address Islamic insolvency and bankruptcy issues or if the Islamic finance industry should work out a mechanism within the existing regime or

law. Participants discussed both approaches and the distinct benefits and challenges of each.

Among the major benefits cited in favor of a new law was the ability to address the constraints faced under the current legal system. It was argued that a new system will pave the way for procedural flexibility and uniform rules and insolvency regimes, which will reduce legal arbitrage. Use of Islamic tools such as cancellation of debt (*ibra*), transfer of debt liability to third party (*hawala*), voluntary deferment of debt, and agreement by the creditor to reduce borrowers' debt will improve rehabilitation (*sulh*) and prevention of strategic defaults. But the major challenges for a new law will include the cost associated with its development, enforceability, and conflict with existing rules, regulations, and mechanisms.

On the other hand, the benefits of using of existing institutions were recognized to be related to lessening of uncertainties and better integration with the global financial and legal systems. It was felt that the existing regime provides greater comfort to investors and financial institutions. However, it was feared that the existing system is not ideally suited to accommodate Islamic finance and therefore may continue to attract legal arbitrage, strategic defaults, and enforceability issues.

After a prolonged discussion the participants agreed that attempting a new regime would entail further complexities and would be more demanding of resources and wherewithal. There were practical questions, too, cited against the new approach, such as where and how it could be enforced? Would it be merely contractual and which states would adopt it? Would it apply to Islamic finance institutions only or to all financial institutions? And most important how could this be achieved?

Considering the number of challenges presented by both options, another path was discussed among participants as a



Participants at the Harvard-LSE workshop on Insolvency & Debt Restructuring in Islamic Finance



## ISLAMIC FINANCE PROJECT, *cont.*

better alternative. This option called for educating stakeholders in clarifying shari'a principles, making specific recommendations to Islamic finance institutions on how to manage within existing laws, preparing a master agreement on bankruptcy (like that of *tahawwut*), and preplanning insolvency. To avoid instances of bankruptcy it was suggested that it would be helpful to prepare model guidelines based on work done by the International Association of Restructuring, Insolvency & Bankruptcy Professionals (INSOL) to guide legislators, practitioners, and possibly courts.

It was noted that some Muslim states are in the process of revising their insolvency laws and it may be an opportune time to work with them. But the moot point in this connection was the actual shari'a-related changes required for existing regimes and whether *fiqh*-level issues can be overcome through political interference. Can creditors be forced to accept reorganization? Can a stay be imposed on secured creditors? How can the option of rehabilitation be strengthened? How can handling of *ta'athur* be strengthened? How can a jurisdiction or arbitration entity be developed into a recourse for insolvencies?

With regard to the above, the major challenges discussed among the participants pertained to the following: differences among scholars on *fiqh* issues; different philosophical approaches (pro-debtor, pro-creditor); complexity of factual situations; and divergent treatment across laws and jurisdictions.

Some complex issues like the limits of *fiqh*, what is subject to pre-agreement, what is within the discretion of financial institutions as grace, what is within the discretion of judges, and what is achievable only through regulation, were also discussed among the participants to identify and set priorities among institutions, market, and participants.

It was suggested that a review should be conducted of existing worldwide systems—a worldwide legislative review (WWLR)—which would recommend the most suitable solutions, along with any further ideas. This process would likely

be worthwhile even for revisions of a general insolvency law (Islamic and conventional); it would be useful for jurisdictions with a significant Islamic sector, which would then adjust to local historical, legislative, and cultural contexts; and it would be useful for judges and insolvency practitioners, as well as the parties concerned.

Finally, the participants discussed the possibility of producing a toolkit of restructuring methods and approaches which will be acceptable in shari'a. The primary aim of these would be to prevent bankruptcy through voluntary workouts and amicable settlements among parties. In the event of court involvement they would help guide reorganization, rescue, and liquidations.

At the end of the workshop, participants provided their specific suggestions. For example, first look at preventive measures such as insolvency and bankruptcy as the end results; review the existing *fiqh* literature on the subject in the light of current experiences; conduct a survey of Western countries, focusing on the issues of importance to shari'a; in light of the above, produce a model law of insolvency with international best practices; and improve AAOIFI's current shari'a Standard 43 to align it with current requirements.

### Shari'a-Compliant Home Finance in the United States

On April 6, 2013, the Islamic Finance Project hosted an event entitled "Shari'a-Compliant Home Finance in the United States." The panel discussion, which drew over 100 attendees, featured a talk by Shaykh Yusuf Talal DeLorenzo, Chairman of the Shari'a Board for the Dow Jones Islamic Market Indexes and a highly regarded scholar of Islamic transactional law. Following DeLorenzo's talk, five panelists offered their opinions and comments: Kathleen C. Engel, Associate Dean for Intellectual Life and Professor of Law at Suffolk University; Thomas Gainor, Senior Vice President and General Counsel at Guidance Residential, LLC; David Loundy,

*continued on p. 10*



*Shari'a-Compliant Home Finance panelists Tom Gainor, Stephen Ranzini, Yusuf DeLorenzo, Samuel Hayes, Kathleen Engel, Ibrahim Warde, and David Loundy*

Chairman of the Board of Directors of Devon Bank; Stephen Ranzini, President and CEO of University Bank; and Ibrahim Warde, Adjunct Professor at the Fletcher School at Tufts University. The event was moderated by Samuel L. Hayes, holder of the Jacob H. Schiff Chair in Investment Banking Emeritus at Harvard Business School.

DeLorenzo began by discussing the potentially large market for shari'a financial products in the United States. He stressed the importance of our building upon the home finance sector in order to gain access to a larger market in the future. He then outlined a number of challenges faced by shari'a-compliant home financiers in the United States. The first two major challenges to successfully introducing shari'a-compliant services are providing competitive pricing and competitive services. Shari'a-compliant home finance aims at Muslims in the higher end of the middle class market. This is a relatively well-educated group that is keenly aware of the dynamics of family finance. The days of COB (cost of being Muslim) are over; Muslim consumers are only interested in products that are priced competitively. Similarly, they are used to the customer orientation and efficiency of conventional banks, which creates the market for competitive services. Islamic financial institutions must find a way to provide this efficiency and financial value without the advantage of large scale-operations.

In addition to the excellent competitive pricing and services offered, another challenge DeLorenzo discussed is the absolute necessity that all shari'a-brand financial products must maintain shari'a authenticity. The Islamic financial industry was founded on Islamic ideals of fairness, justice, and universal access to the economy. However, critics claim that the industry is finding ways to technically follow shari'a while producing products that are no different from conventional ones. Skepticism is one of the biggest challenges faced by the shari'a-compliant home financing sector. In order for consumers to embrace Islamic financing methods, they must feel that Islamic finance is truly value-added and is giving them something conventional banks cannot.

Inertia is one of the most difficult challenges faced by Islamic home financing providers in the United States. Most Muslims in the home-owning demographic are already banked, insured, invested, and financed by conventional means. Convincing satisfied customers to switch banks is difficult, and religious and nationalistic sympathies are often not enough to do so.

Skepticism is strong in Muslim communities in the United States; many educated Muslims question the credentials of shari'a-compliant businesses. Any hint of scandal, fraud, or business failure is enough to make consumers doubt Islamic

finance and its legitimacy. Not only do they influence the performance of the shari'a home financing market, both skepticism and doubt affect the Islamic finance market on a larger scale, making it exceedingly important to address early on.

The Islamic finance industry must also quell the fears of consumers hesitant to invest in new businesses. Consumers are often afraid to be the first to use a service or put their trust in a bank. Many believe a product will not be worthwhile if it does not come with a recommendation from friends, neighbors, or current customers. They may worry that a business started only a year ago will not be around fifteen or thirty years hence to finish the financing term offered. These are valid concerns that all consumers should consider when investing in something as financially significant as a home.

Some of these challenges, such as fear and inertia, can be countered to a degree by having Islamic windows in conventional banks. However, all of these challenges ultimately require consumer education. A greater Islamic board of trade for the United States may be the first step toward achieving this educational goal. There might be a better solution(s), and it is discussions like this one that must continue to serve as incubators for a variety of thinkers on the subject. If the shari'a-compliant home finance industry can find a successful method of educating consumers about the quality and authenticity of its services, it could serve as a role model for other Islamic finance product providers.

Following Shaykh Yusuf's speech, each panel member shared views, opinions, and questions. David Loundy identified some additional challenges faced by the industry, such as taxation and regulation issues. Tom Gainor reflected on the difficulty and importance of building a good reputation. Gainor also optimistically noted that he no longer fears, as he did ten years ago, that Islamic finance is such a new and fragile industry that it may someday be regulated out of existence. Stephen Ranzini reflected on important lessons that the conventional financial industry can learn from the Islamic financial industry. Ibrahim Warde commented on the dire need for creative new financial solutions in the wake of the subprime crisis. Katherine Engel spoke about the confusion and doubt in the financial world that is an indirect negative effect of the subprime crisis on shari'a-compliant home finance.

In order for Islamic finance to become a true contributor to the global financial system, and one used widely by Muslims from every walk of life, it must first be successful with the middle class in the United States and Europe, where competition is strong and the ability to adapt, innovate, and establish a reputation of authenticity is essential.

A detailed report of the event will be posted on the IFP website soon. ❖

## ILSP VISITING FELLOWS



**Olgun Akbulut** came to ILSP from Kadir Has University in Turkey, where he held the positions of Assistant Professor and Associate Dean. He spent the academic year working on the harmonization of Islamic religious rights with secular laws in the context of Turkey.

Olgun's ILSP lecture focused on the debates concerning accommodation of religious identities in the expected new constitution of Turkey. In the ongoing constitutional process, there have been contentious debates about religious issues and expectations of various groups with regard to these issues. Conservative female students are expecting the liberalization of university campuses that are against the ban on wearing Islamic headscarves. For example, conservative parties, including the AKP, are standing against the aggressive implementation of the principle of secularism, which led to the dissolution of conservative political parties several times in the past; non-Muslim communities are expecting the full enjoyment of their minority rights; and non-Sunni Muslims, specifically Alevis, are asking for official and legal recognition of Alevism as an Islamic community equal to, but different from, Sunnism.

In his lecture, Olgun analyzed these problems from the perspectives of comparative constitutional and international human rights law, then suggested a constitutional provision for discussion. The provision is formulated to serve as a legal basis for accommodating religious identities in the new constitutional setting. The suggested provision reads as follows: "The state shall protect all the existing religious beliefs in Turkish society, shall adopt appropriate legislative and other measures to protect believers from interference or any form of discrimination, [and] shall take measures in the field of education, in order to encourage knowledge of the history, traditions, cultures, and practices of the religions existing within its territory."

Olgun has returned to Turkey and is closely monitoring political developments as they unfold.



**Guy Burak** received his Ph.D. from New York University and came directly to ILSP. He kept very busy during his one-semester tenure at the program, completing a book manuscript on the rise of the official state school of law (*madhhab*) in the Ottoman Empire, tentatively entitled *The Second Formation of Islamic*

*Law: The Rise of the State Madhhab in the Ottoman Empire and Its Discontents*. He also finished two encyclopedia entries (on *madhhab* and *mufti*) for the *Oxford Encyclopedia of Islamic Law*, as well as two articles, one of which was

recently published in *Comparative Studies in Society and History* and was the basis of his ILSP lecture.

In his ILSP talk, entitled "The Second Formation of Islamic Law: Some Thoughts about the Ottoman Adoption of a School of Law," Guy explored a set of recurring patterns and practices that are discernible across the eastern Islamic lands in the post-Mongol period. Concretely, he suggested that the Ottoman adoption of a particular branch within the Hanafi school was not a uniquely Ottoman phenomenon but had parallels in other empires in the eastern Islamic lands. He also argued that rise of the state *madhhab* in the post-Mongol period is related to the emergence of new notions of sovereignty and dynastic law that were introduced by the Mongols to the Islamic world in the thirteenth century.

Guy left ILSP in early 2013 to start a job as the Librarian for Middle Eastern and Islamic Studies at New York University's Bobst Library.



**Mohd Na'im Mokhtar** came to ILSP from Malaysia, where he is Director of the Family Support Division in the Department of Syariah Judiciary. During his yearlong stay at ILSP, Na'im's research focused on the doctrine of the separation of powers and its relevance to the enforcement and execution of maintenance orders.

His ILSP lecture, entitled "Doctrine of Separation of Powers and Its Relevance to the Enforcement and Execution of Maintenance Order by the Syariah Courts of Malaysia," highlighted issues pertaining to the enforcement and execution of maintenance/financial support in Malaysia. Na'im first explained the dual system of Malaysian courts with respect to family matters enshrined under the Malaysian Federal Constitution (i.e., civil courts for non-Muslims applying the English legal system and Syariah courts for Muslims applying the Syariah principles). He then explained in detail the problems and issues faced by the Syariah court in relation to non-compliance with maintenance orders. Mokhtar concluded that these problems arise mainly because the courts' function is merely to issue judgment and not to enforce it, while Syariah principles and jurisprudence require the Syariah courts to enforce and execute their own judgment. A lively discussion with many questions and comments followed.

During the last part of the academic year, Na'im was able to pursue an internship at the Department of Probate and Family Court (DPFC) of the Superior Court of Massachusetts. During the internship, Na'im met with Chief Justice Paula M. Carey and other judges specializing in family law. During those sessions, participants exchanged information and experiences, resulting in valuable insights for all.

*continued on p. 12*



## ILSP VISITING FELLOWS, *cont.*



**Huma Sodher** came to ILSP from Pakistan via the United Kingdom, where she is completing her Ph.D. in Islamic Banking Law at Bangor University, Wales. In addition to her academic credentials, Huma brought a wealth of practical experience to her pursuits at Harvard, having worked in auditing at PricewaterhouseCoopers, in the banking industry, and also as a judicial magistrate and civil judge in the High Court of Sindh, Pakistan.

In her ILSP lecture, Huma shared her professional experience and preliminary research findings on the suitability of the contemporary and future secular legal and regulatory milieu for Islamic banking. She discussed the legal framework (from the constitution to the applicable general/specialized laws) of the United Arab Emirates and Malaysia applicable to Islamic banking. She also highlighted the inappropriateness of the financial reporting and tax regulations applicable to Islamic banking transactions and judicial treatment of such transactions. Huma pointed out that financial laws and regulations introduced post-financial crisis are focusing on curbing the practices of excessive risk-taking and uncertainty, lack of transparency, and consumer exploitation, which is also in line with the basic principles and concepts of *fiqh al-mu'amalat* (Islamic law relating to financial transactions).

During her year at Harvard, Huma also participated in several events as panelist or speaker, wrote drafts of several papers, and helped organize several events for the Islamic Finance Project, while continuing to hone her dissertation.

Huma will return to complete her Ph.D. at Bangor University in Wales, UK.



**Ayang Utriza**, a Spring 2012 Visiting Fellow, enjoyed a short but fruitful stay at ILSP. Ayang came to Harvard from Indonesia via Paris, where he recently completed his Ph.D. in Philology, with a dissertation entitled “Philological and Historical Studies on the Compilation of Laws of the Sultanate of Bantën (Indonesia) in the 17th and 18th Centuries.”

While at ILSP, Ayang spent much time transforming his thesis into book format, the manuscript of which has been accepted for publication by the French publisher Les Indes Savantes.

On a related topic, Ayang’s ILSP lecture investigated and studied a manuscript from the archives of the Qadi of the Sultanate of Bantën (1527–1813). It consists of the legal cases brought before the *Kiyahi Pëqih Najmuddin* (the title of the Islamic judge in Bantën) by the inhabitants. The register covers the period from 1754 to 1756, and is the oldest ‘*sijill*’ (court record) known in Southeast Asia. Among the wide

variety of cases contained therein are those concerning marriage, divorce, inheritance, litigation, private transactions, loans, debts, and violence. The research provides a transliteration from *pegon* (Arabo-Javanese) to Latin script, a translation from Javanese to English, and a description of this legal document. Ayang’s lecture presented findings, among others, that the case of the *qadi* of Bantën reveals the encounter between shari‘a and local custom. By taking customary law as one of his legal sources, apart from shari‘a, the *qadi* attempted to “Islamize” local legal culture. According to Islamic law under the principles of ‘*urf*’ and ‘*adat*’, the *qadi* is allowed to do so. Furthermore, the Javanese culture of Bantën gives a moral groundwork to the *qadi* to use his discretion based on ‘*rasa*’, literally meaning “feeling,” or his own judgment based on his “feeling” and thinking, in adjudication. The work of the *qadi* of Bantën shows that he was part of a web of *qadi* in the Muslim world.



**Maaïke Voorhoeve** came to ILSP from the Law Faculty at the University of Amsterdam in the Netherlands, where her research described and analyzed how family law in Tunisia is derived from a variety of legal sources and how it is currently applied. Maaïke also taught a course in legal anthropology focusing on family law in the Muslim world.

Maaïke’s ILSP lecture, “Public Debates on the Role of Shari‘a in the New Tunisian Constitution,” grew out of her research project undertaken at ILSP on shari‘a in the constitution of post-revolutionary Tunisia. In her well-attended talk, Maaïke began by offering the following background: Article One of Tunisia’s draft constitution states that Islam is Tunisia’s religion. It is an exact copy of Article One of the previous constitution, which was implemented in 1959 and abolished upon the revolution. Maaïke contended that in the political and historical context the decision to copy the article on Islam from the previous, “secularist” constitution is surprising: after the revolution, the previous authoritarian “secularist” government was replaced by a democratically elected Islamist one, dominated by a movement that was previously prohibited and suffered most under the political repression that was abolished upon the revolution. For this reason, some Tunisians argue that even if the text of the constitution has remained the same, its meaning has changed significantly. In her presentation, Maaïke further compared the meaning of three aspects of Article One before the revolution and after: the issue of the Tunisian identity; power relations within the state and between the state and other forces such as religious scholars or Islamists; and the relationship between law and religion. Maaïke concluded that while Article One appears to continue to have the same meaning on the levels of identity and law, its meaning has

## ILSP VISITING FELLOWS, *cont.*

changed significantly where the relationship between the state and other forces is concerned: the authoritarian repression of “Islamists” was replaced by the revolution’s discourse of freedom of religion, resulting in an *ouverture* of the religious sphere.

Maaiké will be spending next year continuing related work through a fellowship at the Rechtskulturen program of Humboldt Universität in Berlin.



**Walter Young**, at ILSP for the Spring semester, came from McGill University. While only at Harvard for a short four months, Walter was able to make substantial progress on developing his highly acclaimed dissertation into three separate books and several journal articles.

Walter’s unique ILSP lecture, entitled “*Jadal* and *Uṣūl al-Fiqh*: Vignettes from the Dialectical Forge,” was crafted with several objectives in mind: 1) to introduce “dialectical forge theory”—a paradigm for the formative dynamic of *jadal* with regard to *fiqh*, *uṣūl al-fiqh*, and *jadal*-theory itself; 2) to quickly outline the organizing principles and categories of classical Sunnī juridical dialectical theory; 3) to provide a glimpse of what juridical dialectic actually looked like, by enacting his translation of a purportedly historical disputation between two master dialecticians—Abū Ishāq al-Shīrāzī and Imām al-Ḥaramayn al-Juwaynī—on a *mas’ala* of *ṣalāt*; 4) to quickly analyze this disputation by way of the concepts and categories of *jadal*-theory and formal/informal argumentation; 5) to explain how elements of this disputation illustrate the primary components of “dialectical forge theory”; 6) to promote the study of *jadal/munāzara* as a critical branch of Islamic Legal Studies, and as the means to a better understanding of the nature and evolution of variant projects within Islamic intellectual history at large; and 7) to elicit participation in the formation of an organization for the study and practice of Islamic dialectical theories. ILSP offers a special thank you to former ILSP fellow Dr. Leonard Wood for participating in the disputation re-enactment.

Walter will return to Montreal temporarily while planning the next step in his academic career. He hopes to acquire further post-doctoral funding allowing him to complete his many projects, as well as to establish the operational nucleus of a *jadal*-studies organization.



**Luqman Zakariyah** came to ILSP from Nigeria via the University of Aberdeen in the United Kingdom, where he was a Teaching Fellow in the School of Divinity, History, and Philosophy. Luqman was very productive during his year with ILSP. He completed and submitted several book chapters and articles, wrote and presented papers at various conferences, and continued to make progress on three book projects he is writing or editing.

Luqman’s ILSP lecture, “Legal and Moral Questions in Contemporary Islamic Banking and Finance,” provided a critical analysis of the correlation between legality and morality in Islamic banking and finance. In his research and talk, he evaluated the approach of Islamic banking and finance in harmonizing morality and legality in the business. He also investigated aspects of the legal and moral questions raised in the interaction between the Islamic and the conventional financial systems, and compared the classical and modern opinions on the issues raised. Luqman then outlined the three approaches (i.e., legislating morality, *maqasid al-shari’a* and self-regulation) set to address the issue of legal and moral concepts in contemporary Islamic banking and finance. Drawing from Hallaq’s 2009 assertion, Luqman concluded that, while the two approaches are subject to subjectivity and relativity, self-regulation can achieve harmonization of legal and moral concepts in Islamic banking and finance by injecting the moral teachings of Islam into the hearts of all shareholders, bankers, financial analysts, economists, policymakers and even shari’a scholars. How that could be possible in foreign countries alien to Islamic law and its teachings is considered by many to be a quixotic endeavor.

After his tenure at ILSP, Luqman headed to Kuala Lumpur where he has taken the position of Assistant Professor at the International Islamic University Malaysia.

## ILSP AND IFP EVENTS 2012–2013

**September 12, 2012: ILSP Orientation and Reception.** Orientation to ILSP and reception for HLS and Harvard University students and faculty.

**September 18, 2012: “United Nations and Islamic Law: Using Islamic Strategies to Achieve Universal Development Goals?”** Lecture and discussion by Mohammed Siraj Sait (Reader and Head of Research, School of Law and Social Sciences, University of East London).

**November 12, 2012: “Shari‘ah and the Law in Bangladesh: Understanding the Critical Conjunctions and Disjunctions,”** the eighth Abd al-Razzaq al-Sanhuri Lecture on Legal Interpretation in the Muslim World, given by HE Muhammad Jamiruddin Sircar, MP (Former Speaker, Bangladesh Parliament).

**November 19, 2012: “The Second Formation of Islamic Law: Some Thoughts about the Ottoman Adoption of the Hanafi School of Law,”** ILSP lecture by Guy Burak (Ph.D., New York University; Fall 2012 ILSP Visiting Fellow).

**November 27, 2012: “Turkish Debate on the Accommodation of Religious Identities in the Process of Forming a New Constitution,”** ILSP lecture by Olgun Akbulut (Assistant Professor and Associate Dean, Kadir Has University, Turkey; 2012–2013 ILSP Visiting Fellow).

**December 4, 2012: “Legal and Regulatory Milieu of the Islamic Banking Industry,”** ILSP lecture by Huma Sodher (Ph.D. candidate, Bangor University, U.K.; 2012–2013 ILSP Visiting Fellow).

**February 12, 2013: “Legal and Moral Questions in Contemporary Islamic Banking and Finance,”** ILSP lecture by Luqman Zakariyah (Assistant Professor in the Study of Islam and Muslims, Al-Maktoum College of Higher Education; Former Teaching Fellow of School of Divinity, Philosophy and History, University of Aberdeen, U.K.; 2012–2013 ILSP Visiting Fellow).

**February 27, 2013: “Islamic Finance and Shari‘a Compliance: Reality and Expectations.”** The 2013 London School of Economics-Harvard Public Lecture on Islamic Finance. Speakers: Tan Sri Dato’ Azman bin Hj. Mokhtar (Managing Director, Khazanah Nasional Berhad, Kuala Lumpur, Malaysia); Dr. Frank Vogel (Founding Director, Islamic Legal Studies Program, Harvard Law School). Chair: Justice Blair.

**March 11, 2013: “Public Debates on the Role of Shari‘a in the New Tunisian Constitution,”** ILSP lecture by Maaïke Voorhoeve (Researcher, Law Faculty, University of Amsterdam, Netherlands; 2012–2013 ILSP Visiting Fellow).

**April 2, 2013: “Doctrine of Separation of Powers and Its Relevance to the Enforcement and Execution of Maintenance Orders by Syariah Courts of Malaysia,”** ILSP lecture by Mohd Na‘im Mokhtar (Director, Family Support Division, Dept. of Syariah Judiciary, Malaysia; Spring 2013 ILSP Visiting Fellow).

**April 6, 2013: “Shari‘a-Compliant Home Financing in the U.S.”** A panel discussion on the misconceptions, mistrusts, and perceptions that revolve around Islamic home financing. Discussion paper written by Shaykh Yusuf DeLorenzo.

**April 16, 2013: “Jadal and Uṣūl al-Fiqh: Vignettes from the Dialectical Forge,”** ILSP lecture by Walter Young (Ph.D., McGill University, Canada; Spring 2013 ILSP Visiting Fellow).

**April 24, 2013: “The Register of the Qadi Court of The Sultanate of Bantën (Indonesia) 1754–1756,”** ILSP lecture by Ayang Utriza (Ph.D. candidate, École des Hautes Études en Sciences Sociales, France; Spring 2013 ILSP Visiting Fellow).

## TWO NEW IFP PUBLICATIONS

We are excited to announce the publication of two new books.

*Islamic Finance and Development* is a compilation of papers presented at the tenth forum. *Islamic Finance and Development* will be available in October 2013.

*The Tawarruq Debate in Islamic Finance*, edited by Frank E. Vogel, S. Nazim Ali, and Umar A. Oseni (in preparation). The book is based on the Harvard-LSE Workshop debate on *tawarruq*, a unique instrument used widely in Islamic financial institutions. This pioneering book examines different perspectives on *tawarruq* as a debt instrument in Islamic

finance. Drawing from the high-level discussion of shari‘a scholars, Islamic economists, and financial and legal experts, the book consists of thirteen chapters dissecting the dynamics of *tawarruq* from the classical period to modern times. It also includes discussion of the recent restrictions on *tawarruq* by the Central Bank of Oman. Each chapter is written by a leading expert in Islamic finance, including Muhammad Taqi Usmani, Hussain Hamed Hassan, Mohammad Nejatullah Siddiqi, Mabid Al-Jarhi, Muhammad A. Elgari, Nazih Hammad, Nizam Yaqubi, Mahmoud El-Gamal, and Sami Al-Suwailem. ❖



## 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 to pursue an innovative research project of their own at Harvard. Next year's fellows are listed below.

**Lu'ayy al-Rimawi**, February–May 2014

*Co-Director, LLM Module in Islamic Financial Law and Co-Director, LLM Module in Islamic Business Law, BPP University College, London, UK*

**Research Topic:** Comparative Aspects of Prospectus Liability under Islamic General Law in Arab Countries (Shari'a), UK, and the U.S.

**Saied Edalatnejad**, February–May 2014

*Department of Law, Encyclopaedia Islamica Foundation, Iran*

**Research Topic:** Legal Status of Religious Minorities in Shiite *Fiqh* and Iranian Laws (1906–2012)

**Fachrizal Halim**, September–December 2013

*Ph.D., Institute of Islamic Studies, McGill University, Canada*

**Research Topic:** The Digital *Madhhab*: Reformulation of Islamic Legal Authority in the New Media

**Shariq Nisar**, September 2013–May 2014

*Director, Research and Operations, Taqwaa Advisory and Shariah Investment Solutions, India*

**Research Topic:** Application and Accommodation of Shari'a Financial Concepts in Secular Jurisdictions

**Tahsin Özcan**, September 2013–May 2014

*Professor of Islamic History, Head of Turkish History Branch, Marmara University; Theology Faculty, Islamic History Department, Turkey*

**Research Topic:** *Waqf* and Civil Society: Management of Foundations from the Ottomans to the Republic of Turkey

**Ayman Shabana**, September 2013–May 2014

*Visiting Assistant Professor, School of Foreign Services in Qatar, Georgetown University*

**Research Topic:** Paternity Regulations between Islamic Law and Bioethics

**Serena Tolino**, September 2013–January 2014

*Post-doctoral fellow, University of Zurich, Switzerland*

**Research Topic:** Eunuchs in Medieval Islamic Law: Discourses on the Gender of Castrated Men

## 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 October 2012, ILSP was pleased to support “Yemen in Transition: Challenges and Opportunities,” a conference organized by Steven C. Caton, Harvard University, and the Yemen Working Group. The conference brought together Yemeni-American professionals and academics along with some of their counterparts from Yemen, and academics from the U.S., Europe, and Yemen to discuss the future of Yemen and what might be done to help the country as it transitions into its new historical phase. Participants included both professionals and students from Harvard and the Boston area who are from Yemen. Topics discussed included politics and political reform, economic development, women and youth, and the water crisis.

In April 2013, ILSP co-sponsored The Fifth Annual Prince Alwaleed Bin Talal Islamic Studies Conference at Harvard University, entitled “Communities Like You: Animals and Islam.” Princess Alia Al Hussein of the Hashemite Kingdom of Jordan and founder of the Princess Alia Foundation

was the keynote speaker. Animals have played significant roles within the theological, artistic, legal, philosophical and literary traditions of Muslim communities. Each panel of leading scholars and activists examined the role of animals within a different framework. Of particular interest to ILSP was the panel on Animals and Islamic Law, chaired by Kristene Stilt. Presenters were Dalia Abo-Haggag (“The Queen of Sheba, the Hoopoe, and the Ant: The Story of Solomon in *Sūrat al-Naml*”), Nariman Gasimoglu (“Monotheistic Theology of Animal Treatment in the Bible and the Koran”), Sarra Tlili (“Animals Would Follow Shafi’ism”), Nuri Friedlander (“Ritual Life and Death: Killing Animals in the Later Sunni Legal Tradition”), and Abdullah Nana (“Prophetic Teachings on Animal Rights in Light of Modern Industrial Slaughter”).

In addition, ILSP continued its annual contribution in support of the Islam in the West program in the Harvard Faculty of Arts and Sciences. In 2012, this funding helped support the development of country profiles by Dr. Jocelyne Cesari, Director of the Islam in the West program, on State-Islam and the status of Islamic law for Egypt, Iraq, Libya, Pakistan, Tunisia, and Yemen for the *IslamiopediaOnline* website. ❖

## OUTREACH

The Islamic Legal Studies Program and the Islamic Finance Project staff answer inquiries from all over the world seeking assistance finding educational opportunities, career advice, Islamic finance providers, etc. The programs also work with students here at Harvard, helping to guide those interested in careers in Islamic law and finance. We monitor developments, inquiries, and trends within the field in order to identify topics for our seminars and conferences.

ILSP and IFP staff also work with various government departments, host delegates, and attend conferences. This year, our esteemed visitors included delegations from Malaysia, Qatar, Saudi Arabia, and India.

The ILSP Acting Executive Director attends a variety of conferences and seminars each year. This year's highlights include the Homeland Security Department (DHS) *iftar* in Washington, D.C., hosted by Secretary Napolitano; the First Forum of Scientific Centers and Chairs of Middle Eastern Studies, initiated by the Ministry of Higher Education in Riyadh; the World Islamic Banking Conference in Bahrain; the panel on Women in Islamic Finance at Harvard University; the American University of Sharjah Islamic Finance Conference; and examining a thesis and building bilateral relationships with the Qatar National Library at the Qatar Foundation. ❖



*S. Nazim Ali and Secretary of Homeland Security Janet Napolitano*

## UPCOMING EVENT

### Eleventh Harvard University Forum on Islamic Finance

The next biennial forum, the Eleventh Harvard University Forum on Islamic Finance, will be held April 26–27, 2014. The major theme will of the forum will be “*Takaful* and Alternate Cooperative Financing: Challenges and Opportunities.” The Eleventh Forum seeks to critically examine issues of risk sharing, mutuality, solidarity, and socioeconomic welfare in the context of a discussion about *takaful* and other cooperative financial solutions. The Forum will be a two-day conference, structured around three plenary sessions and six smaller parallel sessions. A formal banquet dinner will be held at Harvard on the evening of April 26, followed by a speech by one of the forum luminaries. A schedule of this event will be posted soon. The deadline for submitting abstracts is August 4, 2013. For a detailed announcement, please visit [http://ifp.law.harvard.edu/login/view\\_pdf/?file=Harvard\\_Forum\\_Call\\_for\\_Papers.pdf&type=Announcements](http://ifp.law.harvard.edu/login/view_pdf/?file=Harvard_Forum_Call_for_Papers.pdf&type=Announcements). ❖

## 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.

