

**ISLAMIC LAW IN WESTERN SCHOLARSHIP:
A Bibliographical Study with Emphasis on
the Work of Joseph Schacht and Its Influence
on His Successor.**

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It should be important first of all to throw some light upon Western scholar's understanding of the doctrine of Islamic law and its important position among Muslim societies, particularly as compared to that of natural law.

Law in any society plays a decisive role. The primary purpose of any law is to make social life possible. Law, according to some scholars, "is the legal norm approved by people, and derives its authority from the reason and will of man, and his moral nature." Law reflects the values current in a society at any given time. The society has its starting point in the formulation of a legal code for its acts and activities. Opinions regarding legal or illegal acts and activities change, sometimes diametrically, as values change. When this situation takes place the law is altered accordingly.

The Muslim conception about law is quite different. According to the classical theory, Allah is the only source of Islamic law, and human authority has no power to legislate. Islamic law is the will of Allah, revealed in the Qur'ān to humankind through His Messenger, Muhammad, and it is regarded as "a divinely ordained system preceding and not preceded, controlling and not controlled by Muslim society." Therefore, the doctrine that Allah possesses all legislative power and that His law to have supreme control over all aspects of human life is clearly established.

Islamic law is very comprehensive. It regulates every aspect of human activity and touches every sphere of Muslim daily life. Not only contracts, criminal matters, marriage and divorce, etc., but also dress, foodstuff, ritual, and even the forms of greeting and courtesy are decreed by Islamic law. Given this fact, it is understandable that some Western

scholars are of the opinion that "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." As a consequence, it is indeed impossible, even today, according to them, really to understand the Muslim mind, Muslim society, Muslim ideals, politics, and reactions, without some knowledge of that of Islamic law which, in theory at least, still molds and pervades them all. Because of this very reason, we think, students of Islam is Western scholarship consider Islamic law one of the most important subjects of Islamic studies.

There are some important introductory works discussing the basic concepts, problems, and the historical development of Islamic law in Western scholarship. D.B. MacDonald's *Development of Muslim Theology, Jurisprudence, and Constitutional Theory* (New York: Charles Scribner's Sons, 1903), and Ignace Goldziher's *Introduction to Islamic Theology and Law*, translated by Andras and Ruth Hamori (Princeton: Princeton University Press, 1981) are seen as being among the most important works in this respect. As implied in the titles, neither concentrates exclusively on Islamic law, but rather they discuss its historical development in relation to the development of other important aspects of Islamic teaching such as theology, constitutional law, sufism, and sectarian doctrines. *The Social Structure of Islam*, Reuben Levy, ed. (Cambridge: Cambridge University Press, 1957), particularly chapters IV ("Islamic Jurisprudence") and VI ("Usage, Custom and Secular Law under Islam"), offers a good account concerning the position of law in relation to Islamic society. Joseph Schacht presents a good introductory article, "Islamic Religious Law", in *The Legacy of Islam*, second edition, eds. Joseph Schacht and C.E. Bosworth (Oxford: Clarendon Press, 1974), 392-403, which should be read in connection with D. de Santillana's "Law and Society," in *The Legacy of Islam*, first edition, eds. Sir Thomas Arnold and Alfred Guillaume (Oxford: Clarendon Press, 1931), 284-310. Quite interesting still is the work of Muhammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Malaysia: Pelanduk Publications, 1989), in which he offers a relatively detailed discussion of Islamic legal theory in a systematic and clear fashion. This work has been considered an excellent introduction to the complexity of legal thinking among Muslims and to the richness of the tradition. Other introductory works discussing Islamic law can be found in Abdur Rahim, *The Principles of Muhammadan Jurisprudence According to the Hanafī, Maliki, Shāfi, and Hanbalī Schools* (London: Luzac & Co., 1911); Ramadan Said, *Islamic Law: Its Scope and Equity*, second edition (n. p.: 1970); N.P. Aghnides, *Muhammedan Theories of Finance with an*

Introduction to Muhammedan Law and Bibliography (Lahore: The Premier Book House, 1961), mainly the introductory section: Ignace Goldziher's "Fikh," in *Shorter Encyclopaedia of Islam*, 102-7; and N. J. Coulson's "Islamic Law," in *An Introduction to Legal Systems*, ed. J. Duncan M. Derrett (Washington: Frederick A. Praeger, 1968), 54-79.

It would not be an exaggeration to state that at the present time the late Joseph Schacht is still considered the leading authority in the field of Islamic law. He devoted a considerable part of his career to the study of the history and development of Islamic juristic thought. He wrote quite a number of works; nonetheless, it is clear that his main thesis is most cherly expressed in his *magnum opus*, *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1950). Several reprints of this work subsequently appeared, the latest being the fourth, published in 1967. This book is concerned with the development of legal theory during the formative period of Islamic law, and is divided into four main sections. In part I (The Development of Legal Theory) the contribution of Shāfi'i to the development of legal thought is emphasized. In part II (The Growth of Legal Traditions) there is a most illuminating discussion of the growth of legal traditions in the period before Shāfi'i. Part III (The Transmission of Legal Doctrine) traces this transmission from the late Umayyad period in which, Schacht argues, Muhammadan jurisprudence had its starting point. Finally in part IV (The Development of the Technical Legal Thought), after a discussion of some general tendencies, the reasoning of certain prominent scholars is described. Schacht's findings in this book made a tremendous impression on many Islamicists. When he published it in 1950, quite a number of reviews by famous scholars appeared immediately, among them those of: Alfred Guillaume, in *Bulletin of the School of Oriental and African Studies* 16 (1954): 176-7; Arthur Jeffery, in *Middle East Journal* 5 (1951): 392-4; H.A.R. Gibb, in *Journal of Comparative Legislation and International Law* (1951): 114-6; H. Ritter, in *Oriens* 4 (1951): 308-12; James Robson, in *The Muslim World* 42 (1952): 61-3; J.N.D. Anderson, in *Die Welt des Islams* 2 (1953): 136; S.V. Fitzgerald, in *The Law Quarterly Review* 69 (1953): 395-9; and W. Montgomery Watt, in *Journal of the Royal Asiatic Society* (1949): 91.

Schacht reiterated his main thesis in his subsequent work *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964) which was printed six times, the latest one having been published in 1986. This book is divided into two sections. The first section is concerned with the development of Islamic law and also includes some discussion of developments in Islamic law during the last century in various regions of

the Muslim world; e.g. Turkey, Egypt, Sudan, Palestine, Transjordan, Israel, Lebanon, Syria, Cyprus, Iraq, Iran, Pakistan, and Morocco. The second section analyses systematically the following topics: the original sources of Islamic law, its general concepts, the law of persons, property, obligation in general, obligation and contracts in particular, family, inheritance, penal law, procedure, and the nature of Islamic law. The subject are discussed in systematic terms and in historical sequence, and it is easier to understand and follow his point of view here than it is to do so in his previous work, *The Origins of Muhammadan Jurisprudence*. For reviews of this work, see J.N.D. Anderson, in *Bulletin of the School of Oriental and African Studies* 28 (1965): 151-3, and Muhammad Hamidullah, in *Middle East Journal* 9 (1965): 238-9.

Other works by Schacht should be mentioned here, especially his essays: "Islamic Law," in *The Encyclopaedia of Social Sciences* 8 (1932-7), ed. Edwin R.A. Seligman; "Shari'a," in *The Encyclopaedia of Islam*, first edition (Leiden: E.J. Brill, 1937); "Shāri'ah," in *Shorter Encyclopaedia of Islam*; "Ahkam," in *The Encyclopaedia of Islam*, new edition; "Law and Justice," in *The Cambridge History of Islam*, volume 2 (Cambridge: Cambridge University Press, 1970), 539-68; and "The Law," in *Unity and Variety in Muslim Civilization*, ed. G.E. von Grunebaum (Chicago: Chicago University Press, 1955), 65-86.

In addition, Schacht also made important contribution, more elaborate in fact than Goldziher's, to the study of the foreign elements in Islamic law, such as in his "Foreign Elements in Ancient Islamic Law", *Journal of Comparative Legislation and International Law* 32 (1950): 9-17, considered a pioneering essay on the subject. In this essay Schacht stressed in particular the parallels between Islamic and Roman law. Shortly afterwards, this essay was disputed by S. Vesey Fitzgerald in his "The Alleged Debt of Islamic to Roman Law," *The Law Quarterly Review* (1951): 81-101, where, Fitzgerald states his opinion that Islāmic jurisprudence was not influenced by Roman legal science. Akh. Minhaji has provided certain discussion regarding the issue in his "The Problem of Foreign Influence on Early Islamic Law," *al-Jami'ah* 49 (April 1992): where hes discusses not only the viewpoints of both Schacht and Fitzgerald but also those of some other scholars.

Schacht provided further discussion of the Prophetic traditions in his "A Revaluation of Islamic Traditions," *Journal of the Royal Asiatic Society* (1949): 143-54. His important views concerning the early history of Islamic law may be found in his "Pre-Islamic Background and Early Development of Jurisprudence," and "The Schools of Law and Later Development of Jurisprudence," both in *Law in Middle East: Origin*

and *Development of Islamic law*, eds. Majid Khadduri and Herbert J. Liebesny (Washington, D.C.: The Middle East Institute, 1955), chapters 2 and 3. Besides the historical development of Islamic law in the early period, Schacht also dealt with the subject in the modern era in his articles: "Islamic Law in Contemporary States," *American Journal of Comparative Law* 8 (1959): 133-47; "The Present State of Studies in Islamic Law," *Atti Del Terzo Congresso Di Studi Arabi e Islamici* (Napoli: Istituto Universitario Orientale, 1967), 621-2; "Problems of Modern Islamic Legislation," *Studia Islamica* 12 (1965): 99-129; "Islamic Law in Northern Nigeria," *Studia Islamica* 8 (1957): 123-46; and "Notes on Islam in East Africa," *Studia Islamica* 13 (1961): 91-136. Interestingly, Schacht's research in Africa was very important for his career, for he thereby had an opportunity to come into contact with the real life of Muslim society and became more familiar with the problem of the application of Islamic law in social contexts.

One last contribution of Schacht's that should be mentioned here is his "*Theology and Law in Islam*," in *Theology and Law in Islam*, ed. G.E. von Grunebaum (Wiesbaden: Otto Harrassowitz, 1971), 3-23. This essay was presented at a symposium held at the University of California, Los Angeles, on May 9, 1969 when he received The Giorgio Levi Della Vida Medal of the Near Eastern Centre, an award given to an outstanding scholar whose work has significantly and lastingly advanced the study of Islamic civilization. What is more, this article has been seen as a subject which fittingly sums up his major interest in the field.

In the preface to his *Origins*, Schacht admitted that his work was influenced by those of previous scholars such as D.S. Margoliouth's *The Early Development of Muhammadanism* (London: Williams and Norgate, 1914); H. Lammens' *Islām, Beliefs and Institutions*, trans. Sir E. Denison Ross (London: Frank Cass & Co., 1968); Christiaan Snouck Hurgronje's work, e.g. *Mohammedanism: Lectures on Its Origin, Its Religious and Political Growth, and Its Present State* (London: The Knickerbocker Press, 1916), and his *Selected Works of Snouck Hurgronje*, eds. G.H. Bousquet and Joseph Schacht (Leiden: E.J. Brill, 1957), especially chapters 1 ("The Law"), 7 ("On the Nature of Islamic Law"), 8 ("The 'Foundation' of Islamic Law"), and 9 ("Islamic Law and Custom").

One cannot discuss Schacht's predecessors without mentioning Ignace Goldziher whose contribution to the study of the historical development of Islamic tradition literature and foreign elements in Islamic law (mainly Roman), was perhaps of the greatest importance to Schacht's work. Some of his writings which apparently influenced Schacht should be pointed out here. In his "The Principles of Law in Islam," in *Histo-*

rian's *History of the World*, ed. H.S. Williams, VIII (New York: Tiffany & CO., 1908), 294-304, Goldziher elaborated his three theses regarding Prophetic traditions, foreign elements in Islamic law, and the birth-hour of Islamic jurisprudence. *The Zāhirīs: Their Doctrine and Their History*, trans. Wolfgang Behn (Leiden: E.J. Brill, 1971) was Goldziher's first work on law, and is regarded as the first work in Western scholarship to discuss the development of the Sunni schools of Islamic law. Although this book treats for the most part the almost extinct fifth school, al-Zāhirī, the author also devotes an important discussion to other schools and to other important aspects of Islamic law such as the principles and methods of Islamic law, contrasts between the various schools, and Qur'ān interpretation. His *Muslim studies*, trans. C.R. Barber and S.M. Stern (London: George Allen & Unwin, 1971), particularly volume two, focuses its attention on the discussion of the Prophetic traditions.

Schacht's main thesis is, to state it succinctly, that the Prophetic traditions were spurious and were fabricated by later generations after the first century of *hijrah*. This theory serves to prove his claim that Islamic law, as we know it today, started in the late Umayyad era. This thesis has constituted the basis for subsequent research on the subject, and it possesses all the attributes of originality and profound thought. For this reason, the impact of Schacht's thesis has been such that no scholar who discusses the historical development of Islamic law, in which Prophetic traditions played a decisive role, can resist the temptation to reassess the thesis.

Three scholarly works have tried to present a broad outline of Schacht's main thesis and its importance in the present study of Islamic law. The first is David S. Forte's "Islamic Law: The Impact of Joseph Schacht," *Loyola of Los Angeles International and Comparative Law Annual* 1 (1978): 1-36, and the second Aharon Layish's "Notes on Joseph Schacht's Contribution to the Study of Islamic Law," *British Society for Middle Eastern Studies, Bulletin* 9 (1982): 132-40. A more complete study of Schacht which covers his background, career, personality, works, his main thesis, the response to the thesis, and the impact of the thesis on modern scholarship is provided in Akh. Minhaji's "Joseph Schacht's Contribution to the Study of Islamic Law" (M.A. Thesis, McGill University, Montreal, 1992).

Scholars have addressed various responses to Schacht's thesis regarding the authenticity of Prophetic traditions. Nabia Abbott disputes Schacht's thesis, arguing that the Prophetic traditions which are available in the six canonical collections can be traced back to the time of Muhammad. She addresses this challenge in her *Studies in Arabic*

Literary Papyri: Qur'ānic Commentary and Tradition (Chicago: Chicago University Press, 1957). She re-emphasizes her views in her subsequent work "Ḥadīth Literature: Collection and Transmission of Ḥadīth", in *Arabic Literature to the End of the Umayyad Period*, ed. A.F.L. Beeston and others (Cambridge: Cambridge University Press, 1983), 289-98.

On the basis of Abbott's argument, Fazlur Rahman pursued the matter even further in his works (listed in order of their appearance): *Islamic Methodology in History* (Karachi: Central Institute of Islamic Research, 1965); "Some issues in the Ayyūb Khān Era," in *Essays on Islamic Civilization*, ed. Donald P. Little (Leiden: E.J. Brill, 1976), 284-57; and *Islam* (Chicago: Chicago University Press, 1979). According to Rahman, Schacht failed to draw a clear conceptual distinction between *sunnah* and *ḥadīth*. As a result, Rahman maintains, Schacht comes to the conclusion that the *sunnah* of the Prophet is not in reality that of the Prophet himself, but rather "a living tradition" of a certain local Muslim society. For this reason, Rahman starts his analysis by providing a clear distinction between *sunnah* and *ḥadīth*, and then brings up some important implications of this distinction.

In addition, Abbott's and Rahman's discoveries are also supported by Fuat Sezgin's findings in his *Geschichte des arabischen Schrifttums* (Leiden: E.J. Brill, 1967). The word *kitāb* plays a key role in Sezgin's analysis, proving that the transmission of written sources, including the traditions, had started from an early time in Islamic history. The frequent statements of the word *kitāb* used in Arabic literature, according to him, must not be interpreted to signify an aversion to writing and an expression of prejudice in favor of oral transmission.

Other significant works which challenge Schacht's thesis concerning the authenticity of Prophetic traditions are the following: Zafār Ishāq Anṣārī, "The Early Development of Islamic Fiqh in Kūfah with Special reference to the Works of Abū Yūsuf and Shaibānī" (Ph.D. diss. McGill University, 1966); likewise his "The Authenticity of Traditions: A Critique of Joseph Schacht's Argument e silentio," *Hamdard Islamicus* 7 (1984): 51-61; also M. Mustafā Azami, *Studies in Early Ḥadīth Literature* (Beirut: al-Maktab al-Islāmī, 1968); Muhammad Hamidullah, "Early History of the Compilation of the Ḥadīth," *Islamic Review* (1949). An article which analyzes some scholar's viewpoints concerning the issue has been written by Akh. Minhaji and is entitled "Some Scholar's responses to Schacht's Thesis Regarding the Authenticity of Prophetic Traditions", *UNISIA* (April 1992).

N.J. Coulson presents a concise picture of the Western critical attitude towards Prophetic traditions in his "European Criticism of

Ḥadīth Literature," in *Arabic Literature to the End of the Umayyad Period*, ed. A.F.L. Beeston and others (Cambridge: Cambridge University Press, 1983), 317-21. James Robson offers quite a number of writings on this issue such as his "Tradition: The Second Foundation of Islam," *The Muslim World* 41 (1951): 22-33; his "Tradition: Investigation and Classification" *The Muslim World* 41 (1951): 98-112; his "The Material of Tradition I," *The Muslim World* 41 (1951): 166-80; his "Ibn Ishāq's Use of the Isnād," *Journal of the John Rylands Library* 38 (1955-66): 459-79; and his "Standards Applied by Muslim Traditionists," *Journal of the John Rylands Library* 43 (1960-6): 459-79. Equally important also are the articles of Charles J. Adams, "The Authority of the Prophetic *Ḥadīth* in the Eyes of Some Modern Muslims," in *Essays on Islamic Civilization*, ed. Donald P. Little (Leiden: E.J. Brill, 1976), 25-47; and S.M. Yusuf, "The Sunnah: Its Place in Islam," *Islamic Studies* 1 (1962): 41-50. Last but not least is the essay of Edward E. Salisbury, "Science of Muslim Tradition," *Journal of the American Oriental Society* 7 (1962): 60-142.

Schacht's thesis about the formation of Islamic law has also drawn criticism from some Western scholars. One challenge to the thesis comes, for example, from the British legal historian Noel Coulson. In opposition to Schacht's view, Coulson suggests that Islamic law originated in the era of Muhammad. Coulson began the debate on this issue in his *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964), where he states his challenge at length. To answer the challenge, and as a review of Coulson's book, Schacht wrote an article entitled "Modernism and Traditionalism in A History of Islamic Law," *Middle Eastern Studies* 1 (1965): 388-400. Two years later, in 1967, Coulson answered Schacht's rebuttal in his essay "Correspondence," *Middle Eastern Studies* 3 (1967): 195-203. Unfortunately, two years later, in 1969, Schacht was to die before answering Coulson's paper. It is important to note here that Coulson's thesis, particularly as it was formulated in his *History*, has been disputed by Muhammed Selim el-Awa in his "Approaches to *Shari'a*," *A Studies* 2 (1991): 143-79.

The crux of the debate between Schacht and Coulson in their efforts to support their different theses regarding the origin of Islamic law involves, among other important things, the discussion about the restriction of bequests (*wasīyah*, pl. *waṣāyā*) to one-third of the estate. This discussion calls for an investigation into the original date of the Prophetic tradition which pronounces on the issue. David S. Powers, for instance, analyzes the matter in connection with the problem of inheritance in

Islamic law in his works: "The Islamic Law of Inheritance Reconsidered: A New Reading of Q. 4: 12B," *Studia Islamica* 55 (1982): 61-94; "The Will of Sa'ad b. Abi Waqqas: A Reassessment," *Studia Islamica* 58 (1983): 33-53; and finally *Studies in Qur'ān and Hadīth: The Formation of the Islamic Law of Inheritance* (Los Angeles: University of California Press, 1986). His analysis of quite a number of data brings him to the conclusion that, contrary to Schacht and at the same time in line with Coulson, there is no longer any reason to accept the dating of the one-third restriction to the Umayyad period. He argues that the matter is certainly linked with the issue discussed in the Qur'ān 4: 12b as a regulation of the law of testate succession as it was understood during the lifetime of Muhammad. Another significant work to be read in connection with this issue is that of R. Marston Speight, "The Will of Sa'ad b. a. Waqqās: The Growth of a Tradition," *Der Islam* 50 (1973): 248-67, an article which analyses nineteen Prophetic traditions which discuss the one-third restriction of bequests.

Powers' thesis is supported by S.V. Fitzgerald, who argues that the law of inheritance is clearly linked to and based on the Qur'ānic verses and perhaps more clearly than any other branch of the law. He also suggests that the law of inheritance is generally admitted to be one of the oldest branches to achieve any certainty. Concerning the authenticity of Prophetic traditions, he is of the opinion that it is the formalism of the traditions which is open to suspicion rather than their substance. Fitzgerald's viewpoint can be read in his *Muhammadian Law: An Abridgement* (Oxford: Clarendon Press, 1979), in his "Nature and Sources of the Shari'ah," in *Law in the Middle East: Origin and Development Of Islamic Law*, eds. Majid Khadduri and Herbert J. Liebesny (Washington, D.C.: The Middle East Institute, 1955), 85-112, and in his review of Schacht's *Origins* (referred to above).

S.D. Goitein shares a view similar to those of Powers and Fitzgerald. He sees *surah* 5 (4,42-51) as a key determining the birth-hour of Islamic law. Based on the *surah* date (in the fifth year of the *hijrah*), Goitein, unlike Schacht, has successfully shown us that Islamic law has been a central part of Islamic teaching long before the Umayyad era, and had its origins in Muhammad's lifetime. He formulated his challenge to Schacht in his, *Studies in Islamic History and Institutions* (Leiden: E.J. Brill, 1968), especially in the chapter "The Birth-Hour of Muslim law?"

An entire book addressed to Schacht's *Origins* has been written by M. Mustafa Azami, entitled *On Schacht's Origins of Muhammadan Jurisprudence* (Riyadh: King Saud University Press, 1985). Corroborating the conclusions reached in his previous book, *Studies in Early Hadith Literature*, Azami challenges both of Schacht's theses, i.e. the authenticity of Prophetic traditions and, consequently, the formation of Islamic law. Azami claims that his *On Schacht's Origins* is an attempt to demonstrate the weak foundation of Schacht's theories. He presents some examples of Schacht's weaknesses, one of which is his suspicion that Schacht has made arbitrary use of source material. Moreover, apart from his detailed critique, he generally shares the view of other scholars who criticize Schacht for having paid insufficient attention to the Qur'anic legal provisions which was, according to him, a fundamental methodological error.

Wael B. Hallaq's work is of significance here in relations to Schacht's views concerning the formation of Islamic law. Unlike Schacht, who was of the opinion that the closing of the gate of *ijtihad* had already taken place, Hallaq successfully demonstrates that it was (and is) never closed. He discusses this issue in his works "Was the Gate of *Ijtihad* Closed?" *International Journal of Middle East Studies* 16 (1984): 3-41; "The Gate of *Ijtihad*: A Study in Islamic Legal History" (Ph.D. diss. University of Washington, 1985); and "On the Origins of the Controversy about the Existence of *Mujtahids* and the Gate of *Ijtihad*," *Studia Islamica* 43 (1986): 129-41.

Although many negative responses, sometimes severely critical, have been addressed to Schacht's thesis, other scholars have taken for granted Schacht's thesis and made it a basis for their scholarly research.

In 1986, Patricia Crone and Martin Hinds published their *God's Caliph: Religious Authority in the First Centuries of Islam* (Cambridge: Cambridge University Press). Basing themselves on extensive data, they investigate the meaning of the term *khalifah* and how it was used during the first two centuries of Islam. This investigation is important for our understanding of religious authority in the early Muslim *ummah*, and what is more, for our understanding of the relation between the problem of religious authority and the problem of the authenticity of Prophetic traditions. This, in turn, may help to explain the origin of some important rules in Islamic law, for the authenticity of Prophetic traditions and the origin of Islamic law seem inseparable.

Crone has continued to publish scholarly works concerning the formation of Islamic law. In 1987, there appeared her *Roman, Provincial*

and *Islamic Law: The Origins of the Islamic patronate* (Cambridge: Cambridge University Press), an investigation into the origin of the *walā* institution in Islamic law. To prove her thesis that such an institution did not originate in Islam, Crone uses Schacht's thesis as well as her own findings in her *God's Caliph*. It must be noted however that a serious challenge to her thesis in this book has been posed by Wael B. Hallaq in his review article. "The Use and Abuse of Evidence: The Question of Provincial and Roman Influence on Early Islamic Law," *Journal of the American Oriental Society* 110 (1990): 79-91.

Another of Crone's works should be mentioned in relation to the two previous ones. In her essay, "Jāhili and Jewish Law: The *Qasāma*," *Jerusalem Studies in Arabic and Islam* 4 (1984): 153-201, Crone traces the origin of the institution of *qasāma* in Islamic law. This essay is clearly another application of her theory which is based on Schacht's. It is no surprise therefore that her attitude towards Prophetic traditions and her belief that the Umayyads provided the starting point of Islamic law are consistent with those adopted in her two previous works, and we can easily find evidence of this in this essay.

Judith Romney Wegner shares a view similar to those of Crone and Schacht. She has written an essay entitled "Islamic and Talmudic Jurisprudence: The Four Roots of Islamic Law and Their Talmudic Counterparts," *The American Journal of Legal History* 26 (1982): 25-71, in which she would have us believe that foreign elements, particularly Jewish law, are a common feature of Islamic law. This view is strengthened in her other essay, "The Status of Women in Jewish and Islamic Marriage and Divorce Law," *Harvard Women's Law Journal* 5 (1982): 1-33.

To some degree G.H.A. Juynboll, under the influence of Schacht's thesis, has adopted a rather sceptical attitude towards the Prophetic traditions. His admiration for Schacht's thesis is shown in his *The Authenticity of the Tradition Literature: Discussion in Modern Egypt* (Leiden: E.J. Brill, 1969), and particularly in the introduction to this work where he discusses the development of Orientalist work on the Prophetic traditions. This tendency is more explicit in his subsequent work *Muslim Tradition: Studies in Chronology, Provenance and Authorship of Early Ḥadīth* (Cambridge: Cambridge University Press, 1983). In general, Juynboll tries to prove that the time when the concept *sunnah* began to be exclusively identified with *sunnat al-nabī* should be set in a time some six or seven decades after his death, that is toward the end of the first century of *hijrah*. He also suggests that the condition of *mutawātir* itself could not guarantee that a certain tradition originated in the lifetime of the Prophet. His adoption of Schacht's theory concerning the wholesale

fabrication of Prophetic traditions is also shown in his essay "The Date of the Great *Fitna*," *Arabica* 20 (1973): 142-59. Scrutinizing a tradition containing the word *fitnah* in the *Ṣaḥīḥ* of al-Bukhārī, Juynboll comes to the conclusion that the wholesale fabrication of Prophetic traditions has already happened. The report contained in the tradition of the *fitnah*, according to him, is an obvious forgery, and he emphasizes that it should be considered to be one of the large group of fabricated traditions giving details about certain persons being (still) alive or (already) dead on certain occasions or at certain times in the past as well as in the future.

Interestingly, Schacht's thesis has been applied not only in the field of Islamic law but also in other fields, e.g. the historical development of Arabic grammar. On this issue, see, for instance, C.H.M. Vestegh, *Greek Elements in Arabic Grammatical Thinking* (Leiden: E.J. Brill, 1977); Rafael Talmon, "An Eighth-Century Grammatical School in Medina: The Collection and Evaluation of the Available Material," *Bulletin of the School of Oriental and African Studies* 48 (1985): 225-36; and his "Schacht's Theory in the Light of Recent Discoveries Concerning and the Origins of Arabic Grammar," *Studia Islamica* 61 (1987): 31-50. Talmon, for instance, briefly describe Schacht's thesis in the introduction to his study, and presents his reasons for having adopted it for his research.

The modern era, i.e. since the 19th century, is the period in which the classical theory of Islamic law began to find itself faced with various challenges. Through imperialism the influence of Western civilization on the Eastern World, and mainly on the Islamic world, has been considerable. As a result, many aspects of Islamic teaching are questioned, and one of the most serious questions is addressed to the issue of Islamic law. To understand the problems and prospects, reforms and changes of some important aspects of Islamic law, the many writings of J.N.D. Anderson should be consulted. Throughout his works, Anderson has concentrated on legal reform in the modern Muslim countries. He devotes himself to discussion of the background and pressures for reform, its philosophy and methods, its achievements and results of reform, and its problems and prospects. He first addressed these issues in his *Islamic Law in the Modern World* (New York: New York State University Press, 1959), and continued his analysis in his subsequent work, *Law Reform in the Muslim World* (London: The Athlone Press, 1976). He also analyzed the issue in his articles: "Shari'ah Today," *Journal of Comparative Legislation and International Law* 31 (1949) 18-25; "The Shari'ah and Civil Law," *The Islamic Quarterly* 1 (1954): 29-46; "Law as a Social Force in Islamic Culture and History," *Bulletin of the School of Oriental and African Studies* 20 (1957): 13-40; "The significance of Islamic Law in the World

Today," *The American Journal of Comparative Law* 9 (1960): 187-98; and "Modern Trends in Islam: Legal Reform and Modernization in the Middle East," *International and Comparative Law Quarterly* 20 (1971): 1-21.

Equally important are the of Malcolm, H. Kerr, "Rashīd Ridā and Islamic Legal Reform: An Ideological Analysis," *The Muslim World* 50 (1960): 99-108, 170-81, and *Islamic Reform: The Political and Legal Theories of Muḥammad Abduh and Rashīd Ridā*. (Berkeley: University of California Press, 1966). In the latter work he analyses the ideas of Muhammad Abduh and Rashid Rida concerning legal reform. According to Kerr, Abduh and Rida tried to reformulate traditional doctrine of Islamic law as a practical modern instrument by working out a definite methodology and proposing the institutional means of its application. Their proposed methodology, says Kerr, is strikingly different from that of traditional Islamic jurisprudence.

Another scholar who in recent years has thrown light on the problem of Islamic law in the modern period is Herbert J. Liebesny. He has published (listed in order of the date of publication): "Religious Law and Westernization in the Moslem Near East," *The American Journal of Comparative Law* 2 (1953): 492-504; "Impact of Western Law in the Countries of the Near East," *George Washington Law Review* 12 (1953): 124-41; "Stability and Change in Islamic law," *Middle East Journal* 21 (1967): 16-34; "Comparative Legal History: Its Role in the Analysis of Islamic and Modern Near Eastern Legal Institution," *The American Journal of Comparative Law* 38 (1972): 38-52; *The Law of the Near and Middle East* (New York : State University of New York Press, 1975); "Judicial System in the Near and Middle East: Evolutionary Development and Islamic Revival," *Middle East Journal* 37 (1983) : 202 - 17; and "The Development of Western Privileges," in *Law in the Middle East : Origin and Development of Islamic Law*, eds, Majid Khadduri and Herbert J. Liebesny (Washington, D.C.: The Middle East Institute, 1955), 309-33. Some works of Majid Khadduri should be mentioned in this connection. He has written, for example, "Secularization and Islamic Law," in *The Principles of Law Making*, ed. Nazar Ali Shah (Lahore: Meezan Printing Press, 1937), 37-8; "From Religious Law to National Law," in *Mid-East: World-Center, Yesterday, Today, and Tomorrow*, ed. Ruth Nanda Anshen (New York: Harper & Brothers Publisher, 1956), 220-34; and "Marriage in Islamic Law; The Modernist Viewpoints," *The American Journal of Comparative Law* 26 (1978): 213-18 Important contribution on the subject of Islamic law in the modern world can also be found in the following: Rahman I. Doi, *Shari'ah in the 1500 Century of*

Hijra: Problems and Prospects (London: Ta-Ha Publishers, 1981); Aharon Layish, "The Contribution of the Modernist to the Secularization of Islamic Law," *Middle Eastern Studies* 14 (1978): 132-40; David Bonderman, "Modernization and Changing Perceptions of Islamic Law," *Harvard Law Review* 81 (1968): 1169-93; P. Nicholas Kourides, "The Influence of Islamic Law on Contemporary Middle Eastern Legal System: The Formation and Binding Force of Contracts," *Columbia Journal of Transnational Law* 9 (1970): 384-435; M.K. Nawaz, "Some Aspects of Modernization of Islamic law," in *The Conflict of Traditionalism and Modernism in the Muslim Middle East* (Austin: University of Texas Press, 1966), 67-76; Fazlur Rahman, "A Survey of Modernization of Muslim Family Law," *International Journal of Middle East Studies* 2 (1980): 451-65, which should be read in connection with his "The Status of Women in Islam" in *Separate Worlds: Studies of Purdah in South Asia*, eds. Hanna Papanek and Gail Minault (Delhi: Kay Kay Printers, 1982, 285-311; Enid Hill, "Comparative and Historical Study of Modern Middle Eastern Law," *The American Journal of Comparative Law* 26 (1978): 279-304; likewise her "Islamic Law as a Source for the Development of a Comparative Jurisprudence, the 'Modern Science of Codification' (1): Theory and Practice in the Life and Work of 'Abd al-Razzāq Aḥmad al-Sanhūrī (1895-1971)," in *Islamic Law: Social and Historical Contexts*, ed. Aziz al-Azmeh (London: Routledge, 1988), 146-97; Subhi Mahmasani, "Muslim: Decadence and Renaissance (Adaptation of Islamic Jurisprudence to Modern Social Needs)," *The Muslim World* 44 (1954): 186-201; Ameer Ali, "Islamic Jurisprudence and the Necessity for Reforms," *Islamic Culture* 2 (1928): 477-84; Maulana Syed Hamid Ali, "Changes in Muslim Personal Law," *Islamic Thought* 14 (1970): 1-15; Muhammad Rashid Feroze, "The Reform in Family Laws in the Muslim World," *Islamic Studies* 1 (1962): 107-28.

Besides the many works mentioned thus far, there are several other books and articles which might be of use to the student of Islamic law who wishes to become more familiar with the Western approach to this discipline.

1. Books :

Abdur Rahman, I. Doi, *Shari'ah: The Islamic Law* (London: Ta Ha Publishers, 1984); Ann Elizabeth Mayer, *Property, Social Structure, and Law in the Modern Middle East* (New York: State University of New York, 1985); Badawi, Gamal A., *Polygamy in Islamic Law* (Lahore: Islamic Publications, n.d); Bilaal Philips, *Plural Marriage in Islam* (Saudi Arabia: International Islamic Publishing House, 1987); Haji Ahmad H.

Sheriff, *Why Polygamy is Allowed in Islam* (Tehran: A Group of Muslim Brothers, 1974); John L. Esposito, *Women in Muslim Family Law* (Syracuse: Syracuse University Press, 1982); Kemal A. Faruki, *The Evolution of Islamic Constitutional Theory and Practice* (Karachi: National Publishing House, 1971); Khalil I. Semaan, *Ash-Shafi'i's Risalah: Basic Ideas* (Pakistan: SH. Muhammad Ashraf, 1961); Khurshid Ahmad, ed. *Studies in the Family Law of Islam* (Karachi: Chiragh-E-Rah Publication 1959); M. Cherif Bassiouni, *The Islamic Criminal Justice System* (London: Oceana Publications, 1982); Muhammad Khalid Masud, *Islamic Legal Philosophy: A Study of Abū Ishāq al-Shāṭibī's Life and Thought* (Pakistan: Islamic Research Institute, 1977); Nicholas Heer, ed. *Islamic Law and Jurisprudence* (London: University of Washington Press, 1990); N.J. Coulson, *Conflicts and Tension in Islamic Jurisprudence* (Chicago : Chicago University Press, 1969), a work whose conclusions have been challenged by Muhammad Muslehuddin in his *Philosophy of Islamic Law and the Orientalists* (Pakistan: Islamic Publications, n.d); N.J. Coulson, *Succession in the Muslim Family* (Cambridge: Cambridge University Press, 1971); al-Shāfi'ī, *al-Risālah*, translated by Majid Khadduri (Cambridge: Johns Hopkins University Press, 1961); Subhi Mahmasani, *The Philosophy of Jurisprudence in Islam*, trans. Farhat J. Ziadeh (Leiden: E.J. Brill, 1961); Uriel Heyd, *Studies in Old Ottoman Criminal Law*, ed. V.L. Menage (Oxford: Clarendon Press, 1973); also his *Kanun and Shari'a in Old Ottoman Criminal Justice* (Jerusalem: The Israel Academy of Science and Humanities, 1967); Wael B. Hallaq and Donald P. Little, eds. *Islamic Studies Presented to Charles J. Adams* (Leiden: E.J. Brill, 1991), particularly the contributions "The Primacy of the Qur'an in Shāṭibī's Legal Theory" by Wael B. Hallaq, and "Law in Islam and in the West: Some Comparative Observations" by Bernard Weiss.

2. Articles:

Abdul Rauf Zafar, "Transmission of *Ḥadīth* and Biography," *Islamic Quarterly* 35 (1991): 117-39; Abraham L. Udovitch, "Theory and Practice of Islamic Law: Some Evidence from the Geniza," *Studia Islamica* 32 (1970): 289-303; Aisha Mahmood Farooqui, "Justice in Islam," *Islam and the Modern Age* 19 (1989): 29-39; A.J. Wensinck, "The Importance of Tradition for the Study of Islam," *The Moslem World* 11(1921): 239-45; Ann Elizabeth Mayer, "Law and religion in the Muslim Middle East," *The American Journal of Comparative Law* 35 (1987): 127-84; Bello Daura, "The Limit of Polygamy in Islam", *Journal of Islamic and Comparative Law* 3 (1969): 21-6; Bernard Weiss, "Knowledge of the Past:

The Theory of Tawātur According to Ghazali," *Studia Islamica* 61 (1985): 81-105; likewise his "The Primacy of Revelation in Classical Islamic Legal Theory as Expounded by Sayf al-Din al-Amidī," *Studia Islamica* 59 (1984): 79-109; Charles J. Adams, "Islam," in *A Reader's Guide to the Great Religions*, ed. Charles J. Adams (New York: The Free Press, 1965), particularly the section entitled "Shari'ah"; likewise his "Islamic Religious Tradition," in *The Study of the Middle East: Research and Scholarship in the Humanities and Social Sciences*, ed. L. Binder (New York: John Wiley & Sons, 1976), 29-95; and his "The Islamic Religious Tradition," in *Religion and Man: Judaism, Christianity and Islam*, ed. W. Richard Comstock (London: Harper & Row Publisher, 1972), 159-223; David F. Forte, "The Comparative Lawyer and the Middle East," *The American Journal of Comparative Law* 26 (1978): 305-7; Donna Lee Bowen, "Muslim Juridical Opinions Concerning the Status of Women as Demonstrated by the Case of Azl," *Journal of Near Eastern Studies* 5 (1981) 323-328; Doorem Hinchcliffe, "Polygamy in Traditional and Contemporary Islamic Law," *Islam and the Modern Age* 1 (1970): 13-38; D.S. Margoliouth, "On Moslem Tradition," *The Moslem World* 2 (1912): 113-21; E. Kohlberg, "Shi'i Ḥadīth," in *Arabic Literature to the End of the Umayyad Period*, eds. A.F.L. Beeston and others (Cambridge: Cambridge University Press, 1983), 299-307; Farhat J. Ziadeh, "Equality (Kafaah) in the Muslim Law of Marriage," *The American Journal of Comparative Law* 6 (1957): 303-17; his "Urf and Law in Islam," in *The World of Islam: Studies in Honour of Philip K. Hitti*, eds. James Kritzeck & R. Bayly Winder (London: Macmillan, 1960), 60-7; Gamal Moursi Badr, "Islamic Law: Its Relation to Other Legal Systems," *The American Journal of Comparative Law* 26 (1978): 187-98; George F. Hourani, "The Basis of Authority of Consensus in Sunnite Islam," *Studia Islamica* 21 (19..): 13-60; George Makdisi, "Freedom in Islamic Jurisprudence: Ijtihad, Taqlid, and Academic Freedom," in *The Concept of Freedom in the Middle Ages: Islam, Byzantium and the West*, ed. George Makdisi, Dominique Sourdél, and Janine Sourdél Thomine (Paris: Societe D'edition Les Belles Letters, 1985), 79-88; likewise his "The Juridical Theology of Shafi'i: Origins and Significance of Uṣūl al-Fiqh," *Studia Islamica* 59 (1984): 5-47; and his "The Significance of the Sunnī Schools of Law in Islamic Religious History," *International Journal of Middle East Studies* 10 (1979): 1-8; George Swan, "Monogamy in Islam," *The Moslem World* 3 (1913): 75-7; Gideon Libson, "Islamic Influence on Medieval Jewish Law? Sefer Ha'arevuth ("Book of Surety") of Rav Shmuel Ben Hofni Gaon and Its Relationship to Islamic Law," *Studia Islamica* 73 (1991): 5-23; Helmut Gatje, "Modern Qur'ānic Exege-

sis," in *The Qur'an and Its Exegesis*, ed. and trans. Aflord T. Welch (London: Routledge & Kegan Paul, 1976), 248-61, especially section "Polygamy"; H.F. Amerdoze, "The Office of Kadi in the Ahkam Sultaniyya of Mawardi," *Journal of the Royal Asiatic Society* (1910): 761-96; likewise his "The Mazalim Jurisdiction in the Ahkam Sultaniyya of Mawardi," *Journal of the Royal Asiatic Society* (1911): 635-74; and his "The Hisba Jurisdiction in the Ahkam Sultaniyya of Mawardi," *Journal of the Royal Asiatic Society* (1916): 287-314; Hossein Modarresi, "Rationalism and Traditionalism in Shi'i Jurisprudence," *Studia Islamica* 59 (1984): 141-56; Ira M. Lapidus, "The Separation of State and Religion in the Development of Early Islamic Society," *International Journal of Middle East Studies* 6 (1975): 363-85; Ismail K. Poonawala, "A Reconsideration of al-Qādi-Nu'mān," *Bulletin of the School of Oriental and African Studies* 37 (1974): 573-9; J.N.D. Anderson and N.J. Coulson, "The Moslem Ruler and Contractual Obligations," *New York University Law Review* 33 (1958): 917-33; Joseph Eliash, "The Ithnā 'Asharī-Shi'i Juristic Theory of Political and Legal Authority," *Studia Islamica* 29 (1969): 17-30; "Jurist" (anonymous), "Western Influences on Muhammedan Law," *The Moslem World* 3 (1913): 350-66; Kemal Faruki, "al-Ahkam al-Khamsah: The Five Values," *Islamic Studies* 5 (1966): 43-99; Mahmoud Hoballah, "Marriage, Divorce, and Inheritance in Islamic Law," *George Washington Law Review* 22 (1953): 24-31; Marcel A. Boisard, "On the Probable Influence of Islam on Western Public and International Law," *International Journal of Middle East Studies* 2 (1980): 429-50; Maulana Mahmud Hassan Khan, "A Note on Muslim Jurisprudence," *Islamic Culture* 1 (1927): 92-9; Maulana Syed Hamid Ali, "Changes in Muslim Personal Law," trans. Iqbal A. Ansari *Islamic Thought* 14, no. 2 (1970): 1-15; Maulana Syed Ahmad Qadri, "Polygamy," *Islamic Thought* 14, no. 1 (1970): 1-17; M. Kerr, "Rashid Ridā and Islamic Legal reform," *The Muslim World* 1 (1960): 99-108; 170-81; Mohd, Mumtaz Ali, "The Application of the Shari'ah: Meaning and Methodology," *Islam and the Modern Age* 20 (1989): 320-40; Muhammad Abdul Haq Ansari, "Shah Wali Allah's Philosophy of the Islamic Shari'ah," *Islam and the Modern Age* 18 (1988): 145-64; Muhammad Hamidullah, "Sources of Islamic Law-A New Approach," *The Islamic Quarterly* 1 (1954): 205-11; Muhammad Khalid Masud, "The Formal Sources of Islamic Law," *Islamic Studies* 5 (1976): 187-94; Nancy B. Turk, "Resolution of Disputes in Saudi Arabia," *Arab Law Quarterly* 6 (1991): 3-32; N.J. Coulson, "A Comparison of the Law of Succession in the Islamic and British Legal Systems," *The American Journal of Comparative Law* 26 (1978): 227-32; likewise his "Doctrine and Practice in Islamic Law," *Bulletin of the School of Oriental*

and African Studies 18 (1956): 211-26; his "Representational Succession in Contemporary Islamic Law," *Studia Islamica* 32 (1970): 101-8; and his "The Concept of Progress and Islamic Law," in *Religion and Progress in Modern Asia*, ed. Robert N. Bellah (New York: The Free Press, 1965), 74-92; Norman Calder, "Ikhtilāf and Ijmā' in Shafi'i's Risāla," *Studia Islamica* 58 (1983): 55-81; Parviz Owsia, "Sources of Law under English, French, Islamic and Iranian Law-A Comparative Review of Legal Techniques," *Arab Law Quarterly* 6 (1991): 33-67; P. Nicholas Kourides, "Traditionalism and Modernism in Islamic Law: A Review," *Columbia Journal of Transnational Law* 11 (1972): 495-506; Shadbano Ahmad and Farhat Yasmeeen, "A Sociological Study of Marriage and Divorce in Islamic Law," *Islam and the Modern Age* 20 (1989): 341-67; Wael B. Hallaq, "A Tenth- Eleventh Century Treatise on Juridical Dialectic," *The Muslim World* 77 (1987): 197-206; likewise his "Caliphs, Jurists and the Saljuqs in the Political Thought of Juwainy," *The Muslim World* 74 (1984): 26-41; his "Considerations on the Function and Character of Sunnī Legal Theory," *Journal of the American Oriental Society* 104 (1984): 679-89; his "Logic, Formal Arguments and Formalization of Arguments in Sunnī Jurisprudence," *Arabica* 37 (1990): 315-58; his "Notes on the Term *Qarīna* in Islamic Legal Discourse," *Journal of the American Oriental Society* 108 (1989): 475-80; his "On the Authoritativeness of Sunnī Consensus," *International Journal of Middle East Studies* 18 (1986): 427-54; and his "The Book of Judicial *Qiyās*," *The Muslim World* 77 (1987): 207-28, a translation of Abū al Ḥusayn al-Baṣrī's *Kitāb al-Qiyās al-Shar'ī*; Zafar Ishaq Ansari, "Islamic Juristic Terminology before Sāfi'i: A Semantic Analysis with Special Reference to Kūfa," *Arabica* 19 (1972): 255-300.