MODERNIZATION AND SOCIETAL SCIENCES IN THE MUSLIM WORLD

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to Said Halim Pasha...

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Preface

Each civilization approaches human action, explains and solves social problems in its own way. From this perspective we can say that every civilization has its own "societal sciences".

Societal sciences are disciplines that express societies' attitudes towards social problems. They are all similar in terms of their subject, social function and conceptual structure; however, their content and approaches vary from one civilization to another. Societies that attempt to change their civilizational identity abandon the societal sciences of their civilization and try to replace them with those that belong to another one.

Fiqh and social sciences are two societal sciences of two different civilizations, namely the Islamic and the Western civilizations, respectively. The main subject of these two scientific traditions is "human action" (*'amal*). Social problems have been addressed and solved by *fiqh* in Muslim societies and by social sciences in Western societies. However, since the 19th Century there has been an intense struggle and mutual interaction between these two scientific traditions in Muslim societies. Western social science has conquered the domain of *fiqh* and attempted to perform its functions. If we examine social change in Muslim societies during the last two centuries, we will realize that the westernization movement in those societies focused mainly on social institutions and relations. However, it does not seem possible to understand westernization by ignoring the mental and cultural basis on which social institutions and relations are built.

Islamic and Ottoman thought and discourse are based on a multiplex (multilayered) structure. As Ṭāshköprüzāde states in his book *Miftāḥ al-Saʿāda*, Ottoman knowledge proceeded from two branches that were inextricably linked to each other: *'ilm* (science) and *ma'rifah* (experiential gnosis). This understanding is based on a multiplex view of existence (*marātib al-wujūd)*, of knowledge (*marātib al-'ilm)*, of methods (*marātib al-usūl)*, of

meanings *(marātib al-ma'ānī)*, and of truths *(marātib al-haqāiq)*. The reflection of this multilayered thinking system on social life made it possible for different groups to co-exist peacefully. This multiplex understanding is clearly seen in the way *fiqh* approaches human action *('amal)*.

According to *fiqh*, human action has two layers: external *(ẓāhir)* and internal *(bāṭin)*. The external layer of human action is the subject of '*ilm* and its internal layer is the subject of *ma'rifah*. One of the distinguishing characteristics between '*ilm* and *ma'rifah* is that the former represents scholars whose institutional basis are educational institutions *(madrasa)* while the latter represents ṣūfīs who are mainly based in ṣūfī lodges *(tekke)*. Another distinguishing feature between these two levels of knowledge is that '*ilm* is taught and gained through "explanatory" methods while "interpretive" methods are used in *ma'rifah*.

During the period of modernization, a new class emerged: *the intellectuals*. The intellectual class represents ideology and its most important institutional foundation is modern media. With the establishment of secular universities, another class emerged: academics or *scientists*. This new class represents secular science and its institutional foundations are modern universities. As part of the secularization project, secular intellectuals and academics attempted to replace scholars and ṣūfīs; in other words, ideology and –secular– science were gradually replacing *ma'rifah* and '*ilm*. Therefore, these two intellectual traditions –'*ilm* and *ma'rifah*– started to be abandoned. So, the *madrasa* and the *tekke*, the institutional bases of scholars and ṣūfīs, have been closed. The tension between intellectuals and academics on one hand and scholars and ṣūfīs on the other hand continued. Consequently, four traditions started to co-exist in Muslim societies: '*ilm, 'irfân or ma'rifah* (gnosis, wisdom), ideology and –secular– science.

We should always keep in mind that society and culture are in continuous change. Today's '*ilm* and *ma'rifah* are not the same as those of the early and late periods of the Ottoman Empire. Muslim scholars have agreed unanimously that issues and norms *(masā'il* and *ahkām)* change over time. However, the ongoing element is the method of thought and approach embodied in *usūl al-fiqh*. It is the methodology used that gives identity to knowledge and science.

We can see that "the scientific approach" to social events has not come to the fore with the transfer of Western social sciences to the Muslim world. Social sciences had to struggle to replace the existing discipline of

fiqh, which is based on a well-established methodology, namely *usūl al-fiqh*. Hence, it would be wrong to attribute the apparent success of social sciences to their "scientificity".

Despite the attempts to replace *fiqh* with social sciences in Muslim societies, it still maintains an undeniable position on the agenda of Muslim intellectuals and modern scholars. It is true that there are serious efforts today to present the legal parts of *fiqh* within the patterns of modern Western law as can be seen in the works of Sanhūrī and Zarkā. Efforts to establish a science of "Islamic economics", "Islamic politics" and "Islamic international relations" based on *fiqh* are also taking place in Muslim societies and in the West. However, we believe that such efforts narrow down the scope of *fiqh* and make it similar to Western social sciences. This is mainly due to the fact that Muslim intellectuals who attempt to establish those "Islamic sciences" do not take into account the philosophical –ontological and epistemological– differentiation between social sciences and *fiqh* and end up producing "Islamic" equivalents to modern Western social sciences. This shows that neither the Islamization of social sciences nor the social scientification of *fiqh* seems to be successful.

As we can see, Western science is not *the only* universal science; it is only one of many alternative sciences. A number of historians of science and philosophers, especially Thomas Kuhn, advocate this view. Such an approach creates an important place for *fiqh* among other intellectual traditions in the contemporary world.

Understanding the points of differentiation between *fiqh* and social sciences and the functions of these two societal sciences cannot be realized without a comparison at the level of civilizations because *fiqh* is the product of the Islamic Civilization and social science is the product of the Western Civilization. As Ibn Khaldūn states, science is one of the aspects of civilization, hence, one of the subjects of the discipline of *'umrān.* Consequenlty, in order to understand the changes in science we must first understand the changes in civilization, which they largely depend on.

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THEORETICAL FRAMEWORK

Two Different Attitudes Towards Social Problems:
Comparison of Social Sciences and *Fiqh*

Introduction:
The Problem of Method

Sociology is gradually getting away from Eurocentrism. "Society" and "Civilization" are not understood in terms of the "Western Society" and the "Western Civilization" anymore. What has been referred to as "Society" is now "a society" among others. When studying society, social scientists are more and more taking into account the cultural and historical factors that shaped social events.

These changes gave birth to comparative sociology, which emerged as an attempt to escape from Eurocentrism and its dominance. With the appearance of Asian and African peoples in the historical science, historians were obliged to widen the scope of history, which came to be known –later on– as "World History". Other social scientists, too, have faced similar challenges in their respective fields and have thus been compelled to reconstruct their understanding of their disciplines accordingly.

In this book, we will approach an inter-civilizational topic from a historical perspective in a comparative way.

One of the main problems of conducting comparative inter-civilizational studies is related to civilization timelines, also called "social time". This challenge is mainly due to the fact that there is no parallelism in the historical development of civilizations; while a civilization is rising, another may be declining. Hence, civilizations should be approached from a holistic perspective because the time of their appearance in the historical science varies. We should also note that intra-civilizational differences related to time, place and ethnicity should not be taken into account in cross-civilization studies. Therefore, we believe that a comparative study based on simultaneity will culminate in problems that we may not be able to explain.

We stated above that this research will be conducted from a historical perspective. However, it should not be understood from this statement that we will adopt historicism as an approach. The reason for this is that sociologists may agree on the historical genesis of social events, but in practice they follow different methods.[1] Historicism as an approach does not put forward a clear method. Therefore, it is more accurate to see the historical approach adopted in this research as a perspective only.

Another distinguishing feature of our work is its being comparative. Comparison involves various units and stages, which can be listed as follows:

> 1) Units of comparison: units of comparison should be identified and clearly defined.
>
> 2) Area(s) of comparison: the area(s) of comparison should be limited.
>
> 3) Hypothesis: In this research, these elements are:
>
> > i) Units of analysis: the Western Civilization and the Islamic Civilization.
> >
> > ii) Areas of comparison: societies' attitudes towards social problems (social sciences and *fiqh*).
> >
> > iii) Hypothesis: we will compare social sciences and *fiqh* and show that they perform the same functions in society.

Most of the methodological questions related to each of these elements will be answered throughout the study; however, it is worth making few important clarifications at this stage.

First of all, it should be clear that our research is not an attempt to compare Christianity and Islam because Christianity is not a civilization but one of many other components of a civilization. As for Islam, it emerged both as a religion and a civilization. One of the reasons why Islam gained such distinguishing characteristic is the fact that, unlike Christianity, it does not draw a clear divide between the religious and secular spheres. For this reason, it is seen as a secular religion. With its monolithic structure, Islam penetrates into many vital activities from which it cannot be separated.

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1   Hans Freyer, *İçtimai Nazariyeler Tarihi*, trans. Tahir Çağatay, Ankara University, Faculty of Language and History Publications, 2nd ed., 1968, p. 235.

When defining the Western Civilization, the place Christianity occupies within it should be clearly identified. As we mentioned earlier, Christianity is one of many other components of the civilization. In addition, the Western Civilization has long existed before Christianity (this is not the case for Islam; there was no Islamic Civilization before Islam). Also, it is a historical fact that the Western Civilization adopted Christianity only after Westernizating it. By westernization of Christianity, I mean the adaptation of a religion of Asian origin to Europe's social, political and economic structures. It is now clear that our comparison is not between Christianity and Islam, but rather between the Western and the Islamic civilizations.

The second important point we would like to clarify is related to civilization timeline. Instead of comparing two social sciences or two social scientists who lived in the same century, we prefer conducting a comparison at the civilizational level from a global perspective. We believe that comparing two civilizations within their respective timeline will generate more accurate results. For example, if we are to compare two social thinkers, one from the Western and the other from the Islamic Civilization, with whom should we compare Ibn Khaldūn, for instance? Should we compare him with medieval scholastic philosophers, or with modern social scientists such as Marx and Weber? Or else, if we are to compare the Western and Islamic political systems, would it be possible to find a way better than comparing Yūsuf Khāṣṣ Ḥājib's *Kutadgu Bilig (The Wisdom of Royal Glory)* and Machiavelli's *Prince*, for instance? Moreover, a comparison of social thought in the formation periods of the Western and Islamic Civilizations cannot be based on simultaneity because the Islamic Civilization is younger than the Western Civilization. Therefore, what might seem an attractive approach –or maybe even a useful one in some areas– is not appropriate in our case. This way, we will be able to not only approach a civilization in its totality but also –at the same time– reach accurate conclusions about civilizational differentiation.

We believe that it would be more appropriate to address civilizational differentiation from a holistic perspective. That is, instead of detaching individual institutions from the systems they are embedded in and comparing them separately, it may be more appropriate to address the differences and similarities and to investigate their sources as a whole. As a matter of

fact, critics of the comparative approach argue that, when studied separately, some institutions may look similar although they may actually be very different from each other. Hence, they argue that it would be misleading to examine any institution in isolation from the society in which it functions.[2]

The differences between the West and the East-Islam at the cultural, social, economic and political levels have been overstudied. However, in this work we will examine it at the scientific level. We will study science –as a social event and institution– in the Western and Islamic societies and try to show how societal differentiation manifests at the level of societal sciences. If we assume that there is a connection between society and science, we will reach the conclusion that social differentiation is manifested as "differentiation in societal sciences". (Let us point out that what we compare are two attitudes towards social problems. Societal sciences gain their importance from the fact that they express such attitudes). As a matter of fact, in his later studies on religion (on Judaism, Chinese and Indian religions), Weber examined the social –especially economic– consequences of *certain attitudes towards life* derived from certain religious doctrines and systems among certain social groups. Thus, at some point, he established a parallelism between social differentiation and differentiation at the level of societal sciences.[3]

We will see clearly in the following chapters that 1) societal sciences, 2) their organization, 3) their scientificity/validity and, 4) their variety are different in Islam and the West. The basis of this differentiation lays in the different ways adopted by each society to explain and regulate its social problems.

We should also point out that *fiqh* –in this work– is not equivalent to Islamic jurisprudence. This narrow understanding of *fiqh* –as Islamic jurisprudence– has been introduced to both Western and Muslim societies through Orientalists and culminated in a deformation of their understanding of this term.

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2   Bronislaw Malinowsky, Culture, *Encyclopedia of Social Sciences* (New York 1937), pp., 621-645.

3   Max Weber, *The Protestant Ethic and Spirit of Capitalism*, (New York 1958). See also: Reinhard Bendix, *Max Weber: An Intellectual Portrait* (New York, 1960).

It is important to clarify what we mean by social science and *fiqh* here. Let us recall once again that we will tackle the issue in the course of historical and social development. Here, when we say social science and *fiqh*, we do not mean a static mass of knowledge or a stack of information. We rather mean an *"attitude"* that manifests in changing social conditions and that is expressed in different scientific traditions.

It is also important to point out that neither *fiqh* nor social sciences is the only representative of the products and wealth of the Islamic and Western civilizations in the field of social thought/science. Historiography, literature, and social philosophy, for instance, exist in both civilizations. It is particularly important to locate *fiqh* and social sciences within the Islamic and Western Civilizations, respectively. For so doing, it might be necessary to draw an "atlas of societal sciences" of both civilizations to explore their respective place within the intellectual tradition of each civilization on one hand, and to examine their relationships with other disciplines on the other hand.

While putting forward such a thesis, we faced a need to develop new concepts such as 'taking an attitude towards social problems', 'societal science' and 'societal science differentiation' among others.

The concept "societal sciences", for instance, emerged out of a need for a term that is not associated with any particular civilization as is the case of the term "social science". It is known that social sciences emerged in the Western Civilization in a particular time under particular circumstances. The function performed by social sciences in the West, however, has been performed by different disciplines in different societies and civilizations. Therefore, it would be more accurate to coin a term that emphasizes this functional feature but, at the same time, is not bound to any particular cultural context. Such a concept is especially needed in our research to encompass both *fiqh* and social sciences. We believe that the term "societal science" is the most suitable for this purpose.

Another expression that we needed to coin is "attitude towards social problems". I developed this expression during my quest for a concept that would reveal the "social life–knowledge relationship" on the one hand and the "differences at the level of societal sciences" on the other hand. Such an expression encompasses not only the theoretical aspect of the issue, as does

the terms social imagination, paradigm, and ideology, but also its practical aspect. It will also serve our purpose better than Thomas Kuhn's "paradigm",[4] which expresses scientific differentiation within the same civilization, and not between civilizations.

While conducting this study we have realized that a science that is considered "scientific" in one civilization may not gain the same scientific validity when it is transferred to another civilization due to ontological and epistemological differences between civilizations. Therefore, what is "scientific" for one society may not be *scientific* for another. Hence, had I put forth my work as a comparison between two sciences –social sciences and *fiqh*–, a major problem I could have faced would have emerged from the fact that they do not recognize each other's –scientific– validity.

Another method-related issue that is worth pointing out is the following: as mentioned earlier, we will approach the issue from a global perspective. Therefore, instead of analyzing separate sciences and the conclusions reached through them, we will adopt a holistic approach and try to identify the sources behind such differences in general. The stance taken here when dealing with the issue is completely different from that of some Eastern intellectuals who see the absence of Western social sciences in the Islamic Civilization as a deficiency. We believe that it is inconvenient, and even wrong, to expect finding sciences that emerged in a particular civilization at a particular time under particular circumstances in another civilization that has not gone through similar circumstances. In addition, the needs out of which social sciences emerged in the Western context have been already met by *fiqh* in Islam.

In this study, we will focus on the similarities and differences between Islam and the West, between *fiqh* and social sciences. We will try to demonstrate that Islam is *not inferior to but different from* the West. This difference is a manifestation of ontological, epistemological and methodological differentiation between the two civilizations. However, in this research, we will not analyze the philosophical and ideological origins of this differentiation in detail. Our focus will rather be on its social manifestation at the civilizational level.

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4   Thomas Kuhn, *The Structure of Scientific Revolutions,* 2nd ed. The University of Chicago Press, Chicago, 1970.

Although our topic touches upon a number of scientific disciplines such as history of thought and Islamic studies, our approach will be purely sociological. We believe that sociology is able to provide us with the tools needed to examine societies and societal differentiation at the civilizational level from a global perspective.

In this study, we tried to present data about both sides –*fiqh* and social sciences– in an objective way. The definition, historical development and structure of both social sciences and *fiqh* are discussed using the existing conventional approaches of these disciplines. In addition, some detailed information is mentioned briefly as long as it does not not affect the basic claim put forward in this study. We believe that discussing such details –as important as it might be– is beyond the scope of this study. Also, the point of view presented in this study may not correspond to many social sciences and *fiqh,* which creates the necessity of giving them new meanings. This is the main problem that this comparison attempts to overcome because, as Thomas Kuhn puts it, there is no paradigm-independent scale that would enable the comparison between different paradigms. Therefore, inter-paradigm comparisons cannot be made using true/false or less information/more information evaluation.

The situation in our study is different. The comparison in this work is functional, and its purpose is not to determine which is more scientific, but to discuss the function of the sciences in question, in particular their attitude towards social problems.

1. Society in the Face of Social Problems

Before entering our subject, we will do well clarify one of our basic concepts, namely "social problems". In our use, social problems are not merely related to socio-economic imbalances and the problems they cause in a narrow sense. We rather mean all the problems behind social action. Hence, the subject will be approached from a different perspective and level.

According to the above mentioned definition, we can classify social problems into two categories:

1. Problems of *explanation*: problems related to how a society explains and understands itself and other societies.

2. Problems of *regulation*: problems related to how a society regulates itself and its relations with other societies.

In fact, the ways societies approach "explanation" and "regulation" problems are essential. This is what we call "attitudes towards social problems", by which we mean the way and procedure adopted by society to address its explanation and regulation problems.[5]

Indeed, societies' attitudes towards social problem –explanation and regulation problems– can be clearly observed in every society. This is a common point between the least and the most "developed" societies. The fact that Western social scientists present social sciences as an exclusive feature of the West and as an indication of the superiority of the contemporary Western Civilization should be questioned. In the words of Baykan Sezer:

> "Societies, social problems, and inter-communal or internal conflicts are all subjects of sociology; yet, all these issues existed before the emergence of sociology as a science. These are not issues that can be ignored; societies and individuals were obliged to take an attitude towards them. Such attitudes inevitably bring with

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5   See Max Weber, *On the Methodology of the Social Sciences.*

them a consciousness, a form of understanding and explanation. In other words, it forms the foundation of a science. This relationship between the individual and society is not specific to contemporary societies; it has been present in past societies as well."[6]

Yet, our main subject is "societies' attitudes towards social problems" not "societal science" per se. However, the systematized form of this attitude is expressed in the societal science of that particular society. The study of these sciences helps us understand the attitude of society in the face of social problems.

It is at this point that the society-knowledge or knowledge-society relationship emerges. (We are not going to make an unwarranted choice of which of these two came first). Society and knowledge have always been intertwined.

At a certain civilizational stage, "social knowledge" enlarges its scope and takes the form of "societal sciences" within the paradigm of the civilization due to its inability to explain and regulate social problems. In other words, social knowledge becomes institutionalized and systematized. Societal sciences –social knowledge in its systematized and institutionalized form–, reflect the society's attitude towards social problems. This is not a characteristic of a particular society but a feature of all societies especially those who have completed a certain stage of development.

One of the points that we should clarify at this stage is the function of a societal science as a global and social event. As will be discussed below, the characteristics of societal sciences vary from one civilization to the other; however, they all perform the same function, which makes it possible for us to put them under a single heading despite all their differences.

Today, the expression "the function of societal science" may come as a surprise to some because of the features that Western social scientists have emphasized to show that social sciences are objective and far from ideology. However, failing to articulate the function of social sciences will lead some Western social scientists to face some contradictions. For example, wouldn't functionalists contradict themselves when arguing that social

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6   Baykan Sezer, *Sosyolojinin Ana Başlıkları*, İstanbul University. Faculty of Literature Publications. Istanbul 1985, p. 23.

sciences have no function in order to prove that they are not normative? In fact, this issue may not exist in societal sciences of other civilizations (i.e. Islamic Civilization) because it results from the science-ideology dichotomy –what is vs. what should be– in modern Western social sciences.

Social sciences try to resemble natural sciences at the epistemological level, yet this resemblance cannot be applied at the functional level. Natural sciences have a clear function and their epistemology and methodology do not prevent them from performing it. The ability of social sciences to establish their legitimacy depends on determining their functions. In this respect, the question "what are social sciences for?" has attracted many social scientists and paved the way for the question "what is knowledge for?" in the West.

After all these explanations, one can ask the question: have all societies taken the same or different attitudes towards social problems? If they have adopted different attitudes, what are the origins of such differentiation?

It is a fact that societies have always explained and regulated social problems in different ways. This differentiation is reflected in their societal sciences and is related to civilizational differentiation. The attitudes adopted by civilizations to explain and regulate social problems vary from one civilization to the other, and so do their societal sciences. Therefore, studies on civilization differentiation can help us explain the differentiation in societal sciences. Intra-civilization differentiation should not be ignored in this respect, but it should be known that with all its internal diversity and variety, the civilization can be seen in its totality. It is this totality that gives it its identity. We can say that each society adopts a certain attitude towards social problems and that this attitude is shared among various societies which belong to the same civilization. In other words, along with geographical, historical and national (tribal or racial) differences there are similarities that unite societies which belong to the same civilization.

At this point, it is worth examining "differentiations among societal sciences" because we can see that –as mentioned earlier– although these sciences perform the same functions they vary from one society to the other. This difference is related to civilization differentiation. What are the factors that lead to such differentiation and how is it manifested?

The main points of societal science differentiation can be sorted as follows:

1. Philosophical/theoretical backgrounds: ontology, epistemology, methodology.
2. Scientificity/validity.
3. Organization of knowledge.
4. Relations with social life.
5. Change and continuity.
6. Areas of concentration.

We can see from the above-mentioned points how different civilization structures produce different societal sciences. We can also understand the essence of diversity and change within the same civilization.

When addressing the differentiation of societal sciences within the civilization examined, it is necessary 1) to determine its place among and relationships with other intellectual traditions in the same society and 2) to explain the differentiation within civilization. We can clarify the first issue by drawing an atlas of the societal sciences of the civilization under investigation. As for the latter, we may encounter two situations:

1) Intra-civilization societal science variety: simultaneous differentiation
2) Intra-civilization societal science change: different-time differentiation.

As it is known, social science has undergone a change in history (mostly parallel to social change) and within a certain period of time it contains different currents. However, these changes do not prevent science from reflecting the civilization in its totality.

We will try to show in the next chapter that different attitudes towards the problems of society lay at the basis of this societal science differentiation. The examination of this issue in the Islamic and Western civilizations will be the subject of later chapters. Finally, our study will end with a comparison based on the differentiation points mentioned above.

The aim of our study is to draw a large scale map of continents. Therefore, famous big cities will probably be represented by small dots, but such a map should not be discarded even in the presence of detailed urban plans.

2. Societies' Attitudes Towards Social Problems

In this chapter, we will focus on the differentiation between societal sciences of the Western and Islamic civilizations within the theoretical framework we have put forward and show that this differentiation culminates in two different attitudes towards social problems in the societies of each of these civilizations.

How did societies in the Western and Islamic Civilizations react to the different social problems they have faced? How did they explain themselves and other societies? and how did they regulate their inter-communal relations and their relations with other societies? What kind of societal science they used to do so?

In this respect, we see that attitudes towards social problems are based on social sciences in the Western Civilization and on *fiqh* in the Islamic Civilization. Both civilizations have expressed such attitudes based on their societal sciences in a systematic way. It is important for us to identify such sciences and to determine the place of social sciences and *fiqh* in the societal sciences atlas that will emerge from such analysis.

Intellectual traditions other than social sciences and *fiqh* such as art, literature and history also carry the aforementioned attitude but cannot be compared to these two scientific traditions when it comes to reflecting such attitude. "Science" is more appropriate for comparison than other intellectual traditions because it accepts objective examination. Also, those traditions are stagnant and thus inferior to societal sciences when it comes to their social effects and functions.

From this we can say that social sciences are the form of societal sciences in Western societies and that *fiqh* is the form of societal sciences in Muslim societies. Intra-civilization change and variety should also be considered in this respect.

Examples of such intra-civilization change and variety in the Western Civilization include the different understandings of social science throughout history from the ancient Greeks to Modern Europe passing through Rome, feudality, and renaissance. Or it can be seen in today's explanatory/interpretive differentiation in Europe and Anglo-Saxon countries. As for the Islamic Civilization, it can be exemplified by the historical differentiation from the era of the Prophet Muḥammad to that of the Ottomans, passing through the era of the Rightly Guided Caliphs, the Umayyads, and the Abbāsids; or from the differentiation between the Maghrib and the Mashriq on one hand, and Ahl al-Sunna and Shīʿa on the other. Despite the intra-civilization variety that has always existed in both Western and Islamic civilizations, these civilizations have constantly used social sciences and *fiqh*, respectively, to explain and regulate their social problems. The common feature between these two societal scientific traditions is their function. Both attempt to "explain" and "regulate" social problems in their respective societies.

Social sciences and *fiqh* will be examined by considering the changes they have undergone since the beginning of the civilizations they belong to. As we have already mentioned, there are two types of intra-civilization differentiation:

1. *Variety*: simultaneous differentiation.

2. *Change*: different-time differentiation.

We will show that "variety" and "change" characterize both social sciences and *fiqh*.

In his article "What are the Social Sciences?" in the *Encyclopedia of Social Sciences*,[7] Seligman states that classical social sciences, namely politics, economics, history, and law have fulfilled the functions of "explanation" and "regulation" in the Western Civilization since Ancient Greece. However, at a certain stage, writes Seligman, the inability of classical social sciences to fulfill those functions has led to the emergence of "new social sciences" such as anthropology, criminology, and sociology. Therefore, it would be more accurate –historically speaking– to say that "modern social

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7   See Seligman, "What are the Social Sciences?", *Encyclopedia of Social Sciences,* New York 1937, pp. 3-7.

sciences", not "social sciences" were born in the 19th century. These modern
social sciences –that emerged as a result of a scientific change– do not differ
from classical social sciences in terms of their functions.

In the following subsections, we will first examine social sciences
in order to reveal the attitude of Western societies towards social prob-
lems. Then, we will discuss the place of the *fiqh* tradition as a "science"
and "art" in the atlas of Islamic societal sciences and thought and inves-
tigate "change" and "variety" in the discipline of *fiqh* (represented in the
four *fiqh* schools). Since the purpose of the following two subsections is
to analyze our units of comparison, each scientific tradition will be dis-
cussed within its paradigm.

2.A. Social Sciences the Attitude Of Western Societies Towards Social Problems

In this sub-section, we will examine various aspects of our first unit of
comparison, namely *social sciences*. First, we will examine it as the "societal
science form" of the Western Civilization. Second, we will investigate its ex-
planatory function. Finally, we will discuss its regulatory function.

A.1. Social Sciences as the Societal Science Form of the Western Civilization

Social sciences represent an attitude taken towards social problems.
In other words, they represent the way and procedure adopted by Western
societies to explain and regulate social problems. In short, social sciences
are a reflection of the Western attitude, its expression and institutionaliza-
tion in a certain system. We can say that the Western attitude towards social
problems expresses itself through social sciences. There are socio-intellec-
tual reasons for the Western Civilization to produce social sciences in this
way. We will discuss these reasons below.

In fact, there are other traditions in the Western Civilization that ad-
dress social issues. Intellectual traditions such as literature, art, architecture
and journalism also reflect Western attitudes towards social issues. Never-
theless, these traditions remain inferior to social sciences because they lack
the "scientific" feature which characterizes the latter.

The definition of social sciences gives us clues in this respect. According to Seligman: "social sciences are the mental or cultural sciences that deal with the activities of the individual as a member of a group". Gellner also defines social sciences as: "social sciences are what social scientists do in their separate disciplines". It is interesting that both definitions emphasize practice: it is social reality that determines what social science is. Social reality not only determines what social science is, but also determines what is scientific. Herein lays how social sciences have become "scientific" or "valid".

Our aim here is not to determine whether or not social sciences are "really" scientific or valid. "Ideal" social sciences and social scientificity is not the subject of our discussion here. Our focus will rather be on the historical change and variety in the social sciences which reflects the change and variety in social theory. Along with all these varieties and changes, which are rooted in theory and were reflected in the social sciences, social sciences fulfill the function of explanation and regulation as an expression of a certain attitude towards social problems.

a- The Place of Social Sciences in The Atlas of Western Societal Sciences

The concept of "social sciences" is not easy to define because it involves deciding what is "social" and what is "scientific". Our aim here is not to offer a new definition of social sciences. For the purpose of our study, we have to work with the existing definitions.

According to Seligman, the field of science is not definite but it is mainly divided into 1) natural sciences and 2) mental or cultural sciences. Mental or cultural sciences are further divided into two categories: a) sciences that study human action at the individual level. b) sciences that study social action at the group level. Social sciences belong to the second category of mental and cultural sciences. They can thus be defined as: "mental or cultural sciences which deal with the activities of the individual as a member of a group".

Since human social needs are diverse, social activities to meet those needs are also varied and so are social sciences. If we are to draw an atlas of Western societal sciences to determine the place of social sciences among

other intellectual traditions that have emerged within the Western Civilization, it is necessary to count and classify the sciences that address social issues one by one.[8]

Seligman classifies social sciences under three main headings: 1) purely social sciences, 2) semi-social sciences and 3) sciences with social implications. Purely social sciences are divided into two categories: 1) Classical social sciences and 2) Modern social sciences. Classical social sciences include: 1) Politics 2) Economics, 3) History and 4) Law. Modern social sciences are: 6) Anthropology, 7) Criminology and 8) Sociology. As for semi-social sciences, they include 1) Ethics, 2) Pedagogy, 3) Philosophy and 4) Psychology. Sciences with social implications include: 1) Biology, 2) Geography, 3) Social Pathology, 4) Linguistics and 5) Arts. It is possible to make a more detailed analysis by minimizing the scale of the map and shedding light on sub-categories each science encompasses. (Indeed, the new edition of the *Encyclopedia of the Social Sciences* provides a more detailed and comprehensive classification.). But, such details are beyond the scope of our study. This atlas shows us that social sciences are the most appropriate way to determine Western attitudes towards social problems because they focus exclusively and entirely on social issues. We are aware that social sciences can be classified in different other ways; however, this difference will probably not change the result of our study.

In addition, the above mentioned Atlas shows us how Western social science is organized within itself. The most obvious feature of this organization is that it is "analytical". Different aspects of social life are examined by different sciences.

b- Social Theory: Structure, Variety and Relationship with Social Sciences

In this sub-section, our primary focus will not be on social theories but on the ontological, epistemological and methodological assumptions behind those theories. These philosophical assumptions determine how social theories will be developed and lay the theoretical ground for them.

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8   See: Seligman ("What are the Social Sciences? V.1, pp. 3-7), chief editor of the *Encyclopedia of the Social Sciences*, prepared by leading social scientists from various Western countries.

Like all other sciences, social sciences recognize that there is an order in the universe that we can discover, describe and understand. This is where the purpose of social theory emerges: through social theory, we can discover, describe and explain such order. The existence of any social scientific research without theory is not possible.

As it is known, some theoretical assumptions are required for a science to exist. It must be acknowledged that what is to be examined exists (ontology) and that it has characteristics that we can study (epistemology). All these assumptions are a prerequisite for any theory (meta-theory) that can be developed on a particular topic (e.g. income distribution, race, religion, etc.).

Furthermore, in order for the conclusions reached to be scientifically valid, there must be a community that will accept the same theoretical assumptions and conclusions drawn from them. A question that may be asked at this point is: "why do social scientists disagree about the nature of the science they are dealing with?" The answer to this question is that this differentiation results from the differentiation of their theoretical –ontological and epistemological– assumptions.

The debate about the nature of existence in ancient Greece, the beginning of civilization in the Western world, has not yet been overcome. Since then, conflict and reconciliation efforts between materialist and idealist worldviews have continued. Since these two philosophical schools have different ontological and epistemological assumptions, the (social) scientific theories they produced are also different.

According to materialists, existence is only matter, or the origin of being is matter. Intangible assets derive from it. When this is the basic assumption of materialism, a certain definition is given to the object of science, and an epistemology is developed accordingly. In other words, when the subject of science is matter, its epistemology will be similar to the epistemology of natural sciences. Social theory and social sciences based on materialism see the object of science in a certain way. This view, represented by positivism in our age, adopts the model of natural society. Positivists claim that society, which is the subject of social sciences, is basically the same as nature, which is the subject of natural sciences. Therefore, they

attempt to apply the epistemology (explanation) and methodology (experiment, observation) of natural sciences to society as well.

It is obvious that there is no homogeneity among social theories based on materialism or positivism. However, it is possible to identify some common characteristics shared by all of them. We can briefly summarize the basic principles of positivism as it provides meta-theory to social sciences:

1. There is no fundamental difference between social and natural sciences. The aim of social sciences should be to formulate *objective* social laws similar to natural law.

2. These laws are tools to explain social events or phenomena. The explanation means bringing two types of sentences together: the first is a sentence that expresses a general law; the second is the sentence stating the special conditions that apply in this general law.

3. Social reality can be known through concepts related to observable and measurable things. The separation of the subtle and formal language used in observation from everyday language is essential for scientific studies in sociology;

4. Social sciences focus on the question "what is this about?" and "how has it happened?" They do not explicitly address *how it should be*, because "science" is independent of value judgments.[9]

Thus, materialism-positivism draws a picture of its own social world. In this world picture, the social world –the world of social actors, social groups and social organizations– is like the world of natural phenomena. Everything we know about the social world is given to us through experiments, observations and measurements. Positivists examine certain events through experiments and measurements to find their regularity. Their aim is to formulate laws governing the activity of social groups and organizations. Positivists assume that there are certain objects and processes in the social world, that certain events occur continuously and that there are fixed relationships between them. It is those objects, events and relationships that science must rigorously describe and explain. These facts are theoretically seen as neutral and "objective". They can therefore be expressed and formulated in a simple way to present the *visible* realities of the social world.

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9   John Wilson, *Social Theory*, Prentice Hall, Englewood Cliffs, New Jersey 1983, pp. 11-12.

Positivist explanations take the form of general deductive assumptions, in which case the event to be explained is a conclusion derived from the premises of one or more universal laws. This is called a *nomological* or *covering-law* model. If an event of similar type A occurs, if there is a universal law of events of similar type B that follows it, the event B will be explained with reference to the previous event A. These statements are accepted or rejected according to their success or failure to generalize such predictions. Therefore, when positivists speak of "cause", they mean a necessary part of the conditions that have come together in a meaningful way to produce a result.[10]

This *social world picture*, which we tried to introduce briefly, goes back to Aristotle in terms of its historical origins. Many social scientific research traditions that are prevalent in our age use this world picture or paradigm. The main headings of these traditions are as follows:

1) Theory of change,

2) Structuralist sociology,

3) Functionalism,

4) System,

5) Historical materialism.[11]

On the other hand, idealism, which represents the other side of the fundamental distinction in Western thought, acknowledges that *"ide"* is the source of existence. *Ide* precedes matter and is its source. This view, put forward by Plato in ancient Greece, has passed through various stages until today. As far as we are concerned, idealist philosophy is based on a certain understanding of existence as well as a certain understanding of society and social science. Social theory based on idealist ontology as its starting point uses the symbolic model of society, as it is called today. Society established by symbols is different from the object of natural sciences and can only be known and understood through *interpretation*. The idealistic view that embraces the symbolic society model and the method of interpretation has been taken as the starting point by various social theories. Despite

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10   Wilson, *Ibid.*, p. 8.

11   W.G. Runciman, *Social Science and Political Theory*, Cambridge University Press, Cambridge 1965, Introduction.

the various conflicts among themselves, they share some general assumptions. The basic principles on which the idealist meta-theory is based can be summarized as follows:

1. There are substantial differences between social and natural sciences because human is the only being who can use symbols. The aim of social sciences is therefore to understand social reality through its own methods.

2. "Understanding" is the method of explaining social reality.

3. Social reality can be known not by quantitative concepts of what can be observed and measured, but by qualitative concepts that make it possible to interpret and understand it.

4. Social sciences are not independent of value judgment. As we have seen, the social world drawn by idealism is quite different from that drawn by positivism. Idealist social scientists are more concerned with making sense of the meaning of human action, rather than focusing on the universal and general laws of social behavior.[12]

According to idealists, social reality is mental; it consists of thought, opinion, and other mind related activities. The most extreme form of idealism is to claim that material things are an illusion since ideas are neither heard nor seen, nor do they occupy space. Idealists believe that the social world is a text that should be read and interpreted rather than a neutral world on which to conduct experiments.[13] Examples of social science traditions based on the social world picture drawn by idealism common in our age are: 1) Symbolic interactionism and 2) Phenomenological sociology.

As a result, social theory reflects a certain understanding of social science. For this reason, it is possible to reduce the debates, differences, or variety in our words, to the variety in social theory. Without these, theoretical, empirical, and field research would be impossible. More precisely, theory determines which questions may be asked and what kind of solutions may be acceptable because it teaches the social scientist what to research, how to research, and what to do with the research results.

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12   Wilson, *Social Theory*, p. 9.
13   Wilson, *Ibid.*, p. 10.

c- Historical Change of Social Sciences

What we mean by "the historical change of social sciences" are the changes that these sciences have undergone throughout history. As it is known, there are various differences between social sciences of the Western Civilization today (*modern* social sciences) and those that existed in ancient Greece or the Middle Ages (*classical* social sciences). The dominance of different philosophical movements and social theories in different periods and the expansion of the field of science lay at the basis of these changes. To illustrate the first case, we can refer to one of the famous schemes that divide the intellectual history of the West into various stages. As for the second case –the expansion of science– we can use sources that deal with the history of social sciences.

We can illustrate these historical changes with the following scheme used by the Encyclopedia of Social Sciences. According to the latter, history of the Western Civilization can be divided as follows:

1. Ancient Greek Period
2. Roman Period
3. Church Domination Period
4. Development of Autonomies Period
5. Renaissance and Reform Period
6. Emergence of Liberalism
7. Revolution Period
8. The Period of Individualism and Capitalism
9. Nationalism Period
10. Period of Internationalism
11. War and Restructuring Period

d- Variety in Social Sciences

In addition to the changes they exhibit throughout history, social sciences also display differences in the same historical period. We can call this "simultaneous differentiation" or "variety". It is a fact that not all social scientists share the same views about the nature of their own disciplines. What is the reason for this? What we will explore in this chapter are the socio-intellectual factors underlying this differentiation.

As mentioned above, social sciences are based on and shaped by social theory. Therefore, we can address the variety in social sciences by reducing it to the variety in social theory. At the basis of the different sociology, politics, economics and social science currents lay different epistemological and methodological assumptions of the sociologist, political scientist or economist, respectively. It is possible to illustrate this situation in every social science. If we take sociology as an example, we first see that sociologists are basically divided into idealists and materialists. A little research on contemporary sociological trends tells us that sociologists differ in defining the nature of society that is the subject of their science. On one hand, a group of sociologists sees society as an object, reduces its intellectual and ideal aspects to material phenomena, considers activities based on practical needs as infrastructure institutions, and sees other activities (culture, religion, art and the like) as superstructure institutions. On the other hand, another group considers society as a non-material entity based on thought and accepts that practice is determined by theory.

Any attitude about the nature of society inevitably requires a certain epistemology and methodology. In addition, the sources of the "explanation-interpretation" debate –between materialists and idealists– are ontological. Positivists argue that the method of "explanation" can be used in sociology because they believe that society is no different from nature, which is the subject of natural sciences. Idealist sociologists, on the other hand, adopt the method of "interpretation" and advocate their own methodologies because they believe that there are fundamental ontological differences between nature and society. This shows that there is a direct relationship between social theory and social methodology.

As a result, we can say that the attitude towards "existence" (ontological assumptions) in general determines the attitude towards the problems of society; therefore, we need to keep this in mind when investigating "variety" in societal sciences.

When examining the historical change of social sciences, we found that there is a societal science understanding that corresponds to every civilization stage. In order to establish the connection between simultaneous change and social conditions, issues such as intra-societal contradictions and class structure have been emphasized and a wide literature has addressed this subject.

Even if we do not acknowledge that social contradictions are based on (or can be reduced to) the understanding of social science, at least there is no reason to deny that this differentiation is nurtured by these contradictions. This is also true for internal conflict and differentiation among Western societies. An example of this is the spread of functionalism or symbolic interactionism in the United States in contrast to the predominant Marxist understanding of social science in the old Soviet Union, which are both nurtured by the social and political conditions of the societies they emerged in.

A.2. Explanation of Social Problems Through Social Sciences

We can see that social sciences explain society –both Western and non-Western– in a unique way. These explanations are presented in the form of social theories. Here, too, there are differences based on socio-intellectual factors.

a- Explanation of Western Societies

Like every society, Western societies have asked questions about themselves. The answers to these questions have been put forward through social theories and social sciences. Indeed, if we want to learn how Western societies have seen themselves throughout history and today, it is enough to look at social sciences.

The attempts by Western societies to explain themselves through social sciences have been an ongoing phenomenon since Ancient Greece, the first stage of Western Civilization. Although this phenomenon remains the same in terms of its main characteristics and manner of expression, its concepts may be different. The Western Civilization has always described itself with the adjectives "civilized", "advanced" and "open" to emphasize its own superiority and difference over other societies. It has also used social sciences to solve its social problems. Economic problems were addressed by economics, political ones by political science, and legal problems by law. All these explanations are important for us in terms of reflecting how the society sees itself and various social events. These statements do not have an "intellectual" dimension only, but also a social dimension that should not be neglected. For example, advocates of conflict theory are pro-change

or revolutionary, and their argument is largely related to the social class or status to which they belong, whereas "functionalists" are generally conservative, in other words, defenders of social order. Therefore, during the study of social theory and social sciences –as sociology of knowledge reveals– the social aspect of knowledge/science must be taken into account, especially when it comes to the internal contradictions and conflicts within society.

b- Explanation of Non-Western Societies

In addition to explaining themselves, Western societies have also described and defined non-Western societies through social theories and social sciences. Like intra-communal explanations, inter-communal explanations also have a certain socio-intellectual basis. The important point here is that the different concepts brought about by different relationships in different periods do not affect the basic features of those explanations.

Non-Western societies have been described by social sciences as "stagnant", "despotic" and "backward". The West attributed to itself certain superiority when defining and explaining itself but continued to look prejudiced in explaining societies other than its own.

These theories were effective in regulating relations with non-Western societies, which were explained and defined by "backwardness" and "eastern despotism".[14] This provided some legitimacy to their exploitation. Therefore, social theories and sciences used to explain non-Western societies are quite interesting in terms of showing how the West looks at societies outside of itself and justifies its relations with them.

A.3. Regulation Of Society Through Social Sciences

Social sciences not only regulate society but also reflect how they regulate it (reflexive). M. Duverger states that the applications of social sciences in Western societies are more important than the applications of atomic physics.

We can see here the integrity of the relationship between the explanation function and the regulation function of social sciences. However,

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14   See an interesting example in Karl A. Wittfogel, *Oriental Despotism: A Comparative Study of Total Power*, Vingate Books, New York 1981.

positivist social scientists object to this approach and argue that the task of social sciences is merely to "explain". However, this objection was clearly refuted by Karl Popper, himself a positivist. In his book "the Poverty of Historicism", Popper not only demonstrates the relationship between the explanation and regulation functions of social sciences, but also clearly demonstrates the link between the quality of explanation and the quality of regulation. He argues that if the explanation is general, the regulation is general, and if the explanation is partial, the regulation is partial, too. This is what Popper calls "piecemeal engineering".[15]

For this reason, some social scientists in our age should not mislead us when claiming that social sciences should try to identify *what is* and should not deal with *what should be.* Let us first state that this claim is quite new in the history of social sciences; it emerged after positivism influenced social sciences. However, in the earlier periods, from the Ancient Greek to the New Age, social sciences had clearly carried out the both explanatory and regulatory functions. (Let us state here that we do not agree with the general conviction that social theories and sciences of the classical period are only intended to regulate society, because explanation is a precondition for regulation). Leon Bramson's words shed enough light on our subject:

> "…What is social theory? In the modern era –since the French revolution– the answer to this question has been threefold: first, social theory has been defined as the attempt to understand the structure of society. In this sense, social theory means the effort to explain social phenomena since the birth of natural sciences, using methods that explain the realities of the physical world. Social scientists tried to examine society and develop general assumptions about the causes of social movement, as did biologists trying to explain the behavior of the organism after Newton. This effort to obtain an explanation of social event in the modern period constitutes the history of the development of social sciences in Western Europe. But social theory has a second meaning. This other meaning presents ideas about the formation of "ideal" society as opposed to the society in which social theorists find themselves. Unlike his colleagues in the physical sciences, the social scientist explores the nature of society. The social scientist himself is an atom in the test tube; he

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15   Karl Popper, *The Poverty of Historicism*, Routledge and Kegan Paul, London 1984.

himself is a member of society. For this reason, it was accepted that the social theorists of the 19th century who tried to explain the social event also contributed to the understanding of "ideal" society in their explanations. Descriptive theories of the structure of society, as we first put it, are intertwined with theories about "ideal" society."[16]

In classical social theories and sciences, there is no such epistemological distinction between explanation and regulation –even in words–. Saint Simon, Comte, Durkheim, Weber and other social scientists who made this claim have been active in the regulation of social life or at least trying to. Social scientists have always undertaken the task of social planning.

a- Regulation of Internal Relations

Regulation of internal relations is one of the most basic social problems. In the West, social sciences assume a function of regulating intra-community relations. Examining the history of social sciences and revealing how much this history overlaps with social history will be enough to explain the situation.

"Law", a social science, has a special place in the regulation of internal relations. In addition, the concepts and institutions such as "social planning" and "social engineering" that emerged in our age will help us disclose the regulatory function of social sciences. In modern societies, social scientists undertake tasks of policy formation, interpretation, and implementation of prepared policies.

b- Regulation of Inter-communal Relations

Regulating the West's relations with non-Western societies is as important as regulating its internal relations. The West's attitude towards how to regulate relations with societies outside it and the rules within which it will manage these relationships is reflected in social sciences. What should be kept in mind here is that neither the West nor non-Western societies have a homogeneous structure. Just as there are many conflicting groups within the West, there are many conflicting groups outside it. Therefore,

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16 Leon Bramson, *The Political Contex of Sociology*, 4th, Princeton Un. Press, Princeton, N.J. 1974, pp. 5-6.

the distinction between West and non-West is not so clear. The relations between the groups separated by symbolic boundaries are in a continuous change and re-formation.

We have mentioned above some of the concepts used by the West to describe societies outside of itself. These concepts played a major role in regulating the West's relations with those societies and justified the nature of those relations for at least Western societies themselves. In the ancient Greek period, the West described societies other than itself as "barbarians", as we can see in the works of Aristotle, Plato, Herodotus and other philosophers. Therefore, the nature of the relationship with those people has been determined accordingly. Philosophers of the modern age, on the other hand, regarded Western societies as "civilized", while non-Western societies as "non-civilized" societies. Therefore, a relationship with those people would aim civilizing them. Today, relations with non-Western societies are shaped in light of adjectives such as "non-developed" or "underdeveloped", which are often used to describe non-Western societies.

2.B. Fiqh: The Attitude Of Muslim Societies Towards Social Problems

In this section, we will investigate our second unit of comparison "*fiqh*" and explain its main functions. We will first show that *fiqh* is the societal science form of the Islamic Civilization. Then, we will approach it from a functional perspective and explore how it explains and regulates society.

B.1. Fiqh as the Form of Societal Sciences in the Islamic Civilization

Fiqh is the discipline (or a group of disciplines) that address social Issues in the Islamic Civilization. By "Islamic Civilization", we mean the material and spiritual products of the societies that followed the societal model established by the Prophet Muḥammad in Madina. The fact that the word "*madaniyya*" (civilization) is derived from the word *Madina* (city of the Prophet) strengthens this meaning.[17]

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17   Jean-Louis Michon, "Religious Institutions", *The Islamic City*, ed. R.B Serjant, France, Unseco, 1980, pp. 13-40.

Fiqh is a way and procedure for explaining and regulating social life. It is not only directly related to Islam, but is also the form of societal sciences unique to the Islamic Civilization. Ibn Khaldūn emphasized this fact in the *Muḳaddima*; he states: "all these *'revealed'* disciplines are special to the Islamic nation and its members."[18] *Fiqh* can thus be defined as the societal science form of the Islamic Civilization. Through *fiqh*, we can learn how Muslim societies explain and regulate social problems in history and today.

Fiqh, however, is not the only intellectual tradition that addresses social issues in the Islamic Civilization. To prove this, we will draw an atlas of Islamic societal sciences and show the place of *fiqh* among other intellectual traditions. We will also shed light on the ontological, epistemological, and methodological assumptions upon which *fiqh* is based. Finally, we will discuss the changes the discipline of *fiqh* went through in the history of the Islamic Civilization.

In order to reveal the ontological and epistemological assumptions upon which *fiqh* is based, it is necessary to shed light on the discipline of "*Al-fiqh al-akbar*", which is known today as "*kalām*". To understand the methodology of *fiqh*, we will investigate the discipline of *usūl al-fiqh*.

We will study the historical and simultaneous differentiation (change and variety) in societal sciences in the Islamic Civilization in light of these two disciplines –*Al-fiqh al-akbar* and *usūl al-fiqh*– which represent the meta-theory and methodology of *fiqh*, respectively. We will not argue whether or not *fiqh* is scientific or whether a certain view –within *fiqh*– is better than the other. What is important to us is how *fiqh* has acquired its "scientificity" and validity.

a- The Place of Fiqh in The Atlas of Islamic Societal Sciences

Like other civilizations, the Islamic Civilization has many scientific and intellectual traditions that address social issues. All of these traditions reflect to a certain extent the attitude of Muslim societies towards social problems. However, the discipline of *fiqh* has a distinguished place among

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18 Ibn Khaldūn, *The Muḳaddima*, ed. ʿAlī ʿAbd al-Wāḥid al-Wāfī, 3th edition, Dār al-Nahdā, Egypt, Cairo, v. 3, p. 1027.

other traditions due to its scope, sophistication and most importantly to its "scientific" feature. Therefore, it is the most appropriate discipline to be considered and examined to determine the attitude of Muslim societies towards social problems.

Muslim scholars divide codified disciplines *(al-ʿulūm al-mudawwanah)* into two main categories: Islamic disciplines *(al-ulūm al-Islāmiyyah)* and assimilated disciplines *(al-ʿulūm al-dakhīlah)*. Assimilated disciplines are disciplines that exist in the Islamic Civilization as well as in other civilizations. As can be seen, this classification is based on the relations of disciplines with the Islamic Civilization and their position within it.

Islamic disciplines *(al-ulūm al-Islāmiyyah)* are disciplines established by Muslims as a response to the needs of Muslim societies. These disciplines are divided into twosub-categories, namely high-end disciplines *(al-ulūm al-ʿāliyyah)* and auxiliary disciplines *(al-ulūm al-āliyyah)*.

High-end disciplines are further divided into three sub-categories:

1) Qurʾān disciplines,

2) *Ḥadīth* disciplines,

3) *Fiqh* disciplines.

The discipline of *fiqh* is further divided into four sub-categories, namely:

1) *Al-fiqh al-akbar* (also called *ʿakāid, ʿilm al-tawḥīd and kalām),*

2) *Usūl al-fiqh,*

3) External *fiqh (also called fiqh al-ẓāhir, al-fiqh al-ʿamalī and furūʾ al-fiqh),*

4) Inner *fiqh* (also called *fiqh al-bāṭin* or *taṣawwuf*).

Auxiliary disciplines are also divided into two sub-categories:

1) Specialized disciplines *(al-ʿulūm al-mukhtassah),*

2) Shared disciplines *(al-ulūm al-mushtarakah).*

Specialized disciplines aim at preventing misinterpretation of the Holy Qurʾān and *ḥadīth* narratives. These disciplines are also called Arabic or linguistic disciplines *(al-ulūm al-ʿArabiyyah* or *al-ulūm al-lisāniyyah)*. Some of the major Arabic disciplines are:

1) Language *(lugha)*

2) Syntax *(nahw)*

3) Literature *(adab)*

4) Etymology *(ishtiqāq)*

5) Morphology *(sarf)*

6) Semantics *(maʾānī)*

7) Rethoric *(bayān)*

8) Prosody *(ʿarūd)*

9) Rhyme *(kāfiyah)*

Shared disciplines *(al-ʿulūm al-mushtaraka)* are not specific to Muslims. These disciplines have been developed in other civilizations and transmitted to the Islamic Civilization in its foundation stage. History and geography can be cited as examples of such disciplines.

The disciplines discussed so far belong to the first main category of codified disciplines, namely "Islamic disciplines". To the second category belong "assimilated disciplines" *(al-ʿulūm al-dakhīlah)*. These disciplines have entered into the Islamic Civilization after being established and developed in other civilizations. They have been first introduced to Muslims through the translation movement launched by the Abbāsid caliph al-Manṣūr's administration (h. 138-158) as a result of the scientific interaction and exchange with surrounding civilizations. These disciplines have generally been referred to as "philosophy" and "*ḥikma*". Because of their epistemology, they were called rational disciplines *(al-ʿulūm al-ʿaqliyyah)*. Medicine, astronomy, agriculture, chemistry and physics are examples of such disciplines.[19]

According to this taxonomy, we can list the main intellectual traditions that address social issues in the Islamic Civilization as follows:

1. The Qurʾān and Qurʾānic disciplines

2. *Ḥadīth* and *ḥadīth* disciplines

3. *Fiqh* disciplines:

   - *Al-fiqh al-akbar (kalām)*
   - *Usūl al-fiqh*
   - *Furūʾ al-fiqh (fiqh al-ẓāhir)*
   - *Taṣawwuf (fiqh al-bāṭin)*

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19   [İzmirli] İsmail Hakkı, *Daru'l-Fünun Dersleri: Usûl-i Fıkıh Dersleri*, İstanbul 1328, pp. 1-3.

1. Social Philosophy *(al-ḥikma al-ʿamaliyyah)*
2. History
3. Literature
4. Politics
5. Other

b- Birth and Semantic Development of The Discipline of Fiqh

Fiqh is defined by Alī Sāmī Nashshār as "the social archive *(al-sijil al-ijtimāʿi)* of Muslim life".[20] The literal meaning of the word *fiqh* is comprehension and deep understanding. However, with the birth of Islam, the word *fiqh* gained a religious meaning. Yet, it was not until the second Hijri Century that it gained its current connotation.[21] *Fiqh* was defined by Imām Abū Ḥanīfa (d.150 / 767), the founder of the Ḥanafī school, as "knowledge about one's self, its rights and duties". *Fiqh*, according to this definition, encompasses all creedal, practical and moral acts in the life of individuals and societies.

However, such a comprehensive understanding of *fiqh* did not last long. First, creedal issues and later, moral and spiritual ones were no more addressed by *fiqh*. This led to the separation of what we may call "creedal *fiqh*" and "inner *fiqh*" from *fiqh*. This development coincided with the emergence of a new definition of *fiqh*: extrapolating legal rulings and norms regarding practical issues from religious sources *(al-adil-la al-sharʿiyya)*".

With the development of *fiqh* emerged another discipline under the name *usūl al-fiqh*, which can be literally translated as "roots of *fiqh*" or "methodology of *fiqh*". In today's words, it can be said that this discipline includes the philosophy, epistemology and methodology of *fiqh. Usūl al-fiqh* was developed by Imām Shāfiʿī, the founder of the Shāfiʿī school. We believe that it is necessary to go one step further in order to understand the discipline of *fiqh*. It is necessary to understand the attitude of Muslim societies towards social problems they have faced in the early periods before the emergence and institutionalization of *fiqh* as a systematic discipline.

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20   See Alī Sāmī Nashshār, *Nashʾat al-fikr al-falsafī fi-l-Islam*, 3 vol, (8. ed.). Cairo 1980.
21   Hüseyin Atay, *İslâm Hukuk Felsefesi*, Introduction, pp. 53-54.

The rise of the Islamic Civilization is intrinsically linked with Prophet Muḥammad's message. Even though the message of Islam has been communicated by many prophets since Adam, the Islamic civilization –in the sense we use today– has begun to gain body in Madinah first with the Prophet Muḥammad, who summed up the Islamic declaration of belief in one statement. In order to enter Islam, it is necessary to accept the sentence and pronounce it clearly. This sentence, which is known as the declaration of belief *(shahādah)*, consists of two propositions. The first has an ontological meaning and the second has an epistemological one. According to the first statement (or belief), which forms the basis of Islamic ontology, all beings are created by Allah and are constantly under His control, will and rule. In short, as stated in the Qur'ān, "creation" *(khālḳ)* and "command" *(amr)* belong to Allah.[22]

According to the second statement, which forms the basis of Islamic epistemology, the Prophet Muḥammad is the messenger of Allah. To put it more clearly, Prophet Muḥammad is a person who is tasked with transmitting the information he receives from Allah through revelation.

In order to enter the religion Prophet Muḥammad preached, Islam, it was necessary to adopt these two –ontological and epistemological– beliefs. These two preconceptions gave people a new identity. However, the most interesting and important aspect of this basic sentence is that it not only determines the attitudes of Muslim individuals and societies towards *existence* and *knowledge* in general but also shapes their attitudes towards social problems. In other words, since Muslims believe that creation and command belong to Allah, their attitudes towards the problems of society are shaped according to His will. This will, however, is basically valid in the physical –not the social– realm. Social life is partially left to human will *(al-irāda al-juz'iyya)*. When this partial (human) will is in accordance with the divine will, the world is said to be in complete harmony. This harmony manifests in the human-divine, human-nature, and human-human relationships. This is called in Arabic *sunnatullah. Sunnatullah* results in happiness not only in this world but also in the Hereafter. All these issues are the subject of *Al-fiqh al-akbar.*[23]

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22   Qur'ān (23:54).

23   See. Mustafa Öz (trans.), *Fiqh,* Kalem Pub., İstanbul 1981, pp. 67-72.

It follows that prior to taking any attitude towards any social problem, it is necessary to determine Allah's will towards it first. In many cases, this will is communicated to Prophet Muḥammad (pbuh) through revelation. However, when the prophet passed away, the question of how to know Allah's will regarding issues that have not been addressed by revelation emerged. It is this question that gave birth to the discipline of *fiqh*.

In order to determine Allah's will regarding issues that have not been explicitly addressed by revelation, Muslim scholars collected all the knowledge transmitted to the Prophet Muḥammad through revelation, Qurʾān and *ḥadīth*. Then, they set general rules and applied them to extrapolate legal rulings regarding newly faced social problems following a specific methodology. This is called *"ijtihād"*. As can be seen, the stage of the establishment of *fiqh* is the period in which Prophet Muḥammad lived. As a matter of fact, during this period Prophet Muḥammad tried to teach his companions how to behave in his absence. Historians of *fiqh* illustrate this fact with the following example:

Prophet Muḥammad decided to send one of his companions, whose name is Muʿādh Ibn-Jabal, to a region as an administrator.

> When he said goodbye, he asked him: "How will you judge?"
>
> Muʿādh replied: "According to the Book of Allah."
>
> The prophet said: "What if it is not in the book of Allah?
>
> Muʿādh said: "Then according the *Sunnah* of the Messenger of Allah."
>
> The prophet said: "What if it is not there?"
>
> Muʿādh said: "Then I will strive to use my own opinion (*ijtihād*)".
>
> Thereupon the Prophet said: "All praise is due to Allah who has made suitable the Messenger of the Messenger of Allah"

This conversation is very important in two ways. First, it draws the limits of freedom of thought, which is bound by the *Qurʾān* and the *Sunnah*. Second, it shows that in case the *Qurʾān* and the *Sunnah* are silent about an issue, reason can be used to extrapolate legal rulings about it. The prophet did not ask Muʿādh how he will use his reason to do so, but this question was answered later by *fiqh*.[24]

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24   Count Leon Ostrorog, *Ankara Reform*, trans. Yusuf Ziya Kavakçı, İstanbul University,

The efforts of Muslim scholars of later periods aimed at answering this question. Abū Ḥanīfa, Mālik, Shāfiʿī and Ibn Ḥanbal are founders of *fiqh* in this sense because their efforts culminated in the systematization of the discipline of *usūl al-fiqh*. They not only determined how the *Qurʾān* and *ḥadīth* should be interpreted, but also set rules and procedures for *ijtihād*.

The efforts to preserve the Qurʾān –the most important epistemological source in the Islamic Civilization– and to set rules for its interpretation resulted in the emergence and development of Qurʾānic disciplines called *tafsīr* disciplines.

Similarly, the efforts to preserve *ḥadīth* –the second most important epistemological source in the Islamic Civilization– culminated in setting rules for interpretating and distinguishing valid from non-valid *ḥadīth*. This resulted in the emergence and development of *ḥadīth* disciplines. The development of *tafsīr* and *ḥadīth* disciplines was accompanied with the development of Arabic disciplines (syntax and morphology), which were needed to insure the right interpretation of the *Qurʾān* and *ḥadīth*.

The *ijtihād* method, more specifically, necessitated the preservation of the poetry of the *jāhiliyya* period in particular.

The discipline of history also gained great importance in the Islamic Civilization because it contained information about the life of the Prophet Muḥammad and his companions, who have set the example regarding how to live for later Muslims. Thus, the disipline of history has become an important scientific tradition since the early periods of Islamic Civilization. The tradition of politics emerged out of practical political needs of later periods.

This is the stage in which social knowledge was systematized and formed "societal sciences". Indeed, by the end of the first century of Islamic Civilization, many intellectual-scientific traditions were systematized and institutionalized, and the above-mentioned atlas of Islamic societal sciences emerged. We have thus come back to our starting point.

İstanbul 1972, pp. 26-28. See also *İslâm Hukuk İlminin Esasları (Usûlü'l-Fıkıh)*, Prof. Dr. Zekiyüddin Şaʾban, trans. Doç. Dr. İbrahim Kafi Dönmez, Türkiye Diyanet Vakfı Publications, Ankara 1990, pp. 39-40.

At this point, we will now have to go back to Abū Ḥanīfa's definition of *fiqh*, which can be translated either as "one's knowledge of one's rights and obligations" or as "one's knowledge of what is useful and what is harmful". This definition emphasizes the relationship between *fiqh* and life. The concepts "useful" and "harmful" evoke a further meaning that is related to the Hereafter, namely reward and punishment. This reflects Islamic ontology (existence of an afterlife). In Islam, the concept of benefit and harm is often linked to the concepts of reward and punishment. In order to understand this, the concepts of *good* and *evil,* which have been widely discussed in *Al-fiqh al-akbar,* should be examined.

The definition set by Imām Abū Ḥanīfa was operationalized by his disciples who divided the discipline of *fiqh* into three sub-disciplines according to their subject matter. Accordingly, deeds of the heart (faith and belief) were studied by *Al-fiqh al-akbar*, the external (visible) dimension of human action by *furū' al-fiqh* or *fiqh al-ẓāhir*, and the inner dimension of human action by *fiqh al-bāṭin* or *taṣawwuf*.

The second definition of *fiqh*, which is prevalent today and which is attributed to Imām Shāfiʾ, is "knowledge about the Islamic rulings derived from detailed (religious) evidence *(al-adilla al-sharʿiyya)* regarding human action". This definition includes two important concepts. The first is the concept of "human action" *('amal)*, which includes the deeds of individuals as individuals and also as members of a group. The second is the concept of "detailed evidence" *(al-adilla al-tafsīliyya)*. Apart from the *Qurʾān* and the *Sunnah*, we cannot say that there is unanimous consensus among *fiqh* scholars about the other sources used as religious evidence *(al-adilla al-sharʿiyya)*. Sources of evidence other than the *Qurʾān* and *Sunna* include *ijmā'* (concensus), *qiyās* (reasoning by analogy), *istihsān* (juristic preference), *istishāb* (continuity), *'urf* (customs), *shar'u man-qablana* (previous religions), and *'amal ahl-al-madina* (the practice of the people of Madina).

In addition, the word *fiqh* is used to mean "discipline" in different areas: the discipline of the Prophetic biography *(fiqh al-sīrah)*, the discipline of alms-giving *(fiqh al-zakāt)*, and the discipline of language *(fiqh al-lughah)*.

b.1. Al-fiqh al-akbar: Its Structure, Variety and Relationship with The Discipline of Fiqh

We have emphasized above that every science is based on a set of ontological and epistemological assumptions. The same is true for *fiqh*, the societal science of the Islamic Civilization. The ontological and epistemological background that underlays the discipline of *fiqh* is provided by the discipline Imām Abū Ḥanīfa called *"Al-fiqh al-akbar"*. It is also referred to as *"'ilm usūl al-dīn"*, *"'ilm al-tawḥīd,"* and *"'ilm al-akāid"*. However, we prefer using the first name because it clearly shows its relationship with the discipline of *fiqh*.

Al-fiqh al-akbar is the discipline that studies the Islamic ontological, epistemological, and axiological preconceptions. As a method, it not only discusses such preconceptions, but transfers them to other disciplines. *Al-fiqh al-akbar* led to the emergence of the discipline of *kalām*, which aims at defending the Islamic creed and protecting the basic beliefs of the Muslim society. In this respect, we can say that *kalām* fulfills a purely social duty. As a matter of fact, this must be the reason why many socio-political elements, especially in the later periods, entered *kalām* books.

Al-fiqh al-akbar thus determines the ontological and epistemological basis of *fiqh* on the one hand, and determines how *fiqh* can be accepted by society on the other hand.

Some of the basic ontological and epistemological assumptions set by *Al-fiqh al-akbar* include the following:

- Existence is *real* and we *can know* this reality.
- There are three sources of knowledge: sound reason *(al-ʿaql al-ṣālīm)*, sound sense perception *(al-hawāss al-ṣālīmah)*, and true reported knowledge *(al-khabar al-ṣādīq)*.
- The world is created and ruled by Allah.
- The nature of Allah is completely different from its creature (it is neither *ide* nor matter).
- Allah is the only being that is eternal. He works according to His will *(sunnatullah)*, but humans have a partial will in ordering social life. Through this freedom, the human being chooses to be a believer or an infidel, obedient or sinful.

- The prophets of Allah have repeatedly called upon people to obey Allah.

- Those who obey Allah and His prophets will go to Heaven as a reward, and those who disobey Allah and His messengers will go to Hell. Thus, absolute justice will be realized.

The three fundamental ontological foundations of the social worldview laid down by Al-fiqh al-akbar are:

1. *Tawḥīd*: belief in the existence and oneness of God.
2. *Nubuwwah*: belief in the existence of prophets.
3. *Ma'ād*: belief in the existence of an afterlife.

Once this worldview is established and accepted, societal issues are addressed and treated in light of these fundamental ontological assumptions, using *usūl al-fiqh* as a methodology. In the introduction of Al-Ghazālī's *Mustaṣfā.* He states:

> "You need to know that disciplines are divided into rational (*'aqliyah*), such as medicine, arithmetic, and geometry –subjects which do not concern us more– and religious, such as *kalām*, *fiqh* and its principles (*usūl*), the discipline of *ḥadīth*, the discipline of *tafsīr* (Qur'ānic exegesis), and the discipline of *bāṭin* (inner self), meaning the discipline that deals with purification of the self. Each of the rational and religious disciplines is further divided into universal and particular. The universal of religious discipline is *kalām*; while the other disciplines such as *fiqh* and its principles, or *ḥadīth* or *tafsīr*, are particular sciences. This is because the *mufassir* (the interpreter of the Qur'ān) studies only the meaning of the [revealed] Book. The *muḥaddith* (*ḥadīth* specialist) [similarly] looks only to [the question of] *ḥadīth* authenticity in particular. The *mutakallim* [kalām specialist] is, [in contrast], the one who studies the most general of things- i.e., Being.
>
> …You have learned from this (classification) that [the *kalām* discipline] begins by studying the most general of things, namely Being. Then it gradually descends to the details we mentioned above [the other areas of particular disciplines] to establish the truth of the sources of religious sciences, viz the Qur'ān, Sunnah, and the trustworthiness of the Messenger [of Allah]. The *mufassir* then takes from the totality examined by the *mutakallim* one specific [area], the Qur'ān, and studies its interpretation. [Similarly] the *ḥadīth* specialist appropriates another

specific [area], the Sunnah, and studies the ways through which
it is authenticated. The *fiqh* specialist [likewise] appropriates
one specific [area], the adult's *[mukallaf]* actions, and studies
their relations to the *Sharī'a* command."[25]

The picture of the social worldview drawn by *Al-fiqh al-akbar* is accepted by both Ahl al-Sunna and Shī'a. There are some conflicts at the creedal level between these two groups. These disputes are the source of conflicts between *fiqh* and *usūl al-fiqh*. This is where the variety of Islamic societal sciences manifests itself in the form of different *fiqh* schools of thought. This separation of socio-intellectual origin, which emerged in the early period of the Islamic Civilization, continues to exist today and has not yet been overcome. We would like to emphasize the fact that the distinction between Ahl al-Sunna and Shī'a is at the level of *Al-fiqh al-akbar* (or *akāid*), not *fiqh*. However, this distinction constitutes the source of differentiation in the field of *fiqh and usūl al-fiqh* as a result of the close relationship between these two disciplines and the discipline of *Al-fiqh al-akbar*.

The separation between Shī'a and Ahl al-Sunna is epistemological, not ontological.

In fact, these epistemological discrepancies are not deep-rooted discrepancies. Most of them are somewhere between the epistemological level and the methodological level. These disputes are basically about how to define and use true reported knowledge *(al-khabar al-ṣādīq)* and sound reason *(al-'aql al-ṣālīm)*. As for the first source of knowledge, *al-khabar al-ṣādīq,* Shī'a do not accept ḥadīth other than that narrated through *Ahl al-Bayt*. They also give special importance to the knowledge of their *imāms*, and some of them even consider it a legitimate source of knowledge, equivalent to ḥadīth of the Prophet Muḥammad.

There is also a minor divergence within Ahl al-Sunnah, which culminated in the development of various schools of thought among them. We can classify them as:

  1) Salafīsts

  2) Māturīdīs

  3) Ash'arīs

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25 Al-Ghazālī, *al-Mustaṣfā.*

The conflict between the Salafīsts and others is about whether reason can be used to interpret the text. Salafīsts believe that sound reason *(al-aql al-ṣālīm)* should be used to determine the text, and not to interpret it. This is an important epistemological-methodological conflict. Māturīdīs and Ashʿarīs –called *mutaakhirīn*– argue that reasoning should be used not only to explain the text, but also to interpret it. With this approach, Ahl al-Sunna seem to have found the middle way between the Muʿtazilītes, who attach great importance to reason and the Salafīsts, who limit its function.

Shīʿa is also divided into many branches. The main ones are:

1) Imāmītes
2) Zaydītes
3) İsmāʿīlītes
4) Jaʿfarītes
5) Ghulāt.

The origin of the distinction between these sects is usually related to the status of the imāmate: the number of imāms, how to identify them, whether they are innocent, and so on.

b.2.- *The Discipline of Usūl al-Fiqh*

The discipline of *al-fiqh al-akbar (kalām)* establishes the ontological and epistemological basis necessary for *fiqh*. This is achieved through the use of three main sources of knowledge *(asbāb al-'Ilm)*, namely *al-ʿaql al-ṣālīm* (sound reason), *al-hawās al-salima* (sense perception), and *al-khabar al-ṣādīq* (true reported knowledge).

The ontological and epistemological assumptions laid down by *Al-fiqh al-akbar* necessitate a methodology. This methodology is called *'usūl al-fiqh'*.

The three fundamental ontological foundations of the social world-view laid down by *Al-fiqh al-akbar* are:

1) *Tawḥīd*: belief in the existence and oneness of God.
2) *Nubuwwah*: belief in the existence of prophets.
3) *Ma'ād*: belief in the existence of an afterlife.

Once this worldview is established and accepted, social issues are addressed and treated in light of these fundamental ontological assumptions, using *usūl al-fiqh* as a methodology.

The main function of *usūl al-fiqh* is building a solid bridge between epistemological sources and *fiqh*. In other words, *usūl al-fiqh* identifies the epistemological sources of *fiqh* and uses them to lay down the rules to be followed in order to obtain legal rulings. These epistemological sources are called '*adilla*'[26] (sources of evidence) and are classified as follows:

1. *Al-adilla al-asliyya* or *al-adilla al-arbaa'* (primary sources): *Qurʾān*, *Sunna*, *ijmāʾ* (concensus), and *qiyās* (reasoning by analogy).
2. *Al-adilla al-tāliyya* (secondary sources): include, but are not limited to, *istihsān* (juristic preference), *istishāb* (continuity), *'urf (customs)*, *shar'u man-qablanā* (previous religions), and *'amal ahl-al-madīna* (the practice of the people of Madina).

There is a consensus among all *fiqh* scholars on the legitimacy of the *Qurʾān* and *Sunnah* as sources of knowledge in *fiqh*; however there are diverse opinions on the acceptance of other sources of knowledge as legitimate. This disagreement among *fiqh* scholars constitutes the source of diversity that characterizes *usūl al-fiqh*. This disagreement emerged first between *ahl-al-Sunna* and Shīʿa, then among *fiqh* scholars within each of these two sects.

Ahl-al-Sunna are united by the ontological assumptions laid down by *Al-fiqh al-akbar*; however, they are divided into four main *madhhabs* (schools) at the methodological level. These *madhhabs* are: Ḥanafī, Shāfiʿī, Mālikī, and Ḥanbalī.

Information about the methodology followed by each of these four *madhhabs* has reached us through Imām Shāfiī' only because the founders of the three other *madhhabs* have transmitted this knowledge to their disciples orally.

The Ḥanafī *madhhab* was founded by İmām Abū Ḥanīfa. His methodūology is based on the *Qurʾān*, *the Sunnah*, opinion of the companions of the Prophet, *ijmāʾ* (consensus), *qiyās* (reasoning by analogy), *istihsān* (juristic preference) and *'urf* (customs).

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26   *Dalil, pl. adilla*: proof, indication, evidence, spiritual support and source.

The Mālikī *madhhab* was founded by Imām Mālik. His methodology is based on the *Qurʾān, the Sunnah, ijmāʾ* (consensus), *ʿamal ahl al-madinah* (practice of the people of Madinah), *qiyās* (reasoning by analogy), opinion of the Prophet's companions', *istislāh* (public welfare), *istishāb* (continuity), *ʿurf* (customs) and *sadd al-dharāʾi'* (closing off the means that can lead to evil).

The Shāfiʿī *madhhab* was founded by Imām Shāfiʿī. His methodology is based on the Qurʾān, *the Sunnah, ijmāʾ* (consensus), and *qiyās* (reasoning by analogy) with the opinion of the Prophet's companions. *Istihsān, al-maslaha al-mursala*, and the practice of the people of Madinah are not accepted as legitimate sources in this *madhhab*.

The Ḥanbalī *madhhab* was founded by İmām Aḥmad b. Ḥanbal. His methodology is based on the *Qurʾān, the Sunnah*, opinion of the Prophet's companions and *qiyās* (reasoning by analogy). Shīʿa also accept the ontological beliefs laid down by *Al-fiqh al-akbar*, but their scholars too have some disagreements at the methodological level. Two of the major Shīʿa schools are Zaydītes and Imāmītes.

The methodology followed by the Zaydīte *madhhab* is based on the *Qurʾān, the Sunnah, ijmāʾ* (consensus), *qiyās* (reasoning by analogy), and *ʿaql* (reason). According to this school, *ʿaql* (reason) can be utilized when legal rulings cannot be obtained through the four other sources. This *madhhab* also places great importance on *ijtihād* (jurists' independent reasoning).

The methodology followed by the *Imāmīte madhhab* is based on the Qurʾān, *the ḥadīth* narrated by the Prophet's family *(Ahl al-Bayt)*, and *ijtihād* (by İmāms only). *Qiyās (reasoning by analogy)* and *ijmāʾ* (consensus) are generally not accepted as legitimate sources.

Both *al-fiqh al-akbar* and *usūl al-fiqh* are concerned with epistemological sources. The difference between the two is that *al-fiqh al-akbar* lays down the epistemological ground on which *usūl al-fiqh* is based. The former identifies the three main sources of knowledge used in fiqh *(asbāb al-ʿilm)*, while the latter gives more details about these sources *(adilla)*.

c- The Change of the Discipline of Fiqh Throughout History

Fiqh has come to its present state in the Islamic Civilization after going through a number of stages. As mentioned above, the concept of *fiqh* has followed a semantic development line. In addition, the changing social events and social problems have led to changes at the scope and methodology of *fiqh* itself. Narrowing down *fiqh* to the study of practical issues is an example of such changes at the scope level, and the belief that the gate of *ijtihād* is closed is an example of changes at the methodological level.

On the other hand, as *fiqh* developed, many of its subjects, although they have retained their place within the general discipline of *fiqh*, started to be approached separately as independent disciplines. Thus, new specialized disciplines such as *al-ahkām al-sultāniyyah*, *'ilm al-ihtisāb*, and *ḥikma al-tashrī'* emerged from *fiqh*, and disciplines such as *'ilm al-khilāf* and *'ilm-al jadal* emerged from *usūl al-fiqh*.

According to *fiqh* historians, the discipline of *fiqh* has gone through the following stages:

1) The era of the Prophet: birth of *fiqh*.
2) The era of the Prophet's companions: development of *fiqh*.
3) The Abbāsid Era: maturity of *fiqh*.
4) The Seljuk (Saljūq) period: stagnation of *fiqh*.
5) From the Mongolian invasion to the *Medjelle*: decline of *fiqh*.
6) From the *Medjelle* to our time: revival of *fiqh*.[27]

This scheme shows us that there is a parallelism between the historical development of the Islamic Civilization and the development of *fiqh*, its societal science. However, during the historical change of *fiqh*, there has not been any change at the philosophical –ontological and epistemological– level (*Al-fiqh al-akbar* and *usūl al-fiqh*). The change only stems from the application of *fiqh* methodology to different social issues since it uses custom (*'urf*) as a source of evidence. In the words of Izmirli Ismail Hakkı, "historical difference and theoretical difference are two different things"[28].

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27   Hayreddin Karaman, *İslâm Hukuk Tarihi*, Nesil Pub., İstanbul 1989.
28   [İzmirli] İsmail Hakkı, *Daru'l-Fünun Dersleri: Usûl-i Fıkıh Dersleri*, İstanbul 1328, p. 65.

d- Variety in The Discipline of Fiqh

Scientific conflicts within the Islamic Civilization manifest in the form of schools of thought. The same is true for *fiqh* schools of thought. The variety at *al-fiqh al-akbar* and *usūl al-fiqh* levels gave rise to variety within *fiqh*. *Fiqh* variety therefore manifests itself at three levels:

1) at the level of *Al-fiqh al-akbar*,

2) at the level of *usūl al-fiqh*,

3) at the level of *furū' al-fiqh.*

These three levels of variety are interrelated. In fact, it can be said that the variety in a lower level determines variety at the higher level.

The variety between Ahl al-Sunnah and Shī'a is grounded at the level of *Al-fiqh al-akbar*. This difference manifests at the levels of *usūl al-fiqh* and *furū' al-fiqh.* However, the source of the differentiation within Ahl al-Sunnah and Shī'a is largely at the level of *usūl al-fiqh*.

We cannot say that the views of scholars of any school of thought within Ahl al-Sunnah or *Shī'a* are homogeneous. If we take the Ḥanafī school of thought as an example, we can see that there is much controversy between Abū Ḥanīfa, the founder of this school, and his followers, Imām Muḥammad al-Shaybānī and Abū Yusuf. We can even say that there are very few issues that these jurists agree on. The fact that these jurists, who have largely agreed at the level of *usūl al-fiqh*, disagreed on some issues at the level of *furū' al-fiqh* shows that even when using the same methodology, it is not always necessary for people to reach the same conclusions. This situation in the Ḥanafī school of thought applies to other school of thoughts as well.

As a matter of fact, some later jurists who came after the first *mujtahids* period were recognized as people of choice *(ahl al-tarjīh)* because they were content with choosing among different legal rulings within the same school of thought without having to make *ijtihād* themselves.

B.2. Explanation of Society Through Fiqh

In this section, we will focus on one of the most important functions of *fiqh*: "explaining society". As we have mentioned above, a society's explanation of itself and its explanation of other societies are two fundamental social problems. The ability of a society to become independent and to gain a distinct identity depends on this explanation. Muslim societies, throughout history, have found the answers to the questions "who are we?" and "who are the people outside of us?" in *fiqh*.

Indeed, *fiqh* has defined the Muslim society throughout history and enabled it to gain a distinct identity. Through this explanation, the Muslim society distinguished itself from other societies of the world. It is not possible to think of the explanation of non-Muslim societies without explaining Muslim societies because those explanations are interdependent.

However, finding these explanations in classical *fiqh* books might not be an easy task because *fiqh* scholars have extensively focused on the regulation of intra-communal and inter-communal relations. For example, when we want to investigate the economic theory on which *kitāb al-buyū'* is based, or, more precisely, how *fiqh* defines and explains economic relations, we see that this has not been addressed in a separate chapter in *fiqh* books. This is probably why *fiqh* is often seen as Islamic Law. However, it should be known that, all legal systems have to be based on social theory (an explanation). As a matter of fact, we emphasized that all social disciplines in the Western Civilization, including law, are based on social theory. Hence, even seeing *fiqh* as *Islamic law* (which is not true) does not mean it does not include explanatory statements.

Therefore, we do not argue here that it is right to treat *fiqh* only as Islamic law (my personal opinion is that this understanding has emerged under the influence of modernization). Our focus here is on its function in Muslim societies.

In other words, what is important to us here is *the social world picture* drawn by *fiqh*. Muslim and non-Muslim societies have a certain place in this picture. The theory developed by *fiqh* to explain society is known today as the *'millet system'*. This system has an important place in *fiqh*. According

to this theory, there are two nations on earth, two different societies that adopted two different belief systems. These are the Muslim nation and the non-Muslim nation. The point that draws attention here is the use of *belief* as the criterion of this distinction.

The theories *fiqh* uses to explain Muslim and non-Muslim societies are found in *fiqh* books of various schools of thought. According to *fiqh,* people are created by Allah. Therefore, belief in the Creator is an important criterion to distinguish one community from the other. Societies that do not recognize the existence of the Creator are called "ignorant societies" because they do not have knowledge about their Creator. *Fiqh* defines Muslim lands as "dār al-Islām" and non-Muslim lands as "dār al-ḥarb". Non-Muslims who live in *dār al-Islam* are called "dhimmīs". The concept of *dār al-sulh* was developed to describe the non-Muslim lands, which are in peace with Muslims.

a- Explanation of Muslim Societies Through Fiqh

Let us remember the social world picture drawn by *fiqh*: Allah has created the world and rules it. Through His messengers, he transmitted true knowledge about existence and expressed His will regarding social life to his servants. Those –individuals and societies– who believe in Him and obey Him will be happy in this life and be rewarded with Paradise in the Hereafter, and those who do not believe in Him and disobey His commands will be unhappy in this life and punished in the Hereafter.

In this picture of the social world, the place of the Muslim nation emerges as follows: it is a nation that recognizes its Creator, praises Him, and complies with His will and with the commandments of Prophet Muḥammad. It is also, according to *fiqh,* one nation among others. Every nation that bases itself on religion is called a "milla (millat)", for example the Muslim *milla*, the Jewish *milla*, the Armenian *milla,* etc. The concept of *milla* is the cornerstone of fiqh's explanation of society. It should be known that translating *milla* as "nation" is wrong.

Islam is a society formed by allegiance *(bay'a)*. The theory of allegiance is a society-organization theory that explains how Muslim societies are formed and established. Allegiance is a contract in which two persons

(imām/believer) agree on certain conditions. As a result of the allegiance, one of the believers takes adjectives such as *Caliph* (the successor of the prophet, not the deputy of Allah), *Amīr al-muminīn* (commander of the faithful), or *Imām* (the leader of the Muslim society). In other words, he becomes the supreme commander of the Muslim community whose main duty is to rule Muslim societies according to the commandments of Allah, the true "Commander", just as the Prophet did. Countries in which this system is applied are called *"dār al-Islam"*. *Dār al-Islam* is united under a single administration and leader. Therefore, there is no section in *fiqh* that regulates the relationship among Muslim states. A *second* Muslim state has no theoretical ground in *fiqh*, which defines all Muslims living in *dār al-Islam* as *brothers*. It is this brotherhood, and not any material or practical assets, that unite Muslims. Therefore, *fiqh* attempts to explain the intra-communal relations of the Muslim society on the basis of this brotherhood.

b- Explanation of Non-Muslim Societies Through Fiqh

Non-Muslim societies are those societies that do not accept the basic tenets set forth by *Al-fiqh al-akbar*. These societies accept neither the Islamic ontology and epistemology summarized in the *shahāda* statement, nor the social world picture drawn by such epistemology.

Non-Muslim societies are described in *fiqh* by the following words: *kufr* (denial of truth), *shirk* (associating partners with Allah), *dalālah* (deviation from the right path), *jahālah* (ignorance). These adjectives are used to describe citizens of the lands referred to as *dār al-ḥarb* or *dār al-sulh*.

B.3. Regulation of Society Through Fiqh

J. Schacht, a professor of Islamic law, says that *fiqh* is the essence of Islamic thought, the typical explanation of Islamic lifestyle, and the spirit of Islam itself. Concerning the regulatory function of *fiqh* he says:

> "*Fiqh* includes all religious duties, which are all the commands of Allah, and which regulate Muslims' lives in all aspects. *Fiqh* also includes principles of worship and religious ceremonies as well as political and legal rules".

Regarding seeing *fiqh* as Islamic law, he said:

> "This limitation is right from a historical and systematic perspective. However, it should be borne in mind that legal issues in Islam form part of a broader system of religious and moral rules".[29]

The legal aspect of *fiqh,* called *"shar'i* law*",* is important for the regulation of society. However, the scope of *fiqh* is broader than this. *Fiqh* also regulates areas of individual and social life such as politics, economics, worship and morality.

Because of the relationship between *explanation* and *regulation*, our discussion about the explanatory function of *fiqh* shed light on the its regulatory function too. In general, *fiqh* sets an overall world order. For *fiqh* scholars, any social problem that arises as a result of social change is nothing but a *fiqhī* issue; the problem is solved once the *faqīh* explains it and extrapolates a legal ruling for it (using religious sources of evidence). Social problems are solved one by one in this way. This shows that *fiqh* plays a dynamic role in all areas of social life. Consequently, it determines the attitude of an entire society towards all kinds of social problems it faces, from the smallest to the most comprehensive.

Fiqh does not distinguish between *is* and *ought* statements, as positivist social sciences do. It does not draw a division line between *deep* (philosophical) and *superficial* (economic, political and legal) sciences. Yet, after the 19th century, efforts to follow the Western specialization of sciences have been made in the Muslim World.

There are some misconceptions about the regulatory function of *fiqh*. The most important of these is that *fiqh* is seen as a set of rigid rules. Those who have this opinion have difficulty in explaining some practices that took place in Islamic history and think that they are outside the scope of *fiqh*. These researchers have particularly focused on practices related to customary law, which was widely practiced in the Ottoman Empire. However, these practices are not separate from the *fiqh* system; on the contrary they are theoretical foundations within the *fiqh* system itself.

Fiqh norms derive their scientificity from the epistemological source known as reported knowledge *(al-khabar al-ṣādīq)*, which is not considered

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29   Joseph Schacht, *İslâm Hukukuna Giriş*, trans. Mehmet Dağ-Abdülkadir Şener, 2nd ed., Ankara 1986, p. 9.

a legitimate source of knowledge in social sciences. This is one of the epistemological differences between these two societal sciences. However, *fiqh* does not rely on this source only; it also uses other epistemological sources such as reason and sense perception, just as social scientists do.

a- Regulation of Relations within The Muslim Society

The Muslim society's need to regulate its internal relations in various social fields has been met by *fiqh* throughout history. The famous *faqīh* Shihāb al-Dīn al-Ḥamawī (in Ibn Nujaym's commentary on his book *al-Ashbāh wa'l-Naẓā'ir*) explains that *fiqh* is the highest and most useful of the sciences: "people's establishment of a stable order, their socialization and the continuity of their social integration can only be achieved if they distinguish what is permissible from what is forbidden and what is recommended from what is reprehensible."[30]

There are many examples in *fiqh* that illustrate the effectiveness of Muslim societies in regulating themselves and social events. A message sent by a caliph from Istanbul to the Muslim community in various parts of the world to take a certain action regarding a political issue is one of such examples. Starting from the foundation stage of Islamic Civilization, all Islamic societies throughout history have endeavored to regulate their inter-communal relations within the framework of *fiqh*.

The desire to regulate social activities and relations in accordance with *fiqh* has led to the emergence of two important institutions apart from legal arrangements and institutions: the "*fatwā*" and the "*ḥisbah*" institutions. These two institutions have undertaken the most important functions after legal institutions in the regulation of social life within the framework of *fiqh* principles. *Fatwā* may mean asking for the opinion of an authorized person regarding a social problem, or it may mean rejecting the opinion of a *faqīh* in case it contradicts *fiqh* principles.

The duty of the institution of *ḥisbah* is checking whether the rules of *fiqh* are applied in the market or in the street. It is an institution that undertakes as its main duty "commanding the good and forbidding the evil"

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30   Aḥmad b. Muḥammad al-Ḥamawī, *amz'u 'Uyūnī'-Basāir*, Dār al-Kutub al-'Ilmiyye, Beirut, 1985, v. 1, pp. 21-22.

that every Muslim must assume. Commanding the good and forbidding the evil has important social functions such as the regulation of society and social control.

We emphasized above that there are differences of opinion among *fiqh* scholars regarding the regulation of the internal relations of the Muslim society. What we want to emphasize now is that these disputes do not in any way result from a particular social or class conflict. Therefore, no one can claim that the Ḥanafī school of thought defends the interests of the working class and that the Shāfi'ī school defends the rights of the rich, for instance. *Fiqh* does not allow such class structure because its regulatory function is based on the "*Islamic brotherhood theory*" that we mentioned above.

b- Regulation of Relations with Non-Muslim Societies

Expressions such as "ignorant society" and "polytheistic society" have been coined to determine and regulate the relations of the Muslim society with non-Muslim societies. *Fiqh* regulates those relations mainly through spreading the message of Islam *(tablīgh)* and struggling to build a good society *(jihād)*.

Regulatory relations between Muslims and non-Muslims, whether they live in *dār al-Islam* or *dār al-ḥarb*, have an important place in *fiqh*. Non-Muslims living in Muslim societies are defined as "*dhimmīs*". The regulation of the relations of the *dhimmīs* among themselves and their relations with the Muslims have been addressed separately. *Dhimmīs* are granted the freedom to live in accordance with their own beliefs.

The relations between Muslims and non-Muslims are regulated according to whether they live in *dār al-ḥarb* or *dār al-sulh*. According to *fiqh*, the assimilation of non-Muslims into the Muslim society –as desirable as it might be– should not be done by means of repression. Instead, *fiqh* provides non-repressive alternatives such as "*jizyah*" and "*tablīgh*" to do so. *Fiqh* regulates relationships among Muslims based on the principle of *commanding the good and prohibiting the evil* and regulates relationships with non-Muslims based on the principle of *tablīgh*. However, unlike the former principle, the latter has never been institutionalized in *fiqh*.

3. COMPARISON OF SOCIAL SCIENCES AND FIQH AS TWO DIFFERENT ATTITUDES TOWARDS SOCIAL PROBLEMS

We have stated above that societies' attitudes towards the basic social problems that we gather under the titles "explanation" and "regulation" problems are different. This difference manifests at certain points. In this section, we will compare social sciences and *fiqh* by mainly focusing on those points of differentiation.

As we have already pointed out, our comparison is not intended to reveal which of the two societal sciences –social sciences and *fiqh*– is more scientific. As we have demonstrated from the beginning, our main aim is to compare two different attitudes towards social problems. Such attitudes are reflected in social sciences and *fiqh* in the Western and Islamic civilizations, respectively. After revealing the points of difference between our units of comparison and the sources of this difference, we do not intend to conclude which societal science is more accurate or more scientific. Rather, by the end of our comparison effort, we will show that the two forms of societal sciences under study perform the same functions –explanation and regulation– although they differ in many respects and although they do not regard each other as scientific.

Before proceeding to the comparison of *fiqh* and social sciences, it is worth remembering the points of differentiation that we briefly discussed in the first chapter. Those points are as follows:

1) Philosophical or Theoretical backgrounds (ontology, epistemology and methodology).

2) Organization of knowledge.

3) Areas of concentration.

4) Relation with social life.

5) Scientificity/validity.

6) Change and continuity (or their position towards social change).

In fact, it is possible to group these differentiation points, which we put forward as six items, under two headings in terms of the areas where differentiation occurs. When we approach them from this perspective, we can see that the first three items arise from the comparison of social sciences and *fiqh* as sciences, while the remaining three items arise from the comparison of the relations of *fiqh* and social sciences with society.

After such a comparison, issues such as how these two societal sciences operate, through which mechanisms they relate to society, and how the interaction between society and science takes place in the West and in Islam will become clear. This will help us better understand the attitudes we have tried to introduce above.

Before starting our comparison, we would like to quote late lawyer Prof. Ali Fuat Başgil who made a comparison of *fiqh* and social sciences. He states:

> "*Fiqh* is, with its *usūl* and *furū'*, according to Imām Abū Ḥanīfa's definition: knowing one's rights and obligations. As understood from this description, *fiqh* in Islam covers a very wide field that includes law, morality and politics and thus corresponds to the notion of today's social sciences. In this case, *fiqh* means Islamic law, morality and political science."[31]

3.A. Social Sciences and Fiqh as Sciences

We have already argued that social sciences are the Western Civilization's and *fiqh* the Islamic Civilization's form of societal sciences. It is worth recalling that our scientific description here is the product of a conventionalist approach and that an ideal social science does not concern us as a sociologist. How an ideal social science should be, or what the position of social sciences and *fiqh* in terms of the ideal social science criterion falls within the field of philosophy of science. What interests us is that various societies within the two different civilizations have accepted these sciences as "science" through a consensus among them. The extent to which they have

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31   Ali Fuat Başgil, *Din ve Laiklik*, 2nd ed., Yağmur Pub., İstanbul 1962, p. 236, n. 130.

resorted to the concept of "ideal science" does not seem sociologically possible to determine. Such an endeavor requires us to move from sociology to philosophy of science. However, comparisons of the general characteristics, sources and functioning of these two different scientific traditions can help us reach interesting results.

A.1. Paradigmatic Differentiation: Ontology, Epistemology and Methodology

There are differences between *fiqh* and social sciences at the ontological and epistemological levels, which we can call philosophical background. This difference is the most important element that underpins these two different scientific traditions. In examining social sciences and *fiqh*, we emphasized separately how each of these ontological and epistemological assumptions shape and affect the science in question. Therefore, we can say that there is a paradigmatic distinction between these two sciences. However, we are aware of the need to use the concept "paradigm" cautiously because T. Kuhn has used it to explain differences within the same civilization; not ontological and epistemological differences between different civilizations. However, we will use the concept of paradigm here to explain scientific differentiation between civilizations because we cannot find a more appropriate concept.

In fact, what is at stake here is not a paradigm used by a particular science or a particular scientific group at any civilization stage, but rather a main paradigm. If the paradigm used by T. Kuhn is a spectacle, what we mean here is a screen or mirror in which different spectacles are reflected. As the screen or mirror (social world picture/the civilization's main paradigm) shows the object of science to the audience in a certain way, various spectators will see different things in that screen or mirror depending on the glasses they use (paradigm in its narrow sense). The difference of civilizational paradigms enables civilizations to distinguish themselves from one another on the one hand and to be seen in their totality on the other hand. However, within each civilization there are different paradigms that do not go beyond the main paradigm. This latter situation helps us to explain the change and variety in societal sciences within each civilization.

The paradigmatic difference between *fiqh* and social sciences is an important part and fundamental factor behind the differentiation of attitudes towards social problems. This paradigmatic difference lies at the root of the differences in attitudes that manifest at the societal level. (A comparison of paradigm and attitude had been made earlier.)

Social sciences –in general– are not based on the ontological assumption that there is a Creator. Even if they do, divine revelation *(waḥy)* is not seen as an epistemological source of information, as is the case in the discipline of *fiqh*.

According to *fiqh*, the universe and society are created by Allah and divine revelation –or reported knowledge *(al-khabar al-ṣādīq)*– is a legitimate epistemological source. Sound reason and sound sense perception are also seen as legitimate sources of knowledge in *fiqh*. Consequently, the concepts and methods used by *fiqh* during the process of explanation and regulation of society differ inevitably from those used in social sciences. Although reason and sense perception are common epistemological sources among the two societal sciences, reported knowledge (divine revelation) is accepted as a legitimate source of knowledge by *fiqh* only. For this reason, the determination, analysis, and interpretation of the reported knowledge, and the effort to evaluate and make judgments about it require a completely different methodology than that of social sciences.

The comparison of the two basic concepts "*nās*" and "*society*", used in *fiqh* and social sciences respectively, will reveal this ontological difference. The concept "*nās*", has the meaning of a community of human beings,[32] whereas the concept "*societa*" actually means firm; it was later transferred by social scientists to the meaning we use today in the sense of "*society*".[33] The importance given by social scientists to the economic aspect of the society thus manifests itself through the semantic and etymological analysis of the word. Non-human societies have no place in the ontology of social sciences. The fact that Doctor Şakir Pasha translated sociology in the 19th century as "*'ilm al-mu-ānaṣṣah*", which is derived from the root *nās* is meaningful in this respect.[34] Another interesting ex-

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32 Asım Efendi, *Kâmus Tercümesi*.

33 İlkay Sunar, *Düşün ve Toplum*, Birey ve Toplum Pub., Ankara 1982, p. 58.

34 Fahri Z. Fındıkoğlu, *Claude Bernard ve Şakir Paşa*, Türkiye Harsi ve İçtimai Araştırmalar Derneği, İstanbul 1963, p. 41.

ample that illustrates this ontological difference is the word *"khālḳ"*. This concept, which *fiqh* (and modern Turkish) uses to describe society, reflects the basic ontological assumption that people are created by Allah. As can be seen, the pictures of social world used by *fiqh* and social science are quite different from each other. To put it more clearly, a social scientist and a *fiqh* scholar see completely different things when they look at the social realm. The basis of this situation lays in the fact that their attitude towards existence in general is different.

The fact that the social scientist and the *faqīh* see society in different ways results in asking different questions about it. *Fiqh* focuses on examining issues such as how God creates society, whether or not He determined how relations between people should be, how is His speech interpreted and put into practice, and how the social relations of people in the world will affect their lives in the Hereafter. On the other hand, a social scientist investigates how people form a society, what is the basis of social behavior, whether we know general social laws, and how science can solve community problems.

A paradigm determines the questions that can be asked about society as well as what kind of answers are acceptable. It would be wrong to expect that an answer based on the paradigm of *fiqh* is accepted in an environment dominated by the social science paradigm. For example "how can we eliminate social instability?" is a question asked by both social sciences and *fiqh*. According to social sciences, social instability can be solved by means of policies to be implemented through social politics or by the fact that the classes which do not get the necessary share can make a revolution and dominate the means of production. *Fiqh* tries to find the answer to the same question by looking at what Allah has commanded in the Qur'ān and how the Prophet Muḥammad has solved this problem in his life, for example through institutionalizing alms-giving (*zakāt*). When we transfer one of these answers to another civilization paradigm, it would not be accepted.

As mentioned above, the most obvious manifestation of this paradigmatic differentiation is methodological. Indeed, there are obvious and serious differences between the methodology of *fiqh* and the methodology of social sciences. This differentiation is mainly due to accepting true

reported knowledge as an epistemological source. As a matter of fact, one of the most important issues on which *usūl al-fiqh* (the methodology of fiqh) dwells is the definition, protection and interpretation of reported knowledge. In social sciences, however, there is no epistemology that would require such a methodology. In contrast, there are methods recognized in the social sciences as "interpretation" and "explanation". While books on the methodology of social sciences teach us how methods of explanation and interpretation, should be used to study the social sphere, *usūl al-fiqh* propose a methodology that teaches us how to use sense perception, reason, and true reported knowledge to acquire knowledge.

Another epistemological distinction between positivist social sciences and *fiqh* is that the former focuses primarily on "explanation" of *what is* and ignore *what ought* or leaves it to metaphysics. This distinction has never been a feature of *fiqh*.

A.2. Organization of Knowledge

In this section, we will focus on how social knowledge is integrated and institutionalized in the Western and Islamic civilizations.

We can see that the organization of social sciences presents an analytical view, both vertically and horizontally. By this we mean that social sciences are organized in the form of philosophy and scientific research and practice, and that the lower one is organized into separate units on which the upper one is based. Let us also mention that in fact, this form of organization has started to become more evident in modern times. Especially in classical social sciences, these three dimensions (philosophy, science, practice) are intertwined. Likewise, even though modern social sciences are organized in a different way, it cannot be said that the units have gained their independence or that the transition between the layers is prevented. As a matter of fact, efforts to remove social sciences from philosophy and normative thought and debates on this issue are still going on.

We mentioned that the organization of social sciences is horizontally analytical. What we mean by this is that they do not lay the ground for one another. Rather, different social sciences address different aspects of social life independently. For example, economics focuses on the economic aspect of social life, politics on the political aspect, and law on the legal aspect. Although there

is a certain relationship between these sciences they do not justify one another, that is why we described them by being horizontally analytical.

If we consider *fiqh* in this respect, we see that the organization of *fiqh* social knowledge in itself is different from that of social sciences. Accordingly, although the vertical organization of *fiqh* is analytical, it can be said that its horizontal organization is not. The order of *Al-fiqh al-akbar (akāid, kalām), usūl al-fiqh* and *furū' al-fiqh* shows that the vertical organization of *fiqh* is analytical. Theoretical issues are addressed by *al-fiqh al-akbar,* methodological issues by *usūl al-fiqh*, and practical issues by *furū' al-fiqh.* Knowledge gained in the first becomes axiomatic for the second, and knowledge gained in the second becomes axiomatic knowledge for the third.

Regarding the horizontal organization of *fiqh*, we see that it differs from that of social sciences. *Fiqh*, unlike social sciences, is not limited to the study of social life. It also studies the individual and spiritual aspects of life because all social, spiritual and individual human activities fall into the concept of *"'amal "* (human action). In this respect, intellectual activities are studied by *Al-fiqh al-akbar*, physical activities by *furū' al-fiqh*, and moral and spiritual activities by *fiqh al-bāṭin* or *taṣawwuf.* Economic, political, and legal activities are not treated as subjects of different sciences as is the case of social sciences. They are all addressed by *furū' al-fiqh* books under separate chapters such as "*Kitāb al-Ibādāt*" (Book of Worship), "*Kitāb al-Buyū'*" (The Book of Shopping), "*Kitāb al-Nikāh*" (The Book of Marriage), and "*Kitāb al-Jihād*" and "*al-Siyar*" (Jihād and International Relations) among others. Even though some attempts have been made to make these chapters independent sciences, most of them have not formed a scientific tradition. For example, one of the founders of the Ḥanafī school of thought, Imām Muḥammad al-Shaybānī, addressed economic activities which constitute the subject of economics under the title "*Al-Iktisāb*" as an independent science, but he could not find followers in this approach and thus could not establish a tradition.[35] The study of political activities in *fiqh* has almost become a separate science under the name "*Al-Ahkām al-Sultāniyyah*".[36]

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35   Imām Muḥammad b. Ḥasan al-Shaybānī, *Al-Iktisāb Fi'r-rızq'ıl-Mustatāb*, ed. Maḥmūd Arnus, Matbaat'ul-Envar, XY. 1938.

36   Māwardī, *Al-Aḥkāmu's-Sulṭāniyya*, Beirut 1405/1985; Abū Ya'lā al-Farrāʾ, *al-Aḥkāmu's- Sulṭāniyya*, (ed. M. Ḥāmid al-Fākkī), Cairo 1357/1938.

However, under the influence of modernization, the organization of *fiqh* knowledge has undergone some changes. Unlike the organization of classical *fiqh* books, contemporary *fiqh* scholars started to follow the horizontal analytical approach used in social sciences. This issue is debatable and needs to addressed separately.

We can say that the holistic approach prevailing in the horizontal organization of *fiqh* social knowledge is the result of Islamic attitudes towards social issues. The fact that each and every Muslim is required to know their rights and obligations in all areas of life prevents the application of specialization and analytical approach to *fiqh*. In addition, the fact that social and religious activities are intertwined makes such approach inappropriate in the Islamic context. For instance, it is not possible to examine an economic action such as alms-giving (*zakāt*) or a religious action such as pilgrimage (*ḥājj*) under certain titles such as economics, politics or law. *Zakāt* is a religious, political, economic, and social action at the same time. The same applays to *ḥājj*. Therefore, it would be impossible to study such actions by separate sciences.

A.3. Areas of Concentration

The differentiation in areas of concentration is a natural consequence of paradigmatic differentiation. As T. Kuhn states, a paradigm determines which questions are meaningful. The differentiation in questions caused by the paradigmatic differentiation between social sciences and *fiqh* created a differentiation of areas of concentration between these sciences.

As we can see, social sciences focus on analyzing the nature of society and *fiqh* focuses on regulating social life in accordance with Allah's will. The fact that *fiqh* relies on divine revelation as an epistemological source may explain why it focuses on the regulation of society. The absence of such source of knowledge in social sciences creates the need of provide such information. Therefore, the problem of explanation of society takes precedence in social sciences.

One of the basic dynamics within social sciences is the idealist-materialist debate concerning existence in general and the explanation of social reality in particular. This debate has been going on since the first periods of Western thought. This conflict is the source of contemporary

debates in the scientific arena such as whether to be a positivist or an idealist (or humanist), whether to use a natural or symbolic model of society, and whether to adopt the method of explanation or interpretation. These problems are at the top of the problems that social scientists spend most of their time debāṭing.

One of the basic dynamics in *fiqh*, on the other hand, is manifested in the form of the problem of will, since the above problems regarding the explanation of society are relatively solved and fall to the second plan. The relationship between God's will and human will and the problems that emerge within this framework have played an important role in the development and progress of science and thought in Islam. Defining the will of God and showing its infinity, defining and determining the limits of human will and finally guiding human will in accordance with the will of God, and thus realizing a community life in accordance with His will are fundamental issues discussed in *fiqh*. Many concepts have developed around these issues and the debate has led to the emergence of various new schools of thought in *fiqh*. The fact that the regulatory function of *fiqh* is more dominant than its explanatory function resulted in perceiving it as "Islamic law". However, it is worth noting that narrowing down *fiqh* to Islamic law culminates in the deformation of the concept of *fiqh*.

3.B. Social Sciences and Fiqh in Terms Of Society-Science Relationship

One of the manifestations of the difference between *fiqh* and social sciences is social life or, more simply, the relationship between society and societal sciences. We will try to summarize the differences in this area below.

Social sciences are produced and determined entirely by society through certain processes. In other words, social sciences do not rely on any religious source of knowledge. When we look at *fiqh* in this respect, we see that it is based on a divine epistemological source, namely revelation. This difference is the source of the differences that we will try to explain below.

We have focused on the explanatory function of social sciences and *fiqh*. We saw that while social sciences have been produced through some social processes, *fiqh* is based on a divine source that reflects the will of God. At this point, we see another difference. Social sciences and *fiqh* acquire the characteristic of "scientificity" in two different ways.

As we mentioned before, social sciences are determined entirely by society without relying on divine sources. Therefore, their social origin is linked with the social class conflicts underlying Western societies. In other words, social sciences have gained the feature of "scientificity" as a product of the party that successfully won the conflict and took over the relations of sovereignty in Western societies. Regardless of the theories used to explain the process and its dynamics, social sciences that go through this kind of social processes complete their institutionalization and become "scientific" and "valid". As a matter of fact, examining the historical change of social sciences shows that social change in Western civilization is intertwined with social scientific change. In the case of *fiqh*, the fact that *fiqh* schools of thought have not been identified with any particular social class and the fact that revelation does not allow such a situation to a large extent distinguishes *fiqh* from social sciences in terms of their source. As we mentioned earlier, we do not have any historical data to allow us to say that any school of thought is the spokesperson of a particular social class.

As can be seen from our explanations above, social sciences are open to constant change. Along with social change, they are heading towards an unknown direction. (Let us remember Popper's criticism of historicism). On the contrary, the basis of *fiqh* is the knowledge laid down by divine revelation. Yet, it is possible to fill out the areas that have not been addressed by revelation according to the changing social reality.

B.1. Differentiation in the Relation With Social Life: Determination and Decisiveness

Social sciences emerged through a series of extremely complex processes. These processes are only epistemological. A sociologist is a member of a society, which he examines and to which he presents the results of his studies. As much as they need society for their social research, social scientists need a paradigm to operate with as well. It is impossible for a social scientist to work without a paradigm.

In the previous sections, we focused on the epistemological elements behind the differentiation between social sciences and *fiqh*. Here we will investigate the social processes that produced social sciences and *fiqh* . In other words, we will try to answer the following question: "how did social sciences and *fiqh* emerge?" We have seen that social sciences are produced by society through certain processes under the influence of intra-communal class conflicts and inter-communal sovereignty relations. Therefore, the different solutions to social problems that emerge in the field of social sciences are in constant conflict. This conflict ends with the victory of one party over the other. The party who wins the conflict and seizes the relations of sovereignty imposes the solution it offers and this solution becomes "scientific". The social science that has gone through these processes completes its institutionalization and becomes "decisive". During social revolutions, existing social sciences lose their decisiveness in the face of the new order and new understanding of social science.

This process is not applicable to *fiqh. Fiqh* is epistemologically based on divine revelation as a basic source of knowledge. The issues that have not been addressed explicitly by revelation are determined by society in accordance with the changing social reality and revealed knowledge. As we see, there is an area characterized by continuity and another area characterized by change. *Fiqh* scholars call the first *"tashrī'"* (legislation) and the second *"tafrī'"* (interpretation). They state that legislation has ended with the end of revelation, but interpretation will continue as long as human life continues (*Fiqh* scholars conceptualized *"tafrī'"* (interpretation) as *ijtihād* and attached to it certain rules).

B.2. Ways of Gaining Scientificity and Validity

We have previously examined the epistemological processes by which *fiqh* and social sciences gain their scientific feature. In this section, we will focus on the social foundations of gained scientificity and compare the two sciences in this respect.

We have already discussed the effect of class structure of Western societies on the determination of social science. Here we will try to look at the same issue from a different perspective. The fact that something in the field of social science is scientific can affect the social structure and life in a way that can lead to major changes. For example, the scientificity of issues such as property or democracy is addressed by different segments of society from different perspectives. If the attitude of society towards social problems is based on a "culture of utility", as in the West, then certain social groups will make great efforts to ensure that certain issues become scientific. In this case, it may even be of secondary importance that these issues become epistemologically valid. If it is not the case, then it would be enough to gain epistemological scientificity.

The social class that became dominant and whose opinions became "scientific" needs to make continuous efforts to remain in this position. There are many examples of this situation in Western history and nowadays. A good example of this situation is considering social scientific issues that defend the interests of a class (other than the dominant class) "ideological" and denying their validity or scientificity.

As a result of this situation, certain social science currents are identified with certain social classes. Thus, social differentiation feeds social scientific differentiation. The situation in *fiqh* is different. Although divine revelation, which is one of the epistemological sources of *fiqh*, allows some different interpretations in line with certain interests, it does not make it possible for certain segments of society to produce solutions in line with their own interests. In addition, the fact that Muslim societies offer a classless structure necessitates social scientific validity to be realized at the epistemological level. As a matter of fact, although Muslim societies were ruled for a long time by the sultanate, those who held sovereignty could not align *fiqh* with their own interests.

B.3. Change and Continuity: Continuity in Change and Non-Change in Continuity

We have previously stated that social sciences are determined entirely by society. As a result of this situation, it is possible that social sciences are open to constant change. When the dominant class loses its power, the existing understanding of social science is replaced by a new one.

However, the situation is different for *fiqh*. On one hand, *fiqh* rules are accepted as the expression of the divine will explained through revelation. They are eternal invariant criteria. *Fiqh* is continuous in this aspect. On the other hand, there are some mechanisms that reflect the change in social reality. The most important of these is the *ijtihād* and *tajdīd* (renewal). In the words of Alī Sāmī Nashshār: "fiqh is dynamic and open to development, it reflects the social changes surrounding Muslims."

The change in societal sciences caused by social change has previously been discussed separately in terms of *fiqh* and social sciences. In summary, social sciences are open to total and continuous change. This change occurs parallel to social change. Continuity in social change makes the change in social science continuous. Although this change in the social sciences has to be limited to the main civilization paradigm, it encompasses both theory and methodology and the conclusions put forward by them. In other words –with the change of the paradigm used by social science– the means of production and products also change. Many examples of this have been seen in history.

The effect of social change on *fiqh* does not affect the means of production such as epistemology and methodology, or more precisely the paradigm. As a matter of fact, *ijtihād* cannot be made on the subjects where text is found.[37] In the words of İzmirli İsmail Hakkı:

> "it is not a change of the evidence, but a change of the issues in which the evidence is applied".[38]

As a result, there have been changes in *fiqh* with social change, but this has never reached a level of "social scientific revolution" as has been the case in the Western civilization.

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37   *The Medjelle*, article: 14.
38   [İzmirli] İsmail Hakkı, *Daru'l-Fünun Dersleri: Usûl-i Fıkıh Dersleri*, İstanbul 1328, p. 65.

4. Conclusion

All societies have taken an attitude towards social problems which we classified under two headings: "explanation of society" and "regulation of society". Societies expressed such attitudes through what we call "societal sciences".

Societies' attitudes towards "explanation" and "regulation" problems differ from one civilization to the other. Societies that belong to the same civilization share a common attitude towards the problems of society, which distinguishes them from the societies belonging to other civilizations. Such differentiation is also reflected in the societal sciences of those civilizations.

If we take societies belonging to the Western and Islamic civilizations as an example, we will see that attitudes towards social problems are expressed through social sciences in the former and through *fiqh* in the latter. These two sciences –social sciences and *fiqh*– represent the societal sciences of the two civilizations in question.

The comparison of social sciences and *fiqh* reveal six major points of differentiation. These differences emerge in areas where social sciences and *fiqh* are compared as sciences or in terms of their relation with society. We can list those differences as follows:

1) Paradigms
2) Organization
3) Areas of concentration
4) Relations with social life
5) Scientificity/Validity
6) Change and Continuity.

Despite these differences, social sciences and *fiqh* are similar in terms of their functions. Both seek to solve two basic social problems, namely "explaining" and "regulating" society. Social sciences attempt to explain both Western and non-Western societies. They also regulate the internal and external relations of Western societies. *Fiqh* performs these two functions in Muslim societies.

As a result, it can be said that social sciences and *fiqh* functionally correspond to each other, although differentiated in many respects, as a form of expression of the attitudes of Western and Muslim societies towards social problems.

SOCIETAL SCIENCES IN THE MUSLIM WORLD: THE CASE OF TURKEY

Intellectual Dependency:
Late Ottoman Intellectuals Between
Fiqh and Social Sciences

Modernization led to the intellectual dependency of the Muslim world on the West for social theories. Human action (*ʿamal*) is the subject matter of both Islamic *fiqh* and Western social science (i.e. of all those sciences which attempt to apply empirical methods drawn from the natural sciences to the sphere of human society, including education and law). Though different in many aspects, both have a claim on widely overlapping intellectual territories. Social science in its different forms conquered the space traditionally occupied by *fiqh*, and its professional representatives (such as academicians, jurists, educationists, and writers) replaced the *fuqahāʾ*. This section thus points to a dialectic tension between *fiqh* and Western social science which shaped Muslim intellectual history since the 19th century. This section unearths this latent tension by using the example of late Ottoman intellectuals as Ziya Gökalp, Said Halim Pasha and İzmirli İsmail Hakkı. In the Ottoman case it brought about a new cleavage in the Muslim intellectual community between advocates of social science and advocates of *fiqh*. Yet many intellectuals and even some *fuqahāʾ* attempted a synthesis between both fields. After the collapse of the Ottoman Empire, the modern Turkish Republic adopted the policy of wholesale westernization, an element of which was the adoption of Western social science to replace *fiqh* in explaining and ordering human action. This intervention in the intellectual life increased the dependence of modern Turkish intellectuals on the state; which is another aspect of their intellectual dependency explored in this section.

INTRODUCTION

The increasingly intensified encounter between Muslim and Western civilizations during the 19th century finally also led to an engagement of *fiqh* and European social science among Ottoman intellectuals. The subject matters of *fiqh* and social science are similar and overlapping as they both undertake the task of analyzing human action (Arabic *'amal*). More specifically, *fiqh* and social science provide answers, though in their own peculiar ways, to the problem of explaining or understanding and ordering it. They do so at the micro (individual) and the macro (group) levels. Yet the two intellectual traditions view human action under a different light and study it with different methods. Customarily, *fiqh* discourse was the major realm of traditional Muslim intellectuals, commonly known as *'ulamā'*, whereas the discourse of social science became an important part of the outlook of the typical Western public intellectuals.

Westernization of Muslim intellectual culture gave rise to an interesting encounter between these two discourses and discourse communities: Western social science challenged the space traditionally occupied by *fiqh* while academically trained bureaucrats, officers, medical doctors, engineers and professors tried to replace the *fuqahā'* in the name of the new sciences. Occupying a middle position, some intellectuals tried to synthesize *fiqh* and Western social science. This continued until the modern Turkish state outlawed *fiqh* and adopted Western scientific discourse as the official doctrine of the state and its schools and universities. The unexpected result was the intellectual dependency of Turkish society on Western social thought and sciences, on the one hand, and the state, on the other. Yet *fiqh* discourse and the discourse community which represented it have been more resilient than expected. Instead of fading away easily in front of the hegemonic modern social discourse and scientists, *fiqh* and *fuqahā'* have managed to survive and maintain their impact on Muslim societies.

Presently, neither social sciences (i.e. all those sciences which attempt to apply empirical methods drawn from the natural sciences to the sphere of human society, including education and law)[39] nor *fiqh* have the monopoly over academic and intellectual social discourse in the Muslim world. Consequently, today's Muslim intellectuals find themselves between *fiqh* and social science discourses and, in my view, have to master both to be able to serve the social roles expected from them. The works of scholars who study late Ottoman thought demonstrate a vivid and diverse public debate on this epistemological encounter. Among them are Hilmi Ziya Ülken,[40] Ahmed Hamdi Tanpınar,[41] Tarık Zafer Tunaya,[42] Şerif Mardin,[43] Şükrü Hanioğlu[44] and Mümtaz'er Türköne.[45] These debates can be seen as revolving around the constantly unfolding and evolving tensions in the unending debates on the contested social- cultural mechanisms of Islamic and secular social study and norm making. Traditional Islamic mechanism of social study and norm making was contested during the late Ottoman Empire by modern secular social thought and sciences, the Western mechanism of norm making and justification. This clash divided the previously homogenous intellectual community into three groups: advocates of *fiqh*, advocates of Western social science and the advocates of a synthesis between them. This tripartite division introduced a new cleavage in Turkish social discourse and discourse communities.[46]

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39 I use 'social sciences' and 'social science' interchangeably. The place of Law poses a problem in the classification of sciences. This article follows the approach that considers Law, or more precisely the "science of law", a social science. On the concept of social sciences, see, Edwin R. A. Seligman, "What are the Social Sciences?", in Edwin R. A. Seligman (ed.), *Encyclopedia of Social Sciences* (New York: The Macmillan Company, 1937), pp. 3-7.

40 Hilmi Ziya Ülken, *Türkiye'de Çağdaş Düşünce Tarihi* (İstanbul: Ülken Pub., 1979)

41 Ahmet Hamdi Tanpınar, *Türk Edebiyatı Tarihi: 19. Asır* (İstanbul: Çağlayan Bookhouse, 1956).

42 Tarık Zafer Tunaya, *Türkiye'de Siyasal Partiler* (İstanbul: Hürriyet Vakfı Yayınları, 1988); *İslamcılık Cereyanı, İkinci Meşrutiyet'in Siyasi Hayatı Boyunca Gelişmesi ve Bugüne Bıraktığı Meseleler* (İstanbul: Cumhuriyet Gazetesi, 1998).

43 Şerif Mardin, *The Genesis of Young Ottoman Thought* (Princeton: Princeton University, 1962); *Jön Türklerin Siyasî Fikirleri: 1895-1908* (İstanbul: İletişim Pub., 1983).

44 Şükrü Hanioğlu, *Bir Siyasal Düşünür Olarak Abdullah Cevdet ve Dönemi* (İstanbul: Üçdal Pub., 1981); *The Young Turks in Opposition* (New York: Oxford University Press, 1995); *Preparation for a Revolution: The Young Turks, 1902-1908* (New York: Oxford University Press, 2001).

45 Mümtazer Türköne, *Türkiye'de İslamcılığın Doğuşu* (İstanbul: İletişim Pub., 1991).

46 Recep Şentürk, "Fıkıh ve Sosyal Bilimler Arasında Son Dönem Osmanlı Aydını", in

In this section, the major attempts to synthesize social sciences and *fiqh* will be explored. This section aims to study the efforts of synthesis between two discourses before the triumph of Western social science at the official level and the survival of the stigmatized *fiqh* discourse in the broader society. It will trace this dialectic in modern Muslim intellectual history that has not been so obvious to other students of modern Islam. I propose this dialectic as an alternative key for the modern history of Muslim thought. The approach I suggest may also serve as an alternative to prevailing views on the history of Muslim thought during the last two centuries as development, progress, modernization, and liberation.[47]

1. *Fiqh* Embattled and Modernized (1839-1924)

The writings of the Western thinkers began to appear in the Ottoman translations only after the end of the first half of the nineteenth century[47] prior to which, only high level *'ulamā'*, bureaucrats and the Sultans had access to Western social ideas. The network of Ottoman intellectuals expanded quickly for the first time to include the products of their Western counterparts[48]. They perceived Western social science as the *'ilm* of the *'ulamā'*

İslam Araştırmaları Dergisi, 2000 (4): 133-171; "Toward an Open Science and Society: Multiplex Relations in Language, Religion and Society", in İslam Araştırmaları Dergisi, 2001 (6): 93-129.

47   See for instance, Niyazi Berkes, *The Development of Secularism in Turkey* (New York: Routledge 1998); Binnaz Toprak, *Islam and Political Development in Turkey* (Leiden: E. J. Brill 1981).

48   "In the field of literature and philosophy the *Tanẓīmāt*, as a whole, was an era during which translations into Turkish of Islamic literature reached unprecedented proportions. Any survey of the modernization of the Ottoman society which does not take into account this reaction falls short of an accurate description. No translations from European thinkers, philosophers, or *litterateurs* were undertaken in Turkey in the first half of the nineteenth century (Mardin, *The Genesis*, 203). Mardin's observation is also supported by Orhan Okay who states that only fifteen philosophical books had been translated from Western languages to Turkish from the time of *Tanẓīmāt* to the end of the 19th century. Seven of these books are by Voltaire while three of them are by Fenelon (see, Orhan Okay, "Batılılaşma Devri Fikir Hayatı Üzerine Bir Deneme", in Ekmeleddin İhsanoğlu (ed.), *Osmanlı Devleti ve Medeniyeti Tarihi* (İstanbul: IRCI-CA 1998), II, 205). Orhan Okay makes the same observation for translation about economics (See, Orhan Okay, "İktisatta Millî Düşünceye Doğru", in *Türk Kültürü* 18, no: 207-208 (Ocak-Şubat 1980): 72-98). The limited number of translations from Western languages raises the question how the pro-Western intellectuals were able to establish their links with Western thought. The increased familiarity with Western languages in some circle certainly played a role here.

of Europe. Subsequently, towards the end of the second half of the nineteenth century, social theories and theorizing emerged next to traditional *ijtihād, ḥukm* and *fatwā,* three major types of *fiqh* reasoning.

For the traditional *'ulamā'* class two types of knowledge can be roughly distinguished: *'ilm* (covering the religious disciplines, logic and philosophy as well as the philological disciplines, often including also medicine, astronomy, and other traditional science) and *'irfān* or *ma'rifa*, i.e. knowledge derived from mystical training. The specialist in *'ilm* was called *'ālim* while the specialist in *'irfān* was called Ṣūfī or *'ārif*. Usually, prominent Ottoman scholars *(khawāss al-khawāss)* combined both types of knowledge as described by Ṭāshköprüzāde in his well-known book, *Miftāḥ al-sa'āda*.[49] The institutional base of *'ilm* and *'ālim* was the madrasa while the tekke, i.e. the Ṣūfī lodge, was the institutional base of *'irfān*. The *'ulamā'* were licensed after a formal education in the madrasa by their teachers with a traditional diploma known as *ijāza*, which qualified them to teach, to author books, to issue *fatwās* and to serve as a *qāḍī*.

The modern intellectual class can also be divided into two groups: one was the academic intelligencia trained in modern colleges, higher institutes and later universities at home and abroad, people who had become increasingly familiar with European languages, and exposed to European literature and science. The other were the home-grown "enlightened persons", commonly known in Ottoman Turkish as "*münevver*", in Modern Turkish as "*aydın*", i.e. writers and journalists whose professional base was the growing public sector of newspapers, journals and magazines. The institutional base of the academics was to become the modern university. The modern intellectuals often were free-lancers without any academic diploma.

Four types of discourse then can be said to have existed side by side in the nineteenth century within the Ottoman elites: *'ilm, 'irfān,* modern science, and "enlightened" ideology. Four groups of intellectuals represented these genres: *'ālim, 'arif,* academic and *münevver (aydın)*. The rise of new

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49 Aḥmad b. Muṣṭafā Ṭāshköprüzāde, *Miftāḥ al-sa'āda wa-miṣbāḥ al-siyāda fī mawḍū'āt al-'ulūm,* ed. Kāmil Kāmil Bākrī and Abd al-Wahhāb Abd al-Nūr (Cairo: Dār al-Kutub al-Hadītha, n.d.): I, 74. Aḥmad ibn Muṣṭafā Ṭāshköprüzāde, *Miftāḥ al-sa'āda wa-miṣbāḥ al-siyāda fī mawḍū'āt al-'ulūm.* 3 vols. Hyderabad: Dāʾirat al-Maʿārif al-Niẓāmiyya, 1328AH.

genres and type of intellectuals reflected new cleavages and conflicts in the Ottoman discourse and discourse communities. Tensions rose between the two types of knowledge and their exponents. The eminent historian of Ottoman literature, Tanpınar, describes the intellectual landscape of the second half of the nineteenth century as follows: "In this period all intellectual tensions revolve around *fiqh* and Islamic law."[50]

One might expect that the *'ulamā'* rejected Western theories outright and a fierce intellectual conflict between the two groups began. In reality, however, there were *'ulamā'* who were more radical reformists than some of the new intellectuals and *vice versa*; there were intellectuals who were more traditionalist than some *'ulamā'*. The conservative intellectuals blamed the reformist *'ulamā'* for failing to defend Islamic values. These mixed orientations forestalled a clear-cut cleavage between *'ulamā'* and the new intellectual elite as well as the rise of an Ottoman enlightenment.

The welcoming attitude of the Muslim intellectuals and the *'ulamā'* towards the new social theories could in part be attributed to the concept of *'ilm* (knowledge and science) and its philosophical components *(ḥikma)*, and even to the early Islamic tradition, related from the Prophet Muḥammad, which encourage Muslims to accept knowledge from non-Muslims.[51] These religious injunctions were commonly used to justify importing Western sciences. It had been used even by those who were not pious Muslims, such as Abdullah Cevdet,[52] and Ahmet Rıza,[53] the two pioneering positivists among Young Turks. This attitude on the part of the *'ulamā'* and Muslim intellectuals helped them welcome social theories in spite of their Western source, and to attempt an accommodation within the life-world of *fiqh*.

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50 Tanpınar, *Türk Edebiyatı Tarihi*, 153.

51 For the numerous Prophetic injunctions, *hadīths,* commonly cited by intellectuals during the nineteenth century in this context, see Mardin, *The Genesis*, 321f. For the support of the far-reaching reforms of the sultans Selīm III and Maḥmūd III by many *'ulamā'* see Uriel Heyd, "The Ottoman *'Ulamā* and Westernization in the Time of Selim III and Maḥmūd II", in A. Hourani, P. S. Khoury, M. C. Wilson (eds.), *The Modern Middle East: A Reader* (London, New York: Tauris Publishers, 1993), pp. 29-59.

52 Hanioğlu, *Abdullah Cevdet*, pp. 129-132.

53 Z. Fahri Fındıkoğlu, *Auguste Comte ve Ahmet Rıza*, Türkiye Harsi ve İçtimai Araştırmalar Derneği, İstanbul, 1962; Murtaza Korlaelçi, *Pozitivizmin Türkiye'ye Girişi ve İlk Etkileri,* İnsan Pub., İstanbul, 1986. The same strategy was adopted by Auguste Comte who presented a favourable view on Islam. See, Auguste Comte, *L'islamisme: au point de vue sociel,* eds. Christian Cherfils, Albert Messein Editeur, Paris 1911.

We can also discern another factor behind the easy permeation of the world of *fiqh* by Western social and political theories in the connection commonly made between knowledge and survival, in the quest to "save the state" through defensive modernization.[54] It was commonly accepted by all intellectual strands that the secret of triumphant European states was their sciences, without distinction between natural and social sciences, technology and institutions. Students of Ottoman modernization have paid attention to Ottoman attempts to import and use European technology and natural sciences. However, they almost completely neglected analogous attempts to introduce Western social theories and later social science into Ottoman society. And yet one of the main arguments that were continuously repeated by the Young Ottomans and the Young Turks was that European sciences and the institutions based on them were the source of Western strength and must be adopted by the Ottoman society for the survival of the state.

What these historians missed was that such a monumental intellectual endeavor to synthesize social and *fiqh* theories needed some theoretical and methodological groundwork. The possibility, the necessity, the legitimacy and the guidelines of such an astonishing project have not been discussed in depth in most studies of Young Ottomans and Young Turks. At the outset it should be said, these questions occupied little space in the minds of the reformists until they became puzzled by them towards the end of the World War I. Ottoman intellectuals worked in an atmosphere completely unfavorable for "intellectualism," and, searched for the most practical solutions to save the state, a concern unfamiliar to the majority of their Western counterparts.[55] They could no longer ignore these fundamental theoretical and methodological questions about their way of thinking.

Calls emerged for free *ijtihād*, also the name of the magazine of the radical reformist Abdullah Cevdet,[56] to help the inner modernization of Ottoman social thought. The theories of this era had still been dominated

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54   Mardin, *The Genesis*, 404 ; Robert E. Ward and Dankwart A. Rustow (eds.), *Political Modernization in Japan and Turkey*, Princeton University Press, Princeton, 1964, p. 8; Mümtaz'er Türköne, *Türkiye'de İslamcılığın Doğuşu,* pp. 24-32, 271-282.

55   Şerif Mardin, *Jön Türklerin Siyasi Fikirleri: 1895-1908*, İletişim Pub., İstanbul,1992, pp. 7-19.

56   For this magazine, see, Nazım H. Polat, "İctihad", *DİA* 21, 446ff.

mostly by *fiqh* language and followed the principles of *fiqh* theorizing, *usūl al-fiqh,* at least in order to gain the acceptance of their audience. However, the tension between *fiqh* and social scientific theorizing is evident in various degrees and ways in the writings of Young Ottomans and Young Turks, for whom the gate of *ijtihād* was closed but the gate of free theorizing was wide open. The debate over the gate of *ijtihād* remained one of the most controversial issues until the building of *fiqh* was destroyed completely from its foundations. A quick look at the literature of the time, such as *İslām Mecmū'ası, Sırāt-ı Müstakīm* and *Sebīlür-reşād,* demonstrates how the cleavage about *ijtihād* divided late Ottoman intellectuals into two camps.[57]

The real tension was between *fiqh* and the demands of the rapidly modernizing bureaucracy. The growing bureaucracy both in size and power conflicted with the constraining principles of *fiqh* and the structure of Ottoman intellectual life:

In the eighteenth century it became an established practice to seek the *Shaykh al-Islām*'s opinion on every governmental matter of importance. The limitations so imposed on the government by the *sharī'a* and by religious authority in the period of decline made the application of reforms especially difficult. The all-embracing *sharī'a* became the stronghold of traditionalism in Ottoman government and society.[58]

Fiqh could easily be used to delegitimize the efforts of the central government and bureaucracy in the Sublime Porte *(Bāb-ı 'Ālī)* to gain more power and efficiency -a strategy also followed by the late 19th century opposition movements, including Young Ottomans and Young Turks. The expanding and centralizing government had to deal with the obstacle of *fiqh* by carefully avoiding an open conflict. The Millet System, for instance, was abolished allegedly to revive the rule of *sharī'a,* claimed the *Tanzīmāt Fermāni* which assured the Muslims that the reforms would be carried out according to religious rules. The *'ulamā',* especially the office of *Shaykh*

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57 For a summary of the views on the debates among Muslim jurists on *ijtihād* by a Turkish scholar who advocates *ijtihād*, see Hayrettin Karaman, *İslam Hukukunda İctihad*, Diyanet İşleri Başkanlığı, Ankara, 1975. For the views of the last Ottoman Sheykhulislam who opposed *ijtihād* as a potentially distorting reform effort in religion, see Mustafa Sabri Efendi, *Dini Mücceddidler*, Sebil Pub., İstanbul, 1969.

58 Halil İnalcık, "Turkey", in Robert E. Ward and Dankwart A. Rustow (eds.), *Political Modernization in Japan and Turkey*, p. 44.

al-Islām, had to defend the integrity of the institution of *fatwā*. The protest against the continuously centralizing and expanding Ottoman bureaucracy attached to the Sublime Porte also relied heavily on *fiqh* for social mobilization.[59] The Young Ottomans and the Young Turks recruited the majority of their members mostly from the ranks of the *'ulamā'*, the *a'yān,* "a rising semi-feudal landed aristocracy in the provinces"[60], middle level bureaucrats and army officers who lost status and power in the course of bureaucratic and political modernization[61]. *Fiqh* along with social theories thus became the prominent idiom in the late nineteenth century Ottoman discourse and informed, if not completely shaped, the arguments of opposing political and intellectual strands.

The intellectuals, whose discourse I will study below, were neither traditionalists nor radical revolutionaries, but reformists who were instrumental in the cultural construction of liberal social and political institutions in Islamic terms. They were modernizers in the sense that they advocated the adoption of modern liberal institutions. They were, nevertheless, conservatives in the sense that they used an Islamic language derived mostly from *fiqh* to materialize their ideals, because *fiqh* was a very effective intellectual tool to achieve an ideological goal in the Ottoman society. The institutions and concepts they stood for were originally born in Europe, conceptualized and defended with social theories of the 18th and the 19th century European liberal thinkers. This strategy, despite keeping them from advocating a pure secular ideology, helped them gain public sympathy for European institutions and concepts-which worked as an important contribution towards modernization.

From this analytical perspective, we can understand why students of Ottoman history of ideas find the origins of both Islamists and modernists in the Young Ottomans and the Young Turks, and why contemporary advocates of Islamism and secularism in Turkey trace their origins back to them. Young Ottomans are, for İnalcık, "the real forerunners of the nationalist

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59 Hanioğlu, *Abdullah Cevdet*, 141ff.; Mardin, *The Genesis*, pp. 81-106; Türköne, *Türkiye'de İslamcılığın Doğuşu*, pp. 93-143, İsmail Kara, *İslamcılara Göre Meşrutiyet İdaresi*, unpublished Ph.D. Dissertation, İstanbul Üniversitesi, 1993.

60 İnalcık, "*Turkey*", p. 45.

61 Mardin, *The Genesis*, p. 397.

and democratic movement in Turkey"[62] for Mardin, they are conservatives[63], for Türköne they are the forerunners of Islamism[64]. Namık Kemal, for instance, had been praised by secular ideologists of the Turkish Republic as their father until they were reminded by a study based on Kemal's own writings[65] that he was an Islamic thinker.[66] Ali Suavi, another example, is a zealot for some, for others the first *laique* Muslim scholar. Ziya Gökalp, normally labeled as the father of Turkish nationalism, was also seen by some as an Islamic revivalist, *mujtahid* or *mujaddid*. Incomplete and partial readings of their ideas mislead researchers to ascribe very divergent and sometimes opposite identities to Young Ottomans and Young Turks.

This analytical perspective also explains why these two key movements of modern Ottoman and Turkish history do not completely fit into the classifications projected onto them. In the absence of a thorough assessment of the intellectual sources of their ideas and why and how these ideas were brought together to constitute a synthesized system, one cannot do justice to their intellectual role and identity.[67]

For the same reasons, the opposition which the Young Ottomans and the Young Turks faced from the radical reformists and traditionalists should not be treated separately as conflicting strands. Instead, they should be analyzed as reactions to mainstream attempts of synthesis. One should thus avoid drawing such clearly distinguished intellectual fronts as the current literature describes. With the purpose of demonstrating the divergent social origins of intellectuals whose work is considered here, I chose below different figures with various social backgrounds: an *'ālim* from the *'ulamā'* order; a bureaucrat from the Sublime Port; a prince from the Ottoman dynasty, and thinkers independent of these established groups. As we

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62   İnalcık, "*Turkey*", p. 45.

63   Mardin, *The Genesis*, p. 401.

64   Türköne, *Türkiye'de İslamcılığın Doğuşu*, pp. 77-87.

65   İhsan Sungu, "Tanzimat ve Yeni Osmanlılar", in *Tanzimat I*, Maarif Matbaası, İstanbul, 1940, pp. 777-857.

66   Mardin, *The Genesis*, p. 287.

67   Bernard Lewis, *The Emergence of Modern Turkey*, Oxford University Press, London, 1968, p. 226f.; Carter Vaughn Findley, *Bureaucratic Reform in the Ottoman Empire: the Sublime Porte 1789-1922*, Princeton University, Princeton, 1980; *Ottoman Civil Officialdom: a Social History*, Princeton University, Princeton, 1989, pp. 174-210; Mardin, *The Genesis*, pp. 120-132, 141f.

will see below, Aḥmad Ḏjewdet Pasha, Ali Suavi, İsmail Hakkı, and Seyyid Bey were affiliated with the *'ulamā'* order. Namık Kemal and Ziya Pasha initially belonged to the bureaucracy of the Sublime Porte. Said Halim was an Egyptian prince with kinship ties to the Ottoman dynasty; he also served as a Grand-Vizier. Ziya Gökalp, who came from a humble social origin in East Anatolia, and had a strong Islamic education in his youth, is usually considered an outsider to these social groups.

1.A. Early Reforms and Cevdet Pasha: From *Fiqh* to Islamic Law

Traditionally *fiqh* had –with few exceptions– not been codified and enacted neither in the Islamic states nor in the Ottoman Empire. This changed during the nineteenth century as *fiqh* came to be seen as "Islamic law" amenable to codification and enactment by the state. It meant the expansion of state control in the domain of law that used to be under the control of *'ulamā'*. This section will shed some light on the historical process through which *fiqh* was transformed into Islamic law under Western influence. Calling *fiqh* "Islamic law" –which we take for granted today– is a recent phenomenon dating back to the 19th century. The term "Islamic law" first emerged in Europe in the works of Orientalists. Later the usage was adopted by Muslim intellectuals and scholars without sufficient scrutiny. Conventionally, Muslim intellectuals still equate *fiqh* with "Islamic law", even though it is evident that *fiqh* is more than Islamic law in content, methods, and the domain of application.

The response of the *'ulamā'* to the pro-Western Tanzīmāt bureaucrats was to codify the relevant parts of *fiqh* in a form similar to the modern codes of Europe. A Western form was synthesized with Islamic content.[68] Yet there was no public intellectual debate, according to our present day research, about why such a project was necessary and in what ways it was going to contribute to the modernization of the country as well as its short and long term social implications.[69] Nor were the theoretical and

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68   Ülken, *Türkiye'de Çağdaş Düşünce Tarihi,* p. 72.

69   According to some observers, the reformist bureaucrats were not concerned with providing accounts to the public about their policies. Mardin makes this observation for the *Tanzīmāt* period (Mardin, *The Genesis,* p. 121), Lewis for the Young Turk era (Lewis, *The Emergence of Modern Turkey,* p. 227), and Parla for the Republican

methodological questions underlying such a fundamental change and syn-
thesis voiced by the carriers of this project. Classical *ʿulamā'* resisted earli-
er attempts to codify *fiqh* as a positive law on various theoretical and prac-
tical considerations.[70]

Yet, according to presently available historical research, *fuqahā'* re-
mained mostly silent at this time. This is particularly true for the members
of the *Meclis-i Aḥkām-ı ʿAdliyye*, which is commonly known as the *Medjelle*
commission. Neither Aḥmad D̲j̲ewdet Pas̲h̲a, a prolific author himself, nor
the other highly learned members of the committee he headed, left any ac-
count dealing in depth with the theoretical and methodological problems
they faced and the guidelines they followed to solve them. However, simply
by looking at the history of the emergence of the *Medjelle,* we can surely say
that to create a modern Islamic law out of the traditional structure of *fiqh*
was not an easy task. Nor do we know to what extent traditional opposition
to such a transformation contributed to the decision of ʿ*Abd al-Ḥamīd II* in
putting an end to the *Medjelle* work. Ali Suavi briefly dealt with the meth-
odological problems of modernizing Islamic law in an article.[71] However,
we need to wait for Ziya Gökalp to turn the issue into a public debate.

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era (Taha Parla, *Ziya Gökalp, Kemalizm ve Türkiye'de Korporatizm,* İstanbul: İletişim
Pub., 1993, p. 209. There is a strong tradition, however, to write reformist memoran-
da and accounts of diplomatic travels by high-ranking diplomats. Cf. Ahmed Resmī)
The origins of this attitude must be sought for in the Turkish statesman tradition,
who, instead of trying to publicly legitimize their actions, looked for the *ʿulamā'* to
provide public legitimacy deriving from *fiqh*, especially through *fatāwā*. None of the
sultans, to my knowledge, left memoirs, diaries, or autobiographies. This is surpris-
ing especially for those who were highly talented in the literary arts such as poetry
and bequeathed collections of poems about love. Unlike Ottoman sultans, Atatürk
left us an account about his policies with his famous *Speech*, in Turkish known as
Nutuk, which could be analyzed in the context of changing patterns of public search
for legitimacy, as well as changing self-perception of the new Turkish statesmen. The
poetry tradition of the Ottoman statesmen served as a means of public expression
which disappeared in the Turkish Republic. *The Speech* may be seen as an attempt for
public self-justification.

70 It is well-known that Abū Ḥanīfa, Mālik, Shāfiʿī and Ibn Ḥanbal, the founders of the
four Sunnī schools of law, distanced themselves from the state. The S̲h̲īʿite jurists, or
imāms, had experienced even a greater tension with the state.

71 Türköne, *Türkiye'de İslamcılığın Doğuşu,* pp. 283-289; also, Sami Erdem, "Ali Suâvi'nin
Usūl-i Fıkh'a Dair Bir Risalesi", in *Divan* 2 (1998): 283-296.

Cevdet Pasha's work is an important turning point which illustrates best the response of *fiqh* to *Tanzīmāt*. The *Medjelle* commission, headed by Cevdet Pasha, codified certain parts of *fiqh,* which was authorized by the Caliph, as the first standard collection of Islamic law to be applied all over the Ottoman lands. The *Medjelle* could not completely curtail the penetration of Western law in Ottoman society; it was, nevertheless, an important compromise to the demand of a growing bureaucracy for a standard law and for a fundamental change in the structure of Islamic legal system. The bureaucrats saw that modern state structure was incompatible with the legal pluralism of the Ottoman Millet System. From their perspective, codification and enactment of Islamic law were essential for the proper functioning of a modern bureaucracy. The 'ulamā' apparently also found their arguments convincing.

In this process Aḥmad Djewdet Pasha played the most significant role. His writings, especially his *Tezâkir*,[72] provided a wealthy source for students of late 19th century Ottoman intellectual history. Of all his intellectual products, *Medjelle* stands out as a sociologically important document, owing to the fact that it served as the Civil Law of the Ottoman society and the succeeding nation states for a considerable time. I will briefly analyze the prologue of the *Medjelle,* which consists of a hundred fundamental principles of *fiqh* and lays the theoretical ground for the subsequent laws. The *fuqahā'* call these legal maxims "universal principles" *(kulliyyāt)* of *fiqh.* Apart from this, its significance for our interest in this paper comes from the fact that these fundamental principles concisely reflect the official understanding of *fiqh* in the late Ottoman State. Aḥmad Djewdet Pasha, along with other members of the *Medjelle* commission, drawing from the works of such scholars as Ibn Nujaym[73] and Khādimī,[74] codified the basic

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72   See Ahmet Cevdet Paşa, *Tezâkir*, Türk Tarih Kurumu, Ankara, 1986.

73   Zayn al-Dīn Zeyn b. Ibrāhim b. Muḥammad Mısrī Hanefī Ibn Nujaym (970/1563), *al-Ashbāh wa an-Nazā'ir,* ed. Muḥammad Muti' Ḥāfiz, Dār al-Fikr, Dımashq, (1983/1403). See for a commentary on it, Abū al-Abbās Aḥmad b. Muḥammad al-Ḥamawī, (1098/1687), *Ghamz 'Uyun al-Baṣā'ir: Sharh Kitāb al-Ashbāh wa an-Nazā'ir*, Dār al-Kutub al-'Ilmiyye, Beirut, 1985/1405.

74   For his most well-known Islamic law manual see, Abū Sa'īd Muḥammad b. Muṣṭafā b. Uthmān al-Khādimī (Turk. Hadimi), *Majāmi' al-Haqā'iq.* For a commentary on it by the author see, *Manāfi' al-Daqā'iq Sharh Majāmi' al-Haqā'iq.* These books have many editions. There is also a translation into Turkish by the son of the author, Abdullah

general rules of *fiqh*. These maxims had officially been adopted by the state through an imperial decree. A body of literature, most importantly several voluminous exegesis analyzing its historical roots in classical *fiqh* literature as well as present day applications, has grown around *Medjelle* in various languages since its first appearance.[75]

The first article defines its subject matter and sources. It also briefly outlines the concept of society on which *fiqh* is founded:

> "The knowledge of the Ordinances of the Sacred Laws is termed the Science of Jurisprudence [*'ilm-i fiqh*]. The Sacred Ordinances refer either to Future, or the Present Life. The Ordinances which refer to the Future Life constitute the Part of the Sacred Law which constitutes Worship. But the Ordinances which relate to the Present Life are divided into Three Heads; that concerning Marriage, that concerning Contracts, and that concerning Punishments."[76]

The concept of mankind and society that lay at the base of this codification of *fiqh* is briefly summarized in a paragraph as follows:

> "God having found the World in the order in which it is, determined that it should be kept in the order in which it is, until its end, by the perpetuation of the Human Race. And this perpetuation is fulfilled by the conjunction of man and woman in the union of marriage for the purpose of procreating children, and by this means the continuation and uninterrupted existence of the human race is maintained. But men, by reason of their natural constitution, have need for their maintenance certain things

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b. Muḥammad b. Muṣṭafā Hanafī al-Khādimī, (1192/1778), *Usul-i Fıkıhdan Hāşiyeli Majāmiʿ al-Haqāʾiq* (Istanbul: Maḥmūd Bey Matbaʿası 1318/1899). It is one of the most popular Islamic Jurisprudence manual during this period. It also served as an important source of inspiration for the *Medjelle*. For a modern study on Khadimī, see Yaşar Sarıkaya, *Abū Saʿīd Muḥammad al-Hādimī (1701/1762): Netzwerke, Karriere und Einfluss eines Osmanischen Provinzgelehrten* (Hamburg: Verlag Dr. Kovac, 2005).

75 For a contemporary English edition of the *Medjelle* based on the 1895 Ottoman translation, see, trans. C. R. Tyser, B. A. L., D. G. Demetriades, Ismail Haqqi Effendi, *The Majalla Being an English Translation of Majallah al-Ahkam-i Adliya and a Complete Code of Islamic Civil Law*, The Other Press, Kuala Lumpur, 2001. For Turkish commentaries on the *Medjelle* see: Emin Efendizāde Küçük ʿAli Haydar Efendi, *Dürerü l-Hükkām Şerhu Mecelleti l-Ahkām,* Matbaʿa-i Ebū z-Ziyā, İstanbul, 1912; ʿAbdü s-Settār, *Mecelle Şerhi Teşrīh*, Mihrān Matbaʿası, İstanbul, 1879; Mehmed Ziyā ed-dīn. *Mecelle-i Ahkām-ı ʿAdliyye Şerhi*, Kasbar Matbaʿası, İstanbul, 1894.

76 *The Medjelle*, Article no: 1.

of art, such as food, clothing, and dwellings, and they obtain these things by mutual community and by mutual help. In other words, men by nature are made for a community, being unable to live as other animals do alone, but they need a social state. In other words, they are compelled in community and to help one another. Since, however, every individual desires easy and pleasant things for himself and shuns painful and displeasing things, men so far as regards marriage and their relations to one another and mutual help, these bases of community and of social life, need certain weighty ordinances for the preservation of justice and order between them."[77]

The *Medjelle*'s approach acknowledges the importance of social change and reflects the traditional *fuqahā's* attitude towards such change. For *'ulamā'* social change is acceptable unless it contradicts the general Islamic norms, which, as we know, do not deal with details, leaving room for the 'ulamā' to decide about particular changes. From this perspective, absence of change is preferable but change cannot be denied. If and when it occurs, fuqahā' decide whether it is good or bad. If it is deemed to be good, then, norms and laws are modified accordingly, otherwise it will be forbidden. This attitude is more concerned with controlling the direction of the change rather than initiating or perpetuating it. The *'ulamā'* assigned to themselves the role of the referee but not the player, which could also be observable in the institution of fatwā, which are issued only when asked for.

The *Medjelle* makes it explicit in numerous articles that the undeniable impact of changing culture and customs on law is acknowledged by *fuqahā'* unless it contradicts the permanent principles of Islamic law. "Custom is law," states article thirty-six, "i.e. a judicial decision is based on custom and usage, whether general or particular." Article fifty-eight states, "*Re'āya* (i.e. subjects) are ruled in accordance with their wants and habits." Article forty states, "The proper sense of a word is abandoned under the guidance of custom." These articles shed light on the status of customary law (*kanūn*) in the Ottoman State[78] and, the place of *'urf,* which can be imprecisely translated as culture, in *fiqh* as practiced by the Ottomans.

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77   The *Medjelle*, p. 1f.
78   Halil İnalcık, *The Ottoman Empire: Classical Age 1300-1600,* Weidenfeld and Nicolson, London, 1973, pp. 1-13, 70-76.

Cevdet Pasha's contribution to the inner modernization of the Islamic sciences was not limited to the codification of Islamic civil law. He also participated in the revival of Islamic sciences through his translations and other books on a wide range of topics. He publicized Ibn Khaldūn after completing the translation of his *Muḳaddima* to Turkish.[79] Turning to Ibn Khaldūn and trying to revive his tradition at this point of history during which Western social theories started entering Ottoman intellectual landscape is significant. Apart from his major Ottoman History, Cevdet Pasha also authored books on logic, etiquette of debate and Turkish grammar.[80]

Cevdet Pasha was an eclectic revivalist. He headed the *Medjelle* commission, on the one hand, and defended the establishment of courts specialized on commerce operating with Western laws, on the other, which clearly shows his pragmatic thinking. He had to deal with the opposition of the advocates of complete and drastic westernization such as Midhat Pasha and Ali Pasha in the first instance, and, on the other hand, with the opposition of the Shaykh al-Islām and other traditionalist *'ulamā'*.

The attempts to transform *fiqh* into a modern code as well as adopting Western laws were indeed consequential for the *'ulamā'* order. Cevdet Pasha worked for both. These consequences were observable in the changes in the legal system and the education of jurists, which was gradually taken away from the hands of the *'ulamā'*.

Cevdet Pasha's thought and political role is significant for our purposes here because he stands at the origin of the political and intellectual network extending through generations until Seyyid Bey, including Namık Kemal and Ziya Gökalp. This line is reflected by the similarities in their political and intellectual careers:

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79 Pīrī-zāde initiated the translation of the *Muḳaddima* before Cevdet Pasha. See Pīrī-zāde Mehmed Sāhib Efendi, *Mukaddime-i İbn-i Haldūn Tercümesi,* Takvimkhāne-yi ʿĀmire, İstanbul,1275/1858.

80 Aḥmad D̲j̲ewdet Pas̲h̲a (1312/1895), *Miʿyār-ı Sedād* (İstanbul: Karabet ve Kasbar Mat baʿası, 1303); *Adab-ı Sedād min ʿIlmi l-Adab* (İstanbul: Matbaʿa-yi ʿĀmire, 1294). For the new editions, in modern Turkish, of these two books and other logic books from the same period, see Kudret Büyükcoşkun (ed.), *Mantık Metinleri* (İstanbul: İşaret Pub., 1998). See about his Ottoman History also Christoph Neumann, *Das indirekte Argument: ein Plädoyer für die Tanzīmāt vermittels der Historie: die geschichtliche Bedeutung von Ahmed Cevdet Paşa's Ta ʾrīḫ* (LIT-Verlag: Münster, 1994).

(1) They maintained the strategy of synthesis to reconcile the tensions, both political and intellectual, caused by the encounter of *fiqh* and modern social sciences.

(2) They were instrumental in grounding modern institutions on Islamic conceptual foundations. Political modernization, which was carried out by the central bureaucracy, required institutional reforms. The *ʿulamāʾ* did not oppose the reconstruction of these institutions, and the introduction of new ones to Ottoman society as long as they were Islamically grounded. They opposed secularization, perhaps, because they knew that a secular cultural framework would bring about the end of their intellectual role.

(3) *Fiqh* remained a means of opposition against the expanding power of state bureaucracy and cultural reconstruction in the hands of these reformist intellectuals.

(4) The very changes and institutions they worked for and constructed, ironically, prepared their end by undermining their conceptual and institutional bases. After the generation of *Tanzīmāt* intellectuals, these common characteristics were maintained across two subsequent generations: Young Ottomans, and Young Turks, most of whom were the members of the Committee of Union and Progress (CUP).

A.1. The Young Ottomans and Their Synthesis of *Fiqh* and Western Social Theories: Tool of Opposition and Reconstruction

Regarding Young Ottoman thought, the leading historian of Turkish literature, Tanpınar says:

> "These authors [Young Ottomans] not only searched in the Qurʾān and in the early periods of Islamic history for the roots of the parliament, which is Western in origin and history, and also came to the Ottoman society from the west, but also show *fiqh* as inexhaustible and not a negligible source for new institutions".[81]

Subsequent studies on the Young Ottomans, whether they focused on the movement in general or on the individual figures, supported this observation. Drawing on this body of literature, I will briefly demonstrate how Young Ottomans depended on *fiqh* in their intellectual and political careers.

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81   Tanpınar, *Türk Edebiyatı Tarihi*, p. 153.

"Following the example of Cevdet Pasha", who defended *fiqh* in the *Tanzīmāt* era against those who called for its replacement with the adopted European laws, writes Tanpınar:

> "Namık Kemal and Ali Suavi, defended *fiqh* and Islamic law in the state institutions, and ...were led to the idea of pan-Islamism".[82]

This assertion was further explored by subsequent studies on the works of leading Young Ottomans such as Namık Kemal, Ziya Pasha, and Ali Suavi.[83] The findings changed the image of Young Ottomans and later also the Young Turks in Turkey from being the forerunners of secularism to being the forerunners of Islamic revivalism as a modern ideology.[84] Findley and Mardin drew attention to the emergence of this new class with a different identity, role, and means of communication.[85] The Young Ottoman intellectuals introduced new social roles, such as novelist and journalist, and used new genres and communication techniques such as newspapers and magazines. Among their publications were newspapers, magazines, plays, all foreign to the traditional Ottoman intellectual world. These intellectuals criticized both the *'ulamā'* because of their impotence and passivity, and the pro-Western bureaucrats because of their wholesale and drastic modernism. The latter group was criticized for not appreciating the importance of cultural symbols and other traits, which, for the Young Ottomans, had greatly contributed to the survival of the Empire.

Consequently, the Young Ottoman project was to revive *fiqh* as the foundation of social, legal and political thought but not to adopt Western social theories at face value. For instance, Namık Kemal, "who thought of the political ideas of the Islamic jurists as basically valid for his own time",[86] and who had the most enduring impact among his contemporaries on subsequent Turkish intellectual development, was, as far as intellectual tools he chose to use, a "conservative." "He was violently opposed to the movement

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82   *Ibid.*

83   Mardin, *The Genesis*; Türköne, *Türkiye'de İslamcılığın Doğuşu.*

84   The article Sungu contributed to the volume on Tanzimat I in 1940 seems to have sparked this process.

85   Findley, *Bureaucratic Reform in the Ottoman Empire*; *Ottoman Civil Officialdom*; Mardin, *The Genesis*, p.124.

86   Mardin, *The Genesis*, p. 405; Türköne, *Türkiye'de İslamcılığın Doğuşu*, pp. 127-143. Young Ottomans defended Islamic law against critics and usually compared it with the natural law in the West. They also advocated deriving the constitution from the *sharia.*

for the secularization of law which had started with *Tanzīmāt*".[87] He defended *fiqh,* especially as Islamic law, and drew freely from its materials.[88] He did not believe law could be based on ethics. For, according to him, "the science of what is just and what is unjust" was based on religion; it was the Şeriat, which he even tried to reconcile with Montesquieu's concept of law as "the relations stemming from the natural order of things".[89]

In addition to his connections to Muslim scholars and thinkers, Kemal expanded his intellectual network towards European thinkers and matched their concepts with those derived from the language of *fiqh*. Among European origins of Kemal's ideas are Plato, Aristotle, Zeno, Cicero, Descartes, Bacon, Rousseau, Voltaire, Condorcet, Turgot, Robespierre, Danton, Garibaldi, Silvio Pellico, Montesquieu, Locke, Volney, and Emille Acollas, his private tutor in France.[90] *Fiqh* terminology helped Kemal in finding Islamic and Turkish counterparts for the concepts he came across in the social theories of the European thinkers. For instance, Kemal met representative government with *meşveret* (*Arabic shūrā*); natural law with *sharī'a*; and social contract with *bay'a.*

Kemal's attempt to match European social concepts with those of *fiqh* cannot be seen only as a matter of translation but also as a strategy of cultural reconstruction of these concepts and institutions. It is crucial to note at this point that *fiqh* terms, after being used as translations of European social theories, lost their original meaning. For instance, the term *millet* (in Arabic *milla*), which originally meant religion and religious community, went through a semantic shift to signify "nation." The change in the content of *fiqh* terminology and the ensuing complications brought about "the great philosophical difficulties in which Kemal had involved himself by attempting to conciliate Montesquieu with Şeriat".[91]

Another prominent Young Ottoman thinker was Ali Suavi. He was a revolutionary *'ālim* who combined political and intellectual activism in his life. Like other Young Ottomans, he also called *fiqh* to the defense of

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87   Mardin, *The Genesis*, p. 315.
88   Türköne, *Türkiye'de İslamcılığın Doğuşu*, pp. 127-144.
89   Mardin, *The Genesis*, pp. 314, 316, 318.
90   *Ibid.*, pp. 332-336.
91   *Ibid.*, p. 319.

liberties against the growing state in his time. "The only step that was necessary, according to Suavi, to keep up with the pace of modern social and economic life, was to prepare "an excellent book of *fiqh* ['Islamic law'] in a language that everyone would understand".[92] At the same time, he criticized the malpractices of the *sharī'a* and the *'ulamā'* order. He appears, in his writings, as the advocate of lower classes who were, in his view, oppressed by the government under the name of *sharī'a*. "In letters sent to the newspapers of the capital he condoned 'Abdul-Hamīd's action, attacked Midhat, expressed once more his belief that liberty was something of which the people should profit, not just ministers like Midhat".[93] In a statement reminiscent of Kinalizâde, he presented a hierarchical image of society which was centered on the *sharī'a:* "the *umerā'* (rulers) rule over the people and the *'ulamā'* rule over *umerā'* and *sharī'a* rules over the *'ulamā'*.[94]

Suavi was not only critical of the bureaucrats but also of the *'ulamā'*, whom he called "dead". He had to admit that their quality had deteriorated considerably and that he could not seek their advice. He maintained, however, that the *'ulamā'* had deteriorated because the new Ottoman bureaucracy had pushed them into the background Suavi was an admirer of Frederic Le Play, one of the early French social engineers, because of his conviction that social problems arose when religious faith was lost.[95] From this perspective, the lack of religious faith was the cause of social decay. This view was diametrically opposed to the positivist view that religion was an obstacle to progress and would disappear with the progress of science.

The Young Ottoman ideals had materialized by the First Constitutional Revolution in 1876. The Islamically constructed parliament and constitution as well as other liberal institutions and concepts found life in the Ottoman society under Caliph Sultan 'Abdul-Hamīd II, whose antagonism

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92   *Ibid.,* p. 370. Ali Suavi's views on how to reform Islamic law can be found in a piece he wrote in *Ulûm Gazetesi,* no: 18 (1870), pp. 1065-1082. This article can be found in modern Turkish script, see Türköne, *Türkiye'de İslamcılığın Doğuşu,* pp. 283-289. On Suavi and his life and views see especially Mardin, *The Genesis,* pp. 360-384; Hüseyin Çelik, *Ali Suavî ve Dönemi* (İstanbul: İletişim Pub., 1994).

93   Mardin, *The Genesis,* p. 364.

94   Kınālı-zāde 'Alī Efendi (979/1572), *Ahlāk-ı 'Alā'ī* (Būlāq: Matba'at al-Būlāq, 1248/1832).

95   Quoted in Mardin, *The Genesis,* p. 368.

with liberal modernism soon became evident. Their intellectual legacy was recognized and later claimed, completely or in part, even in the secular Turkish Republic, by various segments of Turkish politicians and intellectuals. Nevertheless, the Young Ottomans did not deal extensively with the theoretical and methodological foundations of their intellectual attempts to synthesize *fiqh* and European social theories. These were to be dealt with extensively by the Young Turks who followed them. The Young Ottomans had used *fiqh* mainly as a tool of opposition and cultural reconstruction.

1.B. The Young Turks and Their Synthesis of *Fiqh* and Social Science: A Disrupted Debate on Theory and Methodology

Namık Kemal remained without a competitor until Ziya Gökalp emerged as the official mentor and ideologist of the Young Turks, especially the CUP with a "more or less coherent system of thought".[96] Similar to their predecessors, the Young Turks maintained the tradition of synthesis. Nevertheless, the prestige of Western social theories was growing at the expense of *fiqh*. "A common feature of all these schools [of thought during the CUP era] is their tendency to treat sociology as a kind of philosophy, even of religion, and as a source of quasi-revealed authority on moral, social, political, and even religious problems".[97] Lewis observes that "The Young Turks seem to have been less concerned with political theory than their nineteenth-century predecessors".[98] This observation is significant because it illustrates the decreasing social status of the intellectual class in general.

In the literature of this period, European theories once again provide the theoretical foundations of political and social criticism. The main source of these foreign intellectual influences is still France, but instead of the Enlightenment of the eighteenth century, the social science of the nineteenth century dominated the thinking of Turkish reformers and revolutionaries. The first influence to emerge was that of

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96 *Ibid.,* 286. For Ziya Gökalp (d. 1924), see, Uriel Heyd, *Foundations of Turkish Nationalism: the Life and Teachings of Ziya Gökalp* (London: Luzac 1950); Ziya Gökalp, *Turkish Nationalism and Western Civilization*, trans. Niyazi Berkes (London: George Allen and Unwin, 1959); Ziya Gökalp, *The Principles of Turkism*, trans. Robert Devereux (Leiden: E. J. Brill, 1968); M. Orhan Okay, Süleyman Hayri Bolay, Suat Anar, "Gökalp, Ziya", *DİA* 14, pp. 124-137.

97 Lewis, *The Emergence of Modern Turkey*, p. 227.

98 *Ibid.*

Auguste Comte, whose positivist sociology inspired Ahmed Rıza in the first expositions of CUP, and profoundly influenced the subsequent development of secularist radicalism in Turkey. Prince Sabahaddin, seeking a philosophy for his own rival school, found it in the teachings of Le Play and Demolins, whose ideas formed the basis of his doctrines of individual initiative and decentralization. Finally, it was in sociology, especially that of Emile Durkheim, that Ziya Gökalp found the conceptual framework within which he constructed the first elaborate theoretical formulation of Turkish nationalism.[99]

In line with synthesizing intellectuals from Tanzīmāt generation, Gökalp's effort was the last attempt to reconcile the tensions between cultural and political modernization and *fiqh.* Gökalp's deep-rooted interests in *fiqh* and his project to combine it with modern sociology have been less studied compared to his theoretical foundation of Turkism and even on Islamic mysticism (*taṣawwuf*).[100] His solution to the conflict between *fiqh* and sociology was "*ijtimā'ī usūl-i fiqh*" which can be translated as "Societal *Usūl al-Fiqh*".[101] Gökalp's theory is significant because it deviates from the tradition of defending *fiqh* only as Islamic law, and his recognition of the role of *fiqh* as the traditional Islamic societal science. This societal science was to be revived through a synthesis with modern sociological theories, mostly Durkheimian. Gökalp's synthesis was designed to accommodate *fiqh* and *usūl al-fiqh* with the ideological demands of the reconstruction of the Ottoman society as envisioned by the CUP. As a member of the Central Committee of the CUP, Gökalp's ideas were welcomed and he was allowed to propagate his ideas in the first Department of Sociology of Turkey at Istanbul University. Among the intellectuals who supported his project were M. Şeref, Halim Sabit, Şerafeddin (Yaltkaya), Mansurizade Sait. M. Şeref tried to apply the same synthesizing approach to *'ilm al-kalām* (Islamic Theology), and called for a "societal theology" (*ijtimā'ī 'ilm al-kalām*). However, from the ranks of the Young Turks, two objections were raised

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99   *Ibid.* p. 226f.; Ziya Gökalp, *Principles of Turkism,* pp. 49-56, 65, 110, 115.

100   Parla, Ziya Gökalp, *Kemalizm ve Türkiye'de Korporatizm*, 79-85.

101   The Turkish word "*İctimā'iyyāt*" means study of society which could be understood both as sociology and social sciences. Here I will translate it as sociology because of Gökalp's occupation with it. For a journal published in the late Ottoman Empire with this name, see, Recep Şentürk, "İctimâiyyât Mecmûası", in *DİA* 21, p. 448f.

against Gökalp's "Societal *Usūl al-Fiqh*". One was by Said Halim Pasha[102] the other was by İzmirli İsmail Hakkı, both rejecting the injection of Durkheimian sociology into *fiqh*.

B.1. Ziya Gökalp: Societal *Usūl al-Fiqh*

At the outset of his article "*Fiqh* and Sociology",[103] the first in the series of articles he published in *İslâm Mecmūʻası* on the theory and method of the *fiqh*-sociology synthesis, Gökalp claimed that human deeds are studied from two perspectives: the first is from the perspective of benefit and harm, the second from the perspective of good and bad. The first perspective was used by administrative and managerial *(tadbīr)* sciences, including hygiene, economy and administration. Depending on the subject to which harm and benefit is related, it took different names such as the management and administration of the soul, house, city, and state. The second perspective, the study of human deeds from the perspective of good and evil, was adopted by *fiqh* which focused on two categories: religious worship and legal relations. *Akhlāq*, ethics and morality, dealt with the internal spiritual (*wijdānī*) dimensions of these deeds and thus were not treated separately in *fiqh*. However, since the *Tanzīmāt* generation, *fiqh* became almost synonymous with "Islamic jurisprudence/law." Consequently, *fiqh* was used particularly for the second category of deeds.

Gökalp claimed that the Ottomans applied two major approaches to the study of society: *Tadbīr* (management/administration) and *fiqh*. Each had different branches, methods, principles and specialists. According to Gökalp, managerial or administrative sciences studied individual development and social organization (individual, house, city and state) with a methodology based on experimentation and rationality deriving from the principle of pursuing public benefit and avoiding social harm. *Fiqh* studied

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102   Pasha here indicates a princely but not a military title.

103   Ziya Gökalp, "Fıkıh ve İctimāʻiyyāt", in İslām Mecmūʻası, 1332/1914 (2): 40-44. I have transcribed Gökalp's articles on this issue in Latin script. See, Recep Şentürk, *İslam Dünyasında Modernleşme ve Toplumbilim* (İstanbul: İz Yayıncılık 2006), pp. 284-308. On Gökalp's views on the social sciences see also M. Sait Özervarlı, "Transferring Traditional Islamic Disciplines into Modern Social Sciences in Late Ottoman Thought: The Attempts of Ziya Gokalp and Mehmed Serafeddin", in *MW* 97 (April 2007): pp. 317-330.

worship (*'ibādāt),* legal relations (*mu'āmalāt*) and morality (*akhlāq*) with a dogmatic and sociological methodology based on a distinction between good and evil.

Gökalp's goal was to create a theoretical and methodological ground for the synthesis of modern social scientific and *fiqh* approaches. The Young Ottomans had already synthesized or eclectically brought together theories of *fiqh* and social sciences without dealing seriously with the methodological and theoretical questions posed. Gökalp's theoretical and methodological enterprise was a response to this need. He tried to lay the ground and set the program for this theoretical endeavor in his articles. The intellectual circle around him elaborated on the details of his project in *İslâm Mecmū'ası.* His contemporaries and predecessors adopted sociological theories without researching the methodologies employed in producing them.

What made Gökalp stand out among his contemporaries was his attempt to initiate a methodological debate on how to synthesize social science and *fiqh* at the methodological level. After describing the map of societal sciences in his time, Gökalp looked at their methodology and brought to the forefront the social approach employed in *usūl al-fiqh.* By demonstrating that *usūl al-fiqh* used the social approach extensively, he aimed to lay the groundwork for incorporating some of the modern sociological insights in this methodology.

He argued that the controversy about the way good and bad are determined would be a useful topic to explore the relationship between *fiqh* and sociological methods. According to Gökalp, the scholars of *fiqh* disagreed with each other as to how to determine good (*ḥusn*) and evil (*ḳubḥ*) concerning deeds. For the *Mu'tazila,* the rationalist theologians, reason alone determined the quality of righteousness or evilness of a deed.

Gökalp rejected categorically the rationalist *Mu'tazila* perspective on the grounds that the way rationalists determined the moral quality of a deed was based on its benefit or harm. For Gökalp this view is in conformity with the managerial approach. In contrast, Gökalp claimed that a deed was good because it was believed collectively to be so by a society. The good might be beneficial too, but benefit alone was not enough to make a deed morally good for benefit was relative (what was beneficial for

the individual might be harmful for the society) and reason might not always understand and appreciate the judgments of collective consciousness (*ijtimāʿī wijdān*).

Gökalp thus argued that logic did not understand the "sacred" (*muʿazzeze*) a word he coined to correspond to the concept of "sacred" which had not existed in Turkish or Arabic)[104], for otherwise consciousness (*wijdān*) would transform into "managerial reason" (*mudebbire*), and morality would be replaced by economics and hygiene. This rationalistic and utilitarian approach, wrote Gökalp, had been rejected by sociology and philosophy, and, before them, by the Sunnī *ʿulamāʾ* (*Ahl al-Sunna*). For instance, wrote Gökalp, Turks hold sacred the Turkish flag with a crescent, and the *fez*, not because they were beneficial but because they had a lofty place in the Turkish collective consciousness.

Gökalp described the structure of *fiqh* in order to demonstrate that a social perspective had already existed in *fiqh*. *Fiqh* (*sharʿ*) determined righteousness or evil of a deed with reference to two criteria. The first of these criteria was dogma (*naṣṣ*), and the second culture (*ʿurf*). *Naṣṣ* consisted of the evidences in the Qurʾān and the Sunna, the example of Prophet Muḥammad. *ʿUrf,* culture, was the collective consciousness that manifested itself in the community's life and daily practices. The judgments (*ḥukm* pl. *aḥkām*) attributed to the deeds by dogma (*naṣṣ*) were either obligatory (*wājib*) or forbidden (*ḥarām*), whilst by culture (*ʿurf*), well-regarded (*maʿrūf*) or ill-regarded (*munkar*). *Mandub,* recommended, was a subcategory of *wājib*; and, *makrūh,* discouraged, is a subcategory of *ḥarām,* forbidden. *Mubāh,* permissible, was the attribute of a deed which did not fall in the aforementioned normative categories.[105]

As a sociologist, Gökalp was interested in the usage of *ʿurf,* culture, in *usūl al-fiqh*. He further elaborated on this point as follows:

> "... the role of *ʿurf* is not only to distinguish what is *maʿrūf* (well-regarded), then what is, *munkar* (ill-regarded). ... when it

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104   The devide between sacred and secular was foreign to the traditional Muslim Turkish ontology. The absence of this dichotomy played a great role in forestalling conceptual grounding of theocracy and secularism.

105   Ziya Gökalp, "*Fıkıh ve İctimāʿiyyāt*", p. 42. Şentürk, *İslam Dünyasında Modernleşme ve Toplumbilim*, p. 286.

is required, *ʿurf* takes the place of *naṣṣ* as well, for it is clearly stated in a Prophetic tradition, "What is regarded good by the community of the believers is also good in the sight of God," and, in a *fiqh* principle, "Abiding by *ʿurf* is the same as abiding by *naṣṣ*." Muslims are responsible for following the rules that are not clearly stated in the *naṣṣ* (text of Qurʾān or Sunna), as well as for promoting the *maʿrūf*, and preventing the *munkar*. *Maʿrūf*, well-regarded acts, and *munkar*, ill-regarded acts, consist of what is well or ill regarded by the collective consciousness. Consequently, *fiqh* depends both on prophetic revelation, *waḥy*, and, on "sociology." That is to say the Islamic *sharīʿa* is both divine and social." [106]

Having thus opened a conceptual space for his sociology in *usūl al-fiqh*, Gökalp explored the relationship between divine and social aspects of the *sharīʿa*. The former was immutable, while the latter was changeable depending on the "social type" *(enmūzej)* to which a society belonged. What was "well-regarded" in one type of society might be "ill-regarded" in another one. Consequently, the *sharīʿa* rules derived from them change over time. Gökalp argued against rationalist *fuqahāʾ* and social scientists that good and evil were neither rational nor individualistic. Following the communal idealists, he argued that the community decided what was good and bad. Good and bad were embodiments of collective consciousness. Therefore they were socially, but not rationally, determined. He gave examples to illustrate how the concepts of good and evil changed in relation to different types of societies, a typology he borrowed from sociology. His anti-individualistic and anti-rationalistic approach originated in his sociology which can be traced to Durkheim.

In the conclusion of the first article of the series in *İslām Mecmūʿası*, Gökalp summarized his perspective on the theoretical and methodological foundations of the program of social science-*fiqh* synthesis as follows:

"There are two origins of *fiqh*: traditional law (*naqlī sharīʿa*) and social law (*İctimāʿī sharīʿa*). Traditional *sharīʿa* is beyond evolution. Social *sharīʿa*, however, is, just like social life itself, in a continuous change (*devenir*). Thus, this dimension of *fiqh* is not only capable of evolving according to the evolution of Islamic society, *umma*, but it is obliged to do so. The dimension of *fiqh* that is

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106   Gökalp, "*Fıkıh ve İctimāʿiyyāt*", p. 42.

derived from the *naṣṣ* (i.e. the text of Qurʾān and Sunna) is immutable and unchangeable until the end of the world. However, the *fiqh* application of these principles that are derived from human culture, *ʿurf,* and the consensus of *fuqahāʾ* must accommodate itself to the requirements of the social life of the age."[107]

Gökalp opposed two intellectual groups: first, traditional *ʿulamāʾ*, who either rejected any kind of change or had different ideas about how and what to change, and, second, the rival schools of sociology, especially that of Prince Sabahaddin -another prominent sociologist from that time. The latter called for an individualistic and rationalistic social science which was derived from Le Play and Demmolins, urging the Ottomans to follow the Anglo-Saxon model for the salvation of the shattering Empire, instead of the French or the German.

Gökalp's intellectual program cannot be fully understood without reference to the broader intellectual and political cleavages that divided the Ottoman political landscape prior to and during World War I. The state was challenged internationally, the government was challenged internally. The empire was under siege from several fronts and the question of survival was more pressing than ever. As the official ideologist of the CUP, Gökalp found himself at a turning point; he was challenged by internal and external social, political and cultural problems, which he tried to solve by mobilizing the conceptual tools at his disposal. On the one hand, he wanted to gain the support of the moderate *ʿulamāʾ* for CUP. On the other hand, he wanted to discredit the pro-Anglo-Saxon opponents of his party. Here lies the source of his critique of individualism and rationalism.

In opposition to these two groups, Gökalp tried to form a new group around the journal he initiated: *İslām Mecmūʿası.* In his numerous articles in this journal,[108] Gökalp introduced his program in more detail and tried to demonstrate how it was going to be implemented with the cooperation of *fuqahā* and social scientists:

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107   *Ibid.*, p. 44.

108   See Gökalp, İslam Mecmûası,1332/1914 (1):14-17; 1332/1914 (2): 40-44;
        1332/1914 (3): 84-87; 1332/1914 (8): 228-230; 1332/1914 (10): 290-295;
        1333/1914 (17): 469-471; 1333/1915 (20): 517-524 & 528-529; 1333/1915
        (21): 544; 1333/1915 (22): 552; 1333/1915 (26): 621; 1333/1915 (30): 679-680;
        1333/1915 (34): 740-743; 1333/1915 (35): 756-760; 1333/1915 (36): 772-777;
        1333/1915 (37): 791-796.

Societal *Usūl al-Fiqh* studies social origins of *fiqh*, but can never claim to replace *fiqh*. This is similar to *naṣṣ* which cannot have such a claim in *usūl al-fiqh*. The roles of *iftā'* and *qadā'* belong to those *fuqahā'* who deal with *furū' al-fiqh,* but not to those who specialize in *usūl al-fiqh*. As to those who specialize in *usūl al-fiqh*, one of their divisions is responsible for guiding *fuqahā'* in the world of *naṣṣ,* and the other in the social world. The *fuqahā'* cannot consider themselves independent of either group.

With this new intellectual division of labour, as we observe in the later issues of İslâm *Mecmū'ası,* he successfully gained the support of some sociologists and *'ulamā'* who contributed to the project with their writings. Among them were leading figures such as Rızā'eddīn b. Fakhreddīn, Halim Sabit, Mansurizade Said, Mustafa Şeref, Seyyid Bey, and M. Şerafeddin. The latter must be paid a special attention not only because he initiated an analogous program to establish a "social theology", *ijtimā'ī 'ilm al-kalām,* but also because he was going to be close to Atatürk in the Turkish Republic, advising him on religious matters.

We are still intrigued by the question as to which *fiqh* and which social sciences were late Ottoman intellectuals attracted to and why. An analysis of the composition of Gökalp's team and their ideas may shed light on this question. Ibn Taymiyya's puritan *fiqh*, which opposed blind imitation of previous *fuqahā',* gained prominence in İslām *Mecmū'ası* through the writings of Rizā'eddīn b. Fakhreddīn.[109] The reformist approach to *fiqh* searched for other historical figures to support their ideas so as to establish themselves traditionally. İslām *Mecmū'ası* argued for a functional *fiqh* with the gate of *ijtihād* open and the zealotry of *madhhab* left behind. As to social science, the theories that are incorporated in its intellectual endeavor were mostly French, especially Durkheimian.

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109 For a series of articles see, Rızā'eddīn b. Fakhreddīn, "İmam İbn Teymiyye", in İslam Mecmuası,1332/1914 (6): 166-169; 1332/1914 (8): 230-233; 1333/1915 (19): 507-511; 1333/1915 (22): 557-559; 1333/1915 (24): 590-591; 1333/1915 (26): 620; 1333/1915 (28): 654-655; 1333/1915 (29): 668-670; 1333/1915 (30): 683-687; 1333/1915 (31): 699-702; 1333/1915 (32): 717-719; 1333/1915 (33): 736-738; 1333/1915 (35): 767-770; 1333/1915 (38): 813-816; 1334/1915 (40): 845-847; 1334/1916 (43): 893-896.

1.C. Opposition to the *Fiqh*-Social Science Synthesis

Now we can have a look at the opposition to Gökalp's Societal *Usūl al-Fiqh* in the Ottoman intellectual circles. Since Gökalp touched a long-ignored question, the methodological and theoretical problems underlying the synthesis of *fiqh* and social science, his ideas sparked an engaging intellectual debate involving different strands of Ottoman intellectuals.

Among the interesting critiques of Gökalp's ideas on *fiqh* and social sciences were those by his fellow Young Turks who were also modernists. These critics cannot be seen as reactionary conservatives. I will draw attention to the work of two intellectuals, İzmirli İsmail Hakkı and Said Halim Pasha, who opposed Gökalp on this particular issue, although they all had occupied important positions in the same party, the CUP, during its opposition to ʿAbd al-Ḥamīd II prior to the 1908 revolution, and while it was in power until the collapse of the Ottoman Empire.

These critics addressed themselves to different aspects of Gökalp's program. İzmirli challenged Gökalp's understanding of the science of *fiqh* and tried to demonstrate that Gökalp's assertions about *fiqh* could not be legitimized. A conservative figure, S̲h̲ayk̲h̲ al-Islām Mustafa Sabri in his book *Religious Revivalists* (*Dînî Mücedditler*) criticized Gökalp[110] and his reformist friends. Said Halim, on the other hand, without mentioning Gökalp's name, criticized the Ottoman intellectuals of his time on the issue of modernization. Unlike Mustafa Sabri and İsmail Hakkı, whose critique derived from classical *fiqh*, Said Halim used a cultural and social structural perspective to demonstrate that synthesizing *fiqh* and social sciences was not needed and in fact doomed to failure.

C.1. İzmirli İsmail Hakkı: Critique by a modernist Scholar

İzmirli İsmail Hakkı (1946-1868), a Young Turk *ʿālim*[111] criticized *Societal Usūl al-Fiqh* in a series of articles in *Sebīlü'r-reşād*. In this way, İzmirli was involved in a public debate with the authors of *İslām Mecmūʿası* about

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110   M. Sabri, *Dinî Mücedditler* (İstanbul: Sebil Yayınları, 1977), p. 18ff.

111   Ismail Kara, *Türkiye'de İslamcılık Düşüncesi* (İstanbul: Risale Yayınları, 1988), pp. 89-136; Hilmi Ziya Ülken, *Türkiye'de Çağdaş Düşünce Tarihi* (İstanbul: Ülken Yayınları, 1966), pp. 275-278.

their concept of *fiqh*.[112] In typical traditional fashion, his criticism was made in response to a reader, a student of religious sciences named Irakli A. K., who asked him twelve questions.[113] These questions extrapolated the main assumptions and arguments of Gökalp and his friends and asked for further elaboration;

(1) "The science of *fiqh* does not deal with actions relative to benefit and harm; it deals with actions relative to good and evil." What is the opinion of *Sebīlü'r-reşād* on this question?

(2) Is it appropriate to divide Islamic *fiqh* into two separate sections as "Islamic worship" and "Islamic law?"

(3) What is the doctrine of the Sunnīte School on moral good and bad (*ḥusn* and *ḳubḥ*)?

(4) What is the doctrine of Abū Yūsuf on culture (*'urf*)?

(5) What is the meaning of the following *fiqh* principles? First, "Reasoning (*ijtihād*) is not accepted in the existence of textual reference (*naṣṣ*)" and, second, "Abiding by *'urf* is the same as abiding by text."

(6) It is said that "for some *fuqahā'*, if dogma is derived from culture, *'urf*, reasoning is acceptable in the existence of dogma." What does this mean?

(7) What is the place of culture (*'urf*) in Islam?

(8) What is the practice of the People of Medina (*'amal ahl-al-madīna*)?

(9) What are the principles of analogy (*qiyās*) and consensus (*ijmā'*)? Is analogy reducing judgment (*ḥukm*) to dogma?

(10) Did the doctrine of Dāwūd al-Zahirī conflict with social life?

(11) Is *fiqh* reasoning (*ijtihād*) a result of the need for adjustment to culture, *'urf*?

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112 See, *Sebīlü'r-reşād Mecmûası* Vol. 12 (1330/1914), no 288: 22-24, no 303: 296-301, no 304: 315-319, no 305: 326-329, no 306: 345-351 and Vol. 13 (1330/1914), no 329: 128129, no 330: 135-137. For a complete list of his writings on the issue in *Sebīlü'r-reşād* see, Abdullah Ceyhan, *Sırât-i Müstakîm ve Sebīlü'r-reşād Mecmûaları Fihristi* (Ankara: 1991), p. 395ff.

113 For İzmirli's articles with his responses to these questions in Latin script see, Recep Şentürk, *İslam Dünyasında Modernleşme ve Toplumbilim* (İstanbul: İz Pub., 2006), pp. 324-410. For the originals in the Ottoman Turkish, see, *Sebīlü'r-reşād* Vol. 12 (1330/1914), no 292: 94-97, no 293: 128-132, no 294: 134-138, no 295: 150-154, no 296: 170-175, no 297: 190195, no 298: 211-216.

(12) Is there a need for *Societal Usūl al-Fiqh*? If we assume that there is such a need, what are the governing principles in this issue?[114]"

The questions raised by this student suggest how Gökalp's project was perceived by some *'ulama'*. The reinterpretation of *fiqh* that Gökalp and his group presented in İslām Mecmū'ası seems to have undermined the prevailing understanding of usūl *al-fiqh*. İzmirli concluded his series of articles on the Societal *Usūl al-Fiqh* with a negative judgment:

> "None of the reasons for the necessity of Societal *Usūl al-Fiqh* logically require this result. All of them are refuted by *fiqh* and *usūl al-fiqh*. The principles of *usūl al-fiqh* and the rules of *fiqh* are enough for the present and future potential social problems. For the emerging conditions, it will be sufficient to apply the sublime science of *fiqh* to obtain the desired outcomes and to protect the legal order, *sharī'a.*" [115]

Nevertheless, İzmirli accepted the stagnant state of *fiqh* and proposed alternative ways to rejuvenate it: "It should not be forgotten, however, that our need for a new *Usūl al-Fiqh* is evident".[116] He briefly explained how this project should be carried out. This new *usūl al-fiqh*, he suggested, should concentrate on social relations and use concrete examples taken from present social reality. And "the laws should be interpreted by *Usūl al-fiqh*, the adoption of which, similar to *Medjelle*, should be made mandatory for the courts." As to the issue of naming, İzmirli does not object to call a *fiqh* which would be thus rewritten a Societal *Usūl al-Fiqh*.

If Societal *Usūl al-Fiqh* were to be rewritten, it must be rewritten as he described it. A Societal *Usūl al-Fiqh* which is completely different from u*sūl al-fiqh* without any essential relationship to it, is nothing but "personal opinion; and in contradiction with the goals of *sharī'a*. It will not be fruitful, nor loving, nor lively. Conversely, it will be barren, disliked, and without spirit".

İzmirli tried to concretize his ideas on New *Usūl al-Fiqh* in his scholarly works which had a significant impact on Turkish intellectuals. His influence lasted longer than Gökalp's Societal *Usūl al-Fiqh*.[117] İzmirli agreed

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114   İzmirli İsmail Hakkı, "Fıkıh ve Fetâvâ", in *Sebīlü'r-reşād Mecmûası,* no 292: 94.

115   İzmirli İsmail Hakkı, "İctimā'ī Usūl-i Fıkıha İhtiyāc Var mı?", in *Sebīlü'r-reşād,* no 298:215.

116   *Ibid.*

117   For the Latin transcription of his article, see, Şentürk, İslam Dünyasında Modern-

with Gökalp and his friends on the diagnosis, which was that the science of *fiqh* needed rejuvenation; however, they opted for different solutions.[118]

C.2. Said Halim Pasha: Critique by a Young Turk Statesman

Gökalp had never explicitly dealt with *why* Ottomans needed social sciences. His question was *how* to incorporate them into the Ottoman intellectual landscape. The question about whether such a synthesis was needed had to wait for another Young Turk, Said Halim Pasha, who proposed this question, and answered it negatively. Prince Said Halim Pasha (Cairo 1863-Rome 1921), statesman and intellectual, and the grand vizier of the Ottoman State at the outset of the First World War (1913-1917), is another Young Turk who dealt seriously with the relationship between *fiqh* and social sciences as well as their intellectual functions in the Ottoman State. His intellectual career included a degree in political science from Switzerland[119] and his political career included key roles in opposition against ʿAbd al-Ḥamīd II in the ranks of the Young Turks, and later, in CUP governments. He wrote in French.[120] Ironically enough, despite his education in the modern social

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leşme ve Toplumbilim, pp. 320-323. For the original in the Ottoman Turkish, see, Şerafeddin [Yaltkaya], "İctimāʿī ʿİlm-i Kelâm", in İslām Mecmūʿası, 1333/1914 (15): 434-436. For his other writings see, İslām Mecmūʿası, (12): 357-361; (14): 425-429; (18): 490-492; (19): 506-508; (25): 604-606; (27): 650-654; (56): 1108-1112 & 1116-1120; (60): 1153-1154; (61): 1161-1162; (62): 11681169; (63): 1179-1181 (all published 1332-1334/1913-1916). See also Özervarlı, "*Transferring Traditional Islamic Disciplines*".

118   İzmirli, being aware of the fact that such a project was not possible without a revived Islamic Theology, the science of kalām, he worked for establishing a New ʿIlm al-Kalām, in opposition to M. Şerafeddin's Social ʿIlm al-Kalām, which, owing to Gökalp's influence, appeared for the first time in İslām Mecmūʿası. For the writings of İzmirli on the New İlm-i Kelâm, see, *Sebīlü'r-reşād* Vol. 22, no 549-550: 30-32.

119   Said Halim Pasha may be the first Turkish social scientist with a formal university education in the West. His rival, Gökalp, did not have a formal training in sociology. See, Şentürk, *İslam Dünyasında Modernleşme ve Toplumbilim,* pp. 411-448.

120   It is reported that he wrote his books and articles first in French then had them translated to Turkish (Kara, *Türkiye'de İslamcılık*, 76). His *Buhranlarımız* (Our Crises) includes seven previously published pamphlets (first published in 1919, later editions by Düzdag, M. Ertuğrul (ed.), *Buhranlarımız* (İstanbul: Tercüman Gazetesi, n.d.) and Özalp, N. Ahmet, *Said Halim Paşa Bütün Eserleri* (İstanbul: Anka Pub., 2003). There is another book by him which is more important for our concerns here: *Les Institutions Politiques dans la Societé Musulmane* (first published in Rome, 1921, also published as "Notes pour servir à la réforme de societé" in *Orient et Occident,* (1922) and was translated to English as *The Reform of Muslim Society* (1967).

sciences, he was one of the outstanding defenders of *fiqh* as the societal science of Islam. He expressed his core ideas in his short book *Les Institutions Politiques dans la Societé Musulmane* (1921). The book argues that Muslim intellectuals who assumed that the European and Islamic cultures are compatible are wrong because Islamic and European concepts of social life and institutions are completely different. For Said Halim, these two worlds were so essentially dissimilar that no reform effort could eliminate or considerably change this. This did not mean the wholesale rejection of modernization. Said Halim distinguished between natural and cultural sciences and claimed that the latter were more difficult to change.

Said Halim Pasha's views on the *fiqh*-social science synthesis constitute a critique and a counterargument to the prevailing view among the intellectuals of his time. Unlike traditional *'ulamā's* critique of the idea of synthesis, which relied on traditional arguments to refute such a project, Said Halim used modern social science language and arguments, which he owed to his modern Western education in political science. He wrote:

> "C'est donc au Fikh que nous devons demander de créer et de regler toute notre organisation tout notre systeme économique dans le sage esprit du Cheriat pour qa ils répondent a la conception philosophique du bonheur humaine telle qu'il est engendrée par l'Islamisme. Car alors ils seraient exemples des vices et des défauts graves de ceux des peuples d'Occident et qui sont dûs a ceux des peuples d'Occident et qui sont dùs à ceux de leur système social."[121]

Said Halim argued that humans follow physical laws in nature. In social life, *sharī'a* corresponds to these natural laws and has complete sway over social life in an Islamic society. They are given naturally by Providence but not gained through political struggle of power groups. The human mind, on the other hand, is not so easily capable of discovering the laws that govern society. Even if they should become known in the end, the promise of social sciences may take a long time to come true; meanwhile, we cannot afford waiting such a long period for social scientists to tell us these laws. He made a distinction, for the first time, between cultural and natural sciences as well as between Western and Islamic sciences. Prior to him, this cultural relativism

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121   Le Prince Saïd Halim Pacha (Ancien Grand Vizier), *Les Institutions Politiques dans la Société Musulmane* (Rome: n.p. 1921), p. 27f.

did not exist among Ottoman intellectuals. They all shared a similar concept of social knowledge that mirrored traditional concepts of *'ilm.* The common view of Western social science was that it was just another type of *'ilm* and it was mandatory for Muslims to adopt it due to the Prophetic instructions to obtain *'ilm* regardless of its type and source.

Consequently, the question for the Young Turks was not whether or not to adopt Western social sciences, but *how* to accommodate them in the Ottoman intellectual landscape. The Young Ottomans had not asked this question. Therefore, it might be considered significant for the Young Turks to question the methodological and theoretical foundations of the synthesis which they had inherited from Young Ottomans. It seems that Ottoman intellectuals from that period gradually became aware of the difficulties of the synthesis between *fiqh* and social sciences. In this development, Said Halim, after Gökalp, marks another important turning point. Whereas many Young Turk leaders and intellectuals opted for the practical and theoretical commitment to Western science, Said Halim Pasha argued that Ottomans did not need to adopt the European social scientific perspective because the problem with Ottoman State was economic, which would be solved through economic and technological development, but not cultural. Thus, the kind of knowledge Ottomans needed to take from Europe, Said Halim argued, could be limited to the natural sciences, and did not include cultural and moral theories and values.

1.D. 'Ulamā': Uncritical Acceptance of Sociology

These critiques leveled against Gökalp should not lead us to think that the European social theories did not permeate the mind of the religious intellectuals and the *'ulamā'*. They almost unanimously adopted the sociological, more precisely the Durkheimian, approach to religion as a social institution with functions required by society. The social functionalist approach to religion gained prominence even among the conservative *'ulamā'* who defended Islam against attacks on the grounds that religion was necessary for social solidarity and for the survival of the state and the nation, an argument also used by their proponents, the more secularly inclined Young Turks.[122]

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122   Hanioğlu, *Abdullah Cevdet,* p. 139ff.; Mardin, *The Genesis,* pp. 10f., 16-21.

Similar to sociologists like Gökalp, who tried to use *fiqh* for their own intellectual and political purposes, the *'ulamā'* also adopted a certain kind of sociological approach, functionalist, solidarist, and conservative, to use for their own purposes. The perspective adopted by the Islamic Thought Academy, *Dāru l-Hikmeti l-İslāmiyye,* provides an example of the eclectic or the pro-synthesis *'ulamā'* approach. It was a governmental organization housing the elite scholars in *fiqh, kalām,* and *akhlāq,* including İsmail Hakkı, Ahmet Cevdet, Ahmet Rasim Avni, Ali Rıza, Ahmet Sirani, Ferit Bey, Hüseyin Avni, Hüseyin Kamil, Haydarizade İbrahim Efendi, İsmail Efendi, Mehmet Akif [Ersoy], Mehmet Necip, Mehmet Şevketi, Muhammad Hamdi Elmalılı, Mustafa Āsım, Mustafa Sabri, Mustafa Safvet, Mustafa Tevfik, Recep Hilmi, Sadreddin Efendi, Said Efendi [Bediuzzaman], Seyit Nesip, Şerif Saadeddin Pasha.[123] The academy was established during the reign of Mehmet Reşat V and Shaykh al-Islām Musa Kazım in 1918, and remained in existence until 1922. The Islamic Thought Academy published *Cerīde-i 'İlmiyye,* the Science in this context meant Islamic religious disciplines.

Despite the academy's declared Islamic identity, it worked from sociological premises, without seeing any contradiction between them and Islam. The opening statement of the Academy started as follows:

> "Collective consciousness is one of the questions explored by sociology in our age. The social conditions of collective consciousness are today begun to be observed, which had been studied until recently only in individual terms. And it is also understood that survival of nations depends on collective consciousness. ... We cannot, therefore, imagine a nation without a religion."[124]

One of the roles of the Academy was to publish "books about the *usūl,* fundamentals, and *furū',* branches, of Islamic religious regulations, derivation and reasoning of various *fiqh* schools, their relations with, and comparison to, other juridical sciences and social philosophies, legal exploration and civilizational dignity of the Islamic social life/sciences (*ijtimā'iyyāt*), history and reasons for development and decay."[125] The Academy, which actively responded to the critiques of *fiqh,*[126] was the last major Ottoman effort to revive *fiqh* and to demonstrate its public relevance.

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123   Sadık Albayrak, *Son Devrin İslam Akademisi* (İstanbul: Şamil Pub., 1972), pp. 164-205.
124   *Ibid.,* p. 81.
125   *Ibid.,* p. 95f.
126   *Ibid.,* p. 126f.

2. Conclusion: *Fiqh* the Outlawed Science of Society

The period of eclectic and synthesizing intellectuals officially ended when the newly established Republic of Turkey adopted Durkheimian sociology and outlawed *fiqh* education in schools towards the end of the 1920s. The new state saw this radical paradigm shift as an inevitable turn for successful westernization, modernization and secularization. This new policy ended the duality or the dialectic between intellectual, cultural and civilizational policies. The new policy pointed only towards the West. The ambivalence concerning the wholesale westernization policy since the Tanzīmāt reforms no longer existed in the Kemalist reform movement. However, without the legacy of the eclectic and synthesizing intellectuals since the *Tanzīmāt,* Kemalist reforms would have been impossible.[127]

Consequently, social scientists gained prominence and became guides in the march towards the light of modern science and civilization, although the government did not respect their opinions all the time. Nuray Mert describes how sociology was used as an intellectual tool to serve this purpose.[128] Their role was to introduce Western social science, yet not with its full diversity, but solely the positivist French school that suited the interests of the new elite and conformed to its policies. Social scientists were needed to fill the intellectual space surrendered by *fiqh* and the *'ulamā'*. Their task was easy this time, for they had no contenders, as the *'ulamā'* order and *fiqh* were officially outlawed.[129] The rule was no longer "in the name of God" but, as the new constitution stated, "in the name of Nation".[130] In the mind of the new reformers, theory was no longer a constraint, and was to follow action anyway. Their maxim was "Doctrine follows action".[131]

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127 Richard D. Robinson, *The First Turkish Republic: A Case Study in National Development* (Cambridge: Harvard University Press, 1965), p. 3.

128 Nuray Mert, *Laiklik Tartışmasına Kavramsal Bir Bakış: Cumhuriyet Kurulurken Laik Düşünce* (Istanbul: Baglam Yayinları, 1994).

129 For a sociological observation on fiqh during the Republican era in Turkey, see, Serif Mardin, "*Religion, Society and Modernity in Turkey*" (Syracuse, NY: Syracuse University Press 2006), p. 264f. Mardin argues that "the disappearance of fiqh erased the earlier organic bond between law and justice or law as justice" (264).

130 Lewis, *The Emergence of Modern Turkey*, p. 260.

131 Parla, *Ziya Gökalp, Kemalizm ve Türkiye'de Korporatizm*, p. 209.

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