



**KİTAP DEĞERLENDİRMESİ / BOOK REVIEW**

**Chibli Mallat. *Introduction to Middle Eastern Law*.  
Oxford: Oxford University Press, 2007, XXVII + 455 pages.**

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Few works focus on the roots and structures of the Middle Eastern Law. It is an area that needs more and detailed studies and analysis to show differences and divergences in the legal systems of the Middle Eastern countries. Within this context, Chibli Mallat's *Introduction to Middle Eastern Law* is an important and valuable contribution to the area.

Chibli Mallat starts his study by investigating the broad legal structures that go beyond space and time. According to Mallat, these transcendent structures show their effect in the historical development of Middle Eastern Law. Many legal comparatists define Middle Eastern law as Islamic law by neglecting the differences between the countries' legal systems. Although Islamic law dominates the region, Mallat introduces a broader Middle Eastern legal continuum which ranges from autocratic to secular regimes. He highlights this point, when he writes: "Islamic law is set in history against a wider Middle Eastern legal continuum that starts with Hammurabi and acquires a unique profile various manifestation of the law in the classical Islamic age" (p. 2). This explains why the title of the book is 'Introduction to Middle Eastern Law', instead of 'Introduction to Islamic Law'. Defining the central calques of Middle Eastern Law from the Code of Hammurabi to the present day, the book introduces Middle Eastern Law as a patchwork of legal styles, many of which are shared by Islamic law, the laws of Christian and Jewish community, and modern Western law. When adducing this theory, he uses court archives and an array of legal sources from the earliest records of Hammurabi to the extensive statement of law in the Islamic classical period through the latest decisions of Middle Eastern high and supreme courts in public and private law. The book is divided into four parts: introduction, two sections on public law and private law, respectively and a conclusion with an epilogue on justice and lawyering in the Middle East.

His survey presents the development of Islamic law through an analytic reviewing of *fiqh* compendia, historiographic and literary books, especially the works of al-Sarakhsī (d. 490/1097) and al-Kāsānī (d. 587/1191). The legal registers of Tripoli and collections of *fatwas* are used to provide details of the daily workings of the judicial system and to indicate clearly

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the growth and change in the classical period of Islamic law. By emphasizing this legal evidence Mallat tries to show the mutable nature of Islamic law rather than the immutable doctrines of Islamic law. Therefore, the prevalent cliché of “static Islamic law” has been refuted by envisaging a tripartite periodization for the development of Islamic law (p. 125). The first period (the age of the *shari‘a*) covers the first two centuries of Islam with the passage of *fiqh*. The second phase (the age of *fiqh*) starts with the crystallization and concentration of material ascribed to the epigones of the Prophet and encompasses the development in increasing legal sophistication of legal reasoning as well as the encyclopedic legal works. The last period (the age of *qānūn*) begins with “the first Ottoman status around the sixteenth century, as the antecedent of the systematic codification of law by modern legal codes in a prefiguration of modern nation-states” (p. 125). When striving to adduce “the dynamic development of Islamic law” from classical period to 19<sup>th</sup> century, Mallat establishes a striking correlation among a varied and body of legal Islamic materials, such as *fatwas*, court documents, contracts, legal biographies, custom, stories of judges and doctrinal treatments in the *fiqh* books. Thus, this tripartite periodization of Islamic law and multi-layered structure of legal texts reflects Mallat’s sophisticated understanding of the interactions between *fiqh* compendia, notarial acts, court cases, and custom. Presenting an important framework for understanding the history of any legal tradition, the section on “the formation of Middle Eastern law” exemplifies the development of Islamic law in both practice and theory.

In the second section of his book, Mallat investigates the public law of the modern Middle East by identifying the nature of Middle Eastern constitutionalism and judicial system. This section starts with a historical primer, and then he explores constitutional law and political systems in detail, and focuses on constitutional and judicial review. Mallat explains public law in its historical context by drawing a chronological framework that begins with the era of the colonialism and continues into the era of Middle Eastern and global law (p. 132-138). In his survey, he highlights that the political complexities of the region resulted in challenges in understanding Middle Eastern law and identifying the border of Middle East (p. 129). His definition of Middle East covers a large and fluid area when he describes: “Middle East is meant here as the area extending from Morocco and Mauritania on Atlantic, to Afghanistan and Pakistan in Asia, including the twenty-two Arab countries which are formally members of the Arab League in Asia and Africa, in addition to Palestine-Israel, Turkey and Iran” (p. 129). Despite the linguistic, ethnic and territorial diversities of the region, “whether in its constitutional personal law specificity or in the civil codes which developed from a deep and rich tradition, Middle Eastern *legal* affinities are too strong to be ignored...” (p. 131). This expansive definition can be based on mutual history, use of legal sources, and religious dimension of law and moral values of countries in the Middle East.

In his discussion, the phenomenon of sectarian religious law appears as a characteristic of the region. Mallat points out the clash between the concept of modern nation-state and the legal system of the region. In the twentieth century, the modern nation-states are

eminently territorial and all Muslim countries adopt the system of nation-states with sizable Muslim populations (p. 171-2). Mallat draws a clear picture that shows the dilemma between the two legal logics of personality and territoriality. Instead of a territorial model, the Middle East can be identified with the adoption of the personal law model which law adheres to the person as a member of a given religion sect rather than to her belonging as a citizen to a nationality defined territorially (p. 171). Therefore, the legal logic of Middle East emerged on the bases of religious affiliations. According to him, this is one of the challenges of constitutionalism in the twenty first century, and he suggests that the balance between personal and territorial model should be established to provide a working judicial system (p. 179). Another challenge of constitutionalism is the absence of reliable institutions to protect and implement a constitution. The lack of independent judicial system and executive interventions resulted in the lack of free political representation (p. 169-171). Mallat analyses that the attempt to establish democracy became ineffective on account of the persistence of regional crises which gives an excuse to the regimes not to move towards democracy (p. 180). Thus, political and social complexity remains unanswered the question of compatibility or incompatibility between Islam and democracy. Mallat's general conclusion on the constitutional structure of the region is that "the record is disheartening . . . , but there is no clearly decisive successful story of the rule of constitutional law in any one country" (p. 207).

The third section of the book presents "private law" (civil law) including commercial law and family law from the age of codification to the age of case-law. This section introduces more optimistic approach because "private law" is more distance from political and executive pressure than public law. Mallat's discussion of private law shows the centrality of the Ottoman Majalla (p. 249) and the importance of the 'al-Sanhūrī Codes' (p. 261) for the region. Both of these legal works are extremely successful and influential models exemplifying the codification of Islamic law. Therefore, Mallat indicates that the Ottoman and Egyptian codifications provide the two great models which reflect the influence of *fiqh* on contemporary law (p. 249-299). In the case of commercial law, the Western tradition is a common and dominant factor with "Western terminology and rules", whereas a Middle Eastern style can be identified in the contemporary civil law as "a patchwork of European and local traditions with language and terminology derived from classical Islamic law, *fiqh*" (p. 300). Finally, his discussion demonstrates that the defining dimension of twentieth century Middle Eastern family law is the imposition of notions of gender equality on the composition of legal codes.

Mallat's attentive assessment of both classical Islamic literature and court documents nevertheless raises two noteworthy questions. First, in his discussion of attempts at transnational integration, Mallat's argument that the stability of American style court in the Middle East has a better chance of success leads critics to wonder if any secular system can accomplish the establishment of a more democratic state and a more just judicial system in the Middle East. The emergence of nation-states brings with it two models of constitutional review-that of the France Conseil Constitutionnel and of the US Supreme Court. In

investigating and comparing the varied application of these two models throughout the Middle East, Mallat concludes that the separation of powers in the US style models is more appropriate for the legal systems of the region than the France Conseil Constitutionnel (p. 209-210). This is a controversial theory because both of these court models reflect the secular government system which separates the religious and executive body from each other. However, the phenomenon of sectarian religious law is one of the strongest aspects of the region. In addition, Turkey and Israel are given as examples which show the compatibility of Islam with democracy (p. 167-170), but these two countries cannot exemplify compatibility or incompatibility between Islam and democracy. The institutions and executive body of the two states do not reflect any Islamic aspect even if both of these countries are within the boundaries of the Middle East. In the Middle East, therefore, countries should establish a new constitutional and judicial system in which a balance between religion and their executive body is created. Second, in his analyses of common calques where he evaluates the history of Middle Eastern Law, Mallat neither refers to the meaning of Islam as a whole nor question whether the existence of the shared legal patterns is enough to show that the formation of Islamic law depends on a common culture of the region. Even though there is the similarity between these calques and the norms of Islamic law, legal differences among the Qur'ân, the Bible and the Code of Hammurabi cannot be ignored. Whilst the Qur'ân and the Sunna are the main sources of Islamic law, I question his statement that the span of time covered by the similarity of calques is unique to explain the formation or foundation of Islamic law.

This book offers ample examples to illustrate the dynamics of legal development in the region and demonstrate how the judicial system is applied in daily life of the Middle East from the classical period until 21<sup>st</sup> century. Extremely rich and well-documented court records make the book a particularly beneficial reference for both academicians and students.