

## METHODS AND MEANING IN ISLAMIC LAW: INTRODUCTION

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How should we think about the most pressing questions of Islamic law and legal history today? We asked leading scholars of Islamic law and history to weigh in on the methods and meaning they notice or favor, at a time when much has changed in the field and the world since Islamic law emerged as a major field of studies in the global academy over the last century, and at a time when access to new sources, historiographical advances, and data science tools promise that more changes are yet to come.

Myriad engagements with Islamic law and its historical moorings motivate a slew of sometimes existential questions: Is Islamic law a lived tradition with varied socio-historical manifestations, or is it a set of doctrines and rules contained in normative texts that many label “orthodox”? Is Islamic law an expression of values that any modern adherent could interpret to order lives and oppose injustice, or is it the province of experts to show what Muslim jurists said and did, historically, in an unbroken chain of textual sources that reach back to the Prophet Muḥammad and Islam’s founding era? What is Islamic law and history *about*? How do we know? And to what end?

Consider this: When Malcolm X squared off against

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Joseph Schacht in a 1962 New York court room, ostensibly over whether inmates at Attica claiming to be Muslim were entitled to religious accommodations, the two were arguing about methods and meaning in Islamic law and history.<sup>1</sup> Years earlier, when Joseph Schacht accepted Harvard Law School Dean Erwin Griswold's invitation to deliver the first major lecture on Islamic law at an American law school in 1947, the two were engaged in a conversation about method and meaning in Islamic law and history in the academy and in the courts.<sup>2</sup> And years later, when the late Columbia professor Jeanette Wakin wrote a tribute to her colleague Joseph Schacht (d. 1969) in this Program in Islamic Law's predecessor publication, she, too was meditating on methods and meaning in Islamic law and history.<sup>3</sup> All asked questions about the origins, methods, and contours of Islamic law, which took off in the 1950s and 60s.<sup>4</sup> Throughout Schacht loomed large as he marched his way into the center of these

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1 SaMarion v. McGinnis, 253 F. Supp. 738 (W.D.N.Y. 1966); see also Bryant v. McGinnis, 463 F. Supp. 373 (W.D.N.Y. 1978). For discussion, see Garrett Felber, *Those Who Don't Know Say: The Nation of Islam, the Black Freedom Movement, and the Carceral State* (University of North Carolina Press, 2020).

2 Dean Griswold would go on to become Solicitor General of the United States, and took a position in the 1969 conscientious objector case against Muhammad Ali that—as with former Dean Roscoe Pound—seems to have drawn closely on Schacht's Weberian notions of Islamic law as an arbitrary form of justice to oppose religious accommodations for the athlete, as Schacht had opposed religious accommodations for prisoners years before. See Marty Lederman, "Muhammad Ali, Conscientious Objection, and the Supreme Court's struggle to understand 'jihād' and 'holy war': The Story of *Cassius Clay v. United States*," *SCOTUSblog*, June 8, 2016; see also Intisar A. Rabb, "Against Kadijustiz: On the Negative Citation of Foreign Law," *Suffolk University Law Review* 48, no. 343 (2015): 349 n.41, 357.

3 Jeanette Wakin, *Remembering Joseph Schacht (1902-1969)*, Occasional Publication no. 4 (Cambridge, MA: Harvard Law School: Islamic Legal Studies Program, 2003). For a discussion of Schacht's focus on "Islamic law in practice" and law reform in the Muslim world, and for a full list of his related and other works, see Wakin, *Remembering Schacht*, 17–20, 32–40 (selected bibliography).

4 Schacht's most significant salvo came in 1950, *The Origins of Muhammadan Jurisprudence*, which was heavily influenced by the nineteenth-century writings of Ignaz Goldziher, by the early twentieth-century teachings of his first professor of Islamic studies, Gotthelf Bergsträsser, and by those of the Dutch scholar who would come to be Schacht's teacher, Christiaan Snouck Hurgronje. Along with his 1950 *Origins*, his 1964 *Introduction to Islamic Law* dispatched almost equal parts history and meaning on the one hand, and method and historiography on the other. See Wakin, *Remembering Joseph Schacht*, 13–19.

debates by virtue of his first-in-time activities related to Islamic law *as law*, on the page and in the world.<sup>5</sup> But then we moved beyond Schacht.

Now consider this: By the early 1990s, scholarship about Islamic law had grown exponentially, as dozens of well-known scholars pursued ever more sophisticated questions about its methods and meanings. It was during this time that ‘Islamic law’ emerged and gained recognition as a discrete field of academic inquiry. This period saw entire cohorts of PhD graduates receive training by leading scholars of Islamic law and history who had joined the faculties at Harvard, Princeton, the University of Pennsylvania, and elsewhere.<sup>6</sup> They, their students, and scholars from around the country engaged in sustained debates tackling major historical controversies in the study of Islamic law and history.<sup>7</sup> Some of those debates unfolded in the pages of the *Journal of Islamic Law and Society*, which emerged then

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5 Joseph Schacht is like a ubiquitous Energizer Bunny of Islamic law: He marched across the European Continent (born a German citizen in present-day Poland, and becoming the youngest faculty member at any German university when he received a faculty appointment at the University of Freiburg im Breisgau and later accepted a chair of Oriental Studies at Königsberg); marched across the Muslim world (having accepted a visiting professorship at the University of Cairo and conducted manuscript research in Istanbul before World War II, and much later having returned to the region as a visiting professor of law at University of Algiers’ Faculty of Law that he later followed with trips to Nigeria and parts of East Africa); renounced both German citizenship and the German language after World War II as he went on to the United Kingdom (where he was to take up a faculty appointment at Oxford University and complete a second doctoral degree); went back to the Continent to teach at the University of Leiden; and then finally migrated to the United States—where he accepted a faculty appointment at Columbia University; weighed in on U.S. court cases involving Islamic law and Muslims; and accepted requests to lecture, receive awards, and do faculty visits at Harvard, Yale, and UCLA until his untimely death in 1969. Even afterward, Schacht’s papers traveled, first to Europe and to the Muslim world: his widow Dorothy sold his papers to the publisher E.J. Brill, for which the University of Leiden sued and won, after which his papers went to rest, finally, at the libraries of a new buyer, the International Islamic University of Kuala Lumpur. See Wakin, *Remembering Joseph Schacht*, 2–11.

6 The scholars of Islamic law and history who had joined these schools in the 1970s and 1980s—think, for example, of Michael Cook, George Makdisi, Hossein Modarressi, and Roy Mottahedeh, to name a few—went on to train the trainers who, as their former students, now teach at leading and far-flung universities.

7 For illustrative works that emerged roughly in the 1990s with increasingly more diverse and sophisticated treatments of the field, see below under Further Reading: Islamic Legal History and Historiography.

too, in 1994.<sup>8</sup> And this same decade saw the establishment of the Islamic Legal Studies Program at Harvard Law School, to which the Program in Islamic Law is heir.<sup>9</sup> It was against that backdrop that Stephen Humphreys published the first handbook on Islamic history in 1991 and that Bernard Weiss published an edited volume that functioned as a handbook on Islamic law a decade later in 2001.<sup>10</sup>

Since, with the coming of the twenty-first century, the fields of Islamic law and legal history have seen unprecedented advances in scholarly meditations on meaning and method, and in the expansion of publications of primary and secondary sources of Islamic law and history.<sup>11</sup> One especially notable phenomenon is the recent trend of studied reflections on Islamic legal history and historiography alongside these works, resulting in the publication of no fewer than *five* handbooks on Islamic law in just *five* years.<sup>12</sup>

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8     *The Journal of Islamic Law and Society* is on volume 27 in 2020, having operated continuously since its inaugural issue.

9     Harvard Law School established the Islamic Legal Studies Program in 1991, when Dean Robert Clark worked with then-Assistant Professor Frank Vogel to structure and find funding for the Program as the world's leading institution for the academic study of Islamic law. HLS met its initial funding goals in 1993 and 1998. The endowment funds—all designated for teaching and fellowships, library books and research, and programming and scholarship in Islamic legal studies under a faculty director for the Program (then: a Center)—came from individuals and governments from within the Muslim world as well as from large corporations, such as the Boeing Company and the McDonnell Douglas corporation, that operated in the Middle East and larger Muslim world. See Harvard University Archives for Islamic Legal Studies Program, Box 9 (1991–2008); Intisar Rabb, “The Past, Present, and Future of Islamic Law at Harvard and Beyond,” on the “God on Mass Ave Panel at HLS | 200: The Harvard Law School Bicentennial” (unpublished remarks based on archival ILSP documents, Cambridge, MA October 27, 2017).

10    Stephen Humphreys, *Islamic History: A Framework for Inquiry* (Princeton: Princeton University Press, 1991). See also the edited volume by the late Bernard Weiss, ed., *Studies in Islamic Legal Theory* (Leiden: Brill, 2001). The universities training legal historians typically assigned chapters from one or another of these works in their methods courses throughout the 2000s: it was what was available.

11    For illustrative works that emerged much earlier in the field more generally, see below under Further Reading: General Islamic History and Historiography.

12    Namely: Peri Bearman and Rudolph Peters, eds., *The Ashgate Research Companion to Islamic Law* (Farnham: Routledge, 2014); Anver M. Emon and Rume Ahmed, eds., *The Oxford Handbook of Islamic Law* (Oxford: Oxford University Press, 2018); Khaled Abou El Fadl, Ahmad Atif Ahmad, and Said Fares Hassan, eds., *Routledge Handbook of Islamic Law* (Florence: Routledge, 2019); and

In light of these developments, we convened a Roundtable at the Islamic Law Blog to take stock of the state of the field. We invited leading and emerging scholars of Islamic law and history to weigh in on their approach to varied questions of method and meaning in Islamic legal history:

What have been the most significant methodological and historical developments in the field of Islamic law over the past two decades?

How have mainstream approaches from related fields in the humanities and social sciences, ranging from European, American, or Chinese legal history, for example, to law-and-economics, anthropology, and sociology, informed the study of Islamic law?

How have critical approaches from other fields in the humanities and social sciences, ranging from gender and feminist studies to critical race theory, informed the study of Islamic law?

How have data science, the use of quantitative methods, and digital technologies impacted the field, or promised to shape the future of the field?

What is your chosen approach to the historical study of Islamic law, and why?

Our Roundtable put a wide array of legal, social, and intellectual historians in conversation with one another on questions of meaning and method in Islamic law. Through it, we found insight into the once and future status of the field of Islamic legal history and historiography.

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the edited volumes A. Kevin Reinhart and Robert Gleave, eds., *Islamic Law in Theory: Studies on Jurisprudence in Honor of Bernard Weiss* (Leiden: Brill, 2014) and Sohaira Z. M. Siddiqui, ed., *Locating the Shari'a: Legal Fluidity in Theory, History and Practice* (Leiden: Brill, 2019).