The Birth of Islamic Law: From the Intervention of the Prophet to the Evolution of Fiqh

التشريع الإسلامي، من بعثة النبي صلى الله عليه وسلم إلى تطور الفقه الإسلامي

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Abstract

The development of Islamic law encompasses a continuum from the Prophet's intervention to the evolution of fiqh. Fiqh serves as the expression of legal knowledge and accumulated information on legal matters within the Muslim community. This article places emphasis on the significance of fiqh, presenting insights into its utilization during the inception of Islam. Furthermore, it acknowledges that fiqh constitutes a distinct system compared to modern legal frameworks. Sharia is defined as a set of rules established by God for guiding humanity, and the article delves into the relationship between Sharia and fiqh, highlighting fiqh as the pursuit of comprehending and applying these Sharia rules. Additionally, the article elucidates a threefold hermeneutic process, encompassing understanding, interpreting, and the hermeneutic process, and discusses its role in the field of fiqh. Addressing the role of the Prophet (p.b.u.h) and legal interventions, the narrative explores the historical evolution of fiqh and the contributions made by Abū Ḥanīfah. Finally, the challenges encountered in the historical evolution of fiqh are examined, underscoring how traditions, while contributing positively, can also exert negative influences by becoming inflexible and stagnant over time, potentially diminishing the dynamism of fiqh.

Key words: Abū Ḥanīfah, Fiqh, Hermeneutic, Islamic law, Muslim community, Modern legal frameworks, Sharia, Significance of Fiqh

In-Depth Understanding: The Significance and Application Fields of Fiqh

Humans are inherently designed to serve Allah and create an atmosphere where Allah's word is revered. Hence, each Muslim bears the responsibility of discerning whether their life aligns with Allah's commands and desires. This concept underscores the significance and necessity of Fiqh. Specific Quranic verses[1] counsel certain individuals, especially in sacred actions like jihad, not to engage in warfare without gaining an understanding of and learning about their religion. Such individuals are recognized as jurists.[2] Furthermore, the Prophet's hadith further emphasizes this importance: "When Allah intends good for someone, He bestows upon them understanding in religion."[3] The term "يُفَقِّهُهُ (yufaqihhu)" used in this hadith signifies insight and profound

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[1] The Qur'an, al-Tawbah; 122.

[2] Muḥammad bin Jarīr al-Ṭabarī, *Tafsīr al-Taberī: Jāmiʿu al-Bayān fī Taʾwīli al-Qurʾān*, (Dār al-Tarbiyah wa al-Turāth, 2008), vi; 513-514. Also see; Abū Manṣūr al-Māturīdī, *Tafsīr al-Maturīdī: Taʾwīlâtu ahlu as-Sunnah,* (Beirut: Dār al-Kutub al-Ilmiyyah, 2005) ii, 456. Muḥammad ibn Aḥmad al-Qurṭubī, *Tafsīr al-Qurtubi: al-Jāmiʿ li ahkām al-Qur'an*, (Dār al-Kutub al-Ilmiyah, 4th edn., 2014), x, 428-430. Muḥammad Jamāluddin al-Qāsimī, *Mahāsin at-Taʾwīl,* (Damascus: Dār Ihyā al-Kutub al-Arabiyyah, 1957), 3299.

[3] Muhammad al-Bukhārī, Sahih al-Bukhārī; 71 <https://sunnah.com/bukhari:71> (accessed January 15, 2024)

comprehension in religious matters. Comparable hadiths from the Prophet (p.b.u.h) underscore the pivotal role of Fiqh in the life of a Muslim.

While Al-Isfahani perceives fiqh as a tool for accessing the unknown through pre-existing knowledge,[1] al-Jawziyya interprets fiqh in a more nuanced manner than mere "fahm" (understanding). In this context, comprehending the speaker's intention deviates from the strict dictionary definition, and individuals' diverse perspectives on this matter impact the depth of their knowledge and fiqh.[2] The term fiqh entails the understanding of something, grasping it thoroughly and comprehensively, and delving into its depths.[3] This connotation is also present in the Qur'an, as seen in expressions like "they have hearts that do not understand"[4] or "but the hypocrites do not understand,"[5] where understanding surpasses a literal interpretation. Fiqh primarily denotes the legal knowledge among Muslims, encompassing the expertise developed by Muslim legal scholars. Technically, Fiqh is a product of various scholars from different schools of law. Although defined in various ways, a comprehensive definition shared among them is as follows: Fiqh is the knowledge of practical laws derived and deduced from specific and detailed evidence within the Sharīʿah.[6]

In the initial phases of Islam, fiqh had not yet crystallized into a formal science. In the Era of Bliss, fiqh served the purpose of comprehending the Holy Quran, the divine word of Allah, and the practices of the Prophet (p.b.u.h) as outlined in the Sunnah.[7] Fiqh finds its foundation in the Holy Quran, representing the words of Allah, and the Sunnah, encompassing the actions and sayings of the Messenger of Allah. In this regard, fiqh stands as a distinct system, diverging from contemporary legal frameworks.[8]

Fiqh derives its principles from divine sources, in contrast to human-made legal systems.[9] In Fiqh, regulations remain constant, and distinctions between prohibited (haram) and permissible (halal) actions are unequivocal. Conversely, within human legal frameworks, provisions can fluctuate based on societal norms and temporal considerations.[10] Additionally, Fiqh encompasses sanctions that may extend beyond worldly consequences, involving both earthly repercussions and consequences in the afterlife. In contrast, human legal systems predominantly focus on earthly repercussions without consideration for the spiritual realm.[11]

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[1] Abū al-Qāsım Husayin b. Muhammed b. Mufaddal al-Rāghıb al-İsfahānī, *Mufradāt alfaz al-Qur'an*, tahqīq by Safvan Adnan Dāwūdī, (Beirut, Dār al-Shāmiyyah, 4th edn., 2009), 642.

[2] Abū Abdillah Shamsuddīn Muhammed b. Abī Bakr Ibn al-Qayyīm al-Jawziyya, *Iʿlamu al-Muwakkiʿīn ʿan Rabbi al-ʿAlamīn*, tahqiq by Abdurraʿūf Sad, (Beirut, Dār al-Jayl, 1973), i, 219

[3] Muḥammad Bin Yaʿqūb Al-Firuzābādī, *al-Qāmus al-muḥīṭ wa al-Qābus al-Wasīt* (Toronto; University of Toronto, 2013) 74

[4] The Qur'an, al-Aʿrāf: 179

[5] The Qur'an, al-Munāfiqūn: 7

[6] ʿAbdurrahman bin Jādullah al-Bannānī, *Khāshiyah al-ʿAllāmah al-Bannānī 'alā Sharh al-Mahallī 'Alā Jāmʿi al-Jawāmiʿ*, (Dār al-Kutub al-ʿIlmiyyah, 2020), 33.

[7] Faruk Beser, *Herkes İçin Kolay Usulü Fıkıh [Easy Procedure Fiqh for Everyone]*, (Istanbul: Marmara İFAV Yayınları, 3rd edn., 2002), 11.

[8] Nurettin Sentürk, İslam Hukuku ile Modern Hukukun Karakteristik Özellikleri ve Birbirinden Yararlanma İmkânı / The Characteristic Features of Islamic Law and Modern Law and the Opportunity to Benefit From Each Other, *Ilahiyat*, (2021): 155-165.

[9] Sahip Beroje, On the Possibility of Benefiting of Islamic Law and Humanitarian Law From Each Other, *IJSHS*, vol. 2, no. 2 (2018): 129-143

[10] Yuksel Çayıroğlu, Helâl ve Haramlarla İlgili Kaide ve İlkeler [Rules and Principles Regarding Halal and Haram], *Çukurova Üniversitesi İlahiyat Fakültesi Dergisi*, vol. 18, no.1 (2018): 597-633.

[11] İlhan Akbulut, İslam Hukukunda Suçlar ve cezalar [Crimes and Punishments in Islamic Law], *Yeditepe Üniversitesi*, vol. 52, no.1:170-175. Also see; Muhammed Halil Ayaklı, The Concepts of Crime and Punishment in Islamic Law, vol. 2, no.2 (2022): 487-525.

The primary distinction between fiqh and conventional law lies in the fact that fiqh is not solely constructed based on legal reasoning but is shaped by considerations of faith, morality, and worship. Consequently, fiqh regulates not only the legal aspects of individuals' relationships with each other and with the state but also governs the individual's connection with God. The inclusion of systematic worship, acts of worship such as atonement, and discussions on permissible and prohibited matters (Istihsān and Karāhiyah) in nearly every fiqh book stems from this holistic perspective. While fiqh imparts knowledge of rights and responsibilities, its purpose extends beyond legal theory, aiming to instill moral education and practical application.[1] Viewing fiqh solely as a legal theory would, at the very least, result in an incomplete assessment.

The disparities between these legal systems arise from their distinct underlying philosophies. In essence, fiqh is more comprehensive than Western law, encompassing various dimensions, whereas Islamic law, particularly focused on muʿamalāt, appears narrower when compared to the broader scope of fiqh, which includes ibadāt, muʿamalāt, and uqūbāt. In conclusion, a comprehensive examination reveals fiqh as the most extensive framework, encapsulating the entirety of Islamic law.

The distinctive feature of fiqh lies in its endeavor to bridge the gap between evolving life events and societal conditions by applying unchanging provisions grounded in divine will. Fiqh has evolved into a discipline that harmonizes the Qur'an and Sunnah texts (nass) with the dynamics of life, conducting thorough comparisons, reconciliation, and deep interpretation. It serves as a science that not only interprets these sources but also crafts a roadmap for Muslims, providing guidance and direction along their journey.

Interplay of Sharia and Fiqh: Core Principles, Interpretations, and Dynamism

Fiqh, as a scientific discipline, possesses enduring, objective qualities, coupled with the virtues of dynamism, adaptability, and flexibility. Consequently, it becomes crucial to comprehend the interconnection between Sharia and Fiqh within this framework.

Sharia can be characterized as a set of guidelines established by God to direct individuals in their interactions with one another, their surroundings, and their daily lives. There are generally two predominant perspectives on Sharia, attributed to Abū Ḥanīfah and Imam Shafiʿī, both frequently cited by Islamic scholars. Abū Ḥanīfah defines Sharia as the entirety of teachings disclosed by the Prophet (p.b.u.h) to guide his community. However, critics, particularly among Ḥanafī scholars, contend that this definition is overly broad, arguing that it encompasses the entire spectrum of Islamic practices. On the other hand, Imam Shafiʿī posits that Sharia encompasses laws governing human conduct, particularly those transmitted by the Prophet (p.b.u.h). These regulations cover both the vertical relationship between the individual and God and the horizontal interactions among individuals.[2]

According to Hallaq, Sharia transcends being merely a judicial system or a legal doctrine that governs social relations and serves to resolve disputes. It is also a dynamic and integrated practice that establishes various connections with the surrounding world in structural and organic dimensions: vertically and horizontally, structurally and linearly, economically and socially, morally and ethically, intellectually and spiritually, epistemically and culturally, and textually and poetically. Sharia is not just a set of beliefs and rules; it is equally a way of life and a worldview, functioning as a living entity

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[1] Mohammad H. Fadel, *Islamic Jurisprudence, Islamic Law, and Modernity*, (Columbus: Lockwood Press, 2023), 237-240.

[2] Ian Richard Netton, *Islam, Christianity and Tradition: A Comparative Exploration,* (Edinburgh: Edinburgh University Press, 2006), 90-92.

with its own perspective on the world.[1] In this perspective, Sharia is not only a static repository of principles but a vibrant entity that engages with and perceives the world.

The field of fiqh is a dedicated discourse on sharia, and the interconnection between sharia and fiqh is fundamentally harmonious. Sharia is the divine revelation from God, characterized by its eternal, unchanging, and immutable nature. In contrast, fiqh represents human endeavors to reason and interpret God's intentions as conveyed in sharia. While fiqh possesses a quality of adaptability that allows it to evolve with changing times, it is not congruent with sharia in the same unwavering manner, given its inherent flexibility.[2]

Highlighting the differentiation between sharia and fiqh, certain scholars assert that sharia is a divine legislative creation, the ultimate subject of God, whereas fiqh constitutes the legal comprehension within the realm of humanity.[3] Sharia encompasses a wide spectrum, addressing all human actions and behaviors, while fiqh specifically addresses actions classified as legal or illegal based on legal principles.[4]

Sharia encompasses regulations derived from the Quran and Sunnah, consisting of three fundamental components: aqidah, fiqh, and akhlaq. Sharia remains flawless and immutable; conversely, fiqh adjusts to variations in time, location, and context of application.[5] Sharia is exclusively rooted in revelations from the Quran and Sunnah, while fiqh evolves through logical reasoning and inference based on advancing knowledge.[6] Sharia spans a range of actions from permissible to impermissible, whereas fiqh distinctly classifies actions as lawful or unlawful.[7]

The Interplay Between the Science of Fiqh and Hermeneutics: Unraveling the Processes of Understanding and Interpreting Meaning

In the present day, the field of fiqh science is intricately intertwined with hermeneutics. This connection arises from the objective of hermeneutic philosophy not only to formulate rules for comprehending legal texts but also to forge a link between the meaning and intent of humanistic philosophy and establish a connection with contemporary readers. This synergy has given rise to a threefold hermeneutic process, encompassing the understanding of meaning, interpretation, and the hermeneutic process.

The Process of Grasping Meaning:

This initial process delves into the original significance of the text, concentrating on its origin, temporal context, and the place where the original meaning took shape. It aims to comprehend and extract the inherent meaning of the text by revisiting the circumstances in which the legal text was initially crafted.

Interpretation Process:

The second process involves interpretation and endeavors to map the original meaning to the contemporary significance of the text's content. Essentially, this process seeks to adapt the original

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[1] Wael B. Hallaq, *An Introduction to Islamic Law*, (Cambridge University Press, 2009), 163-164

[2] Arip Purkon, Pendekatan Hermeneutika Dalam Kajian Hukum Islam [Examination of the Hermeneutic Approach in the field of Islamic Law], *Ahkam*, vol. 13, no. 2 (2013): 184-185.

[3] Peri Bearman, Wolfhart Heinrichs and Bernard G. Weiss, *The Law Applied: Contextualizing the Islamic Shari'a*, (I.B.Tauris, 2008), 325-330.

[4] Kali Robinson, *Understanding Sharia: The Intersection of Islam and the Law*, 2021.

[5] Muḥammad Yusuf Musa, *al-madkhal Li Dirasat Al-fiqh Al-Islami*, (Dār al-Fikr al-ʿArabi, 1953), 120. Also see; Mustafa Genç, *Fıkh ve Toplumsal Değişme*, (Master thesis, Necmettin Erbakan University, 2019),16

[6] Munir Ahmad Mughal, *What is Istidlal?*, (Punjab University Law College, 2012), 8-10.

[7] Mohammad Akram Laldin, *Introduction to Shariah and Islamic Jurisprudence*, (CERT Publications, 2006), 9

meaning to present-day traditions, rooted in its historical context. The goal is to align the text with the understanding of today's readers.

Hermeneutic Process:

The final step is the hermeneutic process, which involves formulating rules and methods utilized in transitioning from the original understanding to the current or contemporary meaning. This process plays a pivotal role in determining how legal texts engage with contemporary society and culture.

Both processes share a parallel relationship between jurisprudence and hermeneutics. They are guided by the overarching objective of hermeneutic philosophy, which is not solely focused on developing rules and procedures for comprehending legal texts but also aims to establish a connection between their meaning and intent and the understanding of present-day readers.[1]

The Prophet's Integral Role in Fiqh: Legal Involvement and Procedural Fundamentals

Undoubtedly, the linchpin of fiqh in Islamic history lies in the persona of the Prophet (p.b.u.h). As the exclusive individual entrusted with conveying and elucidating the divine revelations that form the core of the Islamic faith,[2] the Prophet's actions and words emerged as a paramount source in the subsequent development of fiqh. Notably, compilations of hadith were organized based on legal themes and labeled as "sunan."[3]

It can be a material for heroism and emotional speeches to believe that the Prophet (p.b.u.h), envisioning the society of his time as devoid of any law, personally constructed a legal system from the ground up. However, it is essential to note that there was an existing legal system in pre-Islamic Arab society. Nevertheless, this system encompassed elements contradicting the divine-natural law introduced by Islam, potentially influencing the formation process and procedures of fiqh.[4]

The Prophet (p.b.u.h) initiated a legal system in Arab society, introducing state authority for the first time and backing the law with state support. However, his approach prioritized practical implementation in terms of methodology. The task of evolving this procedure into a formal scientific discipline was left to subsequent generations.[5]

The legal system lacked a consistent measure for assessing the truth.[6] The Prophet (p.b.u.h) stepped in, executing his legal interventions and fulfilling his mission.[7] Rather than altering specific legal provisions, his mission instigated profound transformations in legal philosophy. It involved redefining fundamental concepts such as rights, justice, humanity, women, society, and sovereignty, thereby reshaping the content and interpretation of various legal domains.

In the era of the Prophet (p.b.u.h), companions would present their challenges to him, seeking resolutions. The Prophet (p.b.u.h) addressed these issues using either Quranic verses revealed to him,

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[1] Mohammad Nor Ichwan, *Ilmu ushul fiqh di mata filsafat ilmu [Philosophy of science through the eyes of the science of the principles of jurisprudence]*, (Walisongo Press, 2009), 20-26.

[2] Ali Mohammad Mirjalili and Majid Daneshgar, A Glance on Main Sources of Fiqh al-hadīth From the Point of view of Feyz Kāshānī's Book al-Vāfī, *Hadis Tetkikleri Dergisi*, (2010): 70.

[3] M. Yasar Kandemir, "Sunen", Turkiye Diyanet Foundation Islamic Encyclopedia, <https://islamansiklopedisi.org.tr/sunen> (accessed January 20, 2024).

[4] Joseph Schacht, Pre-Islamic Background and Early Development of Jurisprudence, in *The Formation of Islamic Law* edited by Wael B. Hallaq, (Routledge, 2004), 29-57.

[5] Hacı Yunus Apaydın, *İslam Hukukunda Deliller ve Yorum Metodolojisi [Evidence and Interpretation Methodology in Islamic Law]*, (Kayseri: Rey Yayincilik, 1994), vi.

[6] Hande Sena Calıs, Genel olarak nesafet kavramı ve bu kavramın idare hukundaki bazı görünüş şekilleri [The concept of nepotism in general and some aspects of this concept in administrative law], *Selçuk Üniversitesi Hukuk Fakültesi Dergisi*, vol. 25, no. 2, (2017): 185.

[7] Daniel Mihoc, "The Mighty Angel, the Little Book and the Mission of the Prophet", *Revista Teologica*, vol. 9, no.3 (2017): 83.

insights divinely inspired in his heart, or his own reasoning and judgment.[1] When the companions observed the Prophet (p.b.u.h) rendering a decision without explicit revelation, that decision would be considered conclusive evidence for all.

In response to the Prophet's recurrent hadith, "Support your brother, whether he is the oppressor or the oppressed," the companions questioned, "We can assist the oppressed, but how do we aid the oppressor?" The Prophet (p.b.u.h) elucidated, "You help the oppressor by preventing his wrongdoing."[2] The companions were already familiar with this concept, and when they sought clarification, the Prophet (p.b.u.h) explained, "Initially, you stood by your brother, whether he was right or wrong. Now, you assist him when he is right. If he is wrong, you help him by restraining him and preventing his wrongdoing." This mission highlights the Prophet's pivotal role as a transformative figure in legal matters.

The Prophet's actions in the realm of law were groundbreaking. Employing a threefold approach, he aimed to elevate the existing legal system and rectify societal issues through reform, abolition, and eradication. He revolutionized society by either preserving existing practices (ibqā), nullifying them entirely (ilqā), or amending them for improvement (ıṣlāḥ).[3]

The Prophet's interventions can be characterized as revolutionary in the realm of law. Rather than completely abolishing existing legal and economic practices in society, he prohibited unjust practices such as interest, usury, and black marketeering that led to unfair gains. He focused on rectifying flawed aspects of practices like surety, rental, and loans. The Prophet (p.b.u.h) also forbade blood feuds, improper marriages, and inhumane treatment of slaves, introducing provisions aligned with human dignity and personality. His provisions were instructional, educational, and guiding, considering human nature and psychology. By accurately understanding society, he took corrective measures and transformed it in accordance with divine will. While it may not be claimed that every individual reached a positive point, the Prophet (p.b.u.h) held the prevailing will and authority at the foundation of society and the state.[4]

Emergence of Fiqh: Abū Ḥanīfah's Influential Contributions

The field of fiqh, which evolved through the contributions of the Prophet's learned companions, attained a significant stage under the guidance of Abū Ḥanīfah. Abū Ḥanīfah played a pivotal role in shaping the tradition of fiqh,[5] defining it as the knowledge of what is beneficial and harmful for an individual.[6] Although later critiques emerged as the dimensions of fiqh became clearer, this definition aligns well with the inherent nature and overarching goal of fiqh. During this era, Abū Ḥanīfah received acclaim for formulating this comprehensive definition.[7] The term "maʿrifah" (knowledge)

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[1] Abdulwahab Khallaf, *Kitāb ʿIlm 'usūl al-fiqh wa khulāsah Tārīkh al-Tashrīʿ*, (Matbaa al-Madani, 1955), 221-222.

[2] Muhammad al-Bukhārī, *Sahih al-Bukhārī*, Book of Oppressions (Mezâlim), Hadith 4; Book of Compulsion (İkrāh), Hadith 6. Also see; Muhammad ibn 'Isa al-Tirmidhi, *Sunan al-Tirmidhi*, Book of Tribulations (Fiten), Hadith 68; Ahmad b. Husayin al-Bayhaqī, *Shuʿabu al-īmān*, (Dimashq: Maktabah al-Rushd, 2003), i, 109).

[3] Inceif, Maqasid al-shariah and the Legality of Islamic Financial Contracts, 2015 <https://inceif.edu.my/kmimpact/2015/04/23/maqasid-al-shariah-and-the-legality-of-islamic-financial-contracts/> (accessed January 21, 2024). Also see; No author, Islam Hukukuna Giris: Kısa Ozet [Introduction to Islamic Law: Brief Summary], 2014, 3; Ali Merad, "islah", Turkiye Diyanet Foundation Islamic Encyclopedia, <https://islamansiklopedisi.org.tr/islah#1-kavramin-icerigi-ortaya-cikisi-ve-gelismesi> (accessed January 20, 2024)

[4] Ahmet Ozdemir, *Peygamber'in Fıkhî Hükümlerindeki Usûl ve Ilkeler [Procedures and Principles in the Fiqh Rulings of the Prophet]*, (Ankara: Murat Kitapevi, 2015), 101-149.

[5] Muhammed Beşir Çalışkan, A Comparative Analysis of the Role of Fiqh in Islamic Finance, *International Journal of Islamic Economics and Finance Studies*, vol. 2, (2022): 200-211.

[6] معرفة النفس ما لها و ما عليها

[7] ⁷ Murat Simsek, "Imam Abu Hanife ve Fıkıh Düşüncesi [Imam Abu Hanife and the thought of fiqh]", Youtube, https://www.youtube.com/watch?v=cBwy6LurY1Q (accessed January 20, 2024)

in this context denotes acquiring specific information supported by evidence, encompassing doctrinal, practical, and ethical aspects. Initially attributed to Abū Ḥanīfah, this definition influenced his categorization of his work on Faith as "al-Fıqh al-Akbar." Subsequently, Hanafis modified it by adding the term "amalan," excluding matters beyond practical provisions from its scope.[1]

Abū Ḥanīfah's significant contribution extends beyond altering the prevailing system; he successfully established a systematic tradition of fiqh, a more intricate task involving the creation of a comprehensive system.[2] Acknowledging this achievement, Abū Ḥanīfah was honored with the title of "absolute and independent mujtahīd." Additionally, two of his notable students, Imam Muhammad and Imam Abu Yusuf, earned the designation of "mujtahīds in the sect" due to their proficiency in independent legal reasoning within the Hanafi school.

The fiqh tradition initiated by Abū Ḥanīfah endured through the efforts of his students and adherents. Nevertheless, as time passed, the notion of "closing the door of ijtihād" surfaced, intending to safeguard this tradition. While this discourse seeks to protect tradition, it has also led to a perspective that restricts the freedom of ijtihād.[3]

Shafiʿī scholars define fiqh as "acquiring knowledge of the provisions of sharʿī - amalī by extracting them from detailed evidence."[4] This comprehensive definition encompasses both definite and contingent provisions.[5] The well-established fiqh tradition, rooted in robust foundations, has extensively addressed fundamental matters such as rights, justice, and human rights. It can be asserted that this tradition has effectively addressed and continues to possess the potential to resolve challenges within Islamic societies throughout history.[6]

In brief, fiqh is a broad term encompassing various religious knowledge acquired through intellectual endeavors. However, with greater specificity, fiqh refers to a scientific discipline exploring and imparting regulations pertaining to the individual and social aspects of Muslim life. Traditionalism, as a distinctive facet of Islamic law, embodies this fiqh tradition.[7] Preserving its legacy is crucial for the continued development of this tradition for future generations.

Evolution in the Islamic Fiqh Tradition: Challenges to Positive Efforts

Tradition possesses a dynamic nature comprising both favorable and unfavorable components. When a harmonious balance and adaptability are attained, tradition serves as both essential and beneficial. Conversely, when tradition solidifies and loses its receptivity over time, it becomes resistant to environmental changes, potentially resulting in adverse outcomes. Like a living organism, tradition should remain open to interaction; otherwise, it risks becoming self-referential and stagnant.

In this context, despite the positive strides taken during its establishment, the tradition of fiqh has not been immune to negative repercussions over time. While considerable efforts are invested in

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[1] Süleyman Muhammed b. Veli b. Resul, *Khāshiyah al-Fazl al-Izmiri ala al-Mir'at*, (Istanbul, Matbāi Âmirah, 2000), i, 44.

[2] Muhammad ʾAmin IbnʿĀbidīn, *Radd al-Mukhtār 'Alā al-Durri al-Mukhtār Sharh Tanwīr al-Absār*, tahqīq by A. A. ʿAbd al-Mawjud and S. Ali Muʿawwad, (Riyadh: ʿĀlem al-Qutub, 2003), i, 50.

[3] Sabri Şakir Ansay, *Hukuk Tarihinde İslam Hukuku [Islamic Law in the History of Law]*, (Ankara: Ankara University, 2002), 29-30

[4] Qād al-Qudāt Tājuddin Abdulwahhāb b. Ali b. Abdülqāfi b. Ali b.Temmām b. Yūsuf al-Subqī, *Jamʿu al-Jawamiʿ fi Usûl al-Fıqh*, tahqiq by Abdulminʿim Halil Ibrahim, (Beirut, Dâr al-Kutub al-ʿIlmiyyah, 2002), 13.

[5] Mustafa Cagirici, "zanniyyyat", Turkiye Diyanet Foundation Islamic Encyclopedia, https://islamansiklopedisi.org.tr/zanniyyat> (accessed January 20, 2024). Also see; Najmuddīn Muhammad al-Darqāni, *al-Talqih Sharhu al-Tanqih li Sadri al-Sharia*, (Beirut: Dār al-Kutub al-Ilmiyyah, 2001), 9-10.

[6] Recep Şentürk, *Türk Düşüncesinin Sosyolojisi: Fıkıhtan Sosyal Bilimlere [Sociology of Turkish Thought: From Fiqh to Social Sciences]*, (Istanbul: Etkilesim Yayin, 2008), 95.

[7] Joseph Schacht, *İslam Hukukunu Giriş [Introduction to Islamic Law]*, (Otto, 2018), 214.

crafting traditions, the repetition of habits and unconscious routines can lead a tradition to become enslaved to these patterns, rendering it unable to fulfill its responsibilities. Likewise, the well-intentioned and hopeful tradition of fiqh may face challenges in the absence of continuous maintenance and development.[1]

The primary aim of the fiqh tradition was to address the legal and moral requirements of Muslim societies, adapting to contemporary circumstances and guiding societal development. Nevertheless, over time, the fiqh tradition has faced challenges, including a decline in its dynamism, the diminishing prominence of ijtihad, the broadening scope of devotion, sectarian biases, and the emergence of individuals over principles.[2]

In the initial stages, early fuqaha employed a logic-driven approach to navigate the vast intricacies of life within the confines of limited texts. Nevertheless, the dynamic nature gradually waned, and factors like the discouragement of ijtihad and resistance to adapting to evolving circumstances resulted in certain shortcomings within the fiqh tradition.[3]

Conclusion

In conclusion, Fiqh serves as the vital link between the eternal divine provisions and the evolving realities of life, harmonizing existence with the teachings of the Quran and the Sunnah, guiding Muslims, and addressing contemporary challenges. The dynamic and flexible nature of fiqh complements the steadfast and enduring qualities of sharia, where sharia delineates the principles for divine guidance, and fiqh emerges as the discipline responsible for interpreting and applying these principles. Fiqh, characterized by its adaptability, can evolve over time, while sharia is perceived as immutable and flawless. The legal intervention methods employed by Prophet Muhammad (p.b.u.h), involving reformation, abolition, and extermination, aimed at maintaining societal balance. Abū Ḥanīfah's contributions not only offered a technical framework but also systematized the field of fiqh, establishing the groundwork for a legal tradition. However, as the fiqh tradition turned more conventional, it deviated from its core purpose and lost dynamism, entangled in sectarian biases and rigid patterns. Issues like a diminished inclination toward ijtihad, sectarian narrow-mindedness, individual prominence, formalism, and restricted definitions have contributed to the emergence of certain challenges within the fiqh tradition.

References

The Qur'an

Akbulut, İlhan. *İslam Hukukunda Suçlar ve Cezalar [Crimes and Punishments in Islamic Law].* Yeditepe Üniversitesi, vol. 52, no.1:170-175.

al-Bannānī, ʿAbdurrahman bin Jādullah. *Khāshiyah al-ʿAllāmah al-Bannānī 'alā Sharh al-Mahallī 'Alā Jām'i al-Jawāmiʿ.* Dār al-Kutub al-ʿIlmiyyah, 2020.

al-Bayhaqī, Ahmad b. Husayin, *Shuʿabu al-īmān,* Dimashq: Maktabah al-Rushd, 2003, i, 109).

al-Bukhārī, Muhammad. *Sahih al-Bukhārī; 71.* https://sunnah.com/bukhari:71 (accessed January 15, 2024).

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[1] Abdullah Kahraman, *İslam Hukukunda Değişim ve İbadetler [Change and Worship in Islamic Law]*, (Ensar Nesriyat, 2012), 70-80.

[2] Saffet Köse, "İslam Hukuk Düşüncesinin Bazı Problemleri [Some of the Islamic Legal Thought Problems], *Islamiyat*, vol. 2, no. I (1999): 35-60

[3] Omer Turker, Islam Dusunce Geleneginin Surekliligi Sorunu [The Problem of Continuity of Islamic Thought Tradition], Fikriyat, 2020, https://www.fikriyat.com/yazarlar/prof-dr-omer-turker/2020/01/10/islam-dusunce-geleneginin-surekliligi-sorunu-1(accessed January 20, 2024).

al-Firuzābādi, Muḥammad Bin Yaʿqūb. *al-Qāmus al-muḥīṭ wa al-Qābus al-Wasīt.* (Toronto: University of Toronto, 2013).

al-Māturīdī, Abū Manṣūr. *Tafsīr al-Maturīdī: Ta'wīlâtu ahlu as-Sunnah.* (Beirut: Dār al-Kutub al-Ilmiyyah, 2005).

al-Qāsimī, Muḥammad Jamāluddin. *Mahāsin at-Ta'wīl.* (Damascus: Dār Ihyā al-Kutub al-Arabiyyah, 1957).

al-Qayyīm al-Jawziyya, Abū Abdillah Shamsuddīn Muhammed b. Abī Bakr Ibn. *Iʿlamu al-Muwakkiʿīn ʿan Rabbi al-ʿAlamīn.* Beirut: Dār al-Jayl, 1973.

al-Qurṭubī, Muḥammad ibn Aḥmad. *Tafsīr al-Qurtubi: al-Jāmiʿ li ahkām al-Qur'an.* (Dār al-Kutub al-Ilmiyah, 4th edn., 2014).

al-Rāghıb al-İsfahānī, Abū al-Qāsım Husayin b. Muhammed. *Mufradāt alfaz al-Qur'an.* Beirut: Dār al-Shāmiyyah, 4th edn., 2009.

al-Ṭabarī, Muḥammad bin Jarīr. *Tafsīr al-Taberī: Jāmiʿu al-Bayān fī Ta'wīli al-Qur'ān.* (Dār al-Tarbiyah wa al-Turāth, 2008).

al-Tirmidhi, Muhammad ibn 'Isa, *Sunan al-Tirmidhi, Book of Tribulations (Fiten), Hadith 68;*

Apaydın, Hacı Yunus. *İslam Hukukunda Deliller ve Yorum Metodolojisi [Evidence and Interpretation Methodology in Islamic Law].* Kayseri: Rey Yayincilik, 1994.

Bearman, Peri, Wolfhart Heinrichs, and Bernard G. Weiss. *The Law Applied: Contextualizing the Islamic Shari'a.* I.B.Tauris, 2008.

Beroje, Sahip. *On the Possibility of Benefiting of Islamic Law and Humanitarian Law From Each Other.* IJSHS, vol. 2, no. 2 (2018): 129-143.

Beser, Faruk. *Herkes İçin Kolay Usulü Fıkıh [Easy Procedure Fiqh for Everyone].* Istanbul: Marmara İFAV Yayınları, 3rd edn., 2002.

Calıs, Hande Sena. *Genel olarak nesafet kavramı ve bu kavramın idare hukundaki bazı görünüş şekilleri [The concept of nepotism in general and some aspects of this concept in administrative law].* Selçuk Üniversitesi Hukuk Fakültesi Dergisi, vol. 25, no. 2, (2017): 185.

Çayıroğlu, Yuksel. *Helâl ve Haramlarla İlgili Kaide ve İlkeler [Rules and Principles Regarding Halal and Haram].* Çukurova Üniversitesi İlahiyat Fakültesi Dergisi, vol. 18, no.1 (2018): 597-633.

Fadel, Mohammad H. *Islamic Jurisprudence, Islamic Law, and Modernity.* Columbus: Lockwood Press, 2023.

Genç, Mustafa. *Fıkh ve Toplumsal Değişme.* (Master thesis, Necmettin Erbakan University, 2019).

Hallaq, Wael B. *An Introduction to Islamic Law.* Cambridge University Press, 2009.

Ichwan, Mohammad Nor. *Ilmu ushul fiqh di mata filsafat ilmu [Philosophy of science through the eyes of the science of the principles of jurisprudence].* Walisongo Press, 2009.

Inceif. *Maqasid al-shariah and the Legality of Islamic Financial Contracts*, 2015. https://inceif.edu.my/kmimpact/2015/04/23/maqasid-al-shariah-and-the-legality-of-islamic-financial-contracts/ (accessed January 21, 2024).

Kandemir, M. Yasar. *"Sunen".* Turkiye Diyanet Foundation Islamic Encyclopedia, https://islamansiklopedisi.org.tr/sunen (accessed January 20, 2024).

Khallaf, Abdulwahab. *Kitāb ʿIlm 'usūl al-fiqh wa khulāsah Tārīkh al-Tashrīʿ.* Matbaa al-Madani, 1955.

Laldin, Mohammad Akram. *Introduction to Shariah and Islamic Jurisprudence.* CERT

Publications, 2006.

Mihoc, Daniel. *"The Mighty Angel, the Little Book and the Mission of the Prophet"*. Revista Teologica, vol. 9, no.3 (2017): 83.

Mirjalili, Ali Mohammad and Majid Daneshgar. *A Glance on Main Sources of Fiqh al-hadīth From the Point of view of Feyz Kāshānī's Book al-Vāfī.* Hadis Tetkikleri Dergisi, (2010): 70.

Mughal, Munir Ahmad. *What is Istidlal?* Punjab University Law College, 2012.

Musa, Muḥammad Yusuf. *al-madkhal Li Dirasat Al-fiqh Al-Islami.* Dār al-Fikr al-ʿArabi, 1953

Netton, Ian Richard. *Islam, Christianity and Tradition: A Comparative Exploration.* Edinburgh: Edinburgh University Press, 2006.

No author. *Islam Hukukuna Giris: Kısa Ozet [Introduction to Islamic Law: Brief Summary],* 2014, 3;

Purkon, Arip. *Pendekatan Hermeneutika Dalam Kajian Hukum Islam [Examination of the Hermeneutic Approach in the field of Islamic Law].* Ahkam, vol. 13, no. 2 (2013): 184-185.

Robinson, Kali. *Understanding Sharia: The Intersection of Islam and the Law.* 2021.

Sentürk, Nurettin. *İslam Hukuku ile Modern Hukukun Karakteristik Özellikleri ve Birbirinden Yararlanma İmkânı / The Characteristic Features of Islamic Law and Modern Law and the Opportunity to Benefit From Each Other.* Ilahiyat, (2021): 155-165.

Schacht, Joseph. *Pre-Islamic Background and Early Development of Jurisprudence.* In *The Formation of Islamic Law* edited by Wael B. Hallaq, Routledge, 2004.