REFORMATION IN ISLAMIC LAW; CAN SHARIA DISENTANGLE FROM FIQH?

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ABSTRACT

After modernisation, numerous new phenomena played a significant role for all of humankind. These phenomena paved the way for novel dilemmas for all people, especially Muslims. These new systems were created by Western civilisation and imposed on other civilisations, and Muslims confront the dilemma of how they can lead a Muslim life under the pressures of modern notions such as the nation-state and devices -like technology. In that context, they need to identify the relationship between religious faith and modern ways of life. This identification, generally, has been discussed in the respect of reformation. This article will discuss the reformation of Islamic law in terms of Sharia and fiqh, and will further cover the similarities and differences between these terms. At the same time, it will attempt to answer the question of whether fiqhis able to disentangle from Sharia and whether or not, in order to reform Islamic law, this is necessary in various circumstances.

Key words: *Shariah, fiqh, islamic law, reformation, modernisation*

HAKEMLİ MAKALE

İSLAM HUKUKUNDA REFORMASYON: ŞERİAT FIKIHTAN AYRILABİLİR Mİ?

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ÖZET

Modernizasyon süreci ile birlikte yeni olgular tüm insanlığın hayatında çok önemli roller oynamaya başladı. Bu olgular, pekçok toplumda, özellikle de Müslüman toplumlarda yeni açmazlara yolaçtı. Modernizasyon süreci özünde batı medeniyetinin bir ürünü olarak ortaya çıktığı ve diğer toplumlara farklı vasıtalar ile empoze edilmeye çalışıldığı için Müslümanlar, kendi inançlarına uygun bir hayat sürmek ile modern olgulara, sözgelimi modern devlet ve teknoloji gibi, dayalı bir dünyada ayakta kalmak arasında bir ikilemde kaldılar. Bu bağlamda, Müslümanlar, dini inançları ile modern hayatında yattığı yaşam tarzı arasında yeni bir ilişki tanımlamaya ihtiyaç duydular. Bu tanımlama tartışmaları genellikle reformasyon bağlamında yapıldı. Bu makale bu eformasyon tartışamalarının, islam hukukuna bakan cihetini Şeriat ve fıkıh kavramları ışığında tartışacaktır ve bu iki kavram arasındaki benzer ve farklı yönlere atıflar yapacaktır. Daha özelde ise fıkıh Şeriattan ayrı bir kategori olarak tanımlanabilir mi sorusunu ele alarak islam hukukunda gerçekleştirilecek bir reformasyon için bu kategorizasyonun gerekli olup olmadığı sorgulanacaktır.

Anahtar Kelimeler: *Şeriat, Fıkıh, İslam Hukuku, Reform, Modernleşme*

INTRODUCTION

The central theme of this dissertation can be expressed by the following questions: can Sharia disentangle from fiqh and what are the implications of this issue in the context of reformation of Islamic law? The work aims to examine the concept of Sharia and fiqh in respect of reformation and modernisation process of Islamic law. To do this, I will discuss the basics of this matters and attempt to analyse these concepts in the context of reformations debates. Law is a quite broad and complex phenomenon that may be interpreted in various ways. The concept of law is constantly shifting in terms of place, time, people and culture. The notion of Islamic law initially brings to mind Islamic culture and Muslims. Since the time of its first revelation, the Quran and its commands have been the principle foundation that Muslims shape their lives upon. The Prophet's Sunnah (the practice of the Prophet expressed in actions, oral pronouncements, or concurrence in action by others[1]) is the second significant foundation of Muslims' lives, as Muhammed is God's messenger and the best human being in terms of applying God's commands and worshipping Him. After the Prophet's death, Muslims needed to interpret the Quran and Sunnah in order to live as Muslims in different places and times. In order to do this, they developed Islamic sciences like Kalam, as well as Islamic law.

After modernisation, numerous new phenomena played a significant role for all of humankind. Not only technological, scientific and cultural transformations but also philosophical, sociological, ideological and economic changes can be observed. These developments paved the way for novel dilemmas for all people, especially Muslims. These new systems were created by Western civilisation and imposed on other civilisations, and Muslims confront the dilemma of how they can lead a Muslim life under the pressures of modern notions such as the nation-state and devices -like technology. In that context, they need to identify the relationship

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[1]BADR, Gamal and BASSIOUNI, Cherif 'The Shari'ah: Sources, Interpretation and Rule Making' (2002) 1 UCLA Journal of Islamic and Near Eastern Law p.135

between religious faith and modern ways of life. In this sense, the issue of reformation has become prevalent and controversial topic among Muslim scholars.

Islamic law plays a central role in this debate, as in every society law governs individuals' ways of life and Islamic law is the emblem of Islamic thought. However, from a modern perspective Islamic law is very old, disappointing and inefficient. The world in which Islamic law was created has gone; in this sense, a question arises about whether a form of Islamic law can be created from within or without the ruins of the old system. The identities of so many Muslims have been transformed into the Western model of rationality and secularism. Their vision of the world is shifting toward a more modern identification in terms of perceptions of the cosmos, humanity and God.

It must be also noted that a person who would like to understand Islamic law intrinsically should avoid two main problems: anachronism and Whiggism. Researchers whose perspectives are bound to modern notions have to be aware of predicaments in Islamic law that were created a long time ago when its scholars lived in a different culture, with different thoughts and a different conceptual world. As long as the focus remains on Islamic law within today's concepts and values and study is organised in a way that shows today's results, it is clear that genuine Islamic law will not be fully understood.

After analysing these points, I will now discuss the reformation of Islamic law in terms of Sharia and fiqh, and will further cover the similarities and differences between these terms. At the same time, I will attempt to answer the question of whether Sharia is able to disentangle from fiqh and whether or not, in order to reform Islamic law, this is necessary in various circumstances. Firstly, I will briefly discuss the basic terms and main features of Islamic law to provide a framework enabling deeper understanding. Following this, I will focus on the concept of reformation as well as the reformation process.

BASIC TERMS OF ISLAMIC LAW

The relationship between Islamic law and the term 'Sharia' is complex, and its precise definition remains a matter of discussion among scholars. Fundamentally, God created human beings and the most complete knowledge of human matters belongs to Him; therefore, God alone has right to decide and identify all individuals' way of life and other essential matters. Moreover, God's Prophet Muhammed is not only his messenger, but also the best role model in terms of modus vivendi. Hence, "The Sharia was as much a way of living and of seeing the world as it was a body of belief and intellectual play."[2] To be more precise, Sharia is not only an Islamic law or legal doctrine, but further encompasses all layers of life including moral, spiritual, cultural, and economical structures. It must also be noted that, in this context, Sharia is a living process in different times and regions, and among various cultures, customs, and nations. As such, one might observe many interpretations and applications implemented in the name of Sharia.

Since Sharia is a way of life given by God to humankind, and one that can be understood and applied in various ways, Muslims were in need of a method and conceptual framework that makes it easier to understand and apply Sharia principles. This necessity paved the way for determining a new concept and device, which became known as fiqh. "Fiqh was a process of understanding"[3], and it was the intellectual activity of the school doctrine, attempt to perceive all possible ways of reasoning in, and interpretation of, a particular case. Fiqh, initially came into existence in the form of individual opinions, and incorporated various methods such as ijtihad and ijma. However, individual opinions did not organise law in the modern sense; rather, their law was an interpretive project,[4] not a "body of rules of actions or conduct prescribed by a controlling authority".[5] Fiqh was the intellectual work of

[2]HALLAQ, Wael , An introduction to Islamic law, Cambridge University Press 2009, p.164
[3]HALLAQ, Wael, 'What is Sharia?' (2007) 12 Yearbook of Islamic and Middle Eastern Law 151–80
[4] ibid p.168
[5] ibid p.168

private individuals whose education was informal and accessible to all interested individuals;[6] the legal activities of these individuals did not involve the pressure of state power. Their authority depends on epistemic, religious, and moral basics. In practice, the main actor of fiqh, namely the qadi, mediated between social and moral imperatives—of which he was a participant—and the demands of the fiqh, which served to morally ground social relations.[7] The mufti, who contributed to the spread of legal knowledge, was a member of the local community and his ties to the community enhanced the strong relationship between the court and the surrounding population.[8] Moreover, it should be noted that the main purpose of the qadi was to prevent the occurrence of conflicts between individuals and to try to maintain social reality so that the litigating parties may continue to coexist peacefully.

CHARACTERISTIC FEATURES OF ISLAMIC LAW

In order to view Islamic law through an appropriate lens, one should be aware that it has been interpreted by people who lived in different cultural settings and thought using a different framework, and must also recognise differences between Islamic law's notions and the modern concept of law. "It would be a mistake then to equate the Sharia and its so-called law with law as we conceive and practice in our world of modernity."[9] For instance, the concept of law, as it exists in Islamic law, can be associated with the concept of morality, while, in the modern sense, law bears little or no association with morality or other abstract notions, as the modern perception of law cannot be recognised regardless of modern state which is centrist, nation-based, and authoritative. Fundamentally, there are conceptual contradictions

[6] ibid p.156
[7] ibid p.163
[8] ibid p.158
[9] HALLAQ, Wael, An introduction to Islamic law, Cambridge University Press 2009, p.165

between Sharia and the legal systems of modern states specifically in terms of their principal features, such as institutional and juristic systems. Each of these distinct legal systems is legally productive but with different ways; namely, while the modern state creates laws as a legal sovereignty, and ensures that citizens adhere to these laws, Islamic law does not set out a comprehensive statement of what must be done, or how to manage and regulate society. Rather, the legal system of modern state has always and everywhere been to restore individuals and be sure that they remain one of the most valid generalisations.[10] Islamic law did not constitute legal sovereign, but modern states are unable to determine legal matters without a legal sovereign.[11] It has improved numerous legal concepts, both specific and generic, which have been derived from abstract thought rather than from the concrete realities of legal life.

Another well-known characteristics of Islamic law is that "it was highly individualistic, giving rise to an extreme version of 'jurist law'.[12] Each case was determined on its own merits and identified according to its own social context. Legal theory was based on the study of the law as an intellectual activity, and existed primarily as an individual practice. The jurist's role in creating legal rules is unique to Islamic law, setting it apart from other legal systems in which the role of jurisprudence is very limited and the rule of law is the sole domain of a secular authority.[13] Moreover, the foundation of Islamic law is not contained in the books of jurists, but rather exists as a changeable and soft application of rules that is integrated in a complicated social structure. Therefore, the Muslim adjudicatory process was never distinct from the social lives of litigating parties; in other words, Muslim courts were embedded in the social fabric.[14]

[10] HALLAQ, Wael, 'What is Sharia?' (2007) 12 Yearbook of Islamic and Middle Eastern Law 151–80 p.170
[11] ibid p.170
[12] ibid p.159
[13] BADR, Gamal and BASSIOUNI, Cherif 'The Shari'ah: Sources, Interpretation and Rule Making' (2002) 1 UCLA Journal of Islamic and Near Eastern Law p.137
[14] HALLAQ, Wael, 'What is Sharia?' (2007) 12 Yearbook of Islamic and Middle Eastern Law 151–80 p.165

A further point of substance warrants attention in relation to this topic. Traditional Islamic law used the casuistical method, which is related to the structure of its legal concepts and analogical method. "Fiqh developed an elaboration of highly speculative discourses, often concerning hypothetical cases with no practical application, what has been termed 'casuistry'."[15] Due to its 'sacred law' character, 'Sharia' is based on divine authority, and while jurists created and developed the laws, they need not to the state authority and scholarly handbooks that hold the force of law. Furthermore, as Hallaq has crucially pointed out, "the law was not abstraction, it did not apply equally to all individuals were not seen as equal to each other".[16] Jurists deemed each individual and circumstance to be unique, requiring ijtihad that is context-specific. As a result, "Islam never accepted the notion of blind justice";[17] furthermore, there was no need to state the law in the same manner as many modern codified legal systems.[18] In addition to this, fiqh provided a pluralistic structure, due to a strong sense of judicial relativism. This pluralism is very significant, as it represents the essence of Islamic law, which has never come to agreement with the spirit of codification or modern means of homogenising the law.[19]

Islamic law has a distinctive process of creating and amending laws, as well as a unique set of concepts that are used in this process. In order to create or revise legal rules, jurists need to take into account specific supplemental sources, including consensus (ijma), analogy (qiyas), public interest (maslaha), and custom (urf). Throughout this process, they must not contravene a norm or outcome derived from one of the two primary sources, namely the Quran and the Sunnah. However, "the impact of this constraint is limited because of the relatively small number of norms

[15] ZUBAIDA, Sami, Law and power in the Islamic world, London 2003, p.11
[16] HALLAQ, Wael, 'What is Sharia?' (2007) 12 Yearbook of Islamic and Middle Eastern Law 151–80 p.168
[17] HALLAQ, Wael, An introduction to Islamic law, Cambridge University Press 2009, p.166
[18] HADDAD, Yvonne and Stowasser, Barbara eds., Islamic Law and the Challenges of Modernity, Walnut Creek 2004, p. 25
[19] ibid p.26

found in the Quran and Sunnah" as compared to the whole body of Islamic law.[20] Besides, Islamic law does not have a dogmatic character, but rather encourages the application of new rule-making frameworks. For instance, the message of Umar, the second caliph, to his qadi states: "Use your brain about matters that perplex you and to which neither Quran nor Sunnah seem to apply. Study similar cases and evaluate the situation through analogy with them."[21] Moreover, ijtihad and the public good (maslaha) are open-ended sources of new legal rules and provide stability and continuity against the pressures of time and place. Islamic law has always considered customary rules and adopted them within its logic. Maslaha is also considered in the context of local values, and Islamic law has been constantly reshaped according to place and culture.

To sum up, Sharia is a set of rules of divine origin and also represents 'the way' of life. Fiqh is a human activity and the effort of men to understand and formulate the divine will. However, fiqh is not merely law, in the modern sense, but also a comprehensive discourse of religion, morality, and justice.[22] Islamic law has its own historical background and frameworks and also differs from other legal systems, particularly those in existence today. These differences have emerged as a challenge and, in this sense, the concept of reformation is an especially controversial topic among Muslim scholars.

REFORMATION IN ISLAMIC LAW

Here, I will focus on the notion of reformation in Islamic law, in terms of Sharia and fiqh, and will also attempt to answer a specific question: in order to achieve reform in Islamic law is it essential to disentangle Sharia from fiqh? It must

[20] BADR, Gamal and BASSIOUNI, Cherif 'The Shari'ah: Sources, Interpretation and Rule Making' (2002) 1 UCLA Journal of Islamic and Near Eastern Law p. 147
[21] ibid p.155
[22] ZUBAIDA, Sami, Law and power in the Islamic world, London 2003, p.11

also be noted that I will discuss the basic terms again in this section, although this will be in the context of the above question.

To begin with, Sharia refers to divine authority, which has many binding elements and it is very limited against different interpretations in the context of the question. In addition, Sharia is an old system, being based on two main sources (the Quran and the Sunnah) that originated many centuries ago. However, fiqh is a method of interpretation and human effort, and sometimes takes the form of positive laws and legal rulings, thereby crossing the boundaries of Sharia. Furthermore, fiqh is changeable and fallible, while Sharia is constant and always right. These determinations generate the first style of argumentation.

In this context, the concept of reformation in Islamic law brings up two possible approaches according to our determinations. Firstly, one may argue that reformation in Islamic law means that it must be modernised constantly through modern concepts such as codification, and, in order to do this, one may use the fiqh perspective, which is more suitable than Sharia in terms of constituting a new legal system. Another determination of reform in Islamic law is that Islamic law should be transformed into today's conditions and thus needs to be free of binding elements of Sharia so that it may be interpreted by the fiqh perspective, which is more flexible and changeable. To be more precise, in the first approach, reformation in Islamic law is understood to entail codification, canonisation, and the state of constituting positive law, which represent the main characteristic features of modern legal systems. However, under the second approach, reformation in Islamic law simply involves a transformation and realignment with the needs of the modern world, which must continue to be satisfied using concepts of Islamic law, with the exclusion of modern notions.

The second style of argumentation is that Sharia refers to an entire legal system, encompassing the principles that relate to all believers and all aspects of their lives. In contrast with Sharia, fiqh is interested in particular situations that are

experienced in people's daily lives. In other words, while Sharia can be existed in the whole body of life and is a kind of ethos, fiqh is the interpretation of particular cases and may not encompass the totality of life. In addition to this, the modern world presents very complex social structures, cultures, and technologies; as such, it imposes a new ethos that could never be compatible with that of Sharia. In this sense, Islamic law cannot be existed with its ethos against the modern ethos, which encompasses all individuals' lives and offers many attractive advantages, such as technology, over the ethos of Sharia. However, Muslims who would like to follow their own religious rules should refer to the fiqh perspective, which does not constitute an ethos but rather focuses on particular cases and presents practical solutions.

In consideration of the foregoing, scholars have commenced discussion of reformation in Islamic law in terms of the dilemma between religious law—or Sharia—and jurisprudence—or fiqh. Coulson stated that "freed from the notion of a religious law expressed in totalitarian and uncompromising terms, jurisprudence would approach the problem of law and society in a different light".[23] He argued that Islamic jurisprudence may apply, in practical and modernist terms, its unique ideal way of life based on the command of God.

From my point of view, the first style of argumentation can be seen as understandable, as the fiqh perspective is more appropriate than the Sharia perspective in terms of transforming old rules. However, modernising all methods in Islamic law might pave the way for the erosion of its character—in this case, Islamic—which, as discussed earlier, has been developed through its unique historical process and conceptual world. Provided that reformation can be understood in the context of today's necessities rather than modern notions, it may be the case that fiqh can provide Muslims an opportunity to respond to today's problems without compromising the distinctive character of Islamic law. However, if

[23] COULSON, J. Noel, A History of Islamic Law, Edinburgh 1978, p.225

such present day problems require more intricate solutions specifically ones related to Weltanschauung, fiqh can find itself up against the wall, unless it is losing its own character in this context Islamic.

When it comes to the second style of argumentation, in my perspective, the concept of law represents worldview and the entire philosophical and sociological legal system. The law is in a permanent relationship with individuals and their Weltanschauung, which represents people's perception of cosmos, humanity, and God. These perceptions have been developed through a unique historical process and conceptual world; therefore, attempts to pursue reformation in this context cannot divide this whole structure. To be more precise, the law has its roots in humans' conceptual world, which is distinct in each society. This world has seen the creation of complete and indivisible legal systems, which can exist solely as a whole system or not at all. Therefore, in my opinion, the second argumentation cannot possibly be applicable or realistic. Having made these assertions, I will now focus on the reasoning behind my ideas and attempt to explain my arguments through historical experiences.

Throughout the process of modernisation, Muslim scholars and states seek to transform their legal systems, which are based on Islamic law. In the late Ottoman period, there were remarkable advances with regard to the discussion of reformation. The Mecelle was written in modern—specifically, European—form; in other words, Islamic law was codified by means of French methodology and format, though its substance was derived from Islamic law.[24] Hallaq stated that "the 'form' is European, but the 'content' Muslim". However, he asked "to what extent does the content survive the form?"[25] In this regard, it must be noted that codification, as a modern legal tool, entails the rupturing of Islamic law and its historical background, and further paves the way for the demise of its specific character.[26] As mentioned

[24] ZUBAIDA, Sami, Law and power in the Islamic world, London 2003, p.131
[25] HALLAQ, Wael, 'What is Sharia?' (2007) 12 Yearbook of Islamic and Middle Eastern Law 151–80 p.177
[26] ibid p.176

above, the main characteristic feature of Islamic law is 'jurist law', which means that a qadi attends judgement with no generalised codes but rather with reference to principles and interpretations. Moreover, codified law is the law of state and, in this sense, jurists serve as functionaries of the state, rather than revealing new rules and making new interpretations, as is the case for Islamic law. The transformations of Islamic law into a code-like genre, which represents modernity, and its rural, bureaucratic, administrative, military, centralising, homogenising and cultural powers marked the demise of Sharia and its fiqh as they were known and practised by Muslims until two centuries ago.[27] As a result of the transformations, the Muslim social order, along with its practitioners and institutions, such as the judicial procedure of the qadi court and madrasa, were replaced by modern equivalents, such as modern law faculties and modern adversarial court systems.[28] In addition to this, the law is now subject to bureaucratic and political logic, and judges' responsibility is to the state and the law, not to God and their consciences.[29]Islamic law took its breaths through social harmony and its unwavering compatibility with local moral values and customs; however, such codification has sealed the airway through which Islamic law drew its breaths and has removed it from social harmony. Moreover, this process has assimilated Islamic law into modern positive law, which is essentially irreconcilable with its own ethos.

In order to understand the relationship between Islamic law and modern law, one ought to make efforts to enquire with the right perspective. For instance, the concept of natural rights, as we understand it today, never existed in Islam.[30] These rights arose in Western Europe, during the Enlightenment, and had no reason to materialise in other cultures. "The question to be asked therefore is not why it did not arise in Afro-Asian civilisations but why it arose in Europe in the first place?[31]

[27] ibid p.177
[28] ZUBAIDA, Sami, Law and power in the Islamic world, London 2003, p.221
[29] ibid p.221
[30] HALLAQ, Wael, 'What is Sharia?' (2007) 12 Yearbook of Islamic and Middle Eastern Law 151–80 p.163
[31] ibid p.163

The fundamental logic behind this is that each civilisation has its own identity and worldview. Each civilisation leads their life into its own conceptual framework, common historical experiences, and customs. In this sense, each civilisation is unique. Their historical developments, necessities, problems, and solutions are also sui generis. Hence, the question of why this solution did not arise in this civilisation is inappropriate, as it lacked the problem that necessitated the solution. Consequently, it is misguided to enquire about Islamic law using modern concepts of law.

Early Muslims instituted laws and a legal system in the absence of the modern concepts espoused by foreign hegemonic powers, and free from the effects of colonial forces; rather, they spoke and conducted themselves with confidence. They were concerned only with their own problems, and referred exclusively to their main sources of legal guidance, namely the Quran and the Sunnah. Their motivations related to the accurate understanding of sources and the proper application of Islamic law. In other words, one might argue that early Islamic jurisprudence was characterised by an effort to effect change and improvement starting from the inside to the outside. This was done by initially understanding the main sources and then applying these to external conditions. However, the present situation is significantly different, as modernity is essentially a product of Western civilisation. This relatively recent development has created a dominant power that is pressing other civilisations. In this sense, Muslims perceive themselves as dominated, and Muslim scholars have attempted to safeguard their perceptions of law against the new reality. In contrast to early times, there now appears to be an effort to effect change from the outside inward. To be more precise, in the present day, Muslim reformers are, firstly, under the influence of the Western drive for modernity; following this, they can just try to improve reactions urgently. In Islam's early years, scholars held a proactive attitude while, today, reformers produce reactions as a result of being drawn into the mainstream of modernity. Therefore, modern reformers must face the dilemma of being subjects of modernity, and should

animate Islamic law regardless of its very system that has produced the entire sociology of legal knowledge. In this regard, it must also be noted that disentangling Sharia from fiqh may pave the way for the loss of Islamic law's essence, owing to the strong influence of modernity.

CONCLUSION

In the world today, many Muslim countries face a host of problems, whether legal, economic, ideological, cultural, etc. Such problems are often related to modernity. These challenges encourage Muslim scholars to interrogate their historical accumulations. They improve various kinds of responses and discourses. To reject modernity completely is plainly impossible, as modernity is not "merely a material phenomenon but primarily one that effected a systematic restructuring of psychology and epistemology, among many other things".[32]Muslims must face modernity in the sense of every areas such as cultural and identical but, in my opinion, this is a long and difficult period.

Islam and Sharia still play a key role in the national heritage of Muslims. All parties, from liberalist to utilitarianist, discuss modern situations in the name of Sharia. Interest in and importance of traditional Islamic law is not affected by these changes,[33] and it continues to inspire even some secular leaders. However, the application of Islamic law in modern states is understood in various ways by different parties. For instance, liberals tend to read the main sources of Islamic law with historical relativism, such that they read these in the sense of time and place, making the argument that Muslims must understand holy texts in their own terms and interpret them in accordance with their spirit and intentions.[34]Radical Islamists

[32] HADDAD, Yvonne and Stowasser, Barbara eds., Islamic Law and the Challenges of Modernity, Walnut Creek 2004, p.48

33SCHACHT, An introduction to Islamic law, Oxford 1964, p. 111

34 ZUBAIDA, Sami, Law and power in the Islamic world, London 2003, p.222

and conservatives generally recite the text with apparent meanings. Their perspective is strict and cannot allow for new interpretations. In this regard, the perspective that advocates disentangling Sharia from fiqh is, in my opinion, closer to the position of liberal Muslims, as this perspective represents an openness to interpretation in reading holy texts, as is the case with the liberal perspective.

Modernist criticism initially face to Islamic law as a traditional form not religious character.[35] These critics concede that Islam, as a religion, encompasses the sphere of law, though they would like to liberate the body of doctrine that has been developed by Muslim scholars over a long period of time. They seek to be freed from the baggage that comprises the contributions of numerous scholars, books, and cases, and they desire to create a new Islamic jurisprudence in place of the old one. As far as I am concerned, this aim is also similar to the perspective that is the main topic of discussion in this essay. A person who would like to reform in specific area, they would not like to face an entire traditional literature rather they have a tendency regarding facing small number of things and studying into this literature freely. However, this ambition can cause some damage, such as the loss of the distinctive character of Islamic law, as discussed above.

Most Muslim countries have secularised their governments and institutions, along with their legal systems and cultural fields. People attend cinemas and music concerts, and use new cutting-edge technological products; they are also consumers of Western entertainment markets, and wear Western style suits instead of their traditional clothing. These developments cannot be halted through direct resistance but, equally, they should not be understood to signal the death of other cultures. In my opinion, the central feature of Islamic law is legal plurality and, in today's globalised world, this feature can potentially provide a new framework through which people can safeguard their diversity.

[35]SCHACHT, An introduction to Islamic law, Oxford 1964, p.100

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