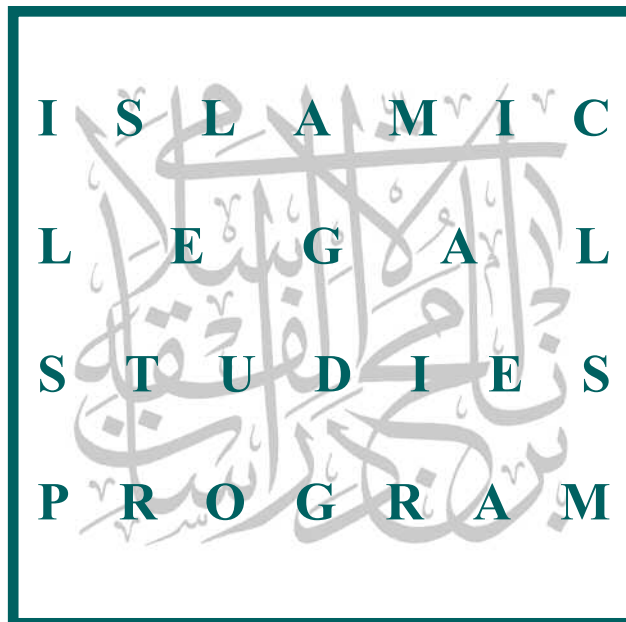


Table of Contents

- p. 1 Plans and Connections, from the Acting Director
- p. 3 Abd al-Razzaq al-Sanhuri Lecture Series
- p. 4 Visiting Fellows
- p. 6 ILSP Lecture Series
- p. 7 Islamic Finance Project
- p. 9 New publications
- p. 10 Visit by Moroccan Ambassador
- p. 11 Law of Waqf Conference program



Plans and Connections

Baber Johansen

The second Sanhuri lecture this past November was a great success for the speaker, Professor Hossein Modarressi (see the report on p. 3), and also for ILSP. More than eighty colleagues and students from different schools attended Professor Modarressi's brilliant reflection on the development of the interpretation of the Qur'an as a legal document in modern Muslim debates. The long and intense discussion that followed the lecture showed the readiness of the Harvard community to engage in an intellectual exchange concerning modern Muslim conceptions of the relationship between revelation and law.

The third Sanhuri lecture will be given by Dr. Saadia Belmir, Counselor of the Moroccan Minister of Justice, on "The Status of Foreigners: Between Personality and Territoriality of the Law" ("La condition des étrangers entre la personnalité et la territorialité des lois"). Dr. Belmir chose this subject because, as she says, it lies at the intersection of human rights, constitutional law, international private law, and the law governing court jurisdiction and organization. It is obvious that in an age of globalization this subject affects the lives of all who migrate.

Dr. Saadia Belmir earned her Doctorat d'Etat in Public Law at the renowned Université de Paris II, and

diplômes d'études supérieures in Political Science at Mohamed V University, Rabat, and in Public Law at the Université de Paris II. She also has an International Diploma of Human Rights from the International Institute of Human Rights in Strasbourg. After a brilliant career in the Moroccan judiciary, she was appointed judge at the Moroccan Supreme Court, Chamber of Administration, in 1995 and rose to the rank of Chamber President at the Supreme Court in 1998. She was part of an advisory group set up by the King of Morocco (1996–99), she has taught at the Haut Institut d'Etudes Judiciaires, and was chosen to be a member of the Institut International de Droit d'Expression et d'Inspiration Française (IDEF). From 1999 to 2005 she served as a member of Morocco's Constitutional Council and since 2005 she is Counselor of the Moroccan Minister of Justice. In November 2005 she was elected a member of the United Nations' Committee Against Torture and of the Moroccan National Council for Human Rights (*Conseil National Consultatif des Droits de l'Homme*). A list of her publications will be available at her lecture. ILSP is proud to host for its third Sanhuri lecture a judge of such stature and with such national and international experience in so wide a range of legal fields.

continued on p. 2

FROM THE ACTING DIRECTOR, *cont.*

In December 2007, ILSP began a new lecture series that treats questions of legal history, modern and classical. In the first lecture of this series, Dr. Ran Hirschl (Professor of Political Science and Law, University of Toronto, and Visiting Professor at Harvard Law School) gave a critical comparative analysis of the jurisprudence and political significance of modern constitutional courts in Muslim and non-Muslim countries entitled “Juristocracy vs. Theocracy: Constitutional Courts and the Reformulation of ‘Sacred Law’” (see the report on p. 6).

The rest of the planned lectures in 2007–2008 will be by ILSP Visiting Fellows: On February 14, 2008, Dr. Murteza Bedir (Associate Professor, Sakarya University, Turkey) will discuss “Fatwa as a Tool of Legal Interpretation: Waki‘at Literature of the 10th–13th Centuries in the Hanafi School of Law,” a contribution to the study of the formation of literary genres under the influence of fatwas. On March 6, 2008, Ahmad El Shamsy will speak on legal manuscripts of the Shafi‘i school that he unearthed during his research on its early period and that will change our understanding of this school’s historical development. In “Between Blind Following and Critical Engagement: Early Shafi‘i Conceptions of *Taqiid*” he will engage us in a debate concerning the understanding and function of a legal concept that over the last decade has been the focus of disagreement among major authorities in our field.

Rudolph Peters (Professor of Islamic Law, University of Amsterdam) will bring us back to the modern period. He will speak on April 3, 2008 on “Shari‘a and Colonial Public Policy: Criminal Law in British India and Colonial Nigeria,” re-opening a debate on the way in which western powers interpreted Muslim law and helped to change it. The lecture series of 2007–08 will end on May 1, 2008 with a lecture by Kilian Bälz (Equity Partner, Gleiss Lutz Rechtsanwälte, Frankfurt) that takes us into the 21st century. It discusses “Shari‘a Risk? How Islamic Finance Has Changed Our Understanding of Islamic Law.” All of these lectures are substantial contributions to ongoing debates in the field and we are looking forward to their presentation.

2008 will be a year of wide-ranging activities at ILSP. In addition to the Sanhuri lectures and the ILSP lectures, we are offering a workshop with young scholars on the methodology of studying Islamic law, a workshop “Teaching Islamic Law at American Law Schools,” a conference on *waqf* in the colonial period, and in planning for the Fall is a conference with justices of High Courts of the Muslim world.

While it is true that ILSP’s range of cooperation with judiciary and academic institutions is already impressive, the Program is bound to extend it in order to keep up with new questions and specialized institutions. In what follows, I offer a synopsis of a number of lectures and contributions I have given since June 2007 in order to further this purpose. On

June 7 and 8 I participated at the Collège de France in a colloquium, organized by Professor Pierre Rosanvallon, on “L’universalisme démocratique en question: un nouveau paradigme.” The colloquium was dedicated to non-Occidental traditions of deliberation and decision-making that could serve to enhance culture-specific forms of democracy in Africa and Asia. The importance of such a subject for ILSP is evident. I spoke there on “Le dissentiment comme élément structurel de la relation entre écoles de droit en Islam” in order to show the extent to which the procedural norms of the Islamic judiciary enabled it to treat dissent and conflict among jurists, judges, and doctrines as not only acceptable but also as a necessary expression of the *fiqh*’s diversity. Further cooperation with Professor Rosanvallon’s project is envisaged but much depends on the way in which ILSP can continue to realize its plans and programs. My lecture—as those of other participants—was broadcast by Radio France Culture in a special program. In addition I have accepted Professor Rosanvallon’s invitation to become a member of the academic board of his new periodical *laviedesidees*.

While in Paris I gave a second lecture in a workshop on “Les lois dans la pensée grecque et arabo-musulmane” organized on June 12 and 13 by the Centre Jean Pépin (UPR76-CNRS). Under the title “Les ordres de Dieu et la hiérarchie des obligations rituelles: Débat sur le statut juridique et spirituel des non-musulmans” I spoke on a problem of causality in the law and its influence on the ritual status of non-Muslims.

From October 24–26, 2007 I participated in the conference “From Silver to Gold: The Next 25 Years of Law and Religion,” organized by Emory University’s Center for the Study of Law and Religion on the occasion of its 25th anniversary. I hope that this contact will be the beginning of close cooperation with the Center. The title of my presentation was “The Future Contests of Islamic Law and Politics.” On October 27, 2007 I took part in a one-day meeting at Harvard Divinity School with a high-ranking delegation of Malaysian scholars from the International Islamic University of Malaysia under the leadership of the President of the IIUM and two deans of the same university. The workshop was dedicated to the discussion of governance in the Islamic tradition and turned out to be very fruitful. I do hope that we can soon intensify our cooperation with the IIUM and other Malaysian institutions as regards research into the relations between modern forms of positive law and the present forms of Islamic law.

To conclude the fall semester, on November 2 I spoke at a seminar on “Business Across Religious Traditions.” Since 2006 this seminar has been organized jointly by Harvard’s Business and Divinity Schools and takes place traditionally in New York City. I spoke on “The First Muslim

continued on p. 10

ABD AL-RAZZAQ AL-SANHURI LECTURE SERIES

On Thursday, November 8, 2007, Custodian of the Two Holy Mosques Visiting Professor Hossein Modarressi, Bayard Dodge Professor of Near East Studies at Princeton University, presented the second Abd al-Razzaq al-Sanhuri lecture, entitled “The Qur’an as a Legal Document: Tradition vs. Modernism.” He spoke to a large audience, which filled the lovely Harvard Faculty Club Library from 4–6 P.M. and enjoyed a reception afterwards.

Professor Modarressi professed nostalgia upon being asked to deliver the second lecture of the Sanhuri Lecture Series, as he vividly remembered studying some of al-Sanhuri’s works—on the theory of contract (*Nazariyyat al-‘aqd*), on the Egyptian Civil Code (*al-Wasit fi sharh al-qanun al-madani*), and on rights (*Masadir al-haqq fi l-fiqh al-islami*)—at Najaf Seminary when he was a student. He related how al-Sanhuri would search through books of jurisprudence of all Sunni schools, even Shi’i schools, to find that one opinion that was most compatible with a modern way of thinking. Al-Sanhuri was a follower and student of the revivalist school of al-Afghani, Abduh, and Rashid Rida, whose remedy to revitalizing Islam was to go back to the Qur’anic message, not to interpret in the way of traditionalist hermeneutics but for the Qur’an itself to lead towards a solution that appealed to the modern mind. It was felt that the traditional understanding of the Qur’an, buttressed by early commentary and interpretation from Traditions and fixed by scholarly fiat, was good for its time, but the modern age required a new methodology.

Prof. Modarressi introduced the traditionist vs. modernist approach by offering an example of the modernist understanding of the Verse of the Sword (Q 9:5), and others, that enjoin the Muslim to fight the non-believer. In traditional hermeneutics this directive is believed to abrogate the many other verses delivering the Qur’anic message to live peacefully among and with one’s neighbors. Contrary to the theory of abrogation, introduced by classical scholars to explain

away seemingly contradictory verses in the Qur’an, is the theory that all verses must be understood to be time- and circumstance-specific. In this theory there are no abrogated or abrogating verses: all are God’s word and all are applicable. If there are discrepancies, it can only be because not all verses were intended to be applicable for all time. The Verse of the Sword in this theory was intended to apply to only a certain moment in time.

Another example concerned the topic of stoning as punishment, understood in Islamic law today to be the *hadd* punishment for the crime of adultery (*zina*). In the Qur’an there is no mention of stoning: the punishment for adultery, for men and women, is flogging (Q 24:2). Stoning, an Old Testament punishment, was introduced through a Tradition of the Prophet. But the idea that the Prophet would transmit God’s command and then promote something else is unconscionable to many, empowering those who believe in returning to the Qur’an for the Qur’anic message. Had God wished for the Muslim community to embrace stoning as punishment, He would have prescribed it. It was instead the early scholars who introduced stoning. To point out the appeal of such ideas today, especially among Shi’is, who hold that no saying of the Prophet can contradict the Qur’an, Prof. Modarressi told of two fatwas recently being issued in Iran that proscribe stoning.

Prof. Modarressi provided other examples of applied Islamic law, including that of the testimony of women in court being half that of a man’s, that have no basis in the Qur’an and that are being revisited. In this way his presentation encapsulated the vigorous debates taking place among Muslims today. In the footsteps of such giants as Abduh and al-Sanhuri, modernists promote what they understand to be the true message of the Qur’an and the spirit of Islamic law: an emphasis on social justice and on rights for the underprivileged, against inharmonious existence and unjust enrichment of the few. ❖



From left to right, Baber Johansen and Hossein Modarressi



The lecture audience

ILSP VISITING FELLOWS



Ahmed El Shamsy

ILSP's Visiting Fellows this year come in batches of two: two in the Fall, both of whom are with us the entire academic year, and two more in the Spring, for the term only. Of the Fall Fellows, one is Harvard's own graduate student, Ahmed El Shamsy, on whose doctoral committee Prof. Johansen sits. Ahmed's work is on early Shafi'i doctrine (see his report "Uncovering the Early Shafi'i School" in Vol. 11/2 of this Newsletter) and his project at ILSP forms the final research stage of his dissertation, tentatively entitled "From al-Shafi'i to Shafi'ism: The Formation of Doctrine Among Early Shafi'is."

With his research Ahmed hopes to shed light on the formative period of Shafi'i thought by reconstructing the legal thinking of ninth-century scholars belonging to the first three generations of Shafi'i followers. Having delved into primary sources, many of which are still in manuscript, Ahmed has found preliminary evidence that these scholars played a far greater role than has been assumed to date and that the Shafi'i doctrine in its early stages was already highly sophisticated. It was also quite heterogeneous, bulging with profound differences in approach and marked influence from scholars of other legal persuasion. Having already completed a detailed and comprehensive socio-political history tracing the lives, careers, and interactions of scholars with links to Shafi'ism in the period between 820 (the deathdate of al-Shafi'i) and 905 (the end of the Tulunid dynasty), as well as having established the textual basis for the study through a close analysis of both extant manuscripts and published editions of the most important works of the early Shafi'i school, Ahmed's project at ILSP is to focus on the development of doctrine. He will

be trying to find answers to questions such as: How did the early Shafi'is justify the practice of following al-Shafi'i's opinion in light of his explicit prohibition of *taqlid*? How was the corpus of legal material bequeathed by al-Shafi'i harmonized, elucidated, and extended? What types of legal argumentation did al-Shafi'i's successors practice, and how did these differ from al-Shafi'i's own style of jurisprudence? And, what recognizable Shafi'i elements became integrated into the mainstream discourse of other schools?

A dual German/Egyptian citizen, Ahmed received a B.A. (Honours) in Arabic and Politics from SOAS, University of London, an M.Sc. in International Relations from the London School of Economics and Political Science, and an A.M. in History and Middle Eastern Studies from Harvard University prior to beginning his Ph.D. candidacy at Harvard. He also received an *ijaza*, or teaching license, in Islamic jurisprudence of the Shafi'i school after studying *al-Iqna'* by al-Khatib al-Shirbini with Shaykh Nasr al-Din Sha'ban of al-Azhar University in Damamhur, Egypt. He has published an article, "The First Shafi'i: The Traditionalist Legal Thought of Abu Ya'qub al-Buwayti (d. 231/846)," *Islamic Law and Society* (14/3), and has a number of entries in *The Oxford Encyclopedia of Legal History* and a chapter in the *Cambridge Companion to Classical Islamic Theology*, both forthcoming.

Our second yearlong Visiting Fellow is Murteza Bedir, Associate Professor of Islamic Jurisprudence at Sakarya University, Turkey. Murteza received his B.A. from Marmara University, an LL.M. from SOAS, University of London, and his Ph.D. from Manchester University with a doctoral dissertation on "Early Development of Hanafi *Usul al-Fiqh* (Legal Theory)." He has published two books in Turkish, with as (translated) titles: "The Authority of the Prophet in Hanafi Legal Theory" (2004) and "The Universal Message of the Prophet Muhammad: Sunna" (2006), as well as numerous articles, the latest being "Bukharan Hanafism and the Mashayikh: An Analysis Through the Law of Waqf as Expounded by Burhan al-Shari'a al-Bukhari (616/1219)" in *Studies in Islamic Law: A Festschrift for Colin Imber*, edited by A. Christmann and R. Gleave (2007).

While at ILSP Murteza will be working on Hanafi *waqi'at* (or *responsa*) literature of the tenth to fourteenth centuries, with special attention to issues of charitable endowments (*waqf*). This genre of literature was popular in early Eastern Islam, notably Bukhara and Samarqand, which was in the hands of some powerful jurist families (the Sadr of the Saffarids, the Burhanis, and the Mahbubis). These families supported students of the Hanafi school, and their presence—and the stability they provided—are a possible reason for the emergence of Transoxania as the center of the revival of Hanafi writings, after the central regions of the caliphate saw waning support and sponsorship of Hanafi scholars.

ILSP VISITING FELLOWS, *cont.*



Murteza Bedir

Murteza hopes his contribution on the *waqi'at* texts, of which he has identified more than 40 written by Transoxanian jurists, will be to show that they were used to introduce new elements into Hanafi law from a Transoxanian perspective, and that they did this by turning the actual questions posed to them into carefully formulated legal discourse. In addition, he will be delineating the evolution of waqf law as he traces it through these texts from its early stage in Baghdad to its refinement in the later Ottoman legal system. With his study, Murteza also hopes to illuminate the perennial problem Muslim jurists faced in balancing changing circumstances and the fixity of Scripture.

Our two Spring scholars are Rudolph (Ruud) Peters and Kilian Bälz, from the Netherlands and Germany, respectively. Prof. Peters, Professor of Islamic Law at the University of Amsterdam, will also be teaching an ILSP-supported FAS course at the Department of Near Eastern Languages and Civilizations entitled "Fatwas and Muftis," which will familiarize students with the fatwa genre by reading fatwas from different periods and on varied topics.

Ruud's project during his term of residence will be to continue his editing and analysis of a trove of legal documents from the Dakhla Oasis in Egypt, found between 2002 and 2004 in the rubble of two houses in al-Qasr, one of the settlements of the Oasis. These 170 documents, a rare find, represent a family archive stretching over four centuries and include sale, lease, and marriage contracts, tax receipts, endowment deeds, etc. Fascinating details of legal practice

have come to light through these documents and Ruud plans to publish extensively about them; one article analyzing a sharecropping contract that applied Maliki doctrine to Shafi'i law and used custom to justify its validity is a chapter in a volume in honor of Frank E. Vogel entitled *The Law Applied: Contextualizing the Islamic Shari'a* (ed. P. Bearman, W. Heinrichs, and B.G. Weiss), to appear with I.B. Tauris in January 2008.

Kilian, a partner with Gleiss Lutz, one of the leading German corporate law firms, will spend his four months at ILSP pursuing several research projects in the field of Islamic finance. In his "real life" Kilian specializes in international M&A and capital market transactions with a particular focus on the Middle East. Additionally he advises German and international banks on the structuring of Shari'a-compliant financing transactions. He is well known to ILSP on account of his having presented papers at both the 2004 and 2006 Harvard University Forum on Islamic Finance. Kilian received his law degree from the Free University of Berlin, his LL.M. from SOAS, University of London (where he was awarded the Derby & Bryce Prize for the best LL.M. thesis in 1995), and his doctorate in law (*summa cum laude*) from the Free University of Berlin, with a thesis on insurance law in the Arab states (published in German through *Versicherungswirtschaft, Karlsruhe*, 1997). He is a member of the German bar and has published numerous articles.

Kilian's research plans build on his previous research and on his experience as a lawyer in an international law firm involved in Islamic financing transactions. He will be studying the relationship between Islamic finance and socially responsible investment, the concept of risk in Islamic contract law, and the role of Arab state investment in international private equity markets. We are sure that Harvard students of Islamic finance will beat a path to his office door while he is with ILSP, and we look forward to having him, and Ruud, added to our group of scholars this year. ❖

ILSP LECTURE SERIES

The first lecture of the 2007–2008 ILSP Lecture Series was given by Ran Hirschl, a scholar of comparative constitutional law who is Jeremiah Smith, Jr. Visiting Professor of Law at Harvard Law School during this academic year. Prof. Hirschl comes from the University of Toronto, where he is Professor of Political Science and Law and Canada Research Chair in Constitutionalism and Democracy. The lecture was entitled “Juristocracy vs. Theocracy: Constitutional Courts and the Reformulation of ‘Sacred Law.’” It was taken in large part from a chapter in a forthcoming publication by his hand, *Sacred Judgments: The Dilemma of Constitutional Theocracy*, to be published in 2008 by Harvard University Press, where he also published *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism* in 2004.

The lecture treated the uneasy union between constitutionalism and theocratic governance, the type of governance generally seen to be the Middle Eastern choice par excellence. Prof. Hirschl nevertheless noted a worldwide trend of religious intervention in government, appearing also in the U.S., with the rise of the evangelical right, as well as in many other countries of Southeast Asia and Latin America. At the same time as acceptance of religious governance has become more widespread, so has constitutional-making: over 100 countries in the world today have written constitutions, and where they were lacking, courts have been established to uphold these constitutions. Thus has a new legal order, that of constitutional theocracy, emerged.

In addition to countries with a weak form of religious government, e.g., Norway, and those that selectively accommodate religion (Kenya, India), one encounters full-blown constitutional theocracies, where a state religion is enshrined in the constitution, there is constitutional enforcement of religion in the law, and religious tribunals are granted official legal status in tandem with or in lieu of secular courts. However, constitutional theocracies are far from monolithic: there are many conflicting tendencies within, and sectors that rely on the modern-day economy for prosperity, the “managerial classes” and tourism being two to stand out, are often at odds with its propensities.

With the rise in religious influence in government, constitutional courts have surprisingly become major players in political decision-making, inhabiting the last bastion in the middle space between the government and the country’s anti-governmental forces. For the government, they provide an outlet for contentious decisions: these can be delegated to the court so that

the government can “talk the talk” but not “walk the walk.” In addition they provide a source of blame. For the anti-government forces, it is both the constitutional court’s adherence to proportionality, that is, its reluctance to embrace either extreme in the law, and its legitimate authority that appeal. Both sides use the courts liberally. Effectively, however, Prof. Hirschl argues that it is the political will of the ruling party that shapes the constitutional courts’ decisions. This is achieved mostly through subtle means, in that the court is composed of members of the elite majority rule who have an interest in upholding the status quo; but more blatant ways of molding the court are still on view, as has recently been displayed in Pakistan.

Prof. Hirschl ran through a number of countries and the role of the high courts in the enshrining, or in the case of Turkey outlawing, of religion in the law. He presented some constitutional court cases of the past 20 years that exemplify the struggle brought on by the constant tension between particularism and universalism that the courts face and that show the trend towards the politicization of these courts. One case in point is the Bavli Decision of 1995, when the Israeli Supreme Court curtailed for the first time the autonomy of rabbinical courts to apply religious law. Even where religious law held sway, the Supreme Court felt it could interfere when constitutional principles such as gender equality were infringed. This was later extended to other religious courts in Israel, such as the Shari‘a courts in 1997. The timing of the Bavli ruling was contemporaneous with a rise in orthodox religious—Jewish—activity and, Prof. Hirschl opined, might well be a sign of the court standing as proxy for difficult decisions the government could not afford to make.

In the audience were a number of constitutional law scholars from Harvard, including Profs. Frank Michelman and Noah Feldman, and Islamic constitutional law scholars such as Baber Johansen and Frank Vogel. The discussion period after the lecture was therefore of some interest as probing questions were posed and answered. ❖



Prof. Ran Hirschl at the top of the seminar table, delivering his lecture

ISLAMIC FINANCE PROJECT

A Short Course on Islamic Finance

by Taha Abdalbasser, Harvard Ph.D. candidate

On August 7, 2007 the Islamic Finance Project (IFP) sponsored a short course by Shaykh Nizam Yaquby on Islamic financial law, specifically on synthetic transactions (*al-jam' bayna l-'uqud*, “combination of contracts”). Issues surrounding the legality of synthesizing financial transactions have been debated by Muslim jurists throughout the history of Islamic law. Since Islamic financial institutions typically use alternative financial instruments which are combinations themselves of simpler contracts (such as sales and leases), the legality of synthesizing, i.e., combining, financial transactions is of profound significance in the application of contemporary Islamic financial law.

Nizam Yaquby is a noted Bahraini jurist and an active Islamic legal consultant in the Islamic financial sector. With a degree from McGill University in economics and fluent in English, he is often asked by Islamic financial institutions to sit on their Shari'a supervisory boards (SSB), which are responsible for reviewing the business practices of the institution for compliance with Shari'a. Although his week-long visit to Harvard Law School was not his first—he is a long-time friend of IFP, having participated for more than a decade in the IFP-hosted Islamic Finance Forum—this visit was special in that it was a dedicated research trip. Shaykh Nizam visited Harvard in order to consult the University's libraries, in general, and the Islamic manuscripts in Houghton Library, in particular. He is a manuscript expert who owns a noted private Islamic manuscript collection and has edited several classical Arabic works.

The course was attended by a small group, which included Baber Johansen, Professor of Islamic Religious Studies, Harvard Divinity School, and ILSP's Acting Director; Frank Vogel, ILSP's Founding Director; Nazim Ali, IFP's Director; and graduate students from Harvard Law School, Harvard's Graduate School of Arts and Sciences, and other nearby universities. The course, conducted in Arabic, was centered on a text—the draft of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) Shari'a Standards for the Combination of Contracts—read aloud by several of the graduate students and commented upon by Shaykh Nizam. The AAOIFI is a standards development organization established in 1990 in order to create and disseminate accounting, auditing, governance, and Islamic legal standards for the Islamic financial sector. Its Shari'a Standards are drafted by a Shari'a council, composed of 16 leading Muslim jurists. The Standards represent attempts to document and promulgate best practice and to be immediately relevant to the activity of external Shari'a auditors, internal Shari'a compliance officers, and SSB members themselves. The Standards published to date cover topics ranging from the composition of the SSB and the minimum

qualifications of its members to the rules governing the permissibility of oft-used specific contracts, such as diminishing equity financing (*musharaka mutanaqi'a*). The final version of the Standard on synthetic transactions was first addressed by the council in 2005 and recently published by AAOIFI.

Shaykh Nizam began by outlining the dimension of the contemporary debate among Muslim jurists about the legality of combining contracts. He noted that while some non-experts erroneously believe that combining contracts is prohibited in Islamic law, in fact jurists have held a variety of nuanced positions on the issue over the course of Islamic legal history. He noted that, in arriving at these opinions, they considered not just the various relevant proof-texts (*adilla*)—such as the *hadith* reporting that the Prophet “forbade two sales in one (*bay'atayn fi bay'*)”—but also applicable legal maxims. Shaykh Nizam noted that the text of the draft copy had been modified prior to approval by the AAOIFI Shari'a council. He also observed that much of the actual phrasing of the technical document was extracted verbatim from a study prepared for the council by one of its senior members, Dr. Nazih Hammad, a respected Canada-based jurist of Syrian origin and formerly a law professor at Umm al-Qura University in Mecca.

After reviewing the section of the Standard that addressed the formal definition of combining contracts, Shaykh Nizam moved on to the central issue of their legality. He pointed out that the council's jurists had clearly affirmed the basic legality (*jawaz*) of synthesizing transactions. All such combinations were legal provided that certain rules were observed. The ensuing discussion focused on these rules. In summary, the Standard allowed the combination of contracts provided that (1) the combination not be of a form that is explicitly prohibited by Prophetic Tradition (such as X executing an exchange transaction and a loan with Y); (2) that the two or more contracts of which the synthesized transaction is composed not be mutually contradictory, such that they have logically inconsistent legal effects (such as X executing the donation and the sale of the same item to Y); (3) that the synthesis not constitute a blameworthy legal device (*hila*) by which usury (*riba*) is achieved; and (4) that the synthesis not constitute the means for achieving impermissible contracts, such as a usurious contract. One of the recurring themes of the short course was the significant role that legal maxims play in the reasoning jurists employed in order to arrive at the rules that govern the scope of legality of a synthesis of transactions. The utility of these maxims was particularly evident in Shaykh Nizam's commentary on the section of the Standard that addressed the issue of collusion between the contracting parties and its effect on the legality of various types of synthetic transactions.

The session was marked by an atmosphere of informality and erudition. Professor Johansen demonstrated his familiarity

continued on p. 8

with the details of the classical *fiqh* texts by calling attention to Hanafi approaches to the legal issues surrounding certain agricultural financial practices and their relevance to the issues raised in the Standard. Throughout, Professor Vogel called attention to the jurists' innovative use of traditional legal tools, such as the formal consideration of public interest and prevailing commercial practice, to recognize practical and flexible boundaries of legality. The short course was well received by the attendees, and several expressed an interest in exploring the possibility of inviting Shaykh Nizam to visit Harvard Law School again in order to present another short course on Islamic financial legal issues.

Upcoming Workshop

As a follow-up to the successful workshop on *tawarruq* held in February 2007 at the London School of Economics (LSE), a second workshop has been scheduled for February 2008, also to take place at the LSE. This time a group of influential Islamic legal scholars, economists, and bankers will discuss *sukuk*, instruments that have attained considerable prominence in Islamic finance. In order to keep the workshop manageable, the workshop is again for invited participants only. The primary goal of the workshop is to conduct an in-depth examination of *sukuk*, but, as with earlier IFP workshops, the secondary goal is to further the conversation between Shari'a scholars and economists. The Director of the LSE, Howard Davies, has kindly agreed to open the day's events by addressing the participants, which will further include a presentation by Mansoor Shakil (HLS '04), HSBC Amanah.

Sukuk (sing. *sakk*) are generally structured as debt instruments to tap capital markets, although various forms have been used in practice. They are approved by most Shari'a scholars, but with their increase in popularity, critique has grown as well—in particular as to whether the manner in which they are used lives up to the ideals envisaged by the Shari'a. The criticism has come from two separate fronts: from economists, who object to such instruments being debt-based, and from Shari'a scholars, who question the interpretation of certain legal concepts employed in structuring the recent wave of *sukuk*.

With this workshop it is hoped to reach a better understanding of the interplay of theory, conceptual structure, and practical application that has gone into the development of *sukuk*, and to survey how they have or have not met Islamic finance ideals. Participants will be asked to identify issues and areas of concern that arise with *sukuk*. These include macroeconomic factors as well as jurisprudential factors. Participants will critically evaluate the *sukuk*'s performance in light of current practice, intended practice, and future practice. Participants will also examine specific structural concerns, such as *sukuk* ownership/asset title transfer, purchase undertakings to repurchase *sukuk*, principal repayment guarantees, fixed periodic payments and LIBOR alternatives, market

value vs. fixed price value, and ratings alternatives. Throughout the discussions, participants will be encouraged to consider theoretical solutions to the issues and concerns raised, including any alternatives to *sukuk* as currently practiced. In this way the workshop also aims to enhance dialogue and to improve mutual understanding and links between participants' methodologies and approaches.

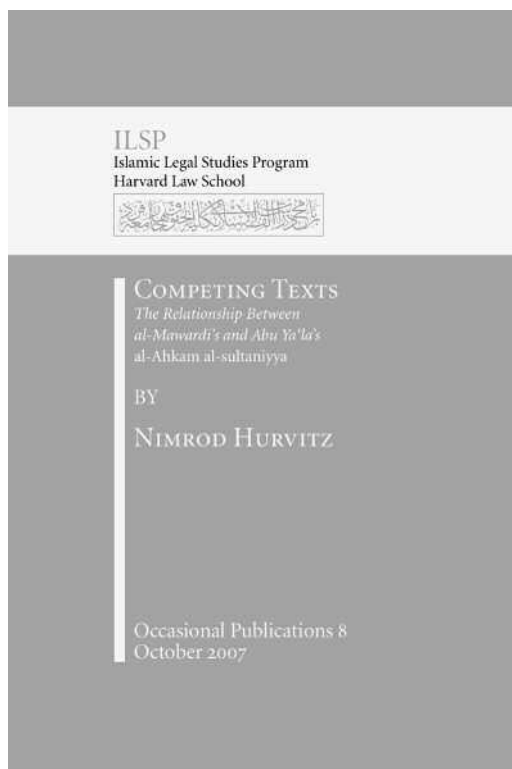
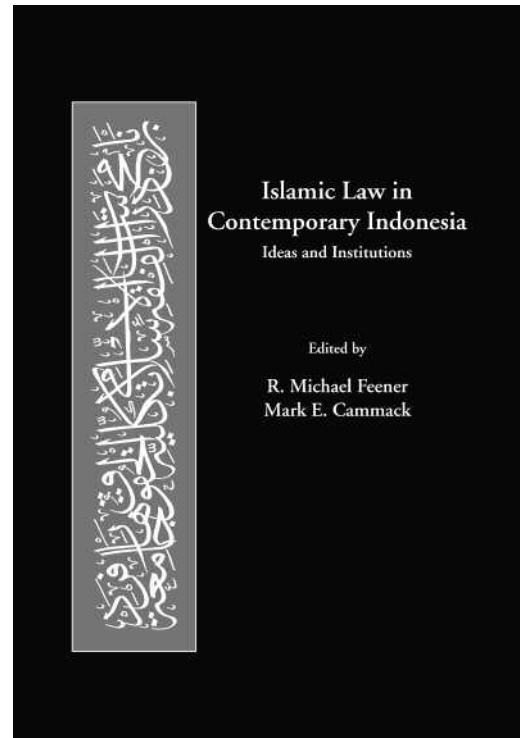
As with last year's workshop, the day will conclude with a public lecture in the evening. This lecture, entitled "Advancements in Contemporary Islamic Finance: From Practice to Scholarship," will reflect on current developments and initiatives in Islamic finance and explain how this faith-based form of finance continues to enhance modern finance and law. This lecture will be presented by Citigroup CEO of Global Islamic Banking, Usman Ahmed. The discussant will be a Shari'a scholar, currently scheduled to be Shaykh Nizam Yaquby, who will provide a jurisprudential view of Islamic finance, in particular in relation to law and economics.

ILSP thanks Husam El-Khatib for providing background for this announcement. ❖

NEW PUBLICATIONS

ILSP is very pleased to announce two new publications in 2007. The first is the fifth monograph in the “Harvard Series in Islamic Law,” launched in 2003 with Harvard University Press. Entitled *Islamic Law in Contemporary Indonesia: Ideas and Institutions* (ed. R. Michael Feener and Mark E. Cammack) and published in November, this volume is made up of 12 chapters that provide focused examinations of the internal dynamics of intellectual and institutional elements of Islamic law in modern Indonesia in its recent formations. The first five chapters address issues relating to legal theory, both in terms of its historical development in Indonesia over the past century and of the work of specific groups of contemporary scholars, jurists, and activists. The second half of the volume contains studies of more concrete manifestations of Islamic law in modern Indonesia, including court systems, positive law, the drafting of new “Islamic” legislation, and contemporary debates on the implementation of the Shari‘a. Taken together these essays offer a series of substantive introductions to important developments in both the theory and practice of law in the world’s most populous Muslim society.

For information about ordering, access www.hup.harvard.edu.



Our second publication this year is the eighth booklet in our “Occasional Publications Series.” The result of a research project initiated by ILSP and undertaken by Dr. Nimrod Hurvitz, Senior Lecturer at Ben Gurion University in Beersheva, Israel, while he was a Visiting Scholar with ILSP in the academic year 2005–2006, the booklet analyzes the commonalities and differences between two eleventh-century works on Islamic governance, both called *al-Ahkam al-Sultaniyya*. The booklet, entitled *Competing Texts: The Relationship Between al-Mawardi's and Abu Ya'la's al-Ahkam al-sultaniyya*, sheds light on textual style and content, on the context in which the treatises were written, and on the authors' distinct methodologies, and in so doing suggests a new way to view these texts as well as opens up new avenues for further discussion. The booklet is available for downloading on the ILSP website, or in print form for library collections upon request.

VISIT BY MOROCCAN AMBASSADOR

His Excellency Aziz Mekouar, the Moroccan ambassador to the United States, came to visit ILSP on November 14, 2007. He was scheduled to give a talk that afternoon under the auspices of the Moroccan Studies Program (“Morocco: Political Realities and Economic Possibilities”) and made use of his trip to Harvard to explore the many academic possibilities at the university for the study of Islam. Professor Johansen invited a number of faculty members to join him for morning coffee and petit-fours. Prof. Johansen welcomed Professors Bill Alford, Vice Dean for the Graduate Program and International Legal Studies at Harvard Law School and Director of its East Asian Legal Studies Program, and Roger Owen, A.J. Meyer Professor of Middle East History at Harvard University’s History Department. Ambassador Mekouar was accompanied by the Honorary Consul of Morocco in New England John Quelch, Senior Associate Dean and Professor at Harvard Business School. Also present were ILSP’s Fall Visiting Fellows Ahmed El Shamsy and Murteza Bedir, IFP Director Nazim Ali, and ILSP Associate Director Peri Bearman. We spent an agreeable hour with the Ambassador discussing the Program’s objectives and possible

ways to increase knowledge of Harvard’s various degree programs in Morocco, which is traditionally French-speaking.

Ambassador Mekouar was appointed ambassador to the United States in June 2002. Before his current assignment, Ambassador Mekouar served as ambassador to Italy (1999–2002), Portugal (1993–1999), and Angola (1986–1993). Ambassador Mekouar has also served as minister plenipotentiary at the Ministry of Foreign Affairs and Cooperation in Morocco (1985–1986), permanent representative of Morocco to the International Bureau for Information Technology (1978–1985), and first counselor and deputy chief of mission at the Embassy of Morocco in Rome (1977–1985). He attended the French High School Charles Lepierre in Lisbon, Portugal, and obtained a graduate degree from the Higher School of Commerce (HEC) in Paris, France, in 1974. Ambassador Mekouar was elected Independent Chairman of the Council of the United Nations Food and Agriculture Organization (FAO) in November 2001 and re-elected in 2003. In addition to Arabic and French, Ambassador Mekouar is fluent in English, Italian, Portuguese, and Spanish. ❖



His Excellency Aziz Mekouar, second from left

FROM THE ACTING DIRECTOR, *cont.*

Globalization” and presented a case study of the last third of the twentieth century on “The Integration of the Poor into the Institutions of Economic Life,” which discussed the development of micro-finance and its relation with Islamic finance.

We hope to intensify and extend the cooperation with these and other institutions and to contribute to a growing awareness that legal development in the Muslim world of today is

of the utmost importance for our shared modernity. We are looking forward to 2008 as a year of intense and fruitful activities and encounters. ❖

SECOND LAW OF WAQF CONFERENCE

The second part of a three-part conference on “The Law of Waqf” will be held at Harvard Law School in May 2008. The first part “Origins to Ottoman-Era Maturity” was convened in May 2006. In “The Law of Waqf II” presentations will explore colonial law vis-à-vis the waqf both as an institution and as physical property in the Muslim world before the independence of the colonized countries. In theory and in practice, colonial law wrestled with the reality of waqf as the colonial

powers sought to introduce reforms for other than legal reasons. In the interests of discovering the law that adapted and was adapted in relation to the waqf, papers will focus on the innovative legal mechanisms or discussions that were presented to deal with the waqf status quo found or established by the colonizing countries upon intervention in the late nineteenth and early twentieth centuries. For updated information, access the ILSP website.

THE LAW OF WAQF

Modern State Control and Nationalization

May 16–18, 2008

Islamic Legal Studies Program, Harvard Law School, Cambridge, Mass.

Friday, May 16, 2008

3:00–3:15

Welcome and Introduction

Baber Johansen (Harvard University)

3:15–4:15

Keynote Speech

Rudolph Peters (University of Amsterdam)

4:15–6:00

PANEL I: The Ottoman Legal Regime and Its Legacy

Tahsin Özcan (University of Istanbul), *The Centralization Process of the Waqf Administration in the Ottoman State*

Konstantinos Tsitselikis (University of Macedonia), *The Waqf in Greece: A Case of Resistance to Civil Law*

Discussion

Saturday, May 17, 2008

9:15–12:15

PANEL II: North Africa

Franz Kogelmann (University of Bayreuth), *Law Reform in Morocco Under the French Protectorate: The Example of Habous*

Maaouia Saidouni (University of Montreal), *The Complex Evolution of French Waqf Legislation in Algeria (1830–1873)*

Mahmoud Abossawa (Fatah University, Tripoli, Libya), *The Law of Waqf in Tripoli under Italian Occupation*

Claudia Gazzini (Oxford University), *The Awqaf in the Courts of Colonial Libya (1911–1932)*

Discussion

2:15–5:15

PANEL III: Syria, Lebanon, and Palestine

Uri Kupferschmidt (University of Haifa), *The Illusions of British and French Waqf Control: Some Comparisons Between the Mandates for Palestine and Syria-Lebanon*

Max Weiss (Princeton University), *The Defense and Definition of Shi‘i Waqf in Mandate Lebanon*

Randi Deguilhem (CNRS/IREMAM, Aix-en-Provence), *Colonizing Waqf Law: Istibdâl and the French Mandate’s Legal Program to Nationalize Waqf in Syria (1920–1946)*

Yitzhak Reiter (Hebrew University, Jerusalem), *“Shar‘iatization” of Colonial Law: Shari‘a Court Accommodation of the 1926 British Mandate Land Expropriation Law in Palestine*

Discussion

Sunday, May 18, 2008

9:15–12:15

PANEL IV: South and Southeast Asia

M. Mohsin Alam and **Vivek Rathore** (Nalsar University of Law, Hyderabad), *Judicial Dicta and the Role of the Judiciary in the Preservation of Waqf: The Indian Experience*

Murat Cizakça (Bahcesehir University, Istanbul), *Malaysian Waqf Legislation During the Colonial Era*

Ismail Mat (University of Brunei Darussalam), *The Application of Waqf Law Under British Administration in Malaysia*

Discussion

Concluding Remarks, by **Randi Deguilhem**

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 stu-

dents 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.

ISLAMIC LEGAL STUDIES PROGRAM

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