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ACKNOWLEDGEMENTS

This volume owes its existence to a symposium held at Alta, Utah, in September, 1999, under the auspices of the Middle East Center. Although all the studies in this volume have been considerably augmented and refined since the time of their original presentation, some in the light of points advanced at the symposium by fellow participants either in papers or in discussion, they all continue collectively to reflect the mix of ideas and points of view and interaction of arguments that made Alta the memorable event that it was.

The Alta symposium—and this volume as its outcome—would not have been possible without the dedicated labors of a great many people. I am especially grateful to Kathy Wyer, the coordinator of external programs for the Middle East Center, who more than any other individual made Alta happen. It is not just that she did the planning down to the last detail and handled all the arrangements for the symposium; most memorable are the conviviality and spirit-edness, remarked on by many who were there, that she brought to the symposium, helping to make it a true *συμπόσιον* in the original meaning of that Greek word—a free exchange of ideas in a setting of a shared table and pleasant companionship. This long-to-be-remembered ambience was also in large measure due to the warm and congenial presence of Peter Sluglett, then Director of the Middle East Center, to whom I shall forever be grateful for the strong personal encouragement he gave to the Alta project from the moment of its inception to the time of its final realization. I wish also to thank Kathy Wyer for capturing the mood of the Alta gathering in several fine photographs, one of which appears in this volume.

Thanks are also due to the individuals who chaired the various sessions of the symposium, presiding over the discussions and in many cases contributing substantially to them: Professor Emeritus Lois A. Giffen, my much esteemed and deeply appreciated colleague of the past sixteen years whose chairing of the final plenary discussion was most invaluable; Professor John Makdisi, Dean of the Law School at St. Thomas University, whose own scholarship in the field of Islamic law is well known; Professor John W. Welch of the Brigham Young University Law School; and Professor Peter von Sivers of the

History Department, University of Utah. Also deserving of thanks are those present at the symposium who entered substantially into the discussions, contributing appreciably to the flow of ideas. These include in particular Ingrid Mattson of the Hartford Seminary Foundation; John Makdisi (mentioned above); Mohammad Eissa of the University of Michigan. Two individuals who, though originally scheduled to participate in the symposium, were unable to come but supported the symposium with generous financial contributions and were very much present in spirit are: Professor Edwin B. Firmage (who together with me and Professor Welch had collaborated on a similar conference-cum-volume some years ago) and Professor Taha Alalwani, President and Imam al-Shāfiʿī Chair in Islamic Legal Theory at the School of Islamic Social Sciences, a scholar of considerable accomplishments in Islamic legal studies.

Also present at the symposium was Ms. Asifa Quraishi representing the Islamic Legal Studies Program at Harvard University, whose director, Professor Frank Vogel, kindly read the introduction and discussion section of this volume and offered many insightful comments. The Harvard program held a similar conference in May, 2000, on the subject of “the *madhhab*”. It is anticipated that scholars in the field of Islamic law and legal theory will find the Harvard studies and those presented here to be helpfully complementary.

In the production of this book, I have been fortunate to have been able to work with Ms. Trudy Kamperveen of Brill, whose constant and gentle nurturing of this project is most appreciated. Thanks also go to Mr. Richard Abdallah Lux, who provided most helpful assistance in transcribing the Alta discussions and made his own valuable contributions to those discussions.

Last but not least among those to be thanked are the Alta symposiasts themselves, the authors of the studies in this volume. I have been most gratified by the seriousness with which each participant without exception has undertaken his or her part of the project. The result is what I consider to be a thoroughly researched, carefully reasoned and truly ground-breaking collection of studies.

The one thing that prevented the Alta gathering from being an altogether perfect occasion was the absence of Jeanette Wakin, who slightly more than two years ago was sadly taken from us and from the field of study she so greatly loved and cared for. She also deeply loved Utah, its colors, its canyons, its mountain streams, its expanses of sage and its Southwestern atmosphere so suggestive of the back-

drop of her favorite mystery tales, those authored by Tony Hillerman. A συμπόσιον that brought the beauties of Utah and the beauties of *uṣūl al-fiqh* together would have been sheer delight for her. In fact, we once, during one of her visits to Utah, talked of such a gathering and imagined what a perfect occasion it would be. It turned out, however, to be not quite perfect, because she was not there.

In editing the various contributions, I have endeavored to achieve as much uniformity as possible throughout the volume in regard to such things as transliteration of Arabic terms, style of documentation and over-all presentation, adhering as much as possible to the *Chicago Manual of Style*. Nonetheless, some variation in detail remains. I have refrained from extensive editing of the basic text of each study. On the matter of bibliography, I have chosen to let authors follow their own inclinations. Three have elected to include a bibliography at the end of their study. I have not attempted to amalgamate these as a single bibliography at the end of the volume, since these bibliographies are quite patently offered to scholarship as a tool for further research related specifically to a particular subject matter. The other authors have preferred to let bibliographic information contained within the notes suffice. In either case, the reader has access to basic information regarding sources used. The system of transliteration I have used will be evident to the Arabist reader, who will note, among other things, that *taʾ marbūṭah* is indicated by *ah* and that the long *kasrah* preceding a *yāʾ* is indicated by an *ī* (i.e. *īyah*, not *īyyah*).

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EDITOR'S INTRODUCTION

Within the field of Islamic legal studies, increasing attention has been given in recent times to that branch of legal learning known in Arabic as *uṣūl al-fiqh*. It is frequently called in English “legal theory.” Although it would be rash to suppose that *uṣūl al-fiqh* subsumes everything that may be regarded as Muslim legal theory in the broadest possible sense of that term, nonetheless there can be no denying that it constitutes, or came over time to constitute, the mainstream of legal-theoretical thought in Islam. It may in fact not be incorrect to say that legal theory in late pre-modern Islam is more or less identical with *uṣūl al-fiqh*, for eventually questions relating to the sources of legal knowledge (legal epistemology), the nature and locus of legal authority, the hermeneutical processes involved in the determination of the law and similar topics were discussed almost exclusively within *uṣūl al-fiqh*.

On the other hand, *uṣūl al-fiqh* does not lend itself easily to definition. For many scholars working on Islamic law, the term *uṣūl al-fiqh* conjures up what has come to be widely called the classical Sunni theory of law. According to this theory, the law has four fundamental “roots”: the Qurʾān, the Sunnah (sayings and deeds of the Prophet Muḥammad), the consensus of Muslim jurists, and analogical reasoning. The history of this particular stream of *uṣūl al-fiqh*—especially its origins and early development—is certainly fascinating and worth pursuing. Of special interest is the pressure it was able to exert upon the juristic community at large, including some Shīʿī jurists, to conform to its main principles. If one turns, however, to the period before the establishment of the classical Sunnī *uṣūl al-fiqh*, one finds oneself facing a much more fluid world of legal thought such that the task of determining precisely what constitutes *uṣūl al-fiqh* becomes highly problematic. But even within the context of the later “four sources” theory one finds considerable diversity of styles of presentation, of terminologies, of agendas, of methods of organization, and of literary forms. Furthermore, throughout the history of Muslim legal thought, the term *uṣūl al-fiqh*, as well as the abbreviated form *uṣūl*, is sometimes used to refer to something that is altogether distinct from legal theory as such, though closely related to it, namely