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IN MEMORIAM

Baber Johansen (1936–2026)

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Born in Berlin in 1936, Baber Johansen received his PhD in Islamic studies from the Freie Universität Berlin in 1965, also having studied Arabic literature at Cairo University (1961–62). He received the habilitation in research and teaching in the philosophy department at the Freie Universität in February 1972, and was appointed professor there. Johansen taught in Berlin until 1995, when he moved to Paris to become *directeur d'études* at the École des Hautes Études en Sciences Sociales (Centre d'étude des normes juridiques). In 2005, he was appointed professor of Islamic religious studies at Harvard University Divinity School, and in 2020 became research professor of Islamic studies emeritus, then in 2025 professor of Islamic studies emeritus. At Harvard, Johansen contributed to and shaped Islamic studies well beyond the Harvard Divinity School; in 2006 he was appointed an affiliated professor at Harvard Law School and acting director of its Islamic legal studies program (2006–10). In 2007 he became affiliated with the Department of Near Eastern Languages and Civilizations in the Faculty of Arts and Sciences, and from 2010 to 2013 he directed Harvard's Center for Middle Eastern Studies. Johansen also visited varied other research and teaching institutions over his career. For example, he was twice a member of the Institute for Advanced Study at Princeton (1993–94, 2002–3). He was a visiting professor at Ca Foscari University in Venice in 1996 and gave the H.A.R. Gibb Lecture Series at Harvard in 1998. He served as one of the three executive editors of the journal *Islamic Law and Society* from 1994 to 2011 and as editor and adviser for the *Encyclopedia of Law and Society* (Sage, 2007).

Baber Johansen was a formidable scholar of Islamic law. A superb Arabist, he was steeped in the rigorous study of Arabic textual sources while also using methodologies inspired by the social sciences. His dissertation, *Muhammad Husain Haikal; Europa und der Orient im Weltbild eines ägyptishen Liberalen* (Muhammad Husain Haikal: Europe and the Orient in the Worldview of an Egyptian Liberal), published in 1967 (and translated into Arabic in 2010), did not tackle legal issues, however. It explored what Johansen saw as the irreconcilable

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tensions between Haikal's attraction to Western liberalism and his commitment to Islam, treating the vexing problems of Middle Eastern liberals' fluctuations between these two poles. This shows that Johansen did not begin his academic career with a primary focus on the study of Islamic law, but rather with the study of the relationship between Islam and the state, broad issues of Islamic interpretation, and Islamic institutions—all topics in which he continued to show interest throughout his long career.[1]

Baber Johansen deeply shaped the field of Islamic law by studying it as a textual corpus as much as an institution, ranging in focus from the ninth century to the contemporary period, and from the Maghrib to the Mashriq, and beyond. Two of his books in particular have influenced generations of scholars of law and Islam: *The Islamic Law on Land Tax and Rent: The Peasants' Loss of Property Rights As Interpreted in the Hanafite Legal Literature of the Mamluk and Ottoman Periods* (reprint by Routledge, 2017 [Croom Helm, 1988]) and *Contingency in a Sacred Law: Legal and Ethical Norms in the Muslim Fiqh* (Brill, 1999), a collection of fifteen of his masterly articles with a new introduction entitled "The Muslim *Fiqh* as a Sacred Law: Religion, Law and Ethics in a Normative System."

Johansen's work had a strong focus on Hanafi law, and he wrote in *Contingency in a Sacred Law* that he tried "to follow the attempt of the Hanafite *fuqahā'* to mark off a legal from a religious and ethical sphere and to show that this attempt is linked to the perspectives of urban life and the historical development of the Muslim cities."[2] This differentiation helped "justify the adaptation of the legal norm to social and political practices."[3] In this way he showed that Islamic law was not an unchanging set of norms, conceiving of it instead as a social construct through which one could interpret social, economic, and political realities (such as the difference between town and countryside) and historical change (as, for instance, in the peasants' "loss of property rights").[4] In *Islamic Law on Land Tax and Rent*, he argued in favor of expanding the sources we use to study Islamic law: *mutūn* (texts), *shurūḥ* (commentaries), and *fatāwā* (legal opinions), which he compared with qadi (judge) registers.[5] His conception of Islamic law was that

[1] See Baber Johansen, "The All-Embracing Town and Its Mosques: al-Misr al-Gâmi," *Revue de l'Occident musulman et de la Méditerranée* (1981); Baber Johansen, *Islam und Staat: abhängige Entwicklung, Verwaltung des Elends und religiöser Antiimperialismus* (Berlin: Argument Verlag, 1982); Baber Johansen, "The Servants of the Mosque," *Maghreb Review* 7, no. 1 (1982), 23; Baber Johansen, "Des Institutions Religieuses du Maghreb," *Arabica* 35, no. 3 (1988), 221–52.

[2] Baber Johansen, *Contingency in a Sacred Law: Legal and Ethical Norms in the Muslim Fiqh* (Brill, 1999), 71.

[3] Ibid., 72.

[4] See "The All-Embracing Town and Its Mosques" in ibid., 77–106; and B. Johansen, *The Islamic Law on Land Tax and Rent: The Peasants' Loss of Property Rights As Interpreted in the Hanafite Legal Literature of the Mamluk and Ottoman Periods* (reprint by Routledge, 2017 [Croom Helm, 1988]). See also Baber Johansen, "Eigentum, Familie und Obrigkeit im Hanafitischen Strafrecht," *Die Welt des Islams* 19, no. 1–4 (1979): 1–73, in which we can see his attention to legal change. For example, "At the same time, it is to be demonstrated that the literature of legal commentators by no means consists, in all areas, exclusively of an endless repetition of preexisting legal positions; rather, that changes in the judicial system, albeit with considerable delay and in a highly abstract form, ultimately find expression in legal literature as well."

[5] See also "Legal Literature and the Problem of Change: The Case of the Land Rent," in Johansen, *Contingency in a Sacred Law*, 446–64.

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of a living, changing institution that helps us understand "one of the ways in which Near Eastern society reconciled its awareness of change with its preservation of a normative tradition."[6] For him, with study of Islamic law came a deep interest in the socioeconomic issues of land, property, and contracts.

For Johansen, no period or topic seemed out of reach, and he believed that studying the past could be relevant for the present (in policy matters as well as academic research). He had, for a legal scholar, a rare anthropological interest in the family, the body, sexuality, the secular, the religious, and even social classes (as seen, for example, in his article "Droit et justice dans l'État islamique: 'Paysans, ouvriers et fuqahâ'").[7] Of particular note also are his explorations of Islamic institutional life (legal or otherwise) in the Mashriq and beyond, as in the case of Algeria in "The Servants of the Mosques."[8] The state also was among his objects of study, as in his 1986 article "Staat, Recht und Religion im sunnitischen Islam. Können Muslime einen religionsneutralen Staat akzeptieren?"[9] Starting with the contemporary question of Muslims in Germany and whether they could be officially recognized as a corporation under public law on par with Christian and Jewish communities, he dealt with the reciprocal issue of whether there existed resources in Islam for Muslims to recognize a religiously neutral state as a worldly authority. Referring to Hanafi law, theories of the caliphate, Ibn Taymiya's conception of the state, and the reformist movements of the eighteenth-, nineteenth-, and twentieth-century Middle East, he concluded that, although certain forms of Islam could not be reconciled with the constitution of the Federal Republic of Germany, it could be legally possible for Muslims in a minority situation to accept a break in the unity of religion and state. He therefore proposed that recognition of Muslim groups in Germany should proceed case by case.

He had remarkable range: he could move from the study of the *salam* contract under the Abbasids in the eleventh and twelfth centuries to the detailed study of the decisions of the Supreme Constitutional Court of Egypt in the twentieth century.[10] In this regard, Johansen was particularly influenced by the multidisciplinary approach of Fritz Steppat (1923–2006), a German scholar of Islamic studies and professor at the Freie Universität Berlin from 1969 to 1988, who focused on Islamic history as well as the study of contemporary Arab ideological trends.[11]

[6] Johansen, *Islamic Law on Land Tax and Rent*, 125.

[7] Johansen, *Contingency in a Sacred Law*, 465–76.

[8] Ibid., 107–28.

[9] Ibid., 263–348. See also his 1981 article, "Secular and Religious Elements in Hanafite Law: Functions and Limits of the Absolute Character of Government Authority," in ibid., 189–218.

[10] Baber Johansen, "Le contrat salam. Droit et formation du capital dans l'Empire abbasside (XIe–XIIe siècle)." *Annales: Histoire, Sciences Sociales* 61, no. 4 (2006), 863–99; Baber Johansen, "The Constitution and the Principles of Islamic Normativity Against the Rules of Fiqh: A Judgment of the Supreme Constitutional Court of Egypt," in *Dispensing Justice in Islam: Qadis and Their Judgements*, ed. Muhammad Khalid Masud, Rudolph Peters, and David Powers (Brill, 2006).

[11] See the festschrift for Fritz Steppat that Johansen co-edited: Axel Havemann and Baber Johansen, eds., *Gegenwart als Geschichte: Islamwissenschaftliche Studien. Fritz Steppat zum fünfundsechzigsten Geburtstag* (Brill, 1988); also *Die Welt des Islams* 28.

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Baber Johansen's teaching at Harvard was a pole of attraction for graduate students in the Harvard Divinity School, the Faculty of Arts and Sciences, and the Harvard Law School, whether they were interested in legal history or Islam more broadly. His seminars had the reputation of being dense, detailed, and based in the deep reading of primary sources in Arabic (which he also frequently translated at length for the non-Arabists in some of his classes), and students invariably described them as both demanding and highly rewarding.

Baber Johansen's wife, Maria Pia Di Bella, a wide-ranging anthropologist in her own right and a senior research scholar at the *École des Hautes Études en Sciences Sociales* in Paris, died a few weeks after he did. She was ever his constant companion, and their colleagues at Harvard will always remember sharing their company on many occasions, typically marked by both good food and profound intellectual interchange.

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