

HADITH, LAW, AND ORIENTALISM: A CRITICAL STUDY OF JOSEPH SCHACHT’S THEORETICAL CONTRIBUTIONS

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ARTICLE INFO

ABSTRACT

Article History

Published : 25 May 2025

Keywords

Joseph Schacht, Islamic Law, Hadith



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This study aims to examine classical and orientalist approaches to Islamic law, with a focus on the development and influence of Joseph Schacht’s theories. It explores Schacht’s understanding of the origins of Islamic jurisprudence, especially hadith, and their impact on Islamic law. This is a qualitative study based on library research. The results of this research show that Schacht uses a socio-historical approach to understanding Islamic law, emphasizing that the development of Islamic law is greatly influenced by the social and cultural context. Schacht argues that many hadith were codified in the early second century of the Hijra and that many of them were the result of reconstructions that emerged as a result of debates among early Islamic legal schools. This opinion has been challenged by various Muslim academics who are trying to prove that hadith have been written and transmitted since the time of the Prophet, both orally and in writing. Therefore, further research that focuses on analyzing hadith manuscripts that have not been translated is needed to provide a deeper understanding of the process of recording hadith and the development of Islamic law.

INTRODUCTION

Orientalism is a critical concept in postcolonial studies, developed and discussed in depth by Edward W. Said in his seminal work *Orientalism* (1978). The term refers to the Western depiction and representation of the “Orient” in the western thought. It encompasses Middle Eastern, Asian, and North African societies in which Islam shapes these societies. In Arabic, the word orientalism is known in Arabic as *istisraq* (استشراق) which comes from the word *استشرق* which is taken from the

Ad-dawl: Jurnal Islamic Studies

Vol. 1, No. 1, Januari - Juni 2025

word شرق which means rising or avoiding something for fear of being burned by the heat.¹ This word also means the place where the sun rises.² Meanwhile, the meaning of orientalism itself comes from two words *orient* and *to the name*, which taken from Latin, namely *Oriri*, which means rising. In French and English orient means *direction of rising sun* (the direction of the sun rising from the eastern hemisphere).³ Malik bin Al-Hajj Umar argues that orientalist were western writers who wrote about Islamic thought and culture.⁴ On the other hand, Said (1978) defines Orientalism as "a style of thought based upon an ontological and epistemological distinction made between the 'Orient' and (most of the time) 'the Occident'".⁵ He argues that this body of knowledge served to justify and reinforce Western dominance over the East by constructing the Orient as irrational, backward, and exotic, in contrast to the rational and civilized West.

Subsequent scholars have expanded on Said's critique. For instance, James Clifford (1988) emphasizes the constructed nature of cultural representations and warns against viewing such categories as fixed or natural.⁶ Similarly, Bernard Lewis (1993), while critical of Said's approach, underscores the long-standing tradition in the West of studying Eastern cultures, albeit from particular ideological positions.⁷ Modern studies connect orientalism to globalization and digital technologies in which the relations between the east and the west is shaped by collaboration.⁸ It can be concluded that orientalism is a field of oriental studies which aims to gain understanding, power, or exploit countries in the eastern world, especially Islamic countries, through various methods which are realized through various scientific essays and the acquisition of abundant wealth. Orientalism, in general terms, refers to the academic study of non-Western cultures, religions, languages, and societies.

Orientalism is often associated with efforts to discredit Islam and its teachings. However, this view is not entirely correct, considering that many Orientalists carry out research with a deep and systematic academic approach.⁹ Many studies refer to the importance of using multidisciplinary

¹ Azim Nanji, *Peta Studi Islam (Orientalisme dan Arah Baru Kajian Islam di Barat)* (Yogyakarta: Fajar Pustaka Baru, 2003), p. 7.

² William Montgomery Watt, *Fundamentalism dan Modernitas dalam Islam* (Bandung: Pustaka Setia, 2003), p.9.

³ Adnan M. Wizan, *Akar Gerakan Orientalisme* (Yogyakarta: Fajar Pustaka Baru, 2003), p.48.

⁴ A. Syafi'i Ma'arif, *Peta Bumi Intelektualisme Islam di Indonesia* (Bandung: Mizan, 1994), p.35.

⁵ Edward W. Said, *Orientalism* (New York: Pantheon Books, 1978), 3.

⁶ James Clifford, *The Predicament of Culture: Twentieth-Century Ethnography, Literature, and Art* (Cambridge, MA: Harvard University Press, 1988).

⁷ Bernard Lewis, "The Question of Orientalism," in *Islam and the West* (Oxford: Oxford University Press, 1993), p.99–121.

⁸ Hajer Albshkar, Nahid Ayad, Khuloud Alouzi, Mowafg Masuwd, and Naser Abdulghani, "Ashab Al-Kahf in the Writings of the Orientalist Johann Wolfgang Von Goethe: A Semantic Study of the Intertextuality With Surah Al-Kahf: أصحاب الكهف في كتابات المستشرق يوهان فولفغانغ فون غوته: دراسة دلالية لألفاظ التناسخ مع سورة الكهف," *Al Karima: Jurnal Studi Ilmu Al-Qur'an dan Tafsir* 8, no. 2 (2024): 119, <https://doi.org/10.58438/alkarima.v8i2.262>

⁹ Mowafg Masuwd, Nahid Ayad, Hajer Albshkar, and Abdunaser Alsaid, "Orientalism and Islam: A Critical Study of the Relationship Between Prophet Muhammad and the Jews as Presented in Chapter Six of

approaches to interpret the Islamic texts.¹⁰ New methodology appeared to shed more light on the the Quran and hadith.¹¹ They form opinions based on detailed research, using multidisciplinary scientific methodology, and utilizing relevant primary sources. Therefore, to criticize or counter their opinions, a scientific approach is needed which is not based on emotions but based on sound methodology and strong arguments.¹²

Orientalists are often categorized into two broad groups: those who adopt a moderate, academically rigorous approach, and those perceived as ideologically rigid and less adherent to scholarly standards. The latter is often seen as adhering rigidly to early Orientalist paradigms and ideology and lacking objectivity in their interpretation of Islamic sources. Some critics classify Schacht as one of those Orientalists who exhibit methodological bias and insufficient adherence to scholarly standards. However, his theories deserve critical examination by Muslim scholars, particularly those who view his conclusions as challenging “disturbed” to foundational aspects of Islamic belief.¹³ In formulating his theories, Schacht employed a historical-critical method, drawing on Arabic manuscripts and engaging in the critical editing of foundational texts in Islamic jurisprudence. Libraries storing ancient manuscripts in cities such as Cairo, Istanbul, Fez, and Tunis became his field of cultivation. These cities influenced Schacht's understanding of Islam and Muslim communities which mostly dominated by Sufi Islam.¹⁴ The Sufi Islam produced a rich understanding of the Quran and hadith which influences these communities.¹⁵ This is clearly represented in literature especially poetry.¹⁶

Montgomery Watt's Book *Muhammad at Medina*,” *Al-Risalah: Jurnal Studi Agama dan Pemikiran Islam* 16, no. 1 (2025): p.246, <https://doi.org/10.34005/alrisalah.v16i1.4494>

¹⁰ Naser Abdulghani, Nahid Ayad, Hajer Albshkar, Abdunlasir Alsayd, and Yousuf Aboujanah, “الإشارات العلمية في قصة أصحاب الكهف: دراسة لتفسير مفاتيح الغيب لفخر الدين الرازي” *Adh Dhiya / Journal of the Quran and Tafseer* 2, no. 1 (2024): 42, <https://doi.org/10.53038/adhy.v2i1.207>

¹¹ Muhammad Syahrani, Mardan Mardan, M. Rusydi Khalid, Aisyah Arsyad, and Mowafg Masuwd, “(تفسير مفاتيح الغيب لفخر الدين الرازي في ضوء التفسير السيميائي (سورة الشرح أنموذجاً): Tafsir Mafatih Al-Gaib Li Fakh Al-Din Al-Razi Fi Dau Al-Tafsir Al-Simyai (Surah Al-Syarah Anmuzajan),” *Diwan: Jurnal Bahasa Dan Sastra Arab* 10, no. 1 (2024): p.77, <https://doi.org/10.24252/diwan.v10i1.47186>.

¹² Ahmad Farih Dzakiy, Abdul Mufid, and Mowafg Masuwd, “A Reading of QS An-Nas Verses 4-5 and the Concept of Original Sin: An Analysis of The Qur'an and the West by Kenneth Cragg,” *Al-Dzikra: Jurnal Studi Ilmu al-Qur'an dan al-Hadits* 18, no. 1 (2024): p.55, <https://doi.org/10.24042/002024182134100>.

¹³ Raihani Salma Amatullah, Mowafg Masuwd, Nabila Aulia Nursalma, Ela Sartika, and Wahyudi. 2024. “The Study of Amtsal Al-Qur'an: Explanation of Hypocritical Verses in QS. Surah Al-Baqarah 17-18”. *Al-Fahmu: Jurnal Ilmu Al-Qur'an Dan Tafsir* 3 (2). <https://doi.org/10.58363/alfahmu.v3i2.221>

¹⁴ Ichwan, Moh. Nor, Mowafg Masuwd, Mokh. Sya'roni, and Naser Ali Abdulghani. “Muhammad Abduh and Sufism: Building Spiritual Consciousness in the Context of Social Change.” *Teosofi: Jurnal Tasawuf Dan Pemikiran Islam* 14, no. 1 (2024). <https://doi.org/10.15642/teosofi.2024.14.1.163-187>

¹⁵ Moh. Nor Ichwan, A. Hasan Asy'ari Ulama'i, Mowafg Abraham Masuwd, and Naser Ali Abdulghani, “Sufism and Quranic Interpretation: Bridging Spirituality, Culture, and Political Discourse in Muslim Societies,” *Ulumuna* 28, no. 2 (2024): p. 655, <https://doi.org/10.20414/ujs.v28i2.1082>

¹⁶ Naima Alzletni, Hajer Albshkar, Nahid Ayad, Abdunlasir Alsayd, and Khuloud Alouzi, “Al-Syi'r Al-Shufi Al-Mu'ashir Dirasah Lughawiyah Dalaliyah Liqasha'id Mukhtarah Li Al-Syaikh Muhammad Al-Mahjub

The study of hadith within the framework of Orientalism has significantly shaped Western perceptions of Islamic legal and theological traditions. Orientalist scholarship, especially in the late nineteenth and early twentieth century's, approached hadith not merely as religious texts, but as historical artifacts subject to the same scrutiny as other ancient documents. This approach, while innovative in its methodological basis, has been criticized for its inherent biases and epistemological assumptions.

Yet, critiques of the Orientalist paradigm have grown increasingly. Muslim scholars and revisionist academics have argued that such approaches suffer from a reductive epistemology and a lack of engagement with the internal logic of hadith sciences (*'ilm al-ḥadīth*). Harald Motzki, for example, challenged the Orientalist skepticism through *isnad-cum-matn* analysis, showing that early *isnad* structures often support the textual authenticity of traditions rather than undermine them.¹⁷ More recent works by Jonathan A.C. Brown and Behnam Sadeghi illustrate a growing trend to balance critical inquiry with methodological fairness. Brown, for example, acknowledges the historical fluidity of hadith transmission but emphasizes the remarkable internal consistency and intellectual infrastructure that Muslim scholars employed to maintain textual integrity.¹⁸ Sadeghi's philological studies underscore the complexity of early Islamic manuscript culture, suggesting that the simplistic binaries of "forged" versus "authentic" are inadequate.¹⁹

In the post-Edward Said era, scholars have increasingly reflected on the ideological underpinnings of Orientalist methods. Said's Orientalism critiqued the power dynamics embedded in knowledge production about the "Orient," arguing that academic discourse often served imperial interests.²⁰ Applied to hadith studies, this critique suggests that early Orientalist conclusions were not merely academic judgments but were shaped by broader political and theological assumptions about Islam's validity and historical coherence.

This study does not seek to portray Schacht as a polemicist against Islam, rather than as a scholar whose controversial theories deserves critical academic engagement and discussion, particularly regarding his contributions to the field of Islamic legal theory. The discussion in this article is more devoted to his two major works, namely, *The Origins of Muhammadan Jurisprudence* and *An Introduction of Islamic Law*.

Hasan Al-Libiy," *International Journal of Da'wah and Islamic Contemporary Issues* 1, no. 1 (2025): p. 38, <https://journal.itqanpreneurs.com/index.php/ijdici/article/view/100>

¹⁷ Herbert Berg, *The Development of Exegesis in Early Islam: The Authenticity of Muslim Literature from the Formative Period* (New York: Routledge, 2013).

¹⁸ Jonathan A.C. Brown, *Hadith: Muhammad's Legacy in the Medieval and Modern World* (New York: Simon and Schuster, 2017).

¹⁹ Behnam Sadeghi and Uwe Bergmann, "The Codex of a Companion of the Prophet and the Qurān of the Prophet," *Arabica* 57, no. 4 (2010).

²⁰ Edward W. Said, *Orientalism* (New York: Pantheon Books, 1978).

RESEARCH METHOD

This study employs a qualitative library research method, which emphasizing examining both primary and secondary written sources. Primary data sources used in this research include the works of Joseph Schacht, namely, *The Origins of Muhammadan Jurisprudence* and *An Introduction to Islamic Law*. These two works are the main sources in understanding Schacht's concepts and approaches to Islamic jurisprudence. Moreover, the study uses secondary sources in the form of studies from scholars who criticize or support Schacht's thinking, such as Wael B. Hallaq and other academics. The data collection technique in this research was carried out through a literature study by reading, reviewing and criticizing various relevant literatures. Moreover, comparative analysis is also used to see how Schacht's thinking interacts with other theories in the field of Islamic law and hadith studies.

RESULTS AND DISCUSSION

A Short Biography of Joseph Schacht

Prof. Dr. Joseph Schacht was born in Silesia, Germany, on March 15, 1902.²¹ His academic career as an Orientalist began with the study of classical philology, theology, and Eastern languages at the University of Breslau and the University of Leipzig. He received his doctorate degree from the University of Breslau in 1923 at the age of 21. Also, in 1925, he was appointed as a lecturer at the University of Freiburg, and in 1929, he was promoted to be a full professor. In 1932, he joined the University of Königsberg. After two years, he left Germany to teach Arabic grammar and Syriac at Fuad I University (now Cairo University) in Cairo, Egypt. This period in Schacht's life is very important especially in meeting Islamic traditions in higher education institutions.²² He remained in Cairo as a professor until 1939.²³

Following the outbreak of World War II, Schacht left Cairo and relocated in England, where he worked for BBC Radio London. Despite his German nationality, he aligned himself with the British during the conflict. After the war, he didn't return to Germany. Instead, he stayed in England and married a British woman. In 1947, Schacht received the British citizenship. Despite his contributions and aid to the British government during the war, he did not receive any formal recognition or rewards. Although, he already holds the title of Professor, Schacht pursued further postgraduate degree at Oxford University, where he earned a master's degree in 1948 and a doctorate in 1952.

In 1954, he left England to accept a professorship at Leiden University in the Netherlands, where he taught until 1959. During his tenure at Leiden, he oversaw the second edition of *Dā'irat al-*

²¹ George F. Hourani, "Joseph Schacht, 1902–69," *JSTOR*, 1970, p.163.

²² Slamet Riyadi, Muhammad Ridha, Mowafg Abraham Masuwd, Naser Ali Abdulghani, and Suhendri, "Integrating Tradition and Modernity in Islamic Higher Education: A Phenomenological Study of the Boarding System," *WARAQAT: Jurnal Ilmu-Ilmu Keislaman* 9, no. 2 (2024): p. 78, <https://doi.org/10.51590/waraqat.v9i2.884>

²³ Ali Mustafa Ya'qub, *Kritik Hadis* (Jakarta: Pustaka Firdaus, 1995), p. 19.

Ma'ārif al-Islāmiyyah (Encyclopedia of Islam). Finally, in the summer of 1959, Schacht joined Columbia University in New York as a professor, a position he held until his death in 1969.²⁴ Although he was an expert in Islamic law, Schacht's writings extended to several related fields. These include studies on Arabic manuscripts, critical editions of Islamic jurisprudential texts (fiqh), kalām (Islamic theology), the history of science, and Islamic philosophy. Some notable examples of his editorial works include *Al-Kashf 'an al-Ḥiyalwa al-Makhārij, Kitāb al-Ḥiyalft al-Fiqh* by AbūḤātim al-Qazwīnī, and *Ikhtilāf al-Fuqahā'* by al-Ṭabarī.

His most influential works are *The Origins of Muhammadan Jurisprudence* (1950) and *An Introduction to Islamic Law* (1960), both of which shaped his reputation in the Islamic studies and law. In these works, he argued that the hadith attributed to the Prophet, especially those concerning Islamic law, were formulated by scholars during the second and third centuries AH.²⁵ Schacht concluded that judicial rulings by early *qadis* required retrospective legitimization. As a result, these rulings were retrospectively attributed to increasingly authoritative figures, first to the *tabi'un*, then to the Companions, and ultimately to the Prophet Muhammad SAW. This retroactive attribution constitutes what Schacht termed the reconstruction of the isnad. As a result, it is very important legal theory which influences the modern understanding of Islamic law.²⁶

Joseph Schacht's Critical Perspective on Hadith Authenticity

Among the most influential Orientalist critics of hadith authenticity was Joseph Schacht, who significantly expanded upon the foundational theories of his predecessor, Ignác Goldziher. Schacht's theories on hadith were largely built upon the pioneering critiques formulated by Goldziher, particularly concerning the retrospective attribution of prophetic traditions. While Goldziher expressed skepticism regarding the authenticity of many hadiths, Schacht advanced this critique by concluding that the majority of legal traditions attributed to the Prophet were fabrications.²⁷ As cited by Ali Mustafa Yaqub, Schacht remarked: "we will not be able to find a single Hadith of the Prophet relating to law, which can be considered as a Sahih Hadith."²⁸

Schacht maintained that while the isnad system may be useful for tracing hadith transmission to scholars of the second Islamic century, the chains extending back to the Prophet and his Companions are largely inauthentic. His argument can be summarized in the following five points:

²⁴ Abdurrahman Badawi, *Mausu'ah Al-Mustasyriqin* (Beirut: Dar al-Ilm al-Malayin, 1993).

²⁵ Muhammad Musthafa Azhami, *Menguji Keaslian Hadis-Hadis Hukum: Sanggahan Atas The Origin of Muhammadan Jurisprudence Joseph Schacht*, trans. Asrori Shodri (Jakarta: Pustaka Firdaus, 2013), p.xvii.

²⁶ Naser Ali Abdulghani and Safa Husayn Alrumayh, "An Islamic Legal Perspective on Contemporary Health Issues: Integrating Traditional and Modern Approaches," *Jurnal Ilmu Psikologi Dan Kesehatan (SIKONTAN)* 3, no. 4 (2025): p.187, <http://dx.doi.org/10.47353/sikontan.v3i4.2785>

²⁷ Muhammad Musthafa Azhami, *Menguji Keaslian Hadis-Hadis Hukum: Sanggahan Atas The Origin of Muhammadan Jurisprudence Joseph Schacht*, trans. Asrori Shodri (Jakarta: Pustaka Firdaus, 2013), p.v.

²⁸ We can find this statement in his book, *The Origins of Muhammadan Jurisprudence*, see Schacht, p. 169. See also Joseph Schacht, *An Introduction to Islamic Law* (New York: Oxford University Press, 1964), p. 34.

1. The isnad system began in the early second century AH (8th century CE), or possibly at the end of the first century AH.
2. Isnads were often constructed retrospectively by jurists seeking to lend doctrinal legitimacy to their views by projecting them onto earlier, authoritative sources.
3. Over time, isnads were incrementally modified and improved, often through fabrication and forgery to appear more complete and authoritative. Earlier, incomplete chains were retroactively supplemented in the classical hadith compilations.
4. In response to criticisms regarding solitary (*aḥad*) transmissions, additional sources were fabricated during the era of al-Shāfi'ī. According to Schacht, so-called "family isnads", transmissions preserved exclusively within particular family lines, are also unreliable, as is the content they convey.
5. The appearance of a prominent legal authority (i.e., a key transmitter) within an isnad typically indicates, in Schacht's view, that the hadith was composed during that individual's lifetime, rather than earlier.²⁹

Schacht, in order to prove his thesis concerning the falsity of certain Prophetic hadith, proposed the following theories:

1. Argument Theory and Silence

Joseph Schacht argues that the best way to prove a tradition does not exist at a certain time is to demonstrate that it was not cited as a legal argument in discussions.³⁰ This theory rests on the assumption that if an early transmitter fails to mention a hadith in a relevant context, while a later transmitter cites it; this implies that the hadith did not exist at the earlier time. As a result, if a hadith initially appears without a complete isnad and later surfaces with one, the isnad is considered to be fabricated. In other words, determining the existence of a hadith depends on whether it was cited as evidence in juristic discourse. If it was not, it is presumed not to have existed at that time.

This theory assumes significance when *qadis*, due to limited access to available hadiths, omit references to them in legal discourse. In later periods, some scholars reported the discovery of such hadiths and employed them as legal proof. However, according to this theory, these hadiths are deemed inauthentic because they were absent from earlier legal discussions where they should have appeared. Ultimately, a hadith's authenticity, under this theory, is established through its citation in early juristic debates. If it had existed, it would necessarily have been referenced.

2. Common Link Theory

²⁹ Azhami, *Menguji Keaslian Hadis-Hadis Hukum*. p 232–33.

³⁰ Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1950), 140.

This theory posits that the individual most responsible for the emergence of a hadith is the central transmitter, referred to as the *common link*, within the chain of transmission (*sanad*). According to Juynboll, the common link is likely to have fabricated the hadith attributed to him.³¹ The central argument is this: if a hadith truly originated with the Prophet Muhammad SAW, why was it transmitted singly during the time of the Companions or the *tabi'un*, and only widely disseminated after the appearance of the common link?

Juynboll interprets this pattern as evidence that the common link fabricated the hadith and retroactively constructed a sanad leading back to the Prophet. Schacht contends that hadiths cannot be reliably traced back to the Prophet through conventional historical methods due to the retrospective construction of their isnads. He bases this view on the hypothesis that the ascription of hadiths to earlier authorities increases over time, resulting in isnads that grow progressively longer the further back they are projected. After analyzing the development of isnads, he concluded that the consistent appearance of a common link in most transmission chains strongly indicates that the hadith originated during that individual's lifetime. Schacht's method involves examining isnad development to identify indications of hadith fabrication. If a particular transmitter, whether anonymous (designated here as N.N.) or known by name, appears as the common link in multiple chains, the hadith may have been fabricated or falsely attributed by that individual or subsequent narrators.

According to Schacht, the latter portion of the isnad, which is closer to the collector, is generally authentic, while the earlier segments may have been constructed retroactively. However, the figure designated as N.N. often serves as the central point from which various isnads diverge, suggesting that additional chains may have been retroactively attached to his name.

3. Projecting Back Theory

This theory posits that the authenticity of hadith can be assessed by tracing the historical development of Islamic legal thought in relation to the emergence of prophetic traditions. Schacht asserts that Islamic law, in its formalized sense, had not yet developed during the time of al-Sha'bī (d. 110 AH). He interprets this to mean that any hadiths pertaining to Islamic legal matters must have been formulated after al-Sha'bī's time.³² Schacht contends that Islamic law only began to take shape following the institutionalization of the office of the *qadis*. Schacht contends that Islamic law only began to take shape following the institutionalization of the office of the *qadis*. He notes that

³¹ G.H.A. Juynboll, *Muslim Tradition: Studies in Chronology, Provenance, and Authorship of Early Ḥadīth* (Cambridge: Cambridge University Press, 1983), p.207.

³² Haidar Altamimi, "The Origin and Development of Islamic Jurisprudence From the Perspective of the German Orientalist Josef Schacht," *Al-Adab Journal*, no. 145 (June 2023): p.30, <https://doi.org/10.31973/aj.v1i145.3864>.

during the caliphate of the Rāshidūn, no formal judicial appointments were made. It was only during the Umayyad period that the office of the *qadis* was formally instituted.

Over time, judicial opinions were attributed not only to near contemporaries but also to earlier figures such as Masrūq. In the pursuit of greater legitimacy, these views were subsequently ascribed to highly authoritative figures such as 'AbdAllāh ibn Mas'ūd. Ultimately, these legal opinions were projected back to the Prophet Muhammad SAW himself. According to Schacht, this process of retroactive ascription constitutes the formation of hadith transmission chains, a phenomenon he terms the "Projecting Back Theory."³³

Joseph Schacht's Thoughts on Islamic Legal Theory

Joseph Schacht, as a prominent Orientalist, created scholarly debate with his two foundational works on Islamic law and hadith among scholars and religious leaders. His arguments were rooted in textual analysis, especially early Islamic legal manuscripts. While his methodological approach was praised for its critical insight, it has also been faced substantial critique, both from Orientalist peers and Muslim scholars.

Schacht's central thesis is that many legal hadiths were retroactively attributed to the Prophet Muhammad in the second and third centuries of Islam to legitimize evolving legal doctrines. His primary question revolves around the anachronism he perceived: how could a vast corpus of hadith be authenticated in later centuries when there was no trace of them in the periods immediately following the Prophet's death? Through analysis of legal doctrine, he suggested that fabricated hadiths had proliferated to support juristic opinions already in circulation.

The Process of Hadith Collection

The collection of hadith, the recorded sayings, actions, and approvals of the Prophet Muhammad, was not an immediate or uniform process. Initially, the preservation of hadith was primarily oral, given the Prophet's discouragement of writing anything besides the Qur'an to prevent conflation. However, with the passage of time and the expansion of the Muslim community, the need for a systematic approach to hadith preservation became evident.

In the early decades following the Prophet's death, companions and their students began to collect and transmit hadith through oral narration, sometimes supported by personal written notes. By the end of the first century Hijri, concerns about fabrication and forgetfulness spurred formal compilation efforts. Notably, Caliph Umar ibn Abd al-Aziz (r. 717–719 CE) is recognized for commissioning the collection of hadiths, tasking scholars such as Abu Bakr ibn Hazm and Az-Zuhri to

³³ Schacht, *The Origins*, p. 31-32.

systematize these efforts. The tafsir of the Quran is connected to hadith during this time.³⁴ Many other sciences emerged after this period that rooted in hadith.³⁵

By the second and third centuries Hijri, the compilation process had become more sophisticated. Scholars established stringent criteria for verifying isnad (chain of narrators) and matn (textual content), leading to the emergence of canonical collections such as those of al-Bukhari and Muslim. The science of hadith criticism ('ilm al-hadith) evolved to authenticate traditions through biographical evaluation and cross-comparison, culminating in a rich and meticulous tradition of textual preservation and become a necessity to be studied.³⁶ Thus, hadith studies are very important for Muslims before and nowadays, especially in relation to their everyday life.³⁷

Critical Responses by Muslim Scholars

Many modern scholars have challenged Schacht's claims. Wael B. Hallaq, in *A History of Islamic Legal Theories*, argues that while Schacht correctly identified some fabricated hadiths, his general conclusion was overreaching.³⁸ Hallaq acknowledges the presence of some spurious traditions but insists that a significant body of hadiths is both authentic and historically reliable. He highlights the development of hadith sciences as a response to the need for legal and theological clarity. Hallaq points to the reign of the Umayyad Caliph Umar II (r. 717–719 CE) as a turning point. Umar II is widely regarded as the first caliph to institutionalize the systematic collection of hadith, especially those concerning fiscal and administrative matters. According to historical records, he reproached his officials for neglecting the Prophet's Sunnah and commissioned Abu Bakr al-Ansari to collect relevant traditions.³⁹ Umar then assigned the task of organizing these materials to the scholar Az-Zuhri, resulting in the distribution of compiled hadiths to provincial authorities. This period marks the beginning of an official acknowledgment of the Sunnah as a foundational source of Islamic law.⁴⁰

³⁴ Majdy Kasheem, Abdulnasir Alsayd, Yousuf Aboujanah, and Naima Salem Alzletni, "Justice in the Governance of Nations and Cultures through the Story of Dhul-Qarnayn: A Comparative Analytical Study from an Islamic Philosophy Perspective: العدل في إدارة الشعوب والثقافات من خلال قصة ذي القرنين: دراسة تحليلية مقارنة من منظور فلسفي إسلامي," *Al Karima: Jurnal Studi Ilmu Al Quran Dan Tafsir* 9, no. 1 (2025): 1, <https://doi.org/10.58438/alkarima.v9i1.311>.

³⁵ Naser Abdulghani, Abdulnasir Alsayd, and Yousuf Aboujanah, "Al-Mu'jizah wa al-Karāmah fi Sūrat al-Kahf 60–82: Dirāsah Taḥlīliyyah Muqāranah min Manzūr Dīnī wa Falsafī li-Qaṣat Mūsā wa al-'Abd al-Ṣāliḥ," *International Journal of Education, Language, and Social Science* 2, no. 2 (2024): 121, <https://doi.org/10.62612/ijelass.v2i2.52>.

³⁶ Nahid Ayad, Mowafg Abraham Masuwd, and Safa Alrumayh, "From Riba to Zakat: An Analytical Study of Islamic Economic Principles and Their Distinction from Conventional Economics," *Bulletin of Islamic Research* 3, no. 4 (2025): 733, <https://doi.org/10.69526/bir.v3i4.358>.

³⁷ Sumaia Almajri, Najah Baroud, Khuloud Mustafa Alouzi, and Amaal Kasheem, *Islamic Psychology: An Integrative Approach to Human Behavior and Mental Well-Being*, *Bulletin of Islamic Research* 3, no. 4 (2025): 687, <https://doi.org/10.69526/bir.v3i4.353>.

³⁸ Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009).

³⁹ Wael B. Hallaq, *Sejarah Teori Hukum Islam: Dari Buku A History of Islamic Legal Theory*, trans. A. Ginanjar Sya'ban (Jakarta: Prenada Media, n.d.), p.21.

⁴⁰ Nabia Abbott, *Studies in Arabic Literary Papyri*, vol. 2 (Chicago: University of Chicago Press, 1957).

Historical Context of Hadith Compilation

The compilation of hadith intensified as legal scholars sought normative sources to address emerging societal issues. In the absence of recorded textual evidence in the first century, jurists often relied on *ra'y* (reasoned opinion) to derive legal rulings. This method, although practical, began to lose prominence with the gradual establishment of textual sources, particularly hadith.⁴¹ During this transition, a distinction emerged between *ahl al-'ilm* (those who derived legal opinions from the Qur'an and Sunnah) and *ahl al-ra'y* (those relying primarily on juristic reasoning). According to Abdullah ibn Shaddad al-Laithy (d. 702 CE), jurists often needed the endorsement of *ahl al-ra'y* to gain public credibility, reflecting the complex dynamics between textual and rational approaches to legal derivation.⁴²

The Function of *Hillah* in Legal Practice

In his work *An Introduction to Islamic Law*, Schacht identifies three core domains of Islamic law: family law (marriage, divorce, and inheritance), contract and bond law, and areas of lesser development such as criminal law, taxation, and constitutional law. He examines examples such as *hillah* (legal stratagems) to demonstrate the tension between normative *sharia* and customary practice. For instance, he cites *bay' al-wafa* (a form of sale used to circumvent prohibitions on usury) and *bay' al-inah* (a sale-repurchase arrangement) as examples of customary practices adapted under the guise of legal formalism.⁴³

Schacht asserts that *hillah* techniques allowed Muslims to navigate restrictive legal frameworks while maintaining formal compliance with *sharia*. These mechanisms, he claims, mirror similar practices in pre-Islamic legal systems, such as Jewish and Roman laws.⁴⁴ In his view, many such innovations originated not from juristic insight but from traders and clients seeking favorable rulings, effectively commissioning *fatwas* that justified their actions.

This characterization led Schacht to a broader conclusion: that Islamic law, in practice, often reflected the creative agency of jurists responding to socio-economic pressures rather than pure fidelity to divine injunctions. However, this conclusion, while provocative, may undervalue the methodological rigor with which early Muslim jurists scrutinized legal sources and developed *usul al-fiqh* (principles of jurisprudence). The Hanafi School, in particular, exhibited significant engagement

⁴¹ Rr. Hesti Setyodyah Lestari, Andia Kusuma Damayanti, and Mowafg Abraham Masuwd, "Optimising Societal Welfare: The Strategic Role of Maqashid Shariah and Maslahah in Contemporary Islamic Economics and Business," *Al-Insyiroh: Jurnal Studi Keislaman* 11, no. 1 (2025): p.20, <https://doi.org/10.35309/alinsyiroh.v11i1.363>.

⁴² Hallaq, *Sejarah Teori Hukum Islam Dari Buku a History of Islamic Legal Theory ...*, p. 22.

⁴³ Schacht, *Pengantar Hukum Islam Yang Diterjemahkan Dari an Introduction of Islamic Law*, p. 113.

⁴⁴ Romadhan, Raid Azhar, Achmad Zakaria, Muhammad Rifki, Mashudi, and Majdy Kasheem, "A Comparative Analysis of Roman-Persian Political and Economic Periods With Contemporary in Islamic Perspective," *Alkasb: Journal of Islamic Economics* 3, no. 2 (2024): 149–74, <https://doi.org/10.59005/alkasb.v3i2.485>.

with *hillah*. Abu Yusuf and Muhammad al-Shaybani authored treatises exploring the permissibility and limitations of legal stratagems. Similarly, al-Khassaf (d. 874 CE) contributed a systematic treatment of *hillah* in his legal writings. Despite Schacht's critique, these efforts demonstrate an evolving legal consciousness deeply concerned with ethical integrity and legal consistency.

Hadith Manuscripts: Evidence and Limitations

The debate over the authenticity of hadith hinges in part on the availability of early manuscripts. While it is true that widespread documentation of hadith only occurred in the second century Hijri, there is evidence suggesting that written records existed earlier. For instance, *as-Sahifah as-Sadiqah*, attributed to Abdullah ibn Amr ibn al-As, is cited in classical sources as an early hadith collection, although the original manuscript has not been recovered.

More promising is the case of *as-Sahifah as-Sahihah*, compiled by Hammam ibn Munabbih (d. ca. 131 H), a student of Abu Hurairah. This document contains 138 hadiths and was rediscovered by Dr. Muhammad Hamidullah in manuscripts housed in Berlin and Damascus. Ibn Hajar confirms that Hammam transmitted approximately 140 hadiths with a single isnad (chain of transmission), enhancing the document's credibility.

However, these early examples, while significant, do not completely overturn Schacht's thesis. He maintained that hadith recording began in earnest only at the end of the first century; a view supported by the absence of extensive hadith corpora from the Prophet's immediate era. The oral-centric culture of the time, combined with the Prophet's caution against writing hadith to avoid confusion with the Qur'an, supports this position. Umar ibn al-Khattab's reported discouragement of excessive hadith narration further complicated the culture of early hadith transmission.

CONCLUSION

Joseph Schacht's thesis on the origins of Islamic law and hadith continues to provoke significant scholarly debate. Utilizing a sociological-historical approach, Schacht analyzed codified legal data, including the Qur'an and early legal manuscripts, to argue that many legal traditions attributed to the Prophet Muhammad SAW were developed in response to the doctrinal and juristic needs of the second and third Islamic centuries. He argued that these traditions were often retroactively projected onto the Prophet in order to legitimize the prevailing legal norms and sectarian positions.

Central to Schacht's argument is the claim that the hadith corpus emerged not from the Prophet's era but as a reaction to the development of legal doctrines, especially as juristic schools began to solidify. He proposed that many hadiths were forged to support or refute sectarian jurisprudence, with fabricated traditions being attributed to the Prophet as a form of legal and ideological authority.

However, subsequent research, particularly by Muslim scholars, has challenged the sweeping nature of Schacht's conclusions. Evidence of early hadith documentation, such as the *Sahifah* of Hammam ibn Munabbih and reports concerning the efforts of Caliph Umar II, suggest that hadith transmission and codification began earlier than Schacht assumed. These findings indicate that hadith were not merely constructed for later legal utility, but were also part of a sincere and methodical attempt to preserve the Prophet's teachings.

Furthermore, the historical evolution of Islamic law reveals a complex interplay between reasoned opinion (*ra'y*), customary practice, and textual sources. Jurists did not adopt hadith indiscriminately but developed rigorous criteria for authenticity and legal relevance. The emergence of *usul al-fiqh* (legal theory) and critical engagement with legal stratagems (*hiyal*) demonstrate the intellectual sophistication of the Islamic legal tradition.

In conclusion, while Schacht's critique introduced a necessary reevaluation of hadith authenticity and legal historiography, it should not be interpreted as a wholesale negation of Islamic legal heritage. His findings must be balanced against historical evidence, manuscript discoveries, and the internal methodological developments within the Islamic tradition itself. Continued scholarly inquiry, especially into unexamined hadith manuscripts and legal documents, holds the potential to further illuminate the early development of Islamic law and correct reductive or anachronistic readings of its origins.

BIBLIOGRAPHY

- Abbott, Nabia. *Studies in Arabic Literary Papyri*. Vol. 2. Chicago: University of Chicago Press, 1957.
- Abdulghani, Naser Ali, and Safa Husayn Alrumayh. "An Islamic Legal Perspective on Contemporary Health Issues: Integrating Traditional and Modern Approaches." *Jurnal Ilmu Psikologi Dan Kesehatan (SIKONTAN)* 3, no. 4 (2025). <http://dx.doi.org/10.47353/sikontan.v3i4.2785>
- Abdulghani, Naser, Abdulnasir Alsayd, and Yousuf Aboujanah. "المعجزة والكرامة في سورة الكهف 60-82: دراسة تحليلية مقارنة من منظور ديني وفلسفي لقصة موسى والعبد الصالح." *International Journal of Education, Language, and Social Science* 2, no. 2 (2024). <https://doi.org/10.62612/ijelass.v2i2.52>.
- Abdulghani, Naser, Nahid Ayad, Hajer Albshkar, Abdulnasir Alsayd, and Yousuf Aboujanah. "الإشارات العلمية في قصة أصحاب الكهف: دراسة لتفسير مفاتيح الغيب لفخر الدين الرازي في *Tafsir Mafāṭīḥ Al-Ghayb*." *Adh Dhiya | Journal of the Quran and Tafseer* 2, no. 1 (2024). <https://doi.org/10.53038/adhy.v2i1.207>
- Adnan M. Wizan, *Akar Gerakan Orientalisme* (Yogyakarta: Fajar Pustaka Baru, 2003), 48.
- Albshkar, Hajer, Nahid Ayad, Khuloud Alouzi, Mowafg Masuwd, and Naser Abdulghani. "أصحاب الكهف في كتابات المستشرق يوهان فولفغانغ فون غوته: دراسة دلالية لألفاظ التناسخ مع سورة الكهف." *Al Karima: Jurnal Studi Ilmu Al-Qur'an dan Tafsir* 8, no. 2 (2024). <https://doi.org/10.58438/alkarima.v8i2.262>

- Almajri, Sumaia, Najah Baroud, Khuloud Mustafa Alouzi, and Amaal Kasheem. *Islamic Psychology: An Integrative Approach to Human Behavior and Mental Well-Being*. *Bulletin of Islamic Research* 3, no. 4 (2025). <https://doi.org/10.69526/bir.v3i4.353>
- Altamimi, Haidar. "The Origin and Development of Islamic Jurisprudence From the Perspective of the German Orientalist Josef Schacht." *Al-Adab Journal*, no. 145 (June 2023). <https://doi.org/10.31973/aj.v1i145.3864>
- Alzletni, Naima, Hajer Albshkar, Nahid Ayad, Abdulnasir Alsayd, and Khuloud Alouzi. "Al-Syi'r Al-Shufi Al-Mu'ashir Dirasah Lughawiyah Dalaliyah Liqasha'id Mukhtarah Li Al-Syaikh Muhammad Al-Mahjub Hasan Al-Libiy." *International Journal of Da'wah and Islamic Contemporary Issues* 1, no. 1 (2025). <https://journal.itqanpreneurs.com/index.php/ijdici/article/view/100>
- Ayad, Nahid, Mowafg Abraham Masuwd, and Safa Alrumayh. "From Riba to Zakat: An Analytical Study of Islamic Economic Principles and Their Distinction from Conventional Economics." *Bulletin of Islamic Research* 3, no. 4 (2025). <https://doi.org/10.69526/bir.v3i4.358>
- Azhami, Muhammad Musthafa. *Menguji Keaslian Hadis-Hadis Hukum: Sanggahan Atas The Origin of Muhammadan Jurisprudence Joseph Schacht*. Translated by Asrori Shodri. Jakarta: Pustaka Firdaus, 2013.
- Azhami, Muhammad Musthafa. *Menguji Keaslian Hadis-Hadis Hukum: Sanggahan Atas The Origin of Muhammadan Jurisprudence Joseph Schacht*. Translated by Asrori Shodri. Jakarta: Pustaka Firdaus, 2013.
- Badawi, Abdurrahman. *Mausu'ah Al-Mustasyriqin*. Beirut: Dar al-Ilm al-Malayin, 1993.
- Berg, Herbert. *The Development of Exegesis in Early Islam: The Authenticity of Muslim Literature from the Formative Period*. New York: Routledge, 2013.
- Brown, Jonathan A.C. *Hadith: Muhammad's Legacy in the Medieval and Modern World*. New York: Simon and Schuster, 2017.
- Clifford, James. *The Predicament of Culture: Twentieth-Century Ethnography, Literature, and Art*. Cambridge, MA: Harvard University Press, 1988.
- Dzakiy, Ahmad Farih, Abdul Mufid, and Mowafg Masuwd. "A Reading of QS An-Nas Verses 4-5 and the Concept of Original Sin: An Analysis of The Qur'an and the West by Kenneth Cragg." *Al-Dzikra: Jurnal Studi Ilmu al-Qur'an dan al-Hadits* 18, no. 1 (2024). <https://doi.org/10.24042/002024182134100>
- Hallaq, Wael B. *An Introduction to Islamic Law*. Cambridge: Cambridge University Press, 2009.
- Hallaq, Wael B. *Sejarah Teori Hukum Islam: Dari Buku A History of Islamic Legal Theory*. Translated by A. Ginanjar Sya'ban. Jakarta: Prenada Media, n.d.
- Hourani, George F. "Joseph Schacht, 1902–69." *JSTOR*, 1970.
- Ichwan, Moh. Nor, A. Hasan Asy'ari Ulama'i, Mowafg Abraham Masuwd, and Naser Ali Abdulghani. "Sufism and Quranic Interpretation: Bridging Spirituality, Culture, and Political Discourse in Muslim Societies." *Ulumuna* 28, no. 2 (2024). <https://doi.org/10.20414/uji.v28i2.1082>
- Ichwan, Moh. Nor, Mowafg Masuwd, Mokh. Sya'roni, and Naser Ali Abdulghani. "Muhammad Abduh and Sufism: Building Spiritual Consciousness in the Context of Social Change." *Teosofi: Jurnal Tasawuf Dan Pemikiran Islam* 14, no. 1 (2024). <https://doi.org/10.15642/teosofi.2024.14.1.163-187>
- Lestari, Rr. Hesti Setyodyah, Andia Kusuma Damayanti, and Mowafg Abraham Masuwd. "Optimising Societal Welfare: The Strategic Role of Maqashid Shariah and Maslahah in Contemporary

- Islamic Economics and Business.” *Al-Insyiroh: Jurnal Studi Keislaman* 11, no. 1 (2025). <https://doi.org/10.35309/alinsyiroh.v11i1.363>
- Lewis, Bernard. “The Question of Orientalism.” In *Islam and the West*, 99–121. Oxford: Oxford University Press, 1993.
- Ma’arif, A. Syafi’i. *Peta Bumi Intelektualisme Islam di Indonesia*. Bandung: Mizan, 1994.
- Majdy Kasheem, Abdunansir Alsayd, Yousuf Aboujanah, and Naima Salem Alzletni, “Justice in the Governance of Nations and Cultures through the Story of Dhul-Qarnayn: A Comparative Analytical Study from an Islamic Philosophy Perspective: العدل في إدارة الشعوب والثقافات من خلال قصة ذي القرنين: دراسة تحليلية مقارنة من منظور فلسفي إسلامي” *Al Karima: Jurnal Studi Ilmu Al Quran Dan Tafsir* 9, no. 1 (2025), <https://doi.org/10.58438/alkarima.v9i1.311>
- Masuwd, Mowafg, Nahid Ayad, Hajer Albshkar, and Abdunaser Alsayd. “Orientalism and Islam: A Critical Study of the Relationship Between Prophet Muhammad and the Jews as Presented in Chapter Six of Montgomery Watt’s Book *Muhammad at Medina*.” *Al-Risalah: Jurnal Studi Agama dan Pemikiran Islam* 16, no. 1 (2025). <https://doi.org/10.34005/alrisalah.v16i1.4494>
- Nanji, Azim. *Peta Studi Islam (Orientalisme dan Arah Baru Kajian Islam di Barat)*. Yogyakarta: Fajar Pustaka Baru, 2003.
- Raihani Salma Amatullah, Mowafg Masuwd, Nabila Aulia Nursalma, Ela Sartika, and Wahyudi. “The Study of Amsal Al-Qur’an: Explanation of Hypocritical Verses in QS. Surah Al-Baqarah 17-18.” *Al-Fahmu: Jurnal Ilmu Al-Qur’an Dan Tafsir* 3, no. 2 (2024). <https://doi.org/10.58363/alfahmu.v3i2.221>
- Riyadi, Slamet, Muhammad Ridha, Mowafg Abraham Masuwd, Naser Ali Abdulghani, and Suhendri. “Integrating Tradition and Modernity in Islamic Higher Education: A Phenomenological Study of the Boarding System.” *WARAQAT: Jurnal Ilmu-Ilmu Keislaman* 9, no. 2 (2024). <https://doi.org/10.51590/waraqat.v9i2.884>
- Romadhan, Raid Azhar, Achmad Zakaria, Muhammad Rifki, Mashudi, and Majdy Kasheem. “A Comparative Analysis of Roman-Persian Political and Economic Periods With Contemporary in Islamic Perspective.” *Alkasb: Journal of Islamic Economics* 3, no. 2 (2024). <https://doi.org/10.59005/alkasb.v3i2.485>
- Sadeghi, Behnam, and Uwe Bergmann. "The Codex of a Companion of the Prophet and the Qurān of the Prophet." *Arabica* 57, no. 4 (2010).
- Said, Edward W. *Orientalism*. New York: Pantheon Books, 1978.
- Schacht, Joseph. *An Introduction to Islamic Law*. New York: Oxford University Press, 1964.
- Schacht, Joseph. *Pengantar Hukum Islam yang Diterjemahkan dari An Introduction of Islamic Law*. Translated by Joko Supomo. Jogjakarta: Imperium, 2012.
- Schacht, Joseph. *The Origins of Muhammadan Jurisprudence*. Oxford: Clarendon Press, 1950.
- Syahrani, Muhammad, Mardan Mardan, M. Rusydi Khalid, Aisyah Arsyad, and Mowafg Masuwd. “(تفسير مفاتيح الغيب لفخر الدين الرازي في ضوء التفسير السيميائي (سورة الشرح أنموذجاً): Tafsir Mafatih Al-Gaib Li Fakh Al-Din Al-Razi Fi Dau Al-Tafsir Al-Simyai (Surah Al-Syahr Anmuzajan).” *Diwan: Jurnal Bahasa Dan Sastra Arab* 10, no. 1 (2024): 77–99. <https://doi.org/10.24252/diwan.v10i1.47186>
- Watt, William Montgomery. *Fundamentalism dan Modernitas dalam Islam*. Bandung: Pustaka Setia, 2003.
- Ya'qub, Ali Mustafa. *Kritik Hadis*. Jakarta: Pustaka Firdaus, 1995.