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Book Review

Islamic Law in Theory and Practice
Introduction to Islamic Law
By, Ahmet Akgündüz
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Muharrem KILIÇ*

The human history has faced some historical breaks which caused to some converting effect in the history of civilizations. This converting effect had its intensive reflexion over the field of inter-relation among the civilizations, cultures and religions. Recently such kind of a break occurred in a form of terror in USA in 11th September 2001. The global crisis that occurred after said event led to a cleavage among the intellectuals, scholars and societies of civilizations and religions. This global crisis has produced a conflict and dissociation rhetorics. In this conflict rhetoric, the subject which has been constructed as 'the other one' i.e. Islam and Muslims became a center of academical and intellectual concern.

Naturally Islamic law or *fiqh* had a central position of this academical concern. Forasmuch as prominent orientalist Schacht pointed out that Islam is a 'religion of *fiqh*' or Islam is a 'civilization of *fiqh*'. Because of its normative and besieging character over practice of life, *fiqh* had a focal interest of orientalists. Islam and *fiqh* had an intensing orientalist interest level through this historical break which goes back to nineteenth century as it is articulated to the colonialistic history of West. To analyze the background and the motives of such a deep concentration of concern over Islam and Islamic law is a different topic of discussion.

So, this very situation is incurring a liability over the Muslim academic and intellectual circles. In plain terms, it is a responsibility of Muslim academicians and intellectuals whom are able to write out an authentic and genuine texts which will be a response to the concentration of concern of Western academic and intellectual circles with an international circulation language i.e. English. The reviewed book of Akgunduz is to be considered as a production of such a sense of academic responsibility. Probably this responsibility is more deeply felt by Muslim academicians whom are living actually in Western societies such as the author of this

* Associate Professor Dr., Akdeniz Üniversitesi, Hukuk Fakültesi, Antalya, muharremk@hotmail.com

work. Here the author has proposed to arrange his work in four books. Other than the reviewed book he is proposing to write three other manuals which are *The Principles of Islamic Jurisprudence*, *Islamic Public Law* and *Islamic Private Law*.

The author, in addition to a foreword and contents divides his work into eight main chapters which consist of *Shariah*, *fiqh* and Islamic law; the sources of information for Islamic law; the historical periods of Islamic law, the law schools and theological schools in Islam; the period of Islamic law after the Turks professed Islam; the modern period and Islamic law; the system and methodology of Islamic law; the implementation of Islamic law and its future. The outline of the book reveals its main problematical framework which deals with the theoretical and practical dimension of the issue. In its theoretical dimension the concepts of *shariah*, *fiqh* and Islamic law have been discussed. To start with such a theoretical discussion is good point for clarifying the conceptual confusion over these main concepts (p. 19-37). Because through the modernization process of law in Muslim world some conceptual confusions over the concepts such as *fiqh*, Islamic law and etc. have introduced to our intellectual minds.

Chapter two (p. 39-108) as dealing with the theoretical and applied sources of information of Islamic law makes a genuine contribution to modern literature of Islamic law. Especially as this contribution draws attention to the practical dimension of Islamic law in its historical process. In modern literature which is generated mostly from doctrinal sources of *fiqh*, this practical dimension has been generally neglected. The purely doctrine-based historical legal productions gave rise to a misconception about Islamic law. This conceptual misconception is explicitly seen in some modern orientalist literatures which argue the existence of conflict and tension between theory and practice. In the classical orientalist discourse this paradigm which characterize Islamic law as a conflicting legal system (such as the conflicts and tensions in revelation and reason, unity and diversity, idealism and realism and others) is seen as a mainstream tendency. To review and revise such an orientalist misconception, the author's perspective depending on a historical conscience can be deemed as a quite significant contribution to modern commonwealth of letters on Islamic law.

Through a historical perspective chapter three (p. 221-250) is devoted to the historical periods of Islamic law. Here the four constructive periods of Islamic law i.e. the periods of Prophet Mohammed, the Companions, the successors of the Companions and the period of *Mujtahidin* have been discussed on the basis of their sources and main characteristics.

In chapter four (p. 147-220) the author draws attention to a problematic of distinction between the legal and theological schools in the history of Islamic thought. As it is argued by the author there is a conceptual misconception and illusion. It is emphasised by the author that the schools of law can not be described on the basis of faith and truth. The expansive conceptual framework and classification such as ortodoxy vs. heretics which is employed in the field of schools of thought can not be used in the field of Islamic legal schools.

The author's academic consideration over 'the period of Islamic law after the Turks professed Islam' in chapter five (p. 221-250), reveals the historical consciousness which have been articulated to writing. Unfortunately, in the modern historical writing of Islamic legal history, this valuable period is generally neglected by

the orientalist and other Muslim writers. Whereas, this period gives us a substantial heritage on the theoretical and also on practical level of Islamic law. Especially, the Ottoman period bequeathed us a written legacy and documents which can lead the relevant academicians or legal historians to a realistic accurate perception and outlook over Islamic law.

To problematize ‘the modern period and Islamic law’ (chapter six, p. 251-318), is well-considered point. Here, the author evaluates the problem facing the Muslim countries that is how to adopt the Islamic legal rules to the social, political and economic demands of the present age. He also touches upon the various opinions on Islamic law and its practice. After giving a concise theoretical information, the author explores the current practical situation in some Muslim countries. In this framework he discusses some realistic cases such as Anglo-Muhammadan Law (Indo-Muslim law), Islamic law in Southeast Asia and in some contemporary Muslim states like Egypt, Pakistan, Morocco, Indonesia, Jordan and etc.

In chapter seven (p. 319-339) author deals with ‘the system and methodology of Islamic law’. Before giving a brief history of codification in Islamic law he discusses the system of Islamic law. He underlines the originality of Islamic law in its systematic arrangement and classification. Islamic law differs from Roman law which depends on the division between public and private law. It has a genuine classification which is divided the law mostly as follows; Devotions, Marriage law, Civil law and Penal law. Then, he discusses the methods (the casuistic method and the normative methods) of codification in Islamic law. Here the author brings up a fundamental question that is ‘which method was pursued in the preparation of the Islamic legal regulations?’

Chapter eight (p. 341-358) is dedicated to ‘the implementation of Islamic law and its future’. The author, firstly discusses some principles concerning the implementation of Islamic law. According to the author, the first principle in this regard is that, only sovereign Muslim states have legal authority to implement Islamic law. And individual Muslims have no legal authority to implement Islamic law. This principle is deemed as a response to the fearness of the Western people whom think that Muslim individuals may implement some Islamic legal rules themselves.

Here he brings up a debate which is involving mainly two different problems in non-muslim countries such as United Kingdom and USA. First is that, ‘Islamic law may be applied as a foreign law in accordance with the rules of conflict law’. The second is that, ‘Islamic legal issues may be addressed and decided by a foreign judge before the rules of local law may be applied.’

Since the undeniable significance of Islamic Jurisprudence which clarifies the provisions of individual’s actions, the author undertakes the topic of ‘Islamic Jurisprudence Encyclopedia’. In this regard he takes into his consideration some projects, such as ‘the Project of the Higher Committees’, ‘Council for Islamic Affairs in Cairo’ and ‘the Project of the Islamic Jurisprudence Encyclopedia in Kuwait’. He then treats the Institutions of Islamic Fiqh (*Majma’ al-Fiqh al-Islami*) which is one of the famous institutions among some a few institutions in Islamic countries. As it is one of the subsidiary organ of the Organization of Islamic Conference, provides some courses and teachings in Islam. Lastly he treats ‘European council for fatwa and research’ which is a Dublin-based foundation.

Overall, Akgunduz's book is to be appraised as a meaningful contribution to the modern English Islamic Studies literature at the level of introduction in the aspect of theory and practice. In terms of its using the literature related to the period of Islamic law after the Turks professed Islam, this work is to be considered as a distinctive contribution to the modern Islamic legal literature.