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Martin Lau
Faris Nasrallah

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Building an Intellectual Monument: The *Yearbook* in Eugene Cotran's Legacy

Chibli Mallat*

Eugene Cotran built intellectual monuments. Those who have known him as a practitioner at the English bar, as a judge in Kenya and Britain, or as legal advisor to the Palestinian leadership, are in a better position to testify to the remarkable building blocks he contributed on so many fronts. My short testimony here is about a project which was particularly dear to him, a characteristically larger than life project: the *Yearbook of Islamic and Middle Eastern Law*. One does not imagine the courage and vision needed to inspire it. It proved to be a turning point for Islamic and Middle Eastern scholarship.

It must have been around 1988, when I started teaching in the law department at SOAS, that I met Eugene and we first discussed the *Yearbook*.¹ Islamic law scholarship was very different then. While the Iranian Revolution was turning the field into a strategic political issue, the corresponding scholarship was at a 20th-century low. Islamic law had lost in the passing away of Noel Coulson in 1986 its last referential figure.² Norman Anderson (d. 1994), the other great Englishman in the field, had published his last important contribution in 1976.³ Long gone were Joseph Schacht (d. 1969) and 'Abd al-Razzaq al-Sanhuri (d. 1971).⁴ The once remarkable French school did not survive the

* Chibli Mallat is a lawyer and law professor. He established with Eugene Cotran the *Yearbook of Islamic and Middle Eastern Law* and the Centre of Islamic and Middle Eastern Law book series.

1 Among some endearing idiosyncrasies of Eugene's, I recall two fondly. While my suggestion to have the *Yearbook* cited as 'YIMEL' eventually prevailed, Eugene did not like the sound of it, and continued to refer to the *Yearbook*, in an aural comfort zone that I am happy to honor in this note. Also, I suggested that Israel should be part of the countries section, but the Palestinian passion in Eugene resisted the suggestion passively, and the entry on Israel is missing to date.

2 Noel Coulson's main work remains his compact and intelligent *A History of Islamic Law*, Edinburgh 1964.

3 Norman Anderson, *Law Reform in the Muslim World*, London 1976.

4 Schacht's two main contributions to the field are *Origins of Muhammadan Jurisprudence*, Oxford 1950, and *Introduction to Islamic Law*, Oxford 1964. Sanhuri's famous lectures on Islamic law at Cairo University were published as *Masader al-haqq fi al-fiqh al-islami* (Sources of law in Islamic law), 6 vols, Cairo, 1954–1959.

Algerian trauma, and there was in the 1980s no master of Islamic or Arab laws whom students could turn to in France, or indeed elsewhere.⁵ Both Emile Tyan (d. 1976) and Subhi Mahmasani (d. 1986) had also stopped contributing their sterling scholarship in the 1970s.⁶

After the Schacht-Coulson generation, it was mostly left to non-lawyers, political scientists, anthropologists and historians, whose work enriches the legal discipline tremendously, but who will always remain foreign to a field where language and logic require professionals of the law, first and foremost, to talk about it. While there were several legal scholars in the Middle East and the Muslim world who wrote in the vernacular, they remained outside the realm of international scholarship, and stayed effectively beyond the reach of worldwide interaction.⁷ Not that this necessarily diminished their importance, but unlike the great figures just mentioned in both East and West, they needed a 'translator' for their work.⁸ Loss in translation may not remain a factor over time, and the better works eventually get acknowledged in several languages. But there is simply no serious scholarly debate of a worldwide nature when scholars across the planet do not meet through the same language.

The last years of the Coulson generation started the slow change, not least because of the blurring of jobs and countries. A large number of Islamic and Middle Eastern lawyers in Western academia comes from the Middle East.⁹ In turn, many of our colleagues in the West have stopped dealing with Oriental laws as Orientalists, that is as scholars of Islamic or Middle Eastern law who address dead Egyptian or Sumerian legal texts in the same way they treat a

5 Amongst the best French language contributions remains Yvon Linant de Bellefonds (d. 1994), *Traité de droit musulman comparé*, Paris-La Haye, 3 vols, 1965–73.

6 Emile Tyan, who died in 1976, was a Lebanese law professor and judge. His scholarship ranged from modern commercial topics to classical Islamic law, including a groundbreaking *Histoire de l'organisation judiciaire en pays d'Islam*, 2 vols, Paris 1938–1943, republished in one, Leiden 1960. His colleague Subhi Mahmasani's (d. 1986) contributions in the field also ranged widely, including the masterful *Al-Nazariyya al-'amma lil-mujibat wal-'uqud fil-shari'a al-islamiyya* (General theory of obligations and contracts in Islamic law), 2 vols, Beirut 1948.

7 For a survey and bibliography, see my 'Islamic law research in the twentieth-century Middle East', *Asian Research Trends* (Tokyo), 8, 1998, 109–136.

8 As in the case of the Iraqi Muhammad Baqer as-Sadr (d. 1980), probably the most innovative of modern 'classical' jurists, see my *The renewal of Islamic law: Muhammad Baqer as-Sadr, Najaf, and the Shi'i International*, Cambridge 1993.

9 Amongst the most innovative authors, both lawyers in international practice, Nabil Saleh, see his *Unlawful gain and legitimate profit in Islamic law*, Cambridge 1986, 2nd ed. London 1992; and his brother Samir, see his *Commercial agency and distributorship in the Arab Middle East*, The Hague 1995.

thriving living culture in Arabic or Persian. In the field of Islamic and Middle Eastern law, there were too few Western scholars who interacted in Arabic or Persian, the two mainstay languages of modern Islamic/Middle Eastern law. Even Edward Said, who was much more comfortable writing and speaking in English, took up expressing himself in Arabic as a matter of course. It is one of my most cherished recollections to have prompted some of his eloquence in Arabic in his later years, including by hosting him several times at SOAS.

Eugene was naturally different, and we spoke Arabic and English as a matter of course, with some French care of Christiane, his likeable and lively wife. By the time I had joined the faculty as Lecturer in Islamic law, Professor and Barrister Cotran, as he then was, had become more of a networker and builder. He had much to do at the bar and later as a judge but he continued to consider scholarship as an important part of his intellectual life. Eugene always found time to support the Centre of Islamic and Middle Eastern Law of which he was the chairman. In a matter of a few years in the early 1990s, he brought together the whole resurgent field of scholarship into London. Several books were published at CIMEL, which resulted from as wide a range of interests as commercial law in the Middle East, Islamic feminism, comparative family law, public law in Islam, and supreme courts.¹⁰ While English remained naturally dominant at SOAS, language was no matter, and we hosted several speakers in Arabic, including a memorable seminar with the Arab Association of Human Rights in 1992, and a large conference on 'the intellectual and legal frameworks for a new Middle East' in 1994.¹¹ To date some of the contributions to the *Yearbook* are in French.

Through its Middle East Center and CIMEL, SOAS turned during the 1990s into the living platform of Middle Eastern intellectual life, including on such world topics as Iraq upon the invasion of Kuwait, or the Arab-Israeli conflict after Oslo.¹² At the SOAS Center of Near and Middle Eastern Studies, Anthony

10 All were eventually published as books: Chibli Mallat and Hilary Lewis Ruttley eds., *Commercial Law in the Middle East*, London 1995; Mai Yamani ed., *Islam and Feminism: Legal and Literary Perspectives*, London 1996; Chibli Mallat and Jane Connors eds., *Islamic Family Law*, London 1990; Chibli Mallat ed., *Islam and Public Law*, London 1993; Eugene Cotran and Adel Omar Sherif eds., *The Role of the Judiciary in the Protection of Human Rights*, London 1997, part of the CIMEL series jointly established with Eugene.

11 '*Al-muqawwimat al-fikriyya wal-qanuniyya li-nizam sharq-awsati jadid*', convened by CIMEL and the Centre of Near and Middle Eastern Studies at SOAS, University of London, 19–20 December 1994.

12 My last significant seminar was a five-day seminar with Iraqi and Western scholars and political leaders over 'the future of constitutionalism in Iraq', held in summer 1995. With Eugene we also convened an unprecedented legal conference on the Arab-Israeli

Allan lent his always generous curiosity, and CIMEL stood thanks to him at the forefront of water issues in the Middle East, an increasingly contentious commodity.¹³ At the law department, all our colleagues, some departed prematurely like Andrew Huxley (d. 2014), participated actively with an amazing scholarship ranging from Muslim communities in the West to Rohingya in Burma and Muslims in China.¹⁴ SOAS was blessed in those early years with the leadership of John Wansbrough, perhaps the greatest scholar on the formation of Islam ever.¹⁵ In the world of world-class journalism, then at the *Financial Times* as foreign columnist, Edward Mortimer was a close road companion, whose enthusiasm I vividly recall at a lecture we organized for one of our better students on the Majlis-e Mab'uthan, the first Ottoman parliament in 1908–1914.¹⁶

At the same time, the Foreign and Commonwealth Office's Near East department was led by David Gore-Booth (d. 2004), who was a great supporter of all things SOAS. Like Edward Mortimer, Gore-Booth deserves a statue in downtown Baghdad as one of the most efficient and consistent supporters of Iraqi oppositional work to the ruthless dictatorship in Baghdad. Two special moments, one in early 1991, the other in April 1993, saw the CIMEL visit for active, lively discussions, of people who would lead Iraq after Saddam Hussein. The first time, in mid-January 1991, SOAS opened its door to a delegation from the Iraqi opposition which included Jalal Talibani, the future president of Iraq, Hoshiyar Zebari, its future foreign minister, Latif Rashid, the future water minister, Ahmad Chalabi (d. 2015), the future Iraqi deputy-prime minister, and Muhammad Bahr al-Ulum (d. 2015), who would lead the country's first

accords after Oslo, and edited it together into *The Arab-Israeli Accords: Legal Perspectives*, London 1996.

13 J.A. Allan and Chibli Mallat eds., *Water in the Middle East: Legal, Political and Commercial Implications*, London 1995.

14 See e.g. Andrew Huxley, 'Khaek, Moro, Rohingya. The family law of three South East Asian Muslim Minorities', in Mallat and Connors eds., *Islamic family law*, above n. 10, at 225–52; Werner Menski, 'The reform of Islamic family law and a Uniform Civil Code for India', id., 253–294; Anthony Dicks 'New lamps for old: the evolving legal position of Islam in China, with special reference to family law', id., 347–88.

15 John Wansbrough (d. 1994) was the pro-director of SOAS, and the author of *Quranic studies: sources and methods of scriptural interpretation*, Oxford 1977, and *The sectarian milieu: content and composition of Islamic salvation history*, Oxford 1978.

16 Khaled Barazi's lecture was delivered in 1994 or 1995. His Phd was completed in 2002, see Khaled Barazi, *The Majlis Mebusan (Meclis—i Mebusan): The Ottoman Parliament* (London Ph.D., 2002).

Governing Council after the deposition of the dictator in 2003.¹⁷ In April 1993, CIMEL hosted the leadership of then unified Iraqi National Congress, including many of the personalities mentioned above, who had come together as a wide opposition front under the impulse of the Iraqi Committee for a Free Iraq, of which Edward Mortimer, Ahmad Chalabi and I had been the founding coordinators.¹⁸ David Gore-Booth had arranged for them to visit with the British Prime Minister John Major.

I actually did not realize, until after I left SOAS, how special London was at the time. In the midst of cruel dictatorships sitting atop victimized societies across the Middle East, so intolerant that they drove the best talents in all disciplines into exile, the London scene formed an intellectual renaissance across the region. Here were launched in the later 1980s pan-Arab daily papers. The Kuwaitis started with *al-Qabas*, which, despite the groundbreaking work of its London-based editor, Rafle Khoriaty, did not survive the Iraqi invasion in August 1991. The experiment paved the way to *al-Sharq al-Awsat* and *al-Hayat*, which, a couple of years later, became the leading papers inside the Arab world. One cannot appreciate the absurdity of the phenomenon enough, lest one imagines the *New York Times* being published from London, or *Le Monde* from Algiers. Leading Arab poets found solace in London and Paris. Adonis and Nizar Qabbani (d. 1998) were regular participants in the SOAS auditorium. The great Iraqi architect Muhammad Makkiyye (Makiya), who passed away in 2015, was at the center of the world of the Saqi house/Kufa Gallery on Westbourne Grove. The alluring complex, which has its own colorful story to tell, included along the activities around the bookshop and the gallery a small poetry quarterly in Arabic. Part of that world were the son of Muhammad, Samir al-Khalil,¹⁹ joint founder of the Saqi bookshop and its unique talented people like publisher André Gaspard and the artist and activist Mai Ghousoub (d. 2007). Across London, Iraqi Shi'i legal-theological innovative work on democracy proliferated

17 For the event, which took place at the Centre of Near and Middle Eastern Studies, see *The Iraqi Opposition—A Dossier*, SOAS, University of London, 15 January 1991, which I prepared for the meeting.

18 For a picture of the visit, see the CIMEL brochure, May 1994, 14. Generally on ICPI, Mallat, 'Voices of opposition: The International Committee for a Free Iraq', in E. Goldberg, R. Kasaba and J. Migdal eds., *Rules and Rights in the Middle East: Democracy, Law and Society*, University of Washington Press, Seattle, 1993, 174–187.

19 This was his nickname as the author of a powerful book on the Iraqi system, *Republic of Fear*, London 1989. His real name is Kanan Makiya.

around Muhammad Bahr al-'Ulum and Mahdi al-Hakim's Ahl al-Bayt, and at the Khu'i Foundation.²⁰

In the midst of the intellectual maelstrom of exiled poets and politicians, SOAS was *the* establishment. I was newly arrived in London, so Eugene, almost blue blooded Establishment himself, was the link to that tumultuous and complicated Middle Eastern world, and the one I always turned to whenever gravitas was needed. He cared for institutional buildup rather than fleeting political moments, and gave this imprimatur through SOAS and CIMEL. Together with the first CIMEL director, Ian Edge, he assembled an impressive roster of world legal authorities, including such towering figures in English law as Lord Goff and Lord Woolf. Once, at a conference on commercial law which CIMEL convened at the Institute of Advanced Legal Studies,²¹ I arrived for the morning coffee to see a distinguished and demure person moving around without the tag customarily delivered to participants. As I moved forward to remind him of the rules of the house, and to enquire whether he had crashed the conference uninvited, I hesitated a second when I was greeted by his smile, and did not proceed with the admonition. I did well to shut up. The tagless visitor was Harry Woolf, the premier judge of the Realm. Such were the guests whom Eugene was able to seamlessly draw to CIMEL's activities.

When I took over the directorship of the Center in 1992, Eugene pushed forward the *Yearbook* project in a systematic and driven manner. He was not conversant with computers and laptops. I recall the neat typewriter outline for the first issue. The outline bewildered me, so ambitious and far-reaching the range sought. One does not realize what desert the legal field had turned into by then in the Arab world, including where it mattered most, in the law handed down by the supreme courts. There were just a few small bastions of quality law left around some courts, like the Supreme Constitutional Court of Egypt.²² Law reporting was the exception rather than rule, and we had to go through inordinately complicated contacts in each country to secure some decisions of the appellate courts.²³ Cotran's outline came at a moment when I had been

20 On Muhammad Bahr al-'Ulum, see my 'Muhammad Bahr al-'Ulum', *Orient*, 3/93, 342-345; on Abul-Qasem al-Khu'i (Kho'i), the foremost religious leader in Iraq in the early 1990s, my obituary in *The Independent*, 10 August 1992.

21 Above, n. 10.

22 Its head, 'Awad al-Morri, probably the judge who made the strongest mark in 20th century Egypt, was a regular visitor at CIMEL, as was the SCC's vice-president to date, Adel Omar Sherif, see above n. 10, and, in the CIMEL book series, Kevin Boyle and Adel Omar Sherif eds., *Human Rights and Democracy: The Role of the Supreme Court of Egypt*, London 1996.

23 This remains inordinately difficult in a country like Saudi Arabia, but we succeeded, with the help of another early *Yearbook* supporter, lawyer Salah al-Hejailain, to publish

struggling to assemble a small book that would feature the basic characteristics of all the countries of the Middle East. There always missed something, either countries for whom we could not find a decent lawyer to write the bare bone legal structure and system, or large legal patches like the main sources of commercial legislation in each jurisdiction, or the court system. As time went, the people who responded diligently to that draft primer of Middle Eastern law were punished by their inexorably falling behind while we were waiting for other promised contributions which we were yet to receive for the primer.

Then came Eugene's idea for a legal monument. He was aware of our efforts and frustrations. Building on the *Annual Survey of African Law* he had established two decades earlier with Neville Rubin,²⁴ he simply proposed to integrate the results assembled for the primer in the first section on 'country entries', and request the contributors to add the most recent developments in the country. We had been unable to get the simple descriptive primer published as a small book, and here came Eugene Cotran with a much more ambitious idea: annual developments to be described and analysed by a local correspondent. He had the network, the energy to pursue it, and the power to convince people that they were working for a worthy, larger than life, project. We also had the extraordinary energy of young CIMEL collaborators, especially Andrew Allen, Nathalie Blezard and Mai Yamani. We also benefited immensely from the professionalism and skills of the *Yearbook* Kluwer editors, who took on Alistair Graham and Cécile Insinger's early efforts at Graham and Trotman, and turned it into a legal monument with Hilary Scannell, Sarah Megary and their successors at Brill. The *Yearbook* was born. Eugene did not fail it a single year until he died.

As I look back at our presentation to the first volume,²⁵ I am amazed at the promise made then, and its annual fulfilment since. The outline appears in

a substantive 'Defence submission by Salah Ibrahim al-Hejailain in the case of *Lucille McLauchlan and Deborah Kim Parry*', YIMEL, iii, 1996, 491-505.' Another country where cases remained handwritten until 1990 was Yemen. Former Chief Justice in South Yemen, and a prominent Supreme Court judge in the unified Yemen after 1993, Nagib Shammiri, helped me publish 'Recent judgments from the Yemen Supreme Court', *Islamic Law and Society*, 21, 1995, 71-90, perhaps the first ever instance of a case report in Yemeni history. In recent years reporting has become significantly better in both countries, as judges in Saudi Arabia and Yemen are increasingly able to overcome the hurdles of publication by a wary executive branch which does not like precedent to limit its propensity to total arbitrariness.

24 Eugene Cotran and Neville Rubin eds., *Annual Survey of African Law*, published for years 1967 to 1973, 7 vols, London 1970 to 1977.

25 YIMEL 1994, published in 1995, xi-xiii.

the Preface, which Eugene mostly wrote. The Preface explains the four Parts which the reader will find in the *Yearbook*: an original articles section (Part I), then the country-based section, with the first issue reviving my aborted attempt to have a short guide to law and legal sources for each jurisdiction (Part II). Parts III and IV include select documents and legislation, then cases. Already in the second volume, we added a section on book reviews, notes and news. Eugene provided in the early years of our joint editorship most of these documents, which are a priceless reference material as time goes. Try to get the original copy of the Oslo Accords nowadays, and you will see how comforting it is to find them in an authoritative reference point. The *Yearbook* even published their Annexes.²⁶

Part II on country surveys has been the most distinctive contribution of the *Yearbook*. We insisted from the beginning that contributors should not restrict their coverage to the legislation passed. This meant a much bigger challenge, because the annual survey had to cover also the most important decisions in the top courts in each country, a mammoth endeavor. Having contributed the entry on Lebanon in the first years, I realized how much attention was needed and how highly selective was the work required. Preparation of the entry took me two months of solid work, and kept me on my toes all year round in my attention to the most important legal developments in the country. This was the lot for each of the 15 to 20 jurisdictions usually covered. While the treatment varied inevitably depending on how careful and comprehensive the coverage of court decisions may be, and the quasi-impossibility in some jurisdictions like Saudi Arabia where reporting was mostly inexistent,²⁷ the result remains, year in year out, unsurpassed. I have often wondered about the immense usefulness of an annual report on France or the United States similar to the exercise carried out in the *Yearbook*. For lawyers and non-lawyers alike, this would be a wonderful contribution to national, international and comparative law. Eugene opened the way in his vision of the *Yearbook of Islamic and Middle Eastern Law*, which became, in the words of an early reviewer, 'incontournable.'²⁸ Now on the verge of its third decade, it has turned into the obligatory starting point for any legal scholar or practitioner interested in both

26 YIMEL 1994, 443-99.

27 See above n. 23.

28 Baudouin Dupret, 'Note de lecture: *Yearbook of Islamic and Middle Eastern Law*', *Egypte-Monde Arabe*, 34, 1998, 289-91, at 291.

fields. And when I say both fields, this is to underline the natural coming of age of Middle Eastern law as a fully-fledged discipline of comparative law.²⁹

Reading afresh our Preface to the first volume, I realized that only one wish remains unfulfilled. With over 240 million Arabs, and 400 million Middle Easterners, there is nothing like the *Yearbook* in Arabic or in any other vernacular. Lawyers and non-lawyers in the region continue to rely on the *Yearbook* to enlighten them on the annual legal developments in their own countries. Again, imagine an annual survey of American, German or English law being conveyed in a *Yearbook* in Arabic.

No less than a building, a literary monument thrives on its foundations. I left the editorship around 1998 with the fifth *Yearbook*, but Eugene carried on with Martin Lau and younger scholars, and the tradition continues with a remarkable second generation led by Faris Nasrallah. I like to think that the *Yearbook* will celebrate its hundredth anniversary. Perhaps even more ambitiously, I hope the Middle East will awaken from its legal lethargy, and publish one day a *Yearbook of Islamic and Middle Eastern Law* in Arabic.

29 This inspiration to map Middle Eastern (as opposed to Islamic) law as a sui generis legal family I owe to Albert Hourani, see my *Introduction to Middle Eastern Law*, Oxford 2007, and to some extent, to Eugene Cotran's clear minded adoption of the concept; see also for the acknowledged debt to the *Yearbook* and to the Yale law school Middle East Legal Seminar, established in 1999, my shorter 'Middle Eastern Law' (with Mara Revkin), *Annual Review of Law and Social Science*, 9, 2013, 405-33, at 405-7.