

THE INFLUENCE OF THE OTTOMAN STATE ON ISLAMIC LAW*

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ABSTRACT

The last two periods in the history of Islamic law are The Period of Taqlid (Imitation) and The Period of Codification and New Ijtihad (jurisprudence). These periods correspond to the Ottoman State's period. According to the chronological period, Ottoman law has a dual distinction: the classical period and the post-Tanzimat period.

During the taqlid period, which coincided with the classical period of the Ottoman State, many Fiqh books, annotations (haşiye), commentaries (şerh) and fatwa books were published. However, in the period the line of law created by the previous period was not exceeded. The Ottoman State placed emphasis on Shaykh al-Islam, applied "official (madhab) sect" and encouraged the formation of sultan law.

The period of codification and new ijthad coincides with the post-Tanzimat period of the Ottoman State. In this period when both domestic and western laws emerged and the official sect understanding was not carried out for all laws and modern-style laws were enacted. Distinct perspectives were discussed in the field of law, while some thinkers considered it necessary to codify western law/norms through the reception method; other lawyers have argued the codification of domestic legal rules. As a result, both views were reflected in practice, and this reflection created a dual legal system which caused some serious problems.

The Ottoman state has a very significant place in the development of Islamic Law. The laws it enacted were implemented in other countries even after it collapsed, and the laws it prepared set an example for other Islamic states even today.

Keywords: Ottoman law, Islamic Law, period of taqlid, period of codification and new jurisprudence, history of Islamic Law.

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OSMANLI DEVLETİ'NİN İSLAM HUKUKUNA TESİRİ

ÖZET

İslam Hukuk Tarihinin son iki evresi, Taklit dönemi ve Kanunlaştırma ve yeni içtihat dönemidir. Bu iki dönem, Osmanlı Devleti dönemine tekabül etmektedir. Tarihi gelişim açısından bakıldığında, Osmanlı Devleti, klasik dönem ve Tanzimat dönemlerine ayrılmaktadır.

Osmanlı Devleti'nin klasik dönemine tekabül eden taklit döneminde, birçok fıkıh kitabı, şerhler, metinler ve fetva kitapları çıkmıştır. Ancak bu dönemde bir önceki dönemin temel felsefesi içerisinde kalınmıştır. Osmanlı Devleti bu dönemde şeyhülislamı ayrı önem vermiş, resmi mezhep anlayışına sahip olmuş ve örfi hukukun gelişimine katkı sağlamıştır.

Osmanlı Devleti'nin Tanzimat sonrası dönemi, Kanunlaştırma ve yeni içtihat döneminin başlangıcıdır. Bu dönemde hem yerli hem batılı kanunlar uygulanmış, resmi mezhep anlayışı bazı hukuk branşlarında terk edilmiş ve modern tarzda hazırlanmış kanunlar yürürlüğe girmiştir. Hukukun birçok alanında farklı bakış açıları dile getirilmiştir. Birtakım hukukçular, yerli hukuka bağlı kanun yapımını savunmuş iken, diğerleri batı kanunlarının getirilmesini ifade etmişlerdir. Nihayetinde her iki anlayış da kabul görmüş, ancak bu durum ülkede ikili hukuk sisteminin doğmasına neden olmuştur.

Osmanlı devleti, İslam hukukunun gelişmesinde mühim bir konuma sahiptir. Onun zamanında çıkmış olan hukuk kuralları, devlet yıkıldıktan sonra dahi başkaca ülkelerde uygulanmış, hatta günümüzde dahi Osmanlı hukuk kuralları, yeni oluşturulacak hukuk kuralları için örnek teşkil etmektedir.

Anahtar Kelimeler: Osmanlı Hukuku, İslam Hukuku, Taklit/İstikrar dönemi, yeni içtihat ve kanunlaştırma dönemi, İslam Hukuk Tarihi.

INTRODUCTION

Islam is defined in doctrine as follows: It is the life system sent by Allah through the Prophet Muhammad (S.A.W), which includes the aspects of human life's creed, ideas, morals and deeds¹. So, Islam did not bring only principles related to belief and worship. It also laid out the principles that explain how interpersonal relations should be. Therefore, it can be stated that Islam has the rules of social order which is named Fiqh (Islamic Law)². Just as Islamic law has its own characteristics³, its development is also unique to itself.

Islamic law, which has its own characteristics, was not formed as a whole, but was born, developed and had its own characteristics in time. This law was born in the time of the Prophet, completed the preparation stage in the time of the Sahabah (Companions) and the Tabi'un, started to be systematized during the time of mujtahids imams, and became perfect as a system during the time of the madhab. Then the period of taqlid came into force. The next period is the period of codification⁴. So, the history of Islamic law is divided into 6 periods in chronological terms. These are 1. The Period of the Prophet 2. The Period of the Four Caliphs and the Companions (Sahabah) 3. The Period of the Tabi'un

¹ **Karaman, Hayrettin** (2013) Mukayeseli İslam Hukuku I, 8. Edition, İstanbul, İz, p. 26.

² For a comment on the relationship between the concepts of "Fiqh" and "Islamic law", see **Yıldız, Kemal/ Yıldırım, İlyas/ Demir, Oğuzhan** (2014) "Türkçe Telif Edilen Fıkıh İlmi/İslam Hukuku Tarihi Çalışmaları", Türkiye Araştırmaları Literatür Dergisi, V: 12, I:24, p. 131.

³ The main features that make Islamic law special are as follows: the basis of this law is religion. Its basic references are the Quran and the Prophet Muhammad (S.A.W). Some rules/laws cannot be changed. However, Islamic law is open to development. Sanctions in this law are both worldly and otherworldly. Islamic law has come into existence by individual ijthad/jurisprudence. This law has been born and developed with the casuistic method; **Cin, Halil / Akyılmaz, Gül** (2013) Türk Hukuk Tarihi, 5th Edition, Konya, Sayram, p. 49, 50; **Karaman**, p. 48, 49; **Ekinci, Ekrem Buğra** (2003) İslâm Hukuku ve Önceki Şeriatlar, İstanbul, Arı Sanat, p. 11.

⁴ **Demir Abdullah** (2019) Mufassal Türk Hukuk Tarihi, Ankara Astana, p. 101.

4. The Formation of the Sects (madhhabs) 5. The Period of Imitation (taqlid)⁵
6. The Period of Codification and New Ijtihad.

Each period has its own peculiarities. The important periods for this study are the last two periods. Because the last two periods are the period when the Ottoman State was alive. Also in these periods, Islam was identified with the Ottoman State. Moreover, we think that the last period is the one we are still in it⁶.

Many thoughts have been expressed about the Turks' conversation into Islam⁷ and its contribution and -if any- harms⁸ to this religion. However, the most intense bond/relationship between Islam and Turks was in the Ottoman Period. Because, in this period, although stated to the contrary⁹, the caliphate passed to the Ottoman State and the advocacy and spread of Islam was

⁵ In the doctrine, some views prefer the concept of "madhhab-centered period" instead of the concept of "taqlid period", for detail see **Apaydın, Hacı Hüseyin** (2010) *İslâm Hukukuna Giriş*, 3rd Edition, Eskişehir, Anadolu Üniversitesi, p. 40.

⁶ In current age, many countries carry out the provisions of Islamic law. In many state constitutions, it is written that the state is an Islamic state and Islamic law is applied in it. As an example, the constitution of Malaysia article 3 declares that "Islam is the religion of the Federation", for detail please see **Hamzah, Wan Arfan** (2009) *A first Look At the Malaysian Legal System*, Selangor, Oxford Fajar, p. 163. İnan, Saudi Arabia are other examples for Islamic states. Therefore, Islamic law is alive when viewed from the point of these Islamic states. So, there are in the last period of the history of Islamic law.

⁷ For detail information see **Biçer, Bekir** (2007) *Türklerin İslamlaşma Süreci*, Ankara, Akçağ, p. 11 and more pages.

⁸ As it is known, caliphate was abolished by Turkey Grand Nation Parliament in 1924. Abolition of the Caliphate can be argued in different ways. Please see. **Livoğlu Mengüç, Hilal** (2019) "The Egyptian Response to the Abolition of the Caliphate: A Press Survey", *Cumhuriyet Tarihi Araştırmaları Dergisi*, I: 30, Year 15, p. 110 and more pages; **Guida, Michelangelo** (2008) "Seyyid Bey and the Abolition of the Caliphate", *Middle Eastern Studies*, V:44, I:2, p. 275 and more pages. However, it should not be forgotten that the caliphate is not an institution mentioned in the main sources of Islamic law and that this institution has a secular character.

⁹ Some thinkers stated that the Caliphate did not pass to the Ottoman state. According to them, Ottomans were not from Quraysh, the Prophet's (S.A.W) clan, or even Arab. Please see **El Mouden, Abderrahmane** (1995) "The Idea of the Caliphate between Moroccans and Ottomans: Political and Symbolic Stakes in the 16th and 17th Century-Maghrib", *Studia Islamica*, I: 82, p. 103 and more pages.

made/provided by the Ottoman State. Also, it was the representative of Sunni Islam.

The Ottoman state contribute to Islam not only in terms of economic, political and social aspects, but also this state influenced Islamic law. In this study, the role of the Ottoman state in the history of Islamic law is examined. How did the Ottoman State affect Islamic law? What are the features that distinguish the Ottoman state from other Islamic states in the field of law? What did the Ottoman state leave as a legacy to Islamic law? The study seeks answers to these questions.

As a rule, the study is based on the studies of Turkish literature. As a matter of fact, these sources are first-hand sources. Archival documents and foreign studies are also used when appropriate.

I. TAQLID (IMITATION) PERIOD

As it is known, The Ottoman State includes the period of taqlid and the period of Codification and New Jurisprudence (Ijtihad). Today, it should be said that we are still in the last period. For this reason, it is useful to remember the basic information about the 5th and 6th periods of Islamic law history. Later on, we will give information about the Ottoman practice in these periods.

The period is between the middle of Hijri 4th to the end of 13th century which coincides with the beginning of the codification movements in the Ottoman period from the middle of the Abbasid state period¹⁰. The period was called the period of imitation (taqlid) and/or stability (istikrar). The distinctive feature of the legal activities in this period was not to produce new solutions to legal problems with ijtihad¹¹ (jurisprudence) and to develop the law, but to

¹⁰ Demir, p. 115; Cin/Akyılmaz, p. 77.

¹¹ Ijtihad is the creation of new legal provisions by jurists (mujtahid) who have enough knowledge of Islamic law to make ijtihad when there is no provision regarding the solution of a legal issue in the Qur'an and Sunnah; Cin/ Akyılmaz, p. 50; Weiss, Bernard (1978) "Interpretation in Islamic Law: The Theory of Ijtihad", The American Journal of Comparative Law, V: 26, I:2, p. 200.

expand the interpretations of the Fiqh madhabs that emerged in the previous period and make them more understandable.

In the period of imitation (taqlid), the studies of Islamic jurists were entirely within the boundaries drawn by the four legal sects (madhhab). In this time, the mujtahid mutlaq “absolute” did not educated, or even if educated, he did not attempt to establish a new sect (madhhab). For this reason, mujtahids in this period remained within the existing sects (madhhab) and engaged in ijihad activities. That is why, this period is called the period of “taqlid” or “stability”¹². This situation brought up the debate whether “the door of ijihad was closed”¹³ in the aforementioned period. And ijihad that “the door of ijihad is closed” has become widespread¹⁴ in the period.

It should be stated that this period is the period in which Islamic law has evolved¹⁵. Important works on Islamic legal methodology, usul al fiqh¹⁶ were written in this period¹⁷. Islamic lawyers wrote doctrinal studies in accordance with the rules and principles that the sect (madhhab) imams had preached. Thus, in this time, valuable legal corpus emerged.

In the 5th period of Islamic law history, studies on Islamic law have emerged in the form of Text (metin), commentary (şerh), annotation (haşiye) and fatwa books. These books examined the views of the madhhab down to

¹² Demir, p.115.

¹³ Ansay, Sabri Şakir (2002) Hukuk Tarihinde İslâm Hukuku, 4th Edition, Ankara, Turhan, p. 29.

¹⁴ Hallaq, Wael B. (1984) “Was the Gate of Ijtihad Closed?”, International Journal of Middle East Studies, V: 16, I:1, p. 31; Demir, p. 115.

¹⁵ Kızılkaya, Necmettin (2006) “Hanefî Furû-ı Fıkıh Eserlerinde Fıkıhî Kâidelerin Uygulama Alanına Bir Örnek Olarak Bedâi’u’s-sanâi”, İslam Hukuku Araştırmaları Dergisi, I: 8, p. 88.

¹⁶ Usul al-fiqh means a body of principles by which the mujtahid is able to develop the rules from the specific Islamic evidences; Remali Yusoff, Nor’zurah Md. Kamdari (2017) “Understanding Usul Al-Fiqh and Its Application Analysis for Sukuk, Muktamar Waqf Iqlimi, V: IV p. 149; Şa’bân, Zekiyyüddîn (2000) İslâm Hukuk İlminin Esasları, Ankara, Türkiye Diyanet Vakfı, p. 27.

¹⁷ Demir, p. 115; Kılınç, Ahmet, “İslam Hukuk Tarihi Açısından Osmanlı Devleti’nin Önemi”: İbrahim, Abdülazim (Editor), 1. Uluslararası Irak’ta Osmanlı İzleri Sempozyumu Özet Bildiri Kitabı, 15-16 November 2021, Karabük.

the last detail¹⁸. Commentaries (Şerh) are studies written on concise texts that have become famous in a field of science, in which closed expressions are explained, missing points are completed, mistakes are pointed out and examples are reproduced¹⁹. The activity of writing a Fiqh book on the ground formed by another Fiqh book and the product that emerged as a result of this activity is called commentary (şerh)²⁰. Annotations (Haşiye), which are generally made on the commentary (şerh) of a famous Fiqh book, are short explanations about issues such as proper names, verses, hadiths, poems, both in the annotation and in some words and sentences in the text²¹. There are differences between şerh and haşiye. First of all, although the şerhs were written on the text of Fiqh, the majority of the haşiyes were written on the şerhs. In addition, while the şerhs follow the content and expression flow of the text on which they are based, haşiyes are written about certain points of the şerhs or texts²².

The period of imitation (taqlid), chronologically, corresponds to the 13th century and the beginning of the 19th century, which we define as the classical period of the Ottoman State. In order to understand the influence of the Ottoman State on Islamic Law in the Ottoman classical period, we need to explain the Ottoman legal system.

II. OTTOMAN LEGAL SYSTEM IN TAQLID PERIOD

The Ottoman legal system in the period of imitation (taqlid) consists of two main parts. One of them is Islamic law and the other is Customary (sultanic) law. There are different opinions about the relationship between these two legal systems. While some authors state that customary law remains

¹⁸ Demir, p. 116.

¹⁹ Şensoy, Sedat (2010) "Şerh", TDV İslâm Ansiklopedisi, V: 38, İstanbul, p. 565.

²⁰ L.W.C. (Eric), Van Lit (2017) "Commentary and Commentary Tradition The Basic Terms for Understanding Islamic Intellectual History", MIDÉO, V: 32, <<http://journals.openedition.org/mideo/1580>> I.a.d: 25.02.2022; Kaya, Eyüp Said (2010) "Şerh" TDV İslâm Ansiklopedisi, V: 38, İstanbul, p. 560.

²¹ Topuzoğlu, Tevfik Rüştü (1997) "Haşiye", TDV İslâm Ansiklopedisi, V: 16, İstanbul, p. 419.

²² Kaya, p. 560.

within the boundaries of Islamic law, others imply that customary law is a legal system independent of Islamic law²³. In any case, it is clear that there were two legal systems integrated with each other during the Taqlid period in the Ottoman State.

In the Ottoman State, Islamic law was applied both theoretically and practically during the period of imitation (taqlid). Islamic law applied theoretically and practically, then practice of the law was based on the sources of Islamic law. In other words, some legal disputes were solved according to the sources of Islamic law directly. As an example: The qādi register, in which it is written that Abdullah forgave Yusuf who injured him, is based on the Qur'an. The provision of the 40th verse of the Shura which is "*Indeed, whoever forgives and establishes peace, his reward belongs to Allah.*" is written clearly in the Qādi register²⁴. We can easily mention that in the practice and theory of law, 4 primary (Quran, Sunnah, Ijma and Qiyas) and secondary sources have been abundantly utilized.

The Ottoman state contributed doctrinally to Islamic law. In addition, there are several features that make the Ottoman state different from other Islamic countries while practicing Islamic law. Let us now examine these matters in detail.

²³ For detail please see **Sobia, Bashir / Amen Imran** (2012) "Legal System of the Ottoman Empire", Journal of Law and Society Law College, V: 42, I:59, Peshawar, p. 101; **Fendoğlu, Hasan Tahsin** (2021) Türk Anayasa Hukuku Tarihi, Ankara, Yetkin, p. 145; **Avcı, Mustafa** (2019) Türk Hukuk Tarihi, 8th Edition, Ankara, Atlas, p. 91; **Aydın, M. Âkif** (2009) Türk Hukuk Tarihi, 7th Edition, İstanbul, Beta, p. 65; **Osmanağaoğlu Karahasanoğlu, Cihan** (2012) "Ömer Lütfi Barkan ve Türk Hukuk Tarihi", İstanbul Üniversitesi Hukuk Fakültesi Mecmuası, V: 70, I:1, p. 421; **Aydın, M. Âkif** (2004) "Kanunnâmeler ve Osmanlı Hukukunun İşleyişindeki Yeri", Osmanlı Araştırmaları, V: 24, İstanbul, p. 40; **Bozkurt, Gülnihal** (1992) "Review of the Ottoman Legal System", Ankara Üniversitesi Osmanlı Tarihi Araştırma ve Uygulama Merkezi Dergisi, I: 3, Ankara, p.117.

²⁴ For the whole record please see **Yılmaz, Çoşkun** (Editör), Hasköy Mahkemesi 3 Numaralı Sicil (H. 1023-1081 / M. 1615-1670) V:52, Hüküm no: 200 Orijinal metin no: [89-3], p. 136.

A. IMPORTANT DOCTRINES CONTRIBUTION OF THE OTTOMAN STATE TO ISLAMIC LAW IN TAQLID PERIOD

The most important contribution of the Ottoman State to Islamic Law in this period was the publication of many Islamic law studies. As a matter of fact, it is stated that there were 105 jurists and around 150 Fiqh studies until the reign of Padishah Mehmed 2nd, Conqueror (Fatih)²⁵. Fiqh studies appear in various forms. There are many **fiqh books, commentary** (şerh), **annotations**(haşiye) written in this period in the Ottoman state.

As it is known, Fiqh books are studies that explain the legal topics and institutions and their sources, sometimes deal with the subjects comparatively between the sects (madhhabs), and reach a preferential result by discussing different views on controversial issues²⁶. Fiqh books are the products of the furu'-ı fiqh (branches of law) which is the one part of Islamic law²⁷. Let me introduce one of Fiqh books which was used as a course book in madrasahs in the Ottoman State and in the 17th century. İbrahim Halebî's Mültekal-Ebhur, which is the main reference book of the judges in the religious courts after the middle of the century, is a study in this group. We have to mention that the book has been annotated by various Ottoman lawyers²⁸.

As has just been stated, many fatwa books were published in this period. **Fatwa books** are works that bring together the answers given to the questions people ask about legal issues they face in daily life²⁹. The most important property of the fatwas is that these consults were non-binding statement of the

²⁵ For detail information see **Cici, Recep** (2001) Osmanlı Dönemi İslam Hukuku Çalışmaları (Kuruluştan Fatih Devri Sonuna Kadar), Bursa, Arasta.

²⁶ **Cin / Akyılmaz**, p. 44.

²⁷ Islamic law divided into two parts. One part is Usul al-fiqh and the other one is furu-u fiqh. While the methodology of the law was studied by the Usul al Fiqh, the material aspect - interpersonal relations- of the law was studied by furu law; **Aybakan, Bilal** (2006) "Fürü' Fıkıh Sistematiği Üzerine" Marmara Üniversitesi İlahiyat Fakültesi Dergisi, V: 31, p. 20.

²⁸ See **Mevkûfâti, Mehmed** (1980) Mültekâ Tercümesi Mevkûfât, Simplified by: Ahmed Davudoğlu, İstanbul Doyuran Matbaası; **Çelik, Mehmet** (2012) Büyük İslam Hukuku Mecme'ul Enhur (Mültekâ'l-Ebhur'un Şerhi- Damad) Tercümesi, İstanbul, Yasin.

²⁹ **Cin / Akyılmaz**, p. 47; **Örsten, Seda** (2007) "Osmanlı Hukuk Tarihi Kaynağı Olarak Fetvâ Mecmuaları", Türk Hukuk Tarihi Araştırmaları, I:4, p.30.

law³⁰. Fatwas are usually issued in response to questions from individuals³¹. Its main and basic purpose is to provide definitive answers³². Fatwas have been an important tool in the resolution of disputes. Because many disputes were resolved without appearing before a judge, based on a fatwa³³. The fatwas have an anonymity character which means instead of the real people, muftis used a set of typical names, usually Amr, Zevc, Zeyd for males, and Zevce, Hind for females³⁴. In the Ottoman states, Shaykh al-Islams organized their fatwas under legal headings and subheading for making them a useful source for students, judges, muftis (jurisconsults) and other with an interest in the law³⁵. The Fatwas of Ebussuud Efendi, Fetavay-ı Fevziyye, Behcetü'l-Fetâvâ, Fetavay-ı Ali Efendi, and Fetevay-ı Yahya Efendi drew attention as the studies that qādīs most frequently benefitted / used.

Let's take the Behcetü'l-Fetâvâ as an example. This fatwa book contains the fatwas of Abdullah Efendi from Yenişehir. Abdullah Efendi worked as a qādī of the army and a Rumelia *Qādī' askeri*. He became Shaykh al-Islam in

³⁰ **Imber, Colin** (2007) Ebu's-su'ud, The Islamic Tradition, Edinburg, Standford University, p. 7.

³¹ **Britannica, T. Editors of Encyclopaedia** (2016) "Fatwa." *Encyclopedia Britannica*, <<https://www.britannica.com/topic/fatwa>> I.a.d. 26.02.2022

³² **Sirry, Mun'im** (2013), "Fatwas and their controversy: The case of the Council of Indonesian Ulama (MUI)", *Journal of Southeast Asian Studies*, V: 44, I:1, Singapore, Cambridge, Cambridge University Press, p. 100; However, theoretically, the basis of some fatwas is also shown in the fatwa. Such fatwas were not seen very often in the Ottoman Empire; **Arslan, Emine** (2008) "Osmanlı Dönemi Nuküllü Fetvâ Mecmuaları", *Türk Hukuk Tarihi Araştırmaları*, I: 5, p. 133.

³³ **Gedikli, Fethi** (2018) "Osmanlı Mahkemesinde Fetva Kullanımı ve Fetva-Kaza İlişkisi" : Kaya, Süleyman; Uğur Yunus; Demiray, Mustafa (Editors), *Osmanlı Hukukunda Fetva, İstanbul, Klasik*, p.218.

³⁴ **Imber**, p. 56.

³⁵ There are two types of fatwa books. The type that is compiled directly by the sheikh al-Islam or the mufti and contains answers to the questions is called the "aslı fatwa books". Those compiled from the classical Hanafi literature and prepared as a reference source for muftis and kadis are called "menkul fatwa books"; **Örsten**, 2007, p. 31; **Heyd, Uriel** (1995) "Osmanlı Fetva Müessesesinin Bazı Tezahürleri (III Levha İle Birlikte)", translator: Gedikli Fethi, Marmara Üniversitesi, *Hukuk Fakültesi Hukuk Araştırmaları Dergisi*, V: 9, I: 13, p. 287 and more pages.

1718. He held this position for about 13 years. While he was a Shaykh al-Islam, his fatwas were compiled. The fetvâ emîni³⁶ (fatwa maker), Mehmed Fikhî el-Ayn, arranged the fatwas of Abdullah Efendi and named it Behcetü'l-Fetâvâ. He made citations from reliable fiqh books for every issue. There are 3474 fatwas in the book. It was the most respected fatwa book in the 18th and 19th centuries and was one of the four journals accepted by the Fetvâhane³⁷.

Many **monographic studies** on Islamic law were also produced in the classical period of the Ottoman State. Monographic studies that deal with a legal issue, examine it in detail, according to various possibilities, and reach a conclusion. For example, many monographic studies (risâle) were written about the cash money waqfs, which caused great controversy in the Ottoman State. Cash money waqfs is claimed as the definitive Ottoman contribution to the Islamic Civilization³⁸. The money waqf, as it is called in the fiqh books, is a kind of waqf of a certain amount of money or a certain amount of money together with the real estate, for a certain charitable purpose³⁹. Islamic jurists do not agree on whether money waqf is compatible with Islamic law. In the Hanafi sect, Imam Zufer stated for the first time that the money foundation is in accordance with the law⁴⁰. In the Ottoman state, monographic studies began to be written after Rumelia Qâdî'asker Muhyeddin Mehmed b. Ilyas (d. 1547)

³⁶ A fatwa maker (fetvâ emîni) was the official who assisted the sheikh al-Islam, replaced him in his absence, played an active role in the preparation of the fatwa and present it to the shaykh al-Islam, and worked within the department of the meshihat in the central organization of the State. **Ayar, Tayip** (2011) *Osmanlı Devleti'nde Fetvâ Eminliği (1826-1922)*, (Phd Dissertation), Ankara University, Institute of Social Sciences, p. 244 and more pages.

³⁷ For detail information about Behcetü'l-Fetâvâ see **Kaya, Süleyman/ Algın, Betül/ Trabzonlu, Zeynep / Erkan, Asuman** (2011) *Behcetü'l-Fetâvâ*, İstanbul, Klasik, p. 9 and more pages.

³⁸ **Mandaville, Jon E.** (1998) "Faizli Dindarlık: Osmanlı İmparatorluğunda Para Vakfı Tartışması", (Translator: Gedikli, Fethi), *Yaz Gündemi, Türkiye Günlüğü*, p. 129.

³⁹ **Gedikli, Fethi** (2012) "İstanbul'da Para Vakıfları ve Mudârebe", *Osmanlı Hukuku Makaleler, İstanbul Gündoğan*, p.34.

⁴⁰ For detail please see **Osmanağaoğlu, Cihan** (2010) "Osmanlı Devleti'nin Klasik Döneminde, Para Vakıflarının Hukuki Yönü", *Maltepe Üniversitesi Hukuk Fakültesi Dergisi*, I: 1-2, İstanbul, p. 282 and more pages

banned the money waqfs. İbn Kemal, Ebussuud (d. 1573), Shaykh Bali Efendi (d. 1552) stated that money waqfs could be established. In spite of this, Muhyeddin Mehmed b. İlyas and Birigivi argued that money waqfs could not be established⁴¹.

As it can be seen, Ottoman jurists produced very important works of fiqh in the period of imitation and made serious contributions to the development of law.

B. UNIQUE TO THE OTTOMAN STATE IN PRACTICING ISLAMIC LAW

As mentioned before, Islamic law has been practiced by various geographies and different nations for hundreds of years. It can be stated that every society contributes to the development of this law. It is possible to see **some differences or riches unique to the Ottoman State** in practicing Islamic Law.

We can say there are three different features in Ottoman State. These are

1. Official sect (madhhab) preference
2. Sultanic law
3. Status of Shaykh al-Islam.

Theoretically, the first of these differences is the **official sect (madhhab) preference** or practice. As it is known, there can be more than one ijtihad on a subject in Islamic law. These jurisprudences (ijtihads) can also contradict each other. In this case, it should be determined which jurisprudence (ijtihad) the judge should choose. Since the middle of the 16th century, the Ottoman State wanted the disputes to be resolved according to the Hanafî sect (madhhab)'s jurisprudence (ijtihad). For this reason, it was clearly stated in the letters patent (berât) for the appointment of judges (qâdis) and mufti that the decision and the fatwa would be given according to the Hanafi school, and it was forbidden

⁴¹ **Gedikli** (2012), p. 37 and 38; **Şimşek, Mehmet** (1985) "Osmanlı Cemiyetinde Para Vakıfları Üzerine Münakaşalar", Ankara Üniversitesi İlahiyat Fakültesi Dergisi, I: 27 pp. 207-220; **Koyunoğlu, H. Hüsnü** (2008) "Para Vakıfları: Muhasebe Defterlerine Göre 17. Yüzyıl İstanbul Uygulaması", Dinbilimleri Akademik Araştırma Dergisi, V: 8, I:1, p. 264.

to make judgments in line with the jurisprudence (ijtihad) of any sect (madhhab) other than the Hanafi school⁴².

Official madhhab is clearly reflected in the fatwas: “*Question: Is it permissible to apply to the Shafi’i (sect) in dividing an oath? Answer: There is no Shafi’i in this land. In this case, would it be valid if the Zayd who took the oath applied to the Shafi’i qādī and removed his oath from Shai’I qādī? Answer: There is a sultan’s prohibition that making a decision according to the Shafi(teşeffü) sect is not valid in Diyar-ı Rum (Anatolia)*”⁴³.

Likewise, qādīs resolved disputes according to the Hanafi sect. For example, according to the Hanafi sect, in the crime of abortion, the fetus aborted (separated) from its mother must have certain characteristics. According to the Hanafi sect, some of the fetal organs should be determined and it should be understood that the fetus is human⁴⁴. A fetus with these features is called "müstebinet’ül-hilka" and it has been revealed that this feature is sought for the crime mentioned in the qādī registers⁴⁵. It is possible to multiply examples⁴⁶.

⁴² **Cin/Akyılmaz**, p. 89; **Bardakoğlu, Ali** (1997) “Hanefî Mezhebi”, TDV İslâm Ansiklopedisi, V: 16, İstanbul p.7; **Aydın** (2009), p. 93.

⁴³ **Düzdağ, Ertuğrul** (2012) Kanunî Devri Şeyhülislam Ebussuud Efendi Fetvaları, İstanbul, Kapı, p. 174.

⁴⁴ **Özdemir, Merve** (2016) “Osmanlı Fetvalarında Iskât-ı Ceninin (Cenin Düşürmenin) Cezai Sonuçları”, Uluslararası Sosyal Araştırmalar Dergisi, I: 46, V: 9, p. 957; **Ucatlı, Abdulahat** (2009) “İslâm Hukukunda Cenine Müdahalenin Hükmü”, (Master) Istanbul University, Institute of Social Sciences, p. 32 quoted from Muhammed Emin b. Ömer b. Abdülaziz ed-Dımaşki İbn Abidin (ö. 1252/1836), Reddül-Muhtar ala Dürri’l-Muhtar, Riyad, Dâru Alemü’l-Kütüb, 2003/1423, I, 500; Ebü’l-Hasan Burhaneddin Ali b. Ebi Bekr Merjanani (ö. 593/1197), el-Hidâye Şerhu Bidâyeti’l-Mübtedi, Karaçi İdaretü’l-Kur’an ve’l-Ulumü’l-İslâmiyye, 1417, V:7, 102; **Konan, Belkis** (2008) “Osmanlı Devleti’nde Çocuk Düşürme Suçu”, Ankara Üniversitesi Hukuk Fakültesi Dergisi, I: 4, V: 57, p.325.

⁴⁵ For detailed information see **Kılınç, Ahmet** (2018) “Çocuk Düşürtme Suçunun 17’nci Yüzyıl İstanbul’undaki Görünümü”, Dicle Üniversitesi Hukuk Fakültesi Dergisi, V: 23, I:38, p. 64.

⁴⁶ Hanafi sect was also preferred for money waqfs. Judges decide according to the Imam Zufer and İmam Muhammed and Ebu Yusuf’s ijtihads who are the students of İmam-ı Azam Ebu Hanife about cash foundations.

As seen in other Islamic countries, the official madhhab practice was chosen as a method to ensure legal unity and stability as much as possible, and in that period, it fulfilled the task of enacting⁴⁷. Notwithstanding, the official madhhab practice has been criticized for allegedly hindering the development and dynamism of the law⁴⁸. The application of the Hanafi sect in regions where people who follow other sects are in the majority has been the subject of criticism⁴⁹.

Another feature that distinguishes the Ottoman state in the taqlid period is the existence of **customary (sultanic) law**. It is because many branches of law have been formed according to the customary (sultanic) law rules. There are too many definitions regarding to the Sultanic law. It can be summarized as: Customary (sultanic) law is the law created by the political authority of the time (ulu'l-emr) of Islamic state within the limits set by Islamic law⁵⁰. The main authority here is the political authority of the time.

The customary (sultanic) law shows itself through the Qānūnnāmes. The Qānūnnāmes are discussed in the Dīvān -ı Hümâyun, which means the Sultan's board (Dīvān) made up of senior executives, and are announced with the Sultan's edict⁵¹. Shaykh al-Islams of the period also supported the development of customary (sultanic) law. For example, Shaykh al-Islam Pir Mehmed Efendi (death date 1620) gave the following answer to a question asked to him: "*It is*

⁴⁷ Bardakoğlu, p. 93.

⁴⁸ Cin/Akyılmaz, p. 90; Aydın, p. 94; Aydın, M. Akif (2011) "İslam Hukukunda Hukukî İstikrar ve Sosyal Değişim Açısından Mezheplerin Konumu (Hanefi Mezhebi İçtihatları ve Osmanlı Devleti Uygulamaları Çerçevesinde)", Türk Hukuk Tarihi Araştırmaları, I: 11, p. 30.

⁴⁹ Rafeq, Abdul-Karim (1999) "Relations Between The Syrian 'Ulama' And The Ottoman State In The Eighteenth Century", Oriente Moderno Nuova serie, V: 18 (79), I:1, p. 67 and more pages; Peters, Rudolph (2005) "What does it mean to be an official madhhab: Hanafism and the Ottoman Empire.", The Islamic School of Law: Evolution, Devolution, and Progress (Editors: P. Bearman, R. Peters, F. Vogel.) Cambridge, Harvard University, p. 156.

⁵⁰ Cin / Akyılmaz, p. 86; Aydın, 2009, p. 73 and more pages; Avcı, p. 91; İnalçık, Halil (2000) "Türk İslam Devletlerinde Devlet Kanunu Geleneği", Osmanlı'da Devlet, Hukuk, Adalet, İstanbul, Eren, p. 27.

⁵¹ Mumcu, Ahmet (2007) Divan-ı Hümayun, 3rd Edition, Ankara, Phoenix, p. 126; Karataş, Abdullah Vefa (2019) "Divan-ı Hümayun ile Paşa Divanının Karşılaştırılması -Manisa Şehzâde Sarayı Dīvânı Örneği-", Adalet Dergisi, V:1-2, I: 63, p.238.

necessary to apply to the political authority in this matter. The rule is established as or how the political authority orders. It is obligatory (wacib) to obey the political authority for public order."⁵²

In the Ottoman state, administrative, financial, military, tax regulations⁵³, land law, tazir crimes⁵⁴ and penalties were mainly codified with customary (sultanic) law. We can say that the Ottoman state acted actively in this regard. For example, during the reign of Suleiman the Magnificent, nearly 200 law codes were coming into force and 29 of them were (umūmī Qānūnnāmes) general law codes⁵⁵. Even in family law, which has many and detailed provisions in Islamic legal sources, customary law norms have been formed. This fatwa confirms our opinion: "Question: "When there is an order that there should be a judge's decision for a marriage, is it possible to marry without the judge's skill? Answer: No, it turns out that there will be animosity and enmity."⁵⁶

In the Ottoman State, the opinions of those who had a minority view among the jurists of the Hanafī sect were codified through sultanic law, based on the principle of public interest. Giving the icāreteyn-based foundations and land into operation with unlimited lease agreements without a time limit, the gedik institution⁵⁷ that can be expressed as derived from European tradesmen's customs, imposing death sentences for counterfeiting and homosexuality that

⁵² **Anhegger R./İnalçık Halil** (1956) Kanunname-i Sultanī ber Müceb-i Örf-i Osmanī, Ankara, Türk Tarih Kurumu, p. X.; **Cin/ Akyılmaz**, p. 83.

⁵³ For more detailed information about the "kul system", one of the most important administrative, financial and military institution of the Ottoman State, see **Karataş, Abdullah Vefa** (2020) "Türk Hukuk Tarihi Açısından Kul Sistemi", Yıldırım Beyazıt Hukuk Dergisi, I:1, p. 155 and more pages.

⁵⁴ **Karakaya, Harun** (2020) "Osmanlı Ceza Hukuku'nda Parada Sahtecilik Suçu" (Master), Ankara Yıldırım Beyazıt University, Institute of Social Sciences, Ankara, p.16.

⁵⁵ For detail see **Kılınç, Ahmet** (2018) "Hukuk Tarihi Açısından Kanuni Dönemine Münhasır Gelişmeler": Baki, Adnan/ Karal, Hasan (Editors), I. Uluslararası Kanuni Sultan Süleyman Sempozyumu, 24-26 April 2018, p. 51.

⁵⁶ **Düzdağ**, p. 37.

⁵⁷ For detail see **Koyuncu, Nuran** (2016) "Osmanlı Hukukunda Esnaf Gediği", II. Türk Hukuk Tarihi Kongresi, Gedikli, Fethi (Editor), İstanbul, Onikilevha.

disrupt social life, allowing cash waqfs are examples of codification of minority jurisprudence, taking into account the public interest⁵⁸.

It should be mentioned that the relationship between Islamic law and sultanic law reveals the existence of different views today. On the one hand, it is stated that the customary law may be contrary to the Islamic law and that there may be a transition to the secular legal system, on the other hand, it is argued that the sultanic law is expressed as *siyâset-i shar'îyya* and is within the boundaries of Islamic law⁵⁹. In my opinion, Islamic Law and Customary (sultanic) Law are not separated from each other with certain lines. Islamic and customary (sultanic) law rules are placed side by side and the two legal systems complement each other with the balance-control mechanism⁶⁰.

Another feature that makes the Ottoman state different is the **status of the Shaykh al-Islam**. The term Shaykh al-Islam has expressed an honorary title conferred on the scholars of Fiqh, who, since the 10th century, settled the disputed issues among the fuqahâ, gained fame with their fatwas and gained the approval of many Islamic jurists⁶¹. In the Ottoman State, the head of the *ilmiyye*⁶² group and theoretically the judicial organization was Shaykh al-

⁵⁸ **Kılınç**, 2018a, p. 50; **Akgündüz, Ahmed** (1990) *Osmanlı Kanunnameleri ve Hukuki Tahlilleri*, V: 4, İstanbul, Fey Vakfı, p. 6.

⁵⁹ For detail see **Cin/ Akyılmaz**, p. 86; **Avcı**, p. 92; **Cin, Halil/ Akgündüz, Ahmed** (1989) *Türk Hukuk Tarihi*, V:1, Konya, pp. 143-144, 163-165; **Bardakoğlu, Ali** (1999) "Osmanlı Hukukunun Şer'îliği Üzerine", *Osmanlı*, V: 6, Ankara, p. 416; **Üçok, Çoşkun** (1946) "Osmanlı Kanunnamelerinde İslam Ceza Hukukuna Aykırı Hükümler", *Ankara Üniversitesi Hukuk Fakültesi Dergisi*, V:3, I:1, p. 126; **Heyd, Uriel** (1983) "Eski Osmanlı Ceza Hukukunda Kanun ve Şeriat", *Ankara Üniversitesi Hukuk Fakültesi Dergisi*, (Translator: Selâhaddin Eroğlu) V: XXVI, p. 633 and more pages; **Heyd, Uriel**, (1973) *Studies in Old Ottoman Criminal Law*, Oxford, Oxford, pp. 174-175; 180-192.

⁶⁰ **Kılınç** (2018a), p. 50, 57.

⁶¹ **Cin/ Akyılmaz**, p. 170; **İpşirli, Mehmet** (2010) "Şeyhülislam", *TDV İslâm Ansiklopedisi*, V: 39, İstanbul, p. 91 and more pages.

⁶² **Atcıl, Abdurrahman** (2009) "The Route to the Top in the Ottoman İlmiye Hierarchy of the Sixteenth Century", *Bulletin of the School of Oriental and African Studies*, I: 3, V: 72, London, Cambridge, p. 489.

Islam⁶³. Because he had extensive powers in the legislative, administrative and judicial topics in the Ottoman state during this period.

He had the power in legislative topics in the Ottoman state. Because it is known that his opinion was taken before the laws were enacted⁶⁴. At the beginning of the Qānūnnāmes, there is a provision that means "*It is the Sultan's code that was prepared in accordance with Islamic law*"⁶⁵. Important legal regulations such as the Land Code of 1858, Majella were sent to the Shaykh al-Islam to check their compliance with Islamic law before the sultan approved it⁶⁶.

When important administrative decisions were to be taken, he was called to the Dīvān and asked for his opinion⁶⁷. Shaykh al-Islam was never a member of the Dīvān -ı Hümâyūn. In case of need, he was called and his opinion was taken. The compatibility of the decision of the Dīvān regarding the executive

⁶³ **Bulliet, Richard W.** (1972) "The Shaikh Al-Islām and the Evolution of Islamic Society", *Studia Islamica*, I: 35, p. 53, 54; **Cin / Akyılmaz**, p.170; **Akyılmaz, Gül** (2004) "Osmanlı Devleti'nde Yönetici Sınıf-Reaya Ayrımı", *Gazi Üniversitesi Hukuk Fakültesi Dergisi*, V: 8, I:2; It is clearly written in the qānūnnāmes that the Shaykh al-Islam was the head of the ilmiyye class; **Akgündüz** (1990), p. 318.

⁶⁴ **Örsten, Seda** (2005) "Osmanlı Hukukunda Fetvâ", Ankara University, Institute of Social Science (Master), Ankara p. 42 and more pages.

⁶⁵ **Akgündüz** (1990), p. 48. While this is the case, it is known that some laws enacted especially after the Tanzimat are contrary to Islamic law. Commercial Codes can be given as an example. On the other hand, the compatibility of fratricide, monetary foundation and some criminal law sanctions with Islamic law is controversial in the doctrine; see **Üçok, Çoşkun** (1947) "Osmanlı Kanunnamelerinde İslâm Ceza Hukukuna Aykırı Hükümler", *Ankara Üniversitesi Hukuk Fakültesi Dergisi*, V: 4, p. 48 and more pages.

⁶⁶ **Hocaeminefendizade, Ali Haydar Efendi** (1992) *Dürerü'l-Hukkâm Şerhu Mecelleti'l Ahkâm*, İstanbul, Osmanlı, p. 5 and more pages; **Cin, Halil** (1992) *Osmanlı Toprak Düzeni ve Bu Düzenin Bozulması*, 3rd Edition, Konya, Selçuk Üniversitesi, p. 21.

⁶⁷ **Erdem, Gazi** (2008) "Religious Services in Turkey: From the Office of Şeyhülislâm to the Diyanet", *The Muslim World*, I: 2-3, V: 98, <<http://onlinelibrary.wiley.com/doi/10.1111/j.1478-1913.2008.00216.x/full>> I.a.d: 28.02.2022.

power with Islamic law was examine by him⁶⁸. Shaykh al-Islams gained importance in the Ottoman state with the fatwas they gave, as stated before. Even the sultans themselves received a fatwa from the Shaykh al-Islam.

They had the power to choose and offer judges to the Sultan. After 1574, the executive powers were constantly expanded against the qādī'asker, and the authority to appoint the qādī'askers, the state judges called "mevali", the mudarris who received a salary of more than forty akçe, the army judges and the muftis belonged to the Shaykh al-Islams⁶⁹. Therefore, Shaykh al-Islam has ceased to be an institution that not only transmits theoretical knowledge, but also has an active role in state administration.

Even though Shaykh al-Islam supervised important legal regulations such as Majella, Land Code, they did not control all sultanic law regulations. In addition, Padishah had the authority to appoint and dismiss the Shaykh al-Islam. In some issues Padishah wanted to obtain a fatwa from the Shaykh al-Islam in order in order to avoid discussions that the sultan acted contrary to the Shari'ah law. When the Shaykh al-Islams did not want to give a fatwa, they could be dismissed by the sultan and the person who would issue the requested fatwas was appointed to this situation⁷⁰.

As a matter of fact, the Shaykh al-Islams took a role in the appointments of qādī, had administrative and legislative power, the necessity of judgement according to the Hanafi madhab in the qādī appointment decisions (berāts), the emergence of law in many law fields within the scope of limited legislative authority can be mentioned as the features that distinguish the Ottoman State in the period of Taqlid.

⁶⁸ **Yakar, Emine Enise** (2019) "A Critical Comparison Between the Presidency of Religious Affairs (Diyanet İşleri Başkanlığı) and the Office of Shaykh Al-Islām", *Kilis 7 Aralık Üniversitesi İlahiyat Fakültesi Dergisi*, V: 6, I:11, p. 430.

⁶⁹ **Cin / Akyılmaz**, p. 171; **Beyazıt, Yasemin** (2009) "Osmanlı İlimiye Bürokrasisinde Şeyhülislâmlığın Değişen Rolü ve Mülâzemet Sistemi (XVI.-XVIII. Yüzyıllar)", *Belleten*, V: 73, I: 267, p. 423 and more pages.

⁷⁰ **Cin / Akyılmaz**, p. 171 and more pages.

III. THE PERIOD OF CODIFICATION AND NEW İJTİHAD.

The period that started with the declaration of the Tanzimat edict and still continues is called the period of “enactment/codification and new ijthad” in terms of Islamic legal history. The striking feature of this period is the enactment of the provisions of Islamic law. In this period, two types of enactment methods were followed. The first is to enact the provisions of Islamic law. The second is the translation of the laws of European states⁷¹.

There are many reasons for the legalization movements in the Ottoman State⁷². The first of the **reasons for the legalization movements** of the Tanzimat period is the changes in commercial, economic and social life. Changes in social life, especially the change in the roles of women in society, are among the reasons for enactment movements. Legal needs also led to the need for new laws. As a matter of fact, the effects and pressures of western states are also among the reasons for enactment movements.

⁷¹ For detail see **Kayar, Betül** (2021) *Tanzimat Dönemi Osmanlı Hukuk Reformları*, Ankara, Adalet; **Demir**, p. 117. For the similarities of the Codification movement in the Ottoman Empire with similar movements in the same period, see **Akyılmaz, Gül** (2021) “İki Önemli Kodifikasyon Örneği: Mecelle ve 1774 Tarihli İsveç (Medeni) Kanunu, Benzerlikler - Farklılıklar”, *Uluslararası Mecelle Sempozyumu*, Bursa, p. 85 and more pages; **Gedikli, Fethi** (2015) “Hukukî Düşünce Yahut Cumhuriyetin Hukuk Devrimi “Bedevilikten Medenliğe Geçiş”: Bolay, Süleyman Hayri (Editor) *Tanzimat’tan Günümüze Türk Düşüncesi V:2*, Ankara, Nobel, p. 890 and more pages.

⁷² For detail see **Demir**, p. 118; **Şentop, Mustafa** (2005) “Tanzimat Dönemi Kanunlaştırma Faaliyetleri Literatürü”, *Türkiye Araştırmaları Literatürü Dergisi*, I: 5, V: 3, p. 647 and more pages; **Akgündüz** (1990), pp. 129-130; **Ortaylı, İlber** (1995) *İmparatorluğun En Uzun Yüzyılı*, 3rd Edition, İstanbul, Hil, p. 52; **Gümüüş, Musa** (2013) “Osmanlı Devleti’nde Kanunlaştırma Hareketleri İdeolojisi ve Kurumları, *Tarih Okulu Dergisi*, I: 14, p. 166 and more pages; **İbrahim, Abdülazim** (2022) “Tanzimat Sonrası Gayrimüslim Osmanlı Tebaasının Hukuki Durumu”, *Necmettin Erbakan Üniversitesi Hukuk Fakültesi Dergisi*, I:1, V:5, p.64; **Akman, Ahmet** (2019) “Tanzimat Sonrası Osmanlı Usûl Hukukundaki Gelişmeler”, *MANAS Sosyal Araştırmalar Dergisi*, I: 1, V:8, p.432.

In the preparation of new laws, different opinions declared⁷³. Some views suggested that Islamic law should be codified in a modern way⁷⁴. Some opinions recommended that western laws should be transferred to the Ottoman State⁷⁵. As a result, there has been a dual distinction between domestic (national) laws and laws taken from foreign legislation by way of quotation (reception).

As stated before, within the framework of the limited legislative authority granted to the ulu'l-emr by Islamic law, modern legalization movements were seen in the Ottoman State. In the Tanzimat period, the **domestic laws** prepared without benefiting from the laws of foreign countries are the Penal Code of 1840 (1256) and 1851 (1267), the Land Code of 1858 (1274), the Majella, which was completed between 1869-1876, and the Family Law Decree of 1917⁷⁶.

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- ⁷³ **Bozkurt, Gülnihal** (2020) *Batı Hukukunun Türkiye’de Benimsenmesi*, 3rd Edition, Ankara, Türk Tarih Kurumu, p.51; **Üçok, Coşkun/ Mumcu, Ahmet / Bozkurt, Gülnihal** (2015) *Türk Hukuk Tarihi*, 17th Edition, Ankara, Turhan, p. 333; **Durhan, İbrahim** (2008) “Tanzimat Döneminde Osmanlı Yargı Teşkilatındaki Gelişmeler”, *Erzincan Üniversitesi Hukuk Fakültesi Dergisi*, V: 12, I:3-4, p. 55 and more pages; **Velidedeoğlu, Veldet Hıfzı** (1940) “Kanunlaştırma Hareketleri ve Tanzimat”, *Tanzimat I*, İstanbul, Maarif, pp. 168-169; **Akça, Gürsoy / Hülür, Himmet** (2006) “Osmanlı Hukukunun Temelleri ve Tanzimat Dönemindeki Hukuksal Yeniliklerin Sosyo-Politik Dinamikleri”, *Selçuk Üniversitesi Türkiyat Araştırmaları Enstitüsü Türkiyat Araştırmaları Dergisi*, I: 19, p. 295 and more pages; **Kılınç, Ahmet** (2019) “İslam Hukukunun Evrenselliği Bağlamında Hukuk-ı Aile Kararnamesi ile Malezya İslam Aile Hukuku Kanunu 1984’ün Mukayesesi”, *Erciyes Üniversitesi Hukuk Fakültesi Dergisi*, V: 14, I:2, p.623 and more pages.
- ⁷⁴ **Taş, Kemaleddin/ Göksüçukur, Betül** (2019) “Osmanlı Dönemi Batıcılık, İslamcılık Türkçülük Fikir Akımları ve Din”, *Dini Araştırmalar*, V: 22, I:56, p. 477 and more pages; **Yıldız, M Cengiz** (1999) “Osmanlı’nın Son Dönemindeki Üç Düşünce Akımının Sosyolojik Analizi: Batılılaşma, İslamcılık ve Milliyetçilik”, *SDÜ Fen Edebiyat Fakültesi Sosyal Bilimler Dergisi*, I: 4, Isparta, p. 286.
- ⁷⁵ **Akbulut, İlhan** (2018) *Türk Hukuk Tarihi*, İstanbul, Timaş, p. 309; for detail information about Namık Kemal and its law opinion see **Değirmenci, Rıdvan** (2021) *Tanzimat Sürecinde Osmanlı Devleti’nin Hukuk Değişimi ve Namık Kemal’in Hukuk Anlayışı*, Ankara, Astana, p.77 and more pages.
- ⁷⁶ **Cin / Akyılmaz**, p. 560-561; **Akgündüz, Said Nuri** (2017) *Tanzimat Dönemi Osmanlı Ceza Hukuku Uygulaması*, İstanbul, Rağbet, pp. 77-78; **Osmanağaoğlu Karahasanoğlu, Cihan** (2011) “Mecelle-i Ahkam-ı Adliyye’nin Yürürlüğe Girişi ve Türk Hukuk Tarihi Bakımından Önemi”, *Osmanlı Tarihi Araştırma ve Uygulama Merkezi Dergisi*, I: 29, p. 114; After the

Majella, has been prepared based on Islamic legal sources. Only the ijtiyhads within the Hanafi Sect were included in the Majella. It is partially prepared in a modern style. The first 99 articles are general rules and include legal principles. It was published in the form of books between 1868-1876. The sixteen books mainly cover the debts, partly the law of property and jurisdiction and do not have the characteristics of a full civil/obligation law; There are no family and inheritance law departments.

The land code of 1858 is one of the efforts to bring together the principles of land law in the Tanzimat period. The law consists of an introduction (art. 1-7), three chapters and 132 articles in six chapters, and a rhetoric. The first article of the qānunnâme divides the lands in the Ottoman country into five categories: mulk, mîrî, mevkuf, abandoned and mevât land.

The 1840 penal code was prepared by partially utilizing the western law technique. However, in accordance with the Ottoman law-making tradition, it did not include information on the general theory of crime. In this respect, it can be said that it is a domestic law. Regarding the hadd and qîsas punishments, it is sufficient to refer to the Sharia, only tazir punishments are regulated. Crimes such as crimes against the sultan and the state, rebellion, injury, insult, bribery, and rancor were organized. It does not contain provisions contrary to Islamic Law. In the law, a fixed penalty was prescribed for each crime, and the judge was not given discretionary power. The death penalty will be decided by the judge, but the execution will be carried out after the sultan's approval.

It would be useful to briefly dwell on the 1917 family law decree. In the Family Decree of 1917, the jurisprudence (ijtiyhads) of the Hanafi sect (madhhab), which was the first official sect (madhhab), was abandoned on some issues and the views of **other legal sects (madhhab)** (Maliki-Shafii-Hanbali sects (madhhabs)) were preferred and solutions were tried to be produced for social needs and conditions of the age without going beyond the

1920s, codification movements in family and inheritance law started in other Islamic countries as well.

limits of Islamic law⁷⁷. In other words, the 1917 family law decree was prepared according to the views of four sects, and this decree even includes provisions for non-Muslims⁷⁸. Thus, the period of taqlid and following only one sect (madhhab) has ended. As a result, a suitable ground has been prepared for the initiation of jurisprudence activities in Islamic countries to adapt Islamic law to the needs of the day.

The laws prepared by translation from other countries are the Commercial Code of 1850, the Criminal Code of 1858⁷⁹, the Commercial Procedure Code of 1861, the Maritime Commercial Code of 1863, the Criminal Procedure Code of 1879, and the Civil Procedure Code of 1879⁸⁰. The laws that were translated from the West brought new legal institutions with them⁸¹. Attorneyship⁸², notary⁸³ public, public prosecutorship⁸⁴ can be given as examples of these institutions.

⁷⁷ **Aydın, M. Akif** (2017) *Osmanlı Aile Hukuku*, İstanbul, Klasik, p.28 and more pages; **Cin, Halil** (1988) *İslâm ve Osmanlı Hukukunda Evlenme*, Konya, Selçuk Üniversitesi, p. 293 and more pages.

⁷⁸ Some provisions of the decree were common to all Muslim and non-Muslim. Engagement provisions exemplify this. **Doğangüzel, Semra Betül** (2021) *Osmanlı Hukukunda Nişanlanma*, 2nd Edition, Ankara, Adalet, p. 40 and more pages.

⁷⁹ Some scholars do not think that this act was prepared by translating Western country's act. For discuss see **Örsten Esirgen, Seda** (2019) "Tanzimat'tan Cumhuriyet'e Türk Hukukunda Kanunlaştırma Hareketleri", *Adalet Dergisi*, V: 1-2, I:62-63, p. 438.

⁸⁰ **Cin / Akyılmaz**, p. 561; **Akgündüz** (2017), pp. 77-78.

⁸¹ **Bozkurt**, p. 126 and more pages.

⁸² The defense mechanism became modern and organized with the 1875 Mehakim-i Nizamiye Dava Vekilleri Hakkında Nizamname; **Kılıç, Yusuf** (2019) *Osmanlı Hukuku'nda Vekâlet Sözleşmesi*, Ankara, Adalet, p. 148.

⁸³ The 1879 Code of Mukavelat Muharrirleri Nizamnamesi, was prepared by utilizing the French Notary Law, and enacted for the first time that an officer would only be a notary public, **Ülker, İbrahim** (2018) *Osmanlı Noterlik Hukuku*, Ankara, Adalet, p. 384.

⁸⁴ The prosecutorship is regulated in detail by the law Mehakim-i Nizamiye'nin Teşkilat-ı Kanun-ı Muvakkatı and Usul-i Muhakemeat-ı Cezaiye Kanun-ı Muvakkat dated 1879; **Ünal Özkorkut, Nevin** (2016) *Osmanlı Hukukunda Müdde-i Umumilik*, Ankara, Turhan, p.80; **Ünal Özkorkut, Nevin** (2003) "Savcılık, Avukatlık ve Noterlik Kurumlarının Osmanlı Devleti'ne Girişi", *Ankara Üniversitesi Hukuk Fakültesi Dergisi*, V:52, I:4, p.149.

The codification movements in the Tanzimat period created a **dualist (dual) structure** in the Ottoman legal system, while the rules of Islamic law remained valid, and laws taken from Western countries were tried to be implemented in certain areas⁸⁵. Another reason for the emergence of the dualist legal system in the post-Tanzimat period is the changes in the judicial organization. Because, new courts such as the ticaret (trade), muhtelit ticaret (mixed commerce), nizāmiye courts, meclis-ı tahkikat emerged.

The dualistic structure has led to serious problems. It is stated by both the lawyers of the period and some contemporary lawyers that this situation caused conflicts of duty and authority between the judicial organizations at that time and therefore caused the cases to be resolved unjustly⁸⁶. Some authors even stated that this situation is unreasonable and dangerous⁸⁷. The reason for the criticism of the period in this way is that some crimes have the duty and authority of both the sharia courts and the nizāmiye courts⁸⁸.

CONCLUSION

There is a historical stage of development and formation of Islamic law. The last two of the six periods of Islamic legal history correspond to the Ottoman State period. The period of imitation (taqlid) and codification and the new ijitihad are important both for Islamic law and for the Ottoman state.

⁸⁵ **Koyuncu, Nuran / Yılmaz, Yasin** “Osmanlı'nın Son Yüzylında Hukuk Düşüncesinin Dönüşümü ve Dönemin Başlıca Tartışma Konuları”, Selçuk Üniversitesi Hukuk Fakültesi Dergisi, V: 26, I:2, p. 83; **Cin / Akyılmaz**, p. 563.

⁸⁶ **Mehmed Arif Bey** (1325) “İ'dâm Cezâsı Târihcesi – Bizde İcrâ Edilememesi Esbâbi”, İlm-i Hukuk ve Mukayese-i Kavânin Mecmuası, I: 1, p. 53 and more pages, **Kılınç, Ahmet** (2015) “Bir Meclis-i Valâ Hükmü ve Tahlili”, Adam Akademi, V: 5/1, p. 15-36; **Kılınç, Ahmet / Yıldırım, Davut** (2021) “Tanzimat Dönemi Dualist Hukuk Yapısının Şahsa Karşı İşlenen Suçlara Yansıması”: Koyuncu, Nuran / Yıldız, Abdulkadir (Editors), Necmettin Erbakan Hukuk Araştırmaları Kamu Hukuku, Konya, Necmettin Erbakan University Publications, p. 177.

⁸⁷ **Kantar, Baha** (1984) Ceza Hukuku, İstanbul, p. 139; **Gökçen, Ahmet** (1987) “Tanzimat Dönemi Osmanlı Ceza Kanunları ve Bu Kanunlardaki Ceza Müeyyideleri” (Master), İstanbul University, Institute of Social Sciences, p. 37; **Kılınç** (2015), p. 19.

⁸⁸ **Kılınç** (2015), p. 19; **Kılınç/Yıldırım**, pp. 177-178.

Because in these periods, the caliphate passed to the Ottoman state, and the Turks contributed a lot to the spread of Islam. This union made significant contributions to the development and experience of Islamic law.

The period of taqlid, which corresponds to the 13th -19th centuries, coincides with the classical period of the Ottoman state. The Ottoman state made very important contributions both theoretically and practically in this period.

Fiqh books, commentaries (şerh) and annotations (haşiye) which has doctrinally rich content were written in the Ottoman state. Only the existence of 150 fiqh studies until the Padishah Mehmed 2nd, conqueror period is an example of this. During this period, many important studies such as fiqh books such as Mülteka'l-Ebhur and fatwa books such as Behcetü'l Fetâvâ were produced in the Ottoman state. As in the case of the money foundation, very serious monographic Islamic law studies have been written.

During this period, there were several aspects that made the Ottoman state special. These are the official sect (madhhab) preference, the sultanic law and the status of the Shaykh al-Islam. Since the 16th century, the Ottoman state government ordered to resolve legal disputes according to the Hanafi sect's jurisprudence (ijtihad). This situation was written in the qādī records and became the subject of fatwas. The qādīs resolved the disputes according to the ijtihad of the Hanafi madhhab. While this preference provided legal unity and legal stability, it also constituted a relative obstacle to the development of law. The Ottoman state acted bravely in using the sultanic law. Only during the reign of Sultan Suleiman about 200 qānūnnāmes were issued. Even provisions on family law have been enacted through Sultan edicts. Some legal choices, which are in weak opinion within the Hanafi madhhab, have been legalized through qānūnnāmes. In our opinion, Islamic law and sultanic law are two legal systems that are intertwined and complement each other. Shaykh al-Islam gained an official identity in the Ottoman state and became the head of the ilmiyye group and theoretically the judicial organization. Shaykh al-Islam had legislative, executive and judicial powers in the Ottoman State.

The Ottoman state started the period of codification and new ijtihad. In this period, both the rules of law were taken from the west and domestic

provisions were enacted with modern techniques. As in the 1917 family law decree, the official sect preference was abolished. Along with the laws brought from the west, new legal institutions took their place in the Ottoman law. During the Tanzimat period, these developments created a dualist legal structure. Both laws created in accordance with Islamic provisions and laws brought from the West were in effect at the same time. This has been a very important gain in terms of legal experience.

The Ottoman state has a very important place in the formation of Islamic law. The laws enacted during its reign were implemented in Islamic states even after it was collapsed. Many states continue to use the laws enacted during its reign as an example. Developments such as official sectarian preference and dualist legal structure in the Ottoman state are very important “experiences” for today's Islamic states. For this reason, when a step is taken regarding Islamic law, the Ottoman experiences should not be ignored.

BIBLIOGRAPHY

- Akbulut, İlhan** (2018) *Türk Hukuk Tarihi*, İstanbul, Timaş.
- Akça, Gürsoy / Hülür, Himmet** (2006) “Osmanlı Hukukunun Temelleri ve Tanzimat Dönemindeki Hukuksal Yeniliklerin Sosyo-Politik Dinamikleri”, Selçuk Üniversitesi Türkiyat Araştırmaları Enstitüsü Türkiyat Araştırmaları Dergisi, I: 19, Konya, pp. 295-320.
- Akgündüz, Ahmed** (1990) *Kanunnâme-i Âli Osman, Osmanlı Kanunnameleri ve Hukuki Tahlilleri, V: I*, İstanbul, Fey Vakfı.
- Akgündüz, Said Nuri** (2017) *Tanzimat Dönemi Osmanlı Ceza Hukuku Uygulaması*, İstanbul, Rağbet.
- Akman, Ahmet** (2019) “Tanzimat Sonrası Osmanlı Usûl Hukukundaki Gelişmeler”, *MANAS Sosyal Araştırmalar Dergisi*, I: 1, V: 8, p: 431-450.
- Akyılmaz, Gül** (2004) “Osmanlı Devleti’nde Yönetici Sınıf-Reaya Ayrımı”, *Gazi Üniversitesi Hukuk Fakültesi Dergisi*, V: 8, I:2, pp. 221-271.
- Akyılmaz, Gül** (2021) “İki Önemli Kodifikasyon Örneği: Mecelle ve 1774 Tarihli İsveç (Medeni) Kanunu, Benzerlikler -Farklılıklar”, *Uluslararası Mecelle Sempozyumu*, Bursa, pp. 85-129.
- Anhegger R./İnalçık Halil** (1956) *Kanunname-i Sultanî ber Müceb-i Örf-i Osmanî*, Ankara, Türk Tarih Kurumu.
- Ansay, Sabri Şakir** (2002) *Hukuk Tarihinde İslâm Hukuku*, 4th Edition, Ankara, Turhan.
- Apaydın, Hacı Hüseyin** (2010) *İslâm Hukukuna Giriş*, 3rd Edition, Eskişehir, Anadolu Üniversitesi
- Arslan, Emine** (2008) “Osmanlı Dönemi Nuküllü Fetvâ Mecmuaları”, *Türk Hukuk Tarihi Araştırmaları*, I: 5, pp.131-153.
- Atcıl, Abdurrahman** (2009) “The Route to the Top in the Ottoman ilmiye Hierarchy of the Sixteenth Century”, *Bulletin of the School of Oriental and African Studies*, V: 72, I: 3, London, Cambridge, pp. 489-512.
- Avcı, Mustafa** (2019) *Türk Hukuk Tarihi*, 8th Edition, Ankara, Atlas.
- Ayar, Tayip** (2011) *Osmanlı Devleti’nde Fetvâ Eminliği (1826-1922)*, (Phd Dissertation), Ankara University, Institute of Social Sciences.

- Aybakan, Bilal** (2006) “Fürû’ Fıkıh Sistematiği Üzerine” Marmara Üniversitesi İlahiyat Fakültesi Dergisi, V: 31, pp. 5-32.
- Aydın, M. Âkif** (2004) “Kanunnâmeler ve Osmanlı Hukukunun İşleyişindeki Yeri”, Osmanlı Araştırmaları, V: 24, İstanbul, pp. 37-46.
- Aydın, M. Akif** (2011) “İslam Hukukunda Hukukî İstikrar ve Sosyal Değişim Açısından Mezheplerin Konumu (Hanefi Mezhebi İçtihatları ve Osmanlı Devleti Uygulamaları Çerçevesinde)”, Türk Hukuk Tarihi Araştırmaları, I: 11, pp.7-31.
- Aydın, M.Âkif** (2009) Türk Hukuk Tarihi, 7th Edition, İstanbul, Beta.
- Aydın, Mehmet Akif** (2017) Osmanlı Aile Hukuku, İstanbul, Klasik
- Bardakoğlu, Ali** (1997) “Hanefi Mezhebi”, TDV İslâm Ansiklopedisi, V:16, İstanbul.
- Bardakoğlu, Ali** (1999) “Osmanlı Hukukunun Şer’iliği Üzerine”, Osmanlı, V: 6, Ankara, pp. 412-417.
- Beyazıt, Yasemin** (2009) “Osmanlı İlmiye Bürokrasisinde Şeyhülislâmlığın Değişen Rolü ve Mülâzemet Sistemi (XVI.-XVIII. Yüzyıllar)”, Belleten, V: 73, I: 267, pp. 423-442.
- Biçer, Bekir** (2007) Türklerin İslamlaşma Süreci, Ankara, Akçağ.
- Bozkurt, Gülnihal** (1992) “Review of the Ottoman Legal System”, Ankara Üniversitesi Osmanlı Tarihi Araştırma ve Uygulama Merkezi Dergisi, I: 3, Ankara, pp.115-128.
- Bozkurt, Gülnihal** (2020) Batı Hukukunun Türkiye’de Benimsenmesi, 3rd Edition, Ankara, Türk Tarih Kurumu.
- Britannica, T. Editors of Encyclopaedia** (2016) "Fatwa." Encyclopedia Britannica, <<https://www.britannica.com/topic/fatwa>> I.a.d. 26.02.2022
- Bulliet, Richard W.** (1972) “The Shaikh Al-İslâm and the Evolution of Islamic Society”, Studia Islamica, I: 35, pp. 53-67.
- Çelik, Mehmet** (2012) Büyük İslam Hukuku Mecme’ul Enhur (Mültekâ’l-Ebhur’un Şerhi- Damad) Tercümesi, İstanbul, Yasin.
- Cici, Recep** (2001) Osmanlı Dönemi İslam Hukuku Çalışmaları (Kuruluştan Fatih Devri Sonuna Kadar), Bursa, Arasta.
- Cin Halil/ Akgündüz Ahmed** (1989) Türk Hukuk Tarihi, V:1, Konya.

- Cin, Halil** (1988) İslâm ve Osmanlı Hukukunda Evlenme, Konya, Selçuk Üniversitesi.
- Cin, Halil** (1992) Osmanlı Toprak Düzeni ve Bu Düzenin Bozulması, 3rd Edition, Konya, Selçuk Üniversitesi.
- Cin, Halil / Akyılmaz, Gül** (2013) Türk Hukuk Tarihi, 5th Edition, Konya, Sayram.
- Değirmenci, Rıdvan** (2021) Tanzimat Sürecinde Osmanlı Devleti'nin Hukuk Değişimi ve Namık Kemal'in Hukuk Anlayışı, Ankara, Astana.
- Demir Abdullah** (2019) Mufassal Türk Hukuk Tarihi, Ankara Astana.
- Doğangüzel, Semra Betül** (2021) Osmanlı Hukukunda Nişanlanma, 2nd Edition, Ankara, Adalet.
- Durhan, İbrahim** (2008) "Tanzimat Döneminde Osmanlı Yargı Teşkilatındaki Gelişmeler", Erzincan Üniversitesi Hukuk Fakültesi Dergisi, V: 12, I: 3-4, pp. 55-108.
- Düzdağ, Ertuğrul** (2012) Kanunî Devri Şeyhülislam Ebussuud Efendi Fetvaları, İstanbul, Kapı.
- Ekinci, Ekrem Buğra** (2003) İslâm Hukuku ve Önceki Şeriatlar, İstanbul, Arı Sanat.
- El Moudden, Abderrahmane** (1995) "The Idea of the Caliphate between Moroccans and Ottomans: Political and Symbolic Stakes in the 16th and 17th Century-Maghrib", Studia Islamica, I: 82, pp. 103-112.
- Erdem, Gazi** (2008) "Religious Services in Turkey: From the Office of Şeyhülislâm to the Diyanet", The Muslim World, V: 98, I: 2-3, <<http://onlinelibrary.wiley.com/doi/10.1111/j.1478-1913.2008.00216.x/full>> I.a.d: 28.02.2022
- Fendoğlu, Hasan Tahsin** (2021) Türk Anayasa Hukuku Tarihi, Ankara, Yetkin.
- Gedikli, Fethi** (2012) "İstanbul'da Para Vakıfları ve Mudârebe", Osmanlı Hukuku Makaleler, İstanbul, Gündoğan.
- Gedikli, Fethi** (2015) "Hukukî Düşünce Yahut Cumhuriyetin Hukuk Devrimi "Bedevilikten Medenliğe Geçiş": Bolay, Süleyman Hayri (Editor) Tanzimat'tan Günümüze Türk Düşüncesi V:2, Ankara, Nobel.

- Gedikli, Fethi** (2018) “Osmanlı Mahkemesinde Fetva Kullanımı ve Fetva-Kaza İlişkisi” : Kaya, Süleyman; Uğur Yunus; Demiray, Mustafa (Editors), Osmanlı Hukukunda Fetva, İstanbul, Klasik.
- Gökçen, Ahmet** (1987) “Tanzimat Dönemi Osmanlı Ceza Kanunları ve Bu Kanunlardaki Ceza Müeyyideleri” (Master), İstanbul University, Institute of Social Sciences.
- Guida, Michelangelo** (2008) “Seyyid Bey and the Abolition of the Caliphate”, Middle Eastern Studies, V: 44, I: 2, pp. 275-289.
- Gümüş, Musa** (2013) “Osmanlı Devleti’nde Kanunlaştırma Hareketleri İdeolojisi ve Kurumları, Tarih Okulu Dergisi, I: 14, pp. 163-200.
- Hallaq, Wael B.** (1984) “Was the Gate of İjtihad Closed?”, International Journal of Middle East Studies, V: 16, I: 1, pp. 3-41.
- Hamzah, Wan Arfan** (2009) A first Look At the Malaysian Legal System, Selangor, Oxford Fajar.
- Heyd, Uriel** (1983) “Eski Osmanlı Ceza Hukukunda Kanun ve Şeriat”, Ankara Üniversitesi Hukuk Fakültesi Dergisi, (Translator: Selâhaddin Eroğlu) V: 26, pp. 633–652.
- Heyd, Uriel**, (1973) Studies in Old Ottoman Criminal Law, Oxford, Oxford.
- Heyd, Uriel** (1995) “Osmanlı Fetva Müessesesinin Bazı Tezahürleri (III Levha İle Birlikte)”, translator: Gedikli Fethi, Marmara Üniversitesi, Hukuk Fakültesi Hukuk Araştırmaları Dergisi, V: 9, I: 13, pp.287- 317.
- Hocaeminefendizade, Ali Haydar Efendi** (1992) Dürerü’l Hukkâm Şerhu Mecelleti’l Ahkâm, İstanbul, Osmanlı.
- Imber, Colin** (2007) Ebu’s-su’ud, The Islamic Tradition, Edinburg, Standford University.
- İbrahim, Abdülazim** (2022) “Tanzimat Sonrası Gayrimüslim Osmanlı Tebaasının Hukuki Durumu”, Necmettin Erbakan Üniversitesi Hukuk Fakültesi Dergisi, I:1, V:5, pp.63-91.
- İncalcık, Halil** (2000) “Türk İslam Devletlerinde Devlet Kanunu Geleneği”, Osmanlı’da Devlet, Hukuk, Adalet, İstanbul, Eren.
- İpşirli, Mehmet** (2010) “Şeyhülislam”, TDV İslâm Ansiklopedisi, V: 39, İstanbul.

- Kantar, Baha** (1984) Ceza Hukuku, İstanbul.
- Karakaya, Harun** (2020) “Osmanlı Ceza Hukuku’nda Parada Sahtecilik Suçu”, (Master), Ankara Yıldırım Beyazıt University, Institute of Social Sciences, Ankara.
- Karataş, Abdullah Vefa** (2019) “Divan-ı Hümayun ile Paşa Divanının Karşılaştırılması -Manisa Şehzâde Sarayı Dîvânı Örneği-“, Adalet Dergisi, V:1-2, I: 63, pp.235-264.
- Karataş, Abdullah Vefa** (2020) “Türk Hukuk Tarihi Açısından Kul Sistemi”, Yıldırım Beyazıt Hukuk Dergisi, I: 1, pp.153-188.
- Karaman, Hayrettin** (2013) Mukayeseli İslam Hukuku I, 8th Edition, İstanbul, İz.
- Kaya, Eyüp Said** (2010) “Şerh” TDV İslâm Ansiklopedisi, V: 38, İstanbul.
- Kaya, Süleyman/ Algin, Betül/ Trabzonlu, Zeynep / Erkan, Asuman** (2011) Behcetü'l-Fetâvâ, İstanbul.
- Kayar, Betül** (2021) Tanzimat Dönemi Osmanlı Hukuk Reformları, Ankara, Adalet.
- Kılıç, Yusuf** (2019) Osmanlı Hukuku’nda Vekâlet Sözleşmesi, Ankara, Adalet.
- Kılınç, Ahmet** (2015) “Bir Meclis-i Vâlâ Hükmü ve Tahlili”, Adam Akademi, V: 5/1, pp. 15-36
- Kılınç, Ahmet** (2018) “Çocuk Düşürtme Suçunun 17’nci Yüzyıl İstanbul’undaki Görünümü”, Dicle Üniversitesi Hukuk Fakültesi Dergisi, V: 23, I:38, pp. 31-84.
- Kılınç, Ahmet** (2018) “Hukuk Tarihi Açısından Kanuni Dönemine Münhasır Gelişmeler”: Baki, Adnan/ Karal, Hasan (Editors), I. Uluslararası Kanuni Sultan Süleyman Sempozyumu, 24-26 April 2018, (2018a).
- Kılınç, Ahmet** (2019) “İslam Hukukunun Evrenselliği Bağlamında Hukuk-ı Aile Kararnamesi ile Malezya İslam Aile Hukuku Kanunu 1984’ün Mukayesesi”, Erciyes Üniversitesi Hukuk Fakültesi Dergisi, V: 14, I: 2, pp. 623-662.

- Kılınç, Ahmet / Yıldırım, Davut** (2021) “Tanzimat Dönemi Dualist Hukuk Yapısının Şahsa Karşı İşlenen Suçlara Yansıması”: Koyuncu, Nuran / Yıldız, Abdulkadir (Editors), Necmettin Erbakan Hukuk Araştırmaları Kamu Hukuku, Konya, Necmettin Erbakan University Publications.
- Kılınç, Ahmet**, “İslam Hukuk Tarihi Açısından Osmanlı Devleti’nin Önemi”: İbrahim, Abdülazim (Editör), 1. Uluslararası Irak’ta Osmanlı İzleri Sempozyumu Özet Bildiri Kitabı, 15-16 November 2021, Karabük.
- Kızılkaya, Necmettin** (2006) “Hanefi Furû-ı Fıkıh Eserlerinde Fikhî Kâidelerin Uygulama Alanına Bir örnek olarak Bedâi’u’s-sanâi”, İslam Hukuku Araştırmaları Dergisi, I: 8, pp. 79-98.
- Konan, Belkıs** (2008) “Osmanlı Devleti’nde Çocuk Düşürme Suçu”, Ankara Üniversitesi Hukuk Fakültesi Dergisi, V: 57, I: 4, pp. 319-335.
- Koyuncu, Nuran** (2016) “Osmanlı Hukukunda Esnaf Gediği”, II. Türk Hukuk Tarihi Kongresi, Gedikli, Fethi (Editor), İstanbul, Onikilevha.
- Koyuncu, Nuran / Yılmaz, Yasin** “Osmanlı’nın Son Yüzylında Hukuk Düşüncesinin Dönüşümü ve Dönemin Başlıca Tartışma Konuları”, Selçuk Üniversitesi Hukuk Fakültesi Dergisi, V: 26, I: 2, pp. 77-109.
- Koyunoğlu, H. Hüsnü** (2008) “Para Vakıfları: Muhasebe Defterlerine Göre 17. Yüzyıl İstanbul Uygulaması”, Dinbilimleri Akademik Araştırma Dergisi, V: 8, I: 1, pp. 253-303.
- L.W.C. (Eric), Van Lit** (2017) “Commentary and Commentary Tradition the Basic Terms for Understanding Islamic Intellectual History”, MIDÉO, V: 32, <<http://journals.openedition.org/mideo/1580>> I.a.d: 25.02.2022
- Livaoglu Mengüç, Hilal** (2019) “The Egyptian Response to the Abolition of the Caliphate: A Press Survey”, Cumhuriyet Tarihi Araştırmaları Dergisi , I: 30, Year 15, pp. 109-133.
- Mandaville, Jon E.** (1998) “Faizli Dindarlık: Osmanlı İmparatorluğunda Para Vakfı Tartışması”, (Translator: Gedikli, Fethi), Yaz Gündemi, Türkiye Günlüğü, p. 129-144.
- Mehmed Arif Bey** (1325) “İ’ dâm Cezâsı Târihcesi – Bizde icrâ edilememesi esbâbı”, İlm-i Hukuk ve Mukayese-i Kavânin Mecmuası, I: 1, pp.49-53.

- Mevkûfâtî, Mehmed** (1980) *Mültekâ Tercümesi Mevkûfât*, Simplified by: Ahmed Davudođlu, İstanbul Doyuran Matbaası.
- Mumcu, Ahmet** (2007) *Divan-ı Hümayun*, 3rd Edition, Ankara, Phoenix.
- Örsten Esirgen, Seda** (2019) “Taznima’tan Cumhuriyet’e Türk Hukukunda Kanunlaştırma Hareketleri”, *Adalet Dergisi*, V: 1-2, I: 62-63, pp. 429-480.
- Örsten, Seda** (2005) “Osmanlı Hukukunda Fetvâ”, Ankara Üniversite İnstitüte of Social Sicence (Master), Ankara.
- Örsten, Seda** (2007) “Osmanlı Hukuk Tarihi Kaynađı Olarak Fetvâ Mecmuaları”, *Türk Hukuk Tarihi Arařtırmaları*, I:4, pp. 29-40.
- Ortaylı, İlber** (1995) *İmparatorluđun En Uzun Yüzyılı*, 3rd Edition, İstanbul, Hil.
- Osmanađaođlu Karahasanođlu, Cihan** (2011) “Mecelle-i Ahkam-ı Adliyye’nin Yürürlüđe Giriři ve Türk Hukuk Tarihi Bakımından Önemi”, *Osmanlı Tarihi Arařtırma ve Uygulama Merkezi Dergisi*, I: 29, pp. 93-124.
- Osmanađaođlu Karahasanođlu, Cihan** (2012) “Ömer Lütfi Barkan ve Türk Hukuk Tarihi”, *İstanbul Üniversitesi Hukuk Fakültesi Mecmuası*, V: 70, I: 1, pp. 413 – 440.
- Osmanađaođlu, Cihan** (2010) “Osmanlı Devleti’nin Klasik Döneminde, Para Vakıflarının Hukuki Yönü”, *Maltepe Üniversitesi Hukuk Fakültesi Dergisi*, I: 1-2,, pp. 247-300.
- Özdemir, Merve** (2016) “Osmanlı Fetvalarında Iskât-ı Ceninin (Cenin Düşürmenin) Cezai Sonuçları”, *Uluslararası Sosyal Arařtırmalar Dergisi*, V: 9, I: 46, pp. 956-965.
- Peters, Rudolph** (2005) “What does it mean to be an official madhhab: Hanafism and the Ottoman Empire.”, *The Islamic School of Law: Evolution, Devolution, and Progress* (Editors: P. Bearman, R. Peters, F. Vogel.) Cambridge, Harvard University, pp. 147-158.
- Rafeq, Abdul-Karim** (1999) “Relations Between The Syrian 'Ulama' And The Ottoman State In The Eighteenth Century”, *Oriente Moderno Nuova serie*,nV: 18 (79), I:1, pp. 67-95.

- Remali Yusoff, Nor'zurah Md. Kamdari** (2017) "Understanding Usul Al-Fiqh and Its Application Analysis", *Sukuk, Mukhtamar Waqf Iqlimi*, V: 4, pp. 148-157.
- Şa'bân, Zekiyyüddîn** (2000) *İslâm Hukuk İlminin Esasları*, Ankara, Türkiye Diyanet Vakfı.
- Şensoy, Sedat** (2010) "Şerh", *TDV İslâm Ansiklopedisi*, V: 38, İstanbul.
- Şentop, Mustafa** (2005) "Tanzimat Dönemi Kanunlaştırma Faaliyetleri Literatürü", *Türkiye Araştırmaları Literatürü Dergisi*, V: 3, I: 5, pp. 647-672.
- Şimşek, Mehmet** (1985) "Osmanlı Cemiyetinde Para Vakıfları Üzerine Münakaşalar", *Ankara Üniversitesi İlahiyat Fakültesi Dergisi*, I: 27, pp. 207-220.
- Sirry, Mun'im** (2013) "Fatwas and their controversy: The case of the Council of Indonesian Ulama (MUI)", *Journal of Southeast Asian Studies*, V: 44, I: 1, Singapore, Cambridge, Cambridge University, pp. 100-117.
- Sobia, Bashir / Amen Imran** (2012) "Legal System of the Ottoman Empire", *Journal of Law and Society Law College*, V: 42, I: 59, Peshawar, pp. 101-110.
- Taş, Kemaleddin/ Göksüçukur, Betül** (2019) "Osmanlı Dönemi Batıcılık, İslamcılık Türkçülük Fikir Akımları ve Din", *Dini Araştırmalar*, V: 22, I: 56, Ankara, pp. 463-488.
- Topuzoğlu, Tevfik Rüştü** (1997) "Haşiye", *TDV İslâm Ansiklopedisi*, V: 16, İstanbul.
- Ucatlı Abdulahat** (2009) "İslâm Hukukunda Cenine Müdahalenin Hükmü", (Master) İstanbul University, Institute of Social Sciences.
- Üçok, Çoşkun** (1946) "Osmanlı Kanunnamelerinde İslam Ceza Hukukuna Aykırı Hükümler", *Ankara Üniversitesi Hukuk Fakültesi Dergisi*, V:3, I: 1, pp. 125-146.
- Üçok, Çoşkun** (1947) "Osmanlı Kanunnamelerinde İslâm Ceza Hukukuna Aykırı Hükümler", *Ankara Üniversitesi Hukuk Fakültesi Dergisi*, V: 4, pp. 48-73.

- Üçok, Coşkun/ Mumcu, Ahmet / Bozkurt, Gülnihal** (2015) Türk Hukuk Tarihi, 17th Edition, Ankara, Turhan.
- Ülker, İbrahim** (2018) Osmanlı Noterlik Hukuku, Ankara, Adalet.
- Ünal Özkorkut, Nevin** (2003) “Savcılık, Avukatlık ve Noterlik Kurumlarının Osmanlı Devleti’ne Girişi”, Ankara Üniversitesi Hukuk Fakültesi Dergisi, V:52, I: 4, pp.114-154.
- Ünal Özkorkut, Nevin** (2016) Osmanlı Hukukunda Müdde-i Umumilik, Ankara, Turhan.
- Velidedeoğlu, Veldet Hıfzı** (1940) “Kanunlaştırma Hareketleri ve Tanzimat”, Tanzimat I, İstanbul, Maarif.
- Weiss, Bernard** (1978) “Interpretation in Islamic Law: The Theory of Ijtihād”, The American Journal of Comparative Law, V: 26, I:2, pp. 199-212.
- Yakar, Emine Enise** (2019) “A Critical Comparison Between The Presidency Of Religious Affairs (Diyanet İşleri Başkanlığı) And The Office Of Shaykh Al-Islâm”, Kilis 7 Aralık Üniversitesi İlahiyat Fakültesi Dergisi, V: 6, I: 11, pp. 421-452.
- Yıldız, Kemal/ Yıldırım, İlyas/ Demir, Oğuzhan** (2014) “Türkçe Telif Edilen Fıkıh İlmi/İslam Hukuku Tarihi Çalışmaları”, Türkiye Araştırmaları Literatür Dergisi, V: 12, I: 24, pp. 127-145.
- Yıldız, M Cengiz** (1999) “Osmanlı’nın Son Dönemindeki Üç Düşünce Akımının Sosyolojik Analizi: Batılılaşma, İslamcılık ve Milliyetçilik”, SDÜ Fen Edebiyat Fakültesi Sosyal bilimler Dergisi, I: 4, Isparta, pp. 279-301.
- Yılmaz, Coşkun** (Editör), Hasköy Mahkemesi 3 Numaralı Sicil (H. 1023-1081 / M. 1615-1670) V:52, İstanbul, İSAM.