ILSP
Islamic Legal Studies Program
Harvard Law School

Remembering Joseph Schacht (1902-1969)

by

Jeanette Wakin

Occasional Publications 4
January 2003

ISBN 0-88086-051-0

The **Islamic Legal Studies 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 the study of its writings and history.

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Preface

The following article, by the late Jeanette Wakin of Columbia University, a friend of our Program and one of the leaders in the field of Islamic legal studies in the United States, memorializes one of the most famous of Western Islamic legal scholars, her mentor Joseph Schacht (d. 1969). This piece is invaluable for many reasons, but foremost because it preserves and reliably interprets many facts about Schacht's life and work. Equally, however—especially since it is one of Prof. Wakin's last writings—it memorializes her, particularly in beautifully revealing her traits of profound personal loyalty and devotion to excellence. We therefore offer this article in our *Occasional Publications* series as a monument to both scholars as well as to the standard of Islamic legal studies that they both courageously and unwaveringly advanced throughout their lives, however controversial some of the conclusions to which these studies led them have been and remain.

Jeanette Wakin was born in Connecticut in 1928, the daughter of Lebanese immigrants of Greek Catholic faith. After teenage years in California, she returned

to the East Coast to complete her undergraduate degree at the New School for Social Research in New York and her M.A. and doctorate at Columbia. She remained at Columbia all her life, barring a two-year stint as Visiting Professor of Islamic Law at New York University, beginning as Preceptor in 1965 and ending as Senior Lecturer in Arabic and Islamic Studies. A tenured position, Senior Lecturer hardly begins to describe the influence she had on generations of students and on the field of Islamic law. Not only was she an acclaimed teacher, attracting the exceptional number of 110 students to a course on Islamic family law, she was also a mentor to her students, providing them as well as colleagues far and wide with continuous intellectual and emotional support. She opened her home to visitors, held salon-like evenings where animated discussion by a host of scholars took place, and ran for many years a widely-known and popular Seminar at Columbia, which gathered together foremost academics of Arabic studies, many of whom would afterwards troop over to her apartment, continuing the seminar in informal manner until the early morning.

In addition to her teaching and mentoring skills, Jeanette was an excellent editor, and she held the position of Associate Editor for Islam and the Near East

for the *Journal of the American Oriental Society* since 1978 until her death. She was a prime mover in the shaping of the Journal in the field of Islamic studies; although her main interest, of course, was Islamic law, which she promoted in *JAOS*, she warmly and generously welcomed the establishment of a "rival" journal in 1994, *Islamic Law and Society*, on which Advisory Board she served.

Jeanette's legacy in the field is not only seen in her output of academic studies, which was small but brilliant—her study *The Function of Documents in Islamic Law* (Albany 1972) is without successor to this day; it is endlessly visible in the impact she had on countless colleagues and students, who will remember her and miss her forever. Jeanette Wakin died on March 13, 1998, of liver cancer.

Frank E. Vogel
Director, Islamic Legal Studies Program

Remembering Joseph Schacht (1902-1969)

Jeanette Wakin

Joseph F. Schacht, a major figure in European and American scholarship on Islam who is most famous for defining and elaborating upon the origins and early development of Islamic law, was born on 15 March 1902, at Ratibor, in Upper Silesia, then in Germany and now in Poland (Racibórz), close to the border of Czechoslovakia. His father, Eduard, was a teacher of the deaf and dumb, and a Roman Catholic. From 1911 to 1920, Joseph attended the Humanistisches Gymnasium in Ratibor, where he studied Latin, Greek, French, and English. It was by chance that he was introduced to the Semitic languages. During the period reserved for religious education, a rabbi would come to teach Hebrew to the Jewish students, and by finishing his work ahead of time, Joseph received permission to attend these classes. In 1920, he began his university training in theological studies at Breslau (now Wroclaw), specializing in classical and Semitic

languages; in 1922 he won a university prize for an essay on an Old Testament subject. His professors at Breslau were William Baumgartner, Hildburgis Gies, Wilhelm Kroll, Rudolf Meissner, Franz Praetorius, Arthur Ungnad, and Gotthelf Bergsträsser. It was above all Bergsträsser (1886-1933) who interested Schacht in the study of Islamic law, and whose lectures on law Schacht was to edit and complete in 1935, shortly after Berg-strässer's death.

In 1923, at the age of twenty-one, Schacht received the degree of D.Phil. summa cum laude. His thesis was the edition, with partial translation and commentary, of al-Khassaf's *Kitab al-hiyal*, a tenth-century work on legal stratagems, and the first of several publications on the problem of the divergence between theory and practice in Islamic law. In order to prepare himself for the Habilitation, which would normally have taken three years from the doctorate, he joined the University of Leipzig, but was almost immediately invited by the University of Freiburg im Breisgau to pass his Habilitation there. He taught for two years as Privatdozent, and then was appointed associate professor in 1927, at the age of twenty-five, thereby becoming the youngest professor in any university in Germany. His promotion to full professor came in 1929, and he held this chair

for the next three years.

From 1925 onward, Schacht pursued two main activities during his vacations and breaks. One was to visit Leiden as often as possible to study with the man he considered to be the greatest expert in Islamic studies in Europe, Christiaan Snouck Hurgronje (1857-1936). The other was to spend as much time as he could in the Middle East and North Africa. He visited Syria, Egypt, and Turkey repeatedly, and traveled as well to other parts of the Arab world. Schacht took advantage of these trips to study the rare Arabic manuscripts in the rich and hardly explored local and private libraries, especially the works of the earliest masters of Islamic law, and he published the results of this research in many valuable articles and monographs. Indeed, this was an interest he pursued until the end of his life.

Schacht had a taste for social activity as well, and during his trips outside Germany he cultivated a wide circle of professional acquaintances. It was during his student days that he formed his long-standing friendship with the physician and scholar Max Meyerhof (1874-1945) in Egypt, a friendship that was to flourish through later collaborations in works on the history of Arab philosophy, medicine, and science. He visited

France several times, and made his first visit to England in 1928, when he attended the International Congress of Orientalists at Oxford. Whenever possible, he kept in touch with his colleagues at scholarly meetings and through exchange of correspondence.

In the spring of 1930 Schacht accepted the invitation of the Egyptian University (later Fouad I University, now the University of Cairo) to teach as visiting professor. Then, when the chair of oriental studies at Königsberg was offered to him two years later, he agreed to take the position on condition that he be given indefinite study leave in the Middle East whenever he applied for it. Since professorships in Germany were usually research positions, he reasoned, this would entail no harm to students. As it turned out, it was this clause that he invoked when the events of 1933 proved intolerable. Although not threatened on grounds of his religion or politics, Schacht perceived that independent scholarship was about to be destroyed with the advent of the Third Reich. In 1934 he left Germany for good, and in further demonstration of his opposition to Nazism, a few years later he ceased writing in, and even speaking German. This gesture was the most dramatic example of the strong moral stands and unbending integrity for which he was

known. Schacht returned to the Egyptian University as professor of oriental languages, the only European member of the faculty to lecture entirely in Arabic. He held this appointment until 1939.

When World War II broke out in September, Schacht happened to be in England on summer vacation. Since it was physically impossible for him to return to Cairo, he decided to remain in England and offer his services to the Allies. As one of a small number of non-Jewish German nationals to do so, his contribution was publicly acknowledged by the British. Through most of World War II, Schacht worked for the Ministry of Information, where he was responsible for the Arabic and Persian language publications. He also prepared a great number of talks for the Arabic and Persian programs of the BBC, and frequently made the broadcasts himself. Many of these were later published in the Arabic Listener (*al-Mustami' al-'arabi*). During 1941 and 1942, despite the air raids, the modest though unstable living conditions, and the lack of a library—the Arabic books in the British Museum having been evacuated and his own books collected for the purpose not available—Schacht appeared relatively happy, although faced with an uncertain future. He managed to continue working through material he found in

the University of London's School of Oriental Studies. In letters to the prominent scholar of Islam Franz Rosenthal (b. 1914) he seems almost elated; he describes his work and adds that "the results so far exceed all my expectations." He was, of course, speaking of his research on the origins of Islamic jurisprudence.

Toward the end of World War II, as the demands made on him began to diminish, Schacht was able to spend more time on his scholarly work. His personal library was still in Cairo, having been seized as enemy alien property, and despite persistent efforts to recover it, it was years before he was to have it back. In 1944 he moved from London to Oxford, and in 1946 began teaching Arabic and Islamic studies at Oxford University. In January 1947, he was appointed a lecturer, and in 1948, reader in Islamic studies. In 1947, he was naturalized as a British subject. Perhaps it was his desire to become fully integrated into his adopted country that led Schacht to take an M.A. (1948), and then later a D.Litt. degree (1952) at Oxford. Finally, in 1948, he completed his most important work, *The Origins of Muhammadan Jurisprudence* (1950), a subject to which he believed all his previous studies had led him. It was about the time of the move from London to Oxford that Schacht married Dorothy (or

"Dorrie" as she liked to be called) Coleman, a petite and lively British woman whom he had met while she was working for the British Council in Cairo. Dorothy enjoyed the Middle Eastern ambience, and during their life together she traveled nearly everywhere with her husband.

Another turning point in Schacht's career came in 1947 when the Arabian American Oil Company invited him to the United States to give a series of lectures on Islamic law at a conference chaired by the dean of the Harvard Law School. Present were representatives and legal advisors of several oil companies. The lectures were so successful that ARAMCO decided to send four young American lawyers to Oxford to take courses in Arabic and Islamic law under Schacht at the Faculty of Law.

Always eager to widen his knowledge of Islamic law in practice, Schacht undertook a research trip to Northern Nigeria in 1950, the most important Muslim territory in the British West African colonies, under the auspices of the Colonial Office. He made several more extended research trips to Africa, especially East Africa, from 1953 to 1964. In 1952, he was invited to be a visiting professor at the University of Algiers' Faculty of Law, still a French institution, and the next year was awarded

an honorary LL.D. degree from that university. Other honors came at about this time. In 1954, he was elected a member of the Arab Academy of Damascus, and in 1956, a member of the Royal Netherlands Academy.

When it became clear in 1954 that he would not become the professor of Arabic at Oxford (where Sir H.A.R. Gibb [1895-1971] held the chair) or elsewhere in England, there being few such positions, Schacht decided to leave. With the help and encouragement of Giorgio Levi Della Vida of Rome, he accepted the offer of the position of professor of Arabic (succeeding J.H. Kramers [1891-1951]) at the University of Leiden. One can imagine what this must have meant to him, since it was to Leiden that he used to come to visit the revered Snouck Hurgronje. Holland, however, was a profound disappointment. Although he learned Dutch and delivered his inaugural lecture ("Islam and the Arabs") in that language, some of his Dutch colleagues appeared to lack appreciation of his efforts. The formality and stiffness of the academic establishment, not to mention outright enmity on the part of G.W.J. Drewes (1899-1992), the Indonesian specialist who doubled as the professor of Islamic studies at Leiden, and who may have felt threatened by the title of the inaugural lecture, made the atmosphere at best

uncongenial, and Schacht felt slighted and excluded. So when Columbia University invited him to join a distinguished faculty—one that included Tibor Halasi-Kun (1914-1991) in Turcology and Arthur Jeffery (1892-1959) in Islamic studies, among others—as a visiting professor for the academic year 1957-58, and then as full professor of Arabic and Islamic studies in the fall of 1959, he jumped at the opportunity.

While at Columbia, Schacht continued his many scholarly projects in addition to a fairly heavy load of teaching. Furthermore, he had assumed the co-editorships of a new journal, *Studia Islamica*, and of the new edition of *The Encyclopaedia of Islam* in 1953 and 1954, respectively. Summers were spent abroad. Each summer he went to Leiden for a meeting of the *Encyclopaedia*'s editorial board—and to meet with his sister, with whom he would spend a few hours in a cafe on the Dutch-German border. He was working especially in North African manuscript libraries, and in 1963 and 1964 he traveled again to East Africa for research. Schacht was active in the American Oriental Society and frequently contributed papers. In 1967 he was named a Guggenheim Fellow.

Schacht and his wife lived across the Hudson River from Columbia in Englewood, New Jersey. One whole

floor and a good part of the rest of their house were taken up with his astonishing library, which contained all the editions he could gather of the essential texts on early jurisprudence, including lithographed editions and, where necessary, handwritten copies made by scribes from manuscripts where microfilms were unavailable. To keep all his Arabic texts in order, and to avoid purchasing editions he already owned, he had constructed in Egypt a large leather suitcase to hold a double layer of the slips of paper—approximating 3 x 5 cards—constituting the catalog. There were, in fact, two suitcases, one a duplicate to be kept at home, while the other traveled with him whenever he went on a research trip. After his death, Dorothy Schacht sold his library to E.J. Brill, in accordance with Schacht's earlier legal instructions given in the United States. However, G.W.J. Drewes, then secretary of the Oriental Institute at the University of Leiden, intervened to demand the library for his own institution. He based his claim on the fact that the Institute had been assigned as the trustee of the library as a means of recovering it from Cairo. Unfortunately, Drewes won his suit, and Brill—and ultimately Mrs. Schacht—were forced to pay the Oriental Institute a large sum of money. Nonetheless, Brill acquired the books, and the precious

library was fortuitously kept intact. The International Islamic University of Kuala Lumpur bought the whole library from Brill, and it is now housed in a special room that bears Schacht's name.

Schacht suffered a fatal brain hemorrhage at his home at Englewood on 1 August 1969 at the age of sixty-seven, just ten years after he took up his permanent position at Columbia. He had apparently been in good health and had had one more year at Columbia before he was to have retired formally in June 1970. When news of his retirement from Columbia had become known, in fact, a number of other institutions, including Yale, Harvard, and UCLA, competed with offers of a visiting appointment. He had chosen Yale as a beginning, drawn there primarily by his continuing friendship with Franz Rosenthal, whom he had met in Rome, at the International Congress of Orientalists, in 1935; the two became friends in England, in 1940. The final public recognition of his great achievements as a scholar had come a few months before his death, when he was awarded the second Giorgio Levi Della Vida Medal in Islamic Studies, the major academic award in the field in the United States, at the conference held for this purpose at the University of California, Los Angeles. After Schacht's death his wife, Dorothy,

moved to Birmingham, England, her native home, where she died, apparently depressed and alone, a few years later. No surviving family members on either side are known.

Schacht had a forceful character, and a severe demeanor. He was also a shy man, and thus gave the impression of being aloof. These qualities may partly account for his reputation of being difficult to get along with, although his exacting and even vehemently critical book reviews surely contributed as well. Schacht was unable to tolerate hypocrisy, either in the professional sphere—by praising, or not censuring, work he knew to be undeserving—or in the everyday social sphere of the academic world. At the same time, he was a man who could be extraordinarily kind and gentle. To his advanced students he was always generous in loaning books, Arabic manuscripts, and even notes laboriously collected over many years. He also had a fine appreciation of humor and a sharp wit which he exercised with unsuppressed pleasure. Colleagues he respected and to whom he gave his friendship could count on his unshakable loyalty. He was never entirely at ease with the American academic system, in which professors are not usually held above administrative demands or accorded the status they have in Europe.

He was generally aloof and formal, although his erudition was always available to advanced students of Arabic and to those whose dissertations he supervised. He taught Islamic law, theology, and institutions, as well as an advanced course in Arabic composition. It was typical that the material selected for this last course were texts such as Francis Bacon's essays, since to him such prose translated best into a high style of medieval Arabic. In his lectures, his vigorous personality dominated the room; he had a forceful delivery, a resonant voice, and his use of language was unhesitating and precise.

Schacht's primary field of study, and the one to which he devoted most of his attention up to the end of his life, was Islamic law. He frequently asserted that it was in the Shari'a, or the religious law, that the essence of Islam was to be found. In his *Introduction to Islamic Law* (1964), he repeated a sentence he had written as early as 1935, in the introduction to his edition of Bergsträsser's *Grundzüge*: "Islamic law is the epitome of Islamic thought, the most typical manifestation of the Islamic way of life, the core and kernel of Islam

itself" (*Introduction*, 1). His discoveries surrounding the formation of Islamic law revolutionized our understanding not only of the religious law itself, but also of early Muslim theology and the Muslim disciplines, or sciences, in general.

Schacht's approach to Islamic law was to treat it as a historical process and in its sociological dimensions. His earliest publications dealt with law in practice. His first scholarly project addressed the subject of the works on *hiyal*, or legal stratagems, that made it possible for a Muslim to use legal means to achieve ends that could not be achieved directly with the means provided by the Shari'a. For instance, the Qur'an prohibits the giving and taking of interest, and while Muslims were unwilling to transgress the law directly, commercial life demanded it. So a number of *hiyal* were devised, each a perfectly lawful transaction in itself, and in combination giving the desired result, and collections of these were made by some of the most authoritative jurists. In this way the customary commercial law was brought into agreement with the Shari'a. In 1923, 1924, and 1930, Schacht edited the Arabic texts, with partial translation, of three important works on *hiyal*, and in 1926 he published his groundbreaking article "Die arabische *hijal*-Literatur." He explored the subject

further in later works.

Further publications reflecting Schacht's interest in Islamic legal practice appeared in 1928 and 1930. These were the editions of the two sections on claims for debts and on preemption in al-Tahawi's partly preserved great work on legal formularies, or *shurut*, the earliest extant work of this genre. Books of *shurut* contained model documents for the notary on every conceivable kind of contract, written, again, by authoritative jurists. However, since the Muslim law of evidence does not, at least in principle, admit written documents as proof (it accepts only the oral testimony of witnesses), an explanation for the popularity of these formularies had to be provided. The answer lay in the permitted differences of opinion among the jurists (the *ikhtilaf al-fuqaha'*); a qadi adjudicating a case in court might embrace the opinion of one scholar, while the terms of the contract were drawn up according to the opinion of another scholar. The notary's duty, therefore, was to draw up a written contract (reflecting a witnessed oral agreement) on behalf of his client that made the transaction immune to being thrown out of court on account of these differences.

Arabic works on these permitted differences were important as well. A study of *furuq*, cases which are

seemingly parallel but systematically distinct, appeared in 1927. Comparative accounts of doctrines of several scholars or schools (*ikhtilafat*) also had practical importance, but the earliest ones were significant for reflecting discussions, sometimes oral, that were otherwise lost. Schacht's edition of a lengthy work by al-Tabari, better known as a historian, contains discussions of comparative doctrine on the law of war and peace, and appeared in 1933.

Many of these studies and editions were the product of Schacht's discoveries in the great manuscript collections of Cairo and Istanbul, accounts of which he began to publish in three monographs in the early 1930s. In 1956, he described the libraries and manuscripts of the Ibadi school, the one surviving branch of the Kharijite sect, that developed its own legal system and survives especially in the Mzab, an isolated region in southern Algeria. Later, in the 1960s, he would concentrate on the North African collections, particularly on the earliest works of Maliki law, the dominant school of law in that region. In all, he published some eight long articles and monographs on rare manuscripts. It is unfortunate that his discoveries, which were one of his most significant but little-noticed contributions, have hardly been exploited.

Schacht's interest in Islamic law in practice led him, very early in his career, to examine an important problem whose significance had not yet come to the attention of Western scholarship. This was the position of Islamic law in the contemporary world and the role of modern jurists and reformers who were aware that the demands of modern society often clashed with the body of doctrine developed by medieval scholars. The dilemma this posed was obvious; in areas where the Shari'a had unchallenged supremacy, such as in the fields of the family and inheritance, reform had to find its support in juristic principles sanctioned by the divine law. The modernists had recourse to methods that Schacht referred to as "unrestrained eclecticism." Schacht's research showed that the modernists found themselves in the same situation as that which prevailed after the beginning of the second century of the hijra (7th century AD), when the early specialists imposed what they thought of as Islamic standards on current law and society to create Islamic law. The modern efforts can thus be put into historical perspective. Schacht's pioneering article, "Shari'a und Qanun im modernen Ägypten," published in 1932, and brought up to date in subsequent publications, formed the basis for a whole field of study that was to be taken up by

other scholars.

Proceeding in a more theoretical direction, Schacht began publishing his insights into the structure of Islamic religious law and its character as a social phenomenon as early as 1935, in a long article entitled "Zur soziologischen Betrachtung des islamischen Rechts." Another subject that yielded important and original results was that of foreign influences in Islamic law. In the 1950s, he published "Foreign Elements in Ancient Islamic Law," "Droit byzantin et droit musulman," "Adultery as an Impediment to Marriage in Islamic Law and in Canon Law," and several other articles that grew out of his research on the origins of Islamic law.

It was as early as the 1930s, especially during his prolonged stay in Cairo, that Schacht began gathering material for his major work in Islamic jurisprudence. Building on the insights of his two great predecessors, Ignac Goldziher (1850-1921) and Snouck Hurgronje, Schacht began to subject to minute critical analysis the traditions with a legal content attributed to the Prophet, which together with the Qur'an formed the material sources for Islamic law. He was able to show that these traditions were not the product of the milieu of Muhammad but, in fact, the expression of various

opinions and practices current some two to three centuries after his death. Schacht published "A Revaluation of Islamic Traditions" in 1949, and a year later his most important work, *The Origins of Muhammadan Jurisprudence*, appeared. Soon after, he decided to put his findings in a less technical form and in a chronological framework. The first of these publications was *Esquisse d'une histoire du droit musulman* (1953), essentially the lectures he had given at the University of Algiers in 1952. The second appeared as chapters in two volumes of collected papers, *Unity and Variety in Muslim Civilization* (ed. G.E. von Grunebaum) and *Law in the Middle East* (ed. M. Khadduri and H. Liebesny). Finally, in 1964, Schacht published *An Introduction to Islamic Law*, a book meant to supersede the previous restatements, in the sense that it incorporated further work on the subject, and to reach a broader audience. The first third of the volume is a tightly woven historical account of Islamic law from its beginnings to the modern period; the second section is a systematic description of the positive law (*fiqh*), according to the Hanafi school, incorporating and adding to his 1935 book on positive law, G. Bergsträsser's *Grundzüge des islamischen Rechts*. Since Schacht intended the *Introduction* to be for students of Arabic who would

be attracted to the field of law, as well as for students of history, the social sciences, and comparative law, the third section is devoted to a comprehensive and meticulously organized bibliography. The work has gone through many reprints, and as a textbook it has not been superseded. At the time of his death, Schacht was engaged in another major project of legal history. This was a comprehensive study of Sahnun's *al-Mudawwana al-kubra*, not only a principal source for doctrines of the Maliki school, but essential for the early history of Islamic law. His work was to take account of versions or recensions, newly discovered by him, in the earliest transmission of the doctrines.

Finally, Schacht again broke new ground with his investigations of law in contemporary Nigeria, where Islam is relatively homogeneous, and in East Africa, where, by contrast, Islam is older, less isolated, and diverse. From 1951 to 1965 he published several important articles, all of them based on research trips to these areas.

Apart from law, Schacht maintained a deep interest in Islamic theology. Some of his articles were conceptually tied to his work on law. For instance, in "An Early Murci'ite Treatise: The Kitab al-'Alim wa 'l-muta'allim," a study and summary of the contents

of an early school of religious thought, he showed that what were later to become well-known traditions on points of dogma were then only just emerging from the status of aphorisms or sayings expressing partisan views. In 1964, Schacht revised and completed the *Theologus Autodidactus of Ibn al-Nafis*, a book he had worked on with his friend Max Meyerhof before Meyerhof's death in 1945. Ibn al-Nafis was a thirteenth-century philosopher-scientist, and discoverer, long before William Harvey in Europe, of the lesser circulation of the blood. Other articles examined new sources on the history of Muslim dogma. At the time of his death, in addition to his work on the *Mu-dawwana*, Schacht was working on a critical edition with commentary (from a manuscript which he himself identified) of the *Kitab al-Tawhid* by al-Maturidi, the ninth-century founder of a doctrinal school which later came to be considered one of the great Sunni schools of Islamic theology. He had already announced this project in an article in *Studia Islamica* in 1953.

Another important topic that was of interest to Schacht was that of the transmission of Greek thought to the Arabs. In addition to the many articles he wrote on the subject, he also published with Max Meyerhof

The Medico-Philosophical Controversy between Ibn Butlan of Baghdad and Ibn Ridwan of Cairo: A Contribution to the History of Greek Learning among the Arabs (1937), an edition of the texts with analytical translation. To Schacht's published work should be added several articles written for the *Encyclopaedia of the Social Sciences* (New York 1932-), and well over a hundred articles written for both the first and new editions of *The Encyclopaedia of Islam*. Some of these are quite substantial contributions, representing original research. Most of the articles in the first edition were later reprinted in the *Shorter Encyclopaedia of Islam* (Leiden and Ithaca 1953). We should add, as well, any number of book reviews and notices that remain uncatalogued.

Schacht deserves to be known for his editorial contributions in furthering the study of Islam. He and his friend and colleague in the field of Islamic law, Robert Brunschvig, who was then at the University of Bordeaux and later at Paris, founded the journal *Studia Islamica* in 1953, and Schacht continued to be the co-editor until his death (vols. 1-28). In 1954, he became one of the four editors of the new edition of *The Encyclopaedia of Islam* (Leiden 1954-), and served in that position through the first two and a half volumes. He

also supervised the new edition of *The Legacy of Islam*, which replaced the one published by Oxford in 1931 with entirely new articles; the work was completed by C.E. Bosworth after Schacht's death.

Schacht had a strong sense of the continuity of scholarship, to which he often referred in the context of the medieval Islamic tradition. A way of honoring two of his own teachers was to publish two works that completed and made accessible their ideas. The first was G. Bergsträsser's *Grundzüge des islamischen Rechts*, a painstaking edition and completion of Bergsträsser's lecture notes (for the winter term, 1928-29) on Hanafi positive law. The second was the volume of articles by Snouck Hurgronje, translated into French and English from the Dutch, which he published together with G.-H. Bousquet in 1957. Schacht also found time to write learned obituaries or articles about his predecessors or colleagues, including Ahmad Pasha Taymur, Snouck, Bergsträsser, and Meyerhof.

Joseph Schacht's reputation rests primarily on the ideas developed in his *Origins of Muhammadan Jurisprudence*. The structure of the book is complex, but

it can best be seen as a historical study of the development of a legal theory, starting from the thought of the jurist al-Shafi'i, who died in the hijri year 204 (AD 820), and proceeding backward to the earliest stages in the growth of Islamic jurisprudence. The book also aimed at working out a methodology by which the traditions with legal content could be used to follow the evolution of legal doctrine.

According to Muslim belief, the religious-legal system of Islam is grounded in the revelations made to the Prophet Muhammad over a twenty-three-year period ending at his death in 632. Problems that arose during the day-to-day affairs of the community, or questions of individual behavior, were sometimes resolved by the revelation of a divine ruling, and the texts of these decisions were preserved in the revealed book, the Qur'an. Other problems, however, were decided by the Prophet himself, acting according to his own inspired human judgment, when they came to his attention. If Muhammad were not available, then one of his associates would sometimes make the decision on the basis of what he or she knew of the Prophet's probable opinion, an earlier decision of his, or some behavior attributed to him. The individual texts recording the eyewitness accounts of the words, actions,

and decisions of Muhammad—which have been called "indirect revelation"—were preserved from the very beginning, and are known as hadiths (or pl. *ahadith*); the contents in general are known as the Sunna. The authenticity of each hadith was guaranteed by a chain of transmitters (the *isnad*) with, ideally, the eyewitness (usually one of Muhammad's associates or wives) at the source, and each succeeding person guaranteeing the reliability of the preceding individual. These texts were collected over a period of about two hundred years, sifted, and analyzed by professionals especially on the basis of their *isnad*s, so that the resulting body of many thousands of hadiths constitutes a huge resource and a second scriptural guide to Muslim doctrine and behavior. These two material sources, the Qur'an and hadith, aided by the principles of consensus of the scholars (*ijma'*) and reasoning by analogy from the ratio legis of one case to that of another (*qiyas*), provided Muslims from the earliest times with all the means they needed to construct the monumental edifice of Muslim religious law.

It was Goldziher—to whom Schacht never failed to give credit—who demonstrated for the first time (in the second volume of his profound work *Muhammedanische Studien*) what a false and idealized

picture this was. He showed that a large number of the hadiths admitted into even the most rigorously critical collections, far from reflecting the milieu and decisions of the Prophet, were actually inventions dating from the eighth and ninth centuries, and were put into circulation to promote some partisan interest or give authority to a later doctrine. Thus the meticulous *isnad*s authenticating them had to be fictitious.

Despite acknowledgment of Goldziher's research, his findings were largely neglected by modern scholars, and they continued to accept the vast body of traditional materials as authentic. That is, they treated early law, religious doctrine, and historical evidence—for this field, too, was dominated by the Muslim historians' reliance on hadiths—as if the medieval view were still sound. Schacht was astonished at this neglect of Goldziher, and saw his task as one of recovering and interpreting Goldziher's findings. In his pursuit of the legal traditions, he was led to even more thorough and radical conclusions.

Schacht then proceeded to do what Goldziher had not attempted, namely, to erect a new structure to explain the real nature of the origins of Muslim jurisprudence. The structure is an elaborate one. Briefly, Schacht held that during the period after the death of

the Prophet and in the early Umayyad period, the tribal *sunna* of the Arabian peninsula, that is, pre-Islamic customary law, formed the main source for law. At the same time, local custom as well as the administrative rules of the Umayyad caliphs prevailed in the newly conquered provinces. In effect, these created a parallel body of rules. The doctrines arising from local or regional "schools," that is, groups of concerned Muslims in Kufa, Basra, Medina, and Mecca, who made themselves specialists in law and who gave individual opinions based on discretionary reasoning on a variety of questions, formed a third source of law. The process of Islamization began still later, when these schools began for the first time to apply Qur'anic norms, as they understood them, to legal injunctions that had up until then been a mixture of custom, local rules, foreign law, administrative regulations, pre-Islamic *sunna*, and the results of personal discretion in adjudicating cases.

The critical juncture in this process came in about the year 120 (AD 738), when the scholars of the local schools began ascribing their doctrines to earlier jurists within their respective schools, which was somehow supposed to guarantee the authenticity of the doctrines. By a process of gradual back projection, these

doctrines came to be ascribed to the associates of Muhammad, and then, inevitably, to Muhammad himself. Soon various movements arose in opposition to the opinions held in these schools. These men, supporting their views by reference to the "example" of the Prophet, and fabricating *isnad*s to go with them, were called "Traditionists" because they asserted that the formal traditions deriving from the Prophet superseded the "living tradition" of the local schools. Not content to say, as did the local schools, that their doctrines were based on the teachings of the Prophet's associates, or even that the "living tradition" of the respective local schools best represented the *sunna* of the Prophet, the Traditionists demanded eyewitness accounts. The best weapon in the hands of the local scholars was to retaliate by doing likewise. "The demand," as Schacht said, "produced the supply," and vast numbers of traditions came into circulation.

By the second half of the second century, after the Islamization of the law had been completed, the system was given its final formulation by the jurist al-Shafi'i. His legal theory was based on the principle laid down by the Traditionists that nothing overrides the formal authority of a tradition from the Prophet. He identified the Sunna with the content of formal traditions of

the Prophet; the traditions were thus raised to a form of revelation. The consensus of the scholars of the local schools, which expressed the "living tradition" of each school, became irrelevant. Al-Shafi'i replaced the local consensus of the scholars with the consensus of the entire Muslim community, thus emptying it of all content, since procedurally this was an impossible goal. Legal reasoning was now limited to a formal process of strict analogy, with no room for the discretionary reasoning that had been characteristic of the early specialists. (The consensus of the scholars, as well as certain forms of discretionary reasoning, found their way back into Islamic law, however.) Al-Shafi'i imposed consistency and uniformity, especially compared with the disparate legal precedents and rules that existed before; nonetheless, it was, to use Schacht's words, a "ruthless innovation."

Schacht's conclusions are so firmly grounded in the closest reading of large numbers of texts, in a masterly knowledge of Arabic, and in penetrating reasoning, that they are almost impossible to refute. Nearly all Western scholars of Islam concede this, although a few, such as H.A.R. Gibb (1895-1971), have shown hesitation in embracing the full implications by shifting the focus away from the traditions as a fiction and

toward their significance as documentation for ninth-century Muslim values. This is also the tendency of W. Montgomery Watt (b. 1909), who implies that Schacht may have taken the analysis too far. Still others (Fuat Sezgin, M.M. Azami, and Nabia Abbott) take the approach that Schacht did not understand the process of hadith transmission in early Islam. The criticisms of these and other scholars were undocumented and tended to be somewhat intuitive. The most developed challenge to Schacht came from N.J. Coulson, who, in his *History of Islamic Law* (1964), while stating that although the broad essentials of Schacht's findings are irrefutable, nonetheless suggests that certain fabricated traditions may have represented the substance of decisions actually made by the Prophet. This triggered a fierce reaction by Schacht (in a review in *Middle Eastern Studies*, 1965). Then, in a paper he delivered at Ravello in 1966, he spoke of the danger that "the results achieved by the Islamic scholars, at great effort, in the present generation, instead of being developed and made the starting point for new scholarly progress might, by a kind of intellectual laziness, be gradually whittled down and deprived of their real significance, or even be turned inside out by those who themselves had taken no part in achieving them." He was aim-

ing these remarks directly at Coulson, but was also expressing the fear that "what happened in the past to the work of Goldziher had happened again, recently, with regard to the conclusions. . . achieved by critical scholarship."

Not surprisingly, scholars in the Muslim world in general are unable to accept Schacht's discoveries or face their implications. Some include Schacht in their bibliographies, yet ignore his ideas entirely and continue in the classical tradition; others would bar any Westerner from hadith criticism on the grounds of insufficient familiarity. A few have attempted to challenge his ideas directly, but employ such circular methods as citing the Qur'an or hadiths themselves to provide documentation. On the whole, the only criticism voiced thus far has been eclectic and lacking in systematic or rigorous thought. The understandable fear among modern Muslim scholars is that the great edifice of the religious law, and thus Islam itself, will collapse if it is shown to have been the product of human minds. Schacht's findings can, of course, conceivably be put at the service of a liberalizing movement, but this has not yet been attempted.

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