



**KİTAP DEĞERLENDİRMESİ / BOOK REVIEW**

**Tarek Elgawhary. *Rewriting Islamic Law: The Opinions of the ‘Ulamā Towards Codification of Personal Status Law in Egypt*. New Jersey: Gorgias Press LLC, 2019, xi + 223 pages.**

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Limited academic works focus on the roots and structures of the Middle Eastern legal systems. There is an extra need for more detailed academic studies in order to understand the origin of personal status law and the role of codification in Middle Eastern countries. Within this context, Tarek Elgawhary’s *Rewriting Islamic Law: The Opinions of the ‘Ulamā Towards Codification of Personal Status Law in Egypt* is an important contribution to the academic literature. Although there has been a great academic literature written about the effects of codification on the nature of law, the impact of modernity on Islam and Islamic legal tradition, the book fills the scholarly gap concerning intellectual discussions of codification process of Islamic law in Egypt. The author’s goal is to provide insight into the initial stage of codification, the gradual alteration of personal status law and sophisticated approaches of scholars (*‘ulamā*) towards codification of personal status law, especially the issue of divorce. There are academic compilations that focus on codification in Egypt. Leonard Wood, for instance, explains the transformation of Islamic law into codified rulings after encountering European law systems.<sup>1</sup> While he mainly addresses the initiations of scholars for the replacement of European legal influence from Egypt’s Islamic legal system, Elgawhary seeks to reveal the codification procedure concerning personal issues in Egypt. However, comparing the intellectual debates and methodological approaches of Egyptian scholars concerning codification makes Elgawhary’s book different from others. The focus of the book moves from the general attempts of codification ideas in Muslim territories to the codification activities of personal status law in Egypt. Comparing sophisticated/intellectual arguments of scholars from diversified environments and analysing their supportive or rejective arguments towards the codification of personal status law broaden the intellectual mind of the reader. The author not only explains the scholars’ opinions related to codification

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1 Leonard Wood, *Islamic Legal Revival: Reception of European Law and Transformations in Islamic Legal Thought, 1875-1952* (Oxford: Oxford University Press, 2016), s. 1-17.

but also aims to offer background information concerning the major political and religious events of Egypt during the formation period of civil code.

The time period of the book covers from the middle of the 19<sup>th</sup> century until the early third of the 20<sup>th</sup> century and its structure does not follow a specific chronology during the representation of the scholars' opinions concerning the codification of personal status law. The book begins with an introduction and continues with four main chapters that are arranged in accordance with the supportive and rejective discussions of the scholars relevant to the codification of Islamic law. The scholars who adopt different views regarding codification are classified into four basic groups (scholars writing codes of law, scholars supporting the theory of codification but avoiding writing codes, scholars rejecting codification and scholars accepting the theory of codification but critiquing particular aspects of codification). The elaborate explanation regarding the scholars' intellectual influence that has guided and shaped the entire codification process and associated legal reforms in Egypt makes the book unique among other academic literature in this specific field of study.

Chapter one and two intent to explain in detail the common approaches that encourage codification, both theoretically and operationally, and that support it from different angles. By situating all of supportive intellectual discourses at the same section despite of their various educational backgrounds ranging from traditional to secular (Makhlūf Al-Minyāwī and Aḥmad Shākir received traditional teaching at al-Azhar in Egypt, Qāsim Amīn obtained secular training in France, and Muḥammad 'Abduh completed both secular and traditional education), the author represents not only the wide scholastic legal area but also highlights their promotive attitude through diversified reasoning methods. On the other hand, the last two chapters refer to state the arguments of the scholars who see the codification of law theoretically and operationally problematic and foreign to Egypt's legal conjuncture. The classification of scholars is structured according to the result-oriented evaluation of their ideas rather than educational attainment or chronological order. After mentioning each scholar in the last two chapters, the author gives remarkable space to their discussions centred around *ijtihād* (legal reasoning), *taqlīd* (blind imitation), and *talfīq* (legal eclecticism) in order to clarify the reason of scholars' rejective attitudes towards codification of personal status law. The author, especially for the last two chapters, seems to degrade the rejective attitude of scholars again codification when he links their negative responses with their exclusion from the codification process and committee of personal status laws. Upon representing their deep knowledge in classical sources and methodological critiques concerning the eclectic approach, it might be assumed that the main concern of the scholars goes beyond the isolation from the codification committee. Although the author argues that the scholars of the first two chapters are advocators of eclectic method, he does not mention what type of eclectic approach they promote apart from little mentioning about the eclectic method of Shākir that rests on collective *ijtihād* (p. 107). Presenting broad methodological analysis of the scholars' views regarding legal reasoning and legal eclecticism strengthen the rejective

opinions against codification methodology since the supporters of codification could not create widely accepted method for codification and counter argument for negative critiques against eclectic approach from legal point of view.

The author, in chapter three, presents the rejection of codification as an intersection point of two contradictive scholars, Muḥammad Rashīd Riḍā and Muḥammad Zāhid al-Kawtharī (p. 115, 136). Although their ideologies, arguments, views and education styles contradict with each other, they reach the same conclusion which is against the codification of law because of its problematic and uncertain methodology from legal point of view. Additionally, in the last chapter, 'Alī Ḥusayn and Muḥammad Bakhīt al-Muṭī'ī, as the author expresses, criticise the outcome of actual codification process as problematic, but promote the theoretical process of codification and creation of a legal compilation for personal issues (p. 163, 185). For these scholars, the idea of producing a civil code becomes an opportunity to consolidate their influence on the judiciary and to reinforce the role of Islamic law in the formation procedure which are the major reasons of their support for codification. However, the exclusion of these scholars from the codification process led to increase the tension between scholars and state authorities despite their positive endorsement for the formation of civil law. Al-Minyāwī and Ḥuṣayn make comparison between French civil code and Mālikī school of law and argue that almost nine tenths of French law are taken directly from Mālikī school (p. 45, 164, 166). Although they claim that French code is originated from Islamic law with high level of similarity, they do not corroborate the adoption of French law into Egyptian legal system by underscoring the potential infiltration of Western legal norms and the sufficient nature of Islamic law. It seems that the rejective arguments claimed by these scholars against the adoption of French or Western codes mainly centres around the avoidance of foreign influence, problematic methodology of codification and exclusion of scholars from the legal committee.

Throughout the whole book, the writer refers each scholars' opinions on divorce rulings in general and the issue of thrice-pronounced divorce specifically as a practical example. The author quotes two contradictory narrations that the first one belongs to the Companion Rukāna which enables scholars to count thrice-pronounced divorce as one, revocable divorce and the second belongs to 'Umar ibn al-Khaṭṭāb which provides scholars with an opportunity to count it as three, irrevocable divorce (p. 109, 150). The first narration capacitates scholars such as Qadrī Pasha, 'Abduh and Shākir to consider it as one revocable divorce relying on the linguistic analysis, legal responsibility of political ruler and *mujtahid* scholars' views of the past.<sup>2</sup> Since the narration of 'Umar is evaluated within the framework of *ijmā'* (consensus), the scholars of classical understanding such as al-Kawtharī or al-Muṭī'ī avoid the violation of skeletal structure of the entire Islamic legal discipline by taking it as three irrevocable divorce. Although the methodological and logical explanation of the scholars for three-pronounced

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2 These legal scholars include Ibn Taymiyya, Ibn al-Qayyim, al-Shawkānī.

divorce issue were well analysed, the writer did not mention how these scholars evaluate contemporary custom of society or intention of people upon using this pronouncement apart from Ḥusayn's assessment (p. 177). The evaluation of person's act according to classical schools of laws shows variety depending on the validity or invalidity of intention over acts because Shafi school takes it in consideration while Mālikī school disregards its estimation during the assessment of practice.

The main purpose of Islamic law is conceptualised as *maqāṣid al-sharī'a* which is known the protection of religion, life, property, offspring, and reason. The ultimate goal of all rulings, regulations and orders in Islamic law is mainly supposed to focus upon protecting these five fundamental elements in order to establish fair legal system within the community. The writer adequately touches on the political and methodological debates of the scholars over the codification but misses to mention how they consider the ultimate goal of rulings or the purpose of ruling whether it is to protect the state's interests or increase the benefit of society.

Overall, Elgawhary's brilliantly researched monograph on the contextual concept of codification, its adoption and subsequent modification under the Egyptian State's authorities sheds much needed light upon both the development of contemporary personal status law and the reconstruction of Egypt's legal system after the collapse of the Ottoman Sultanate. Extremely rich and well-analysed scholars' views regarding codification make the book a particularly beneficial reference for both academicians and students who wish to gain greater insight into the process of codification and intellectual debates behind the codification of personal status law in Egypt.