INTELLECTUAL DEPENDENCY:
LATE OTTOMAN INTELLECTUALS BETWEEN Fiqh AND
SOCIAL SCIENCE

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Abstract

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 article thus points to a dialectic tension between fiqh and Western social science which shaped Muslim intellectual history since the 19th century. This article uncovers this latent tension by using the example of late Ottoman intellectuals as Ziya Gokalp, 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 article.

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

* I would like to express my deep gratitude to the patient help and persistent encouragement of my friend and colleague Abdulkader Tayob while revising this paper. A note on the transliteration method followed in this paper: The spelling of Turkish names is preserved as it is. The Turkish terms that have been derived from Arabic roots are transliterated following the commonly used method in English. However, the transcription in the citations from other authors has not been altered.

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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 science (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)\(^1\) nor *fiqh* have the monopoly over academic and intellectual social discourse in the Muslim world. Consequently, today’s Muslim intellectuals find themselves

\(^1\) 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), 3-7.
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 Ulken,2 Ahmed Hamdi Tanpınar,3 Tarık Zafer Tunaya,4 Şerif Mardin,5 Şükri Hanoğlu6 and Mümtezer Türköne.7 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.8

In this article, the major attempts to synthesize social sciences and *fiqh* will be explored. This paper 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

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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.\(^9\)

**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\(^10\) 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. They perceived Western social science as the 'ilm of the 'ulamā' of Europe. Subsequently, towards the end of the second half of the nineteenth century, social theories and theorizing emerged next to traditional ijtihād, hukma and fattwā, 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


\(^10\) “In the field of literature and philosophy the Tanzimât, 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 Tanzimât to the end of the 19th century. Seven of these books are by Voltaire while three of them are by Fenelon (see, Orhan Okay, “Batılaşma Devri Fikir Hayatı Üzerine Bir Deneme”, in Ekmeleddin İhsanoğlu (ed.), *Osmanlı Devleti ve Medeniyeti Tarihi* (İstanbul: IRCICA 1998), II, 205). Orhan Okay makes the same observation for translation about economics (See, Orhan Okay, “İktisatta Millî Duşunceye Doğru”, in *Türk Kultürü* 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.
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medicine, astronomy, and other traditional science) and 'irfân or ma’rifâ, i.e. knowledge derived from mystical training. The specialist in 'ilm was called 'âlim while the specialist in 'irfân was called Sufî or 'ârif. Usually, prominent Ottoman scholars (khâwîs al-khâwîs) combined both types of knowledge as described by Taşköprüzade in his well-known book, Miftâh al-sulâda. The institutional base of 'ilm and 'âlim was the madrasa while the tekke, i.e. the Sufî lodge, was the institutional base of 'irfân. The 'ulamâ‘ were licensed after a formal education in the madrasa by their teachers with a traditional diploma known as ijâza, which qualified them to teach, to author books, to issue fatwas and to serve as a qâdi.

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 “mûnevver”, in Modern Turkish as “aydîn”, 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, 'irfân, modern science, and “enlightened” ideology. Four groups of intellectuals represented these genres: 'âlim, 'ârif, academician and mûnevver (aydîn). The rise of new 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, Tanpinar, 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”.12

12 Tanpinar, Türk Edebiyatı Tarihi, 153.
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 (fikra), and even to the early Islamic tradition, related from the Prophet Muhammad, which encourage Muslims to accept knowledge from non-Muslims. 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, and Ahmet Rıza, 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.

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. It was


14 Hanıoğlu, Abdullah Cevdet, 129-132.


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 endeavour 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 unfavourable for “intellectualism,” and, searched for the most practical solutions to save the state, a concern unfamiliar to the majority of their Western counterparts.\textsuperscript{17} 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,\textsuperscript{18} to help the inner modernization of Ottoman social thought. The theories of this era had still been dominated mostly by *fiqh* language and followed the principles of *fiqh* theorizing, *ustul 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

\textsuperscript{17} Türkone, *Türkiye'de İslamiyetin Doğuşu*, 24-32, 271-282.


\textsuperscript{19} For this magazine, see, Nazım H. Polat, “İctihat”, *DHA* 21, 446ff.
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 *İslam Mecmuası, Sıra-1 Mustakim* and *Sebil-i-reyād*, demonstrates how the cleavage about *ijtihād* divided late Ottoman intellectuals into two camps.19

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 shaikhülislâm’s opinion on every governmental matter of importance. The limitations so imposed on the government by the *şerfi‘a* and by religious authority in the period of decline made the application of reforms especially difficult. The all-embracing *şerfi‘a* became the stronghold of traditionalism in Ottoman government and society.20

*Fiqh* could easily be used to delegitimize the efforts of the central government and bureaucracy in the Sublime Porte (*Bâb-1 ‘Ali*) 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 *şerfi‘a*, claimed the *Tançmâ‘i Fermanı* which assured the Muslims that the reforms would be carried out according to religious rules. The ‘ulamâ’, especially the office of Sheikhu l-islâm, had to defend the integrity of the institution of *fatwa*. The protest against the continuously centralizing and expanding Ottoman bureaucracy attached to the Sublime Porte also relied heavily on *fiqh* for social mobilization.21 The Young Ottomans and the Young Turks recruited the majority of their members mostly

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19 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 İttihad* (Ankara: Dıyaneş İşleri Başkanlığı, 1973). For the views of the last Ottoman Sheykhülislâm who opposed *ijtihād* as a potentially distorting reform effort in religion, see Mustafa Sabri Efendi, *Dini Müceddidler* (*İstanbul: Sebil Yayınevi*, 1969).

20 Halil Inalêk, “Turkey”, in Robert E. Ward and Dankwart A. Rustow (eds.), *Political Modernization in Japan and Turkey*, 44.

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from the ranks of the ‘ulamā’, the d’yan, “a rising semi-feudal landed aristocracy in the provinces”, middle level bureaucrats and army officers who lost status and power in the course of bureaucratic and political modernization. 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 an 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 İnalek, “the real forerunners of the nationalist and democratic movement in Turkey” for Mardin, they are conservatives, for Mardin, they are the forerunners of Islamism. Namık Kemal, for instance, had been praised by secular ideologists of the Turkish Republic as their father until they were reminded by a

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22 İnalek, “Turkey”, 45.
24 İnalek, “Turkey”, 62.
26 Türköne, Türkiye’de İslâmcilık Doğuşu, 77-87.
study based on Kemal’s own writings that he was an Islamic thinker. Ali Suavi, another example, is a zealot for some, for others the first laique Muslim scholar. Ziya Gökalp, normally labelled 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.

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 will see below, Ahmed Cevdet Pasha, Ali Suavi, Ismaïl Hakka, and Seyyid Bey were affiliated with the ‘ulamā order. Namâk 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

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had a strong Islamic education in his youth, is usually considered an outsider to these social groups.

**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 ‘ulama’. 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”, event though it is evident that fiqh is more than Islamic law in content, methods, and the domain of application.

The response of the ‘ulama’ to the pro-Western Tanzimat 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. 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. Nor were the

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30 Ülken, Türkiye’de Çağdaş Devrim Tarihi, 72.
31 According to some observers, the reformist bureaucrats were not concerned with providing accounts to the public about their policies. Marcini makes this observation for the Tanzimat period (Marcini, The Genesis, 121), Lewis for the Young Turk era (Lewis, The Emergence of Modern Turkey, 227), and Parla for the Republican era (Taha Parla, Ziya Gökalp, Kemalizm ve Türkiye’de Korporatizm, Istanbul: İletişim Yayınları, 1993, 209. There is a strong tradition, however, to write reformist memoranda and accounts of diplomatic travels by high-ranking diplomats. Cf. Ahmed Reşmi) 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 ‘ulama’ to provide public legitimacy deriving from fiqh, especially through
theoretical and methodological questions underlying such a fundamental change and synthesis voiced by the carriers of this project. Classical ‘ulamā’ resisted earlier attempts to codify fiqh as a positive law on various theoretical and practical considerations. Yet, according to presently available historical research, fiqh remained mostly silent at this time. This is particularly true for the members of the Meclis-i Akkâm-i ‘Adliyye, which is commonly known as the Mecelle commission. Neither Ahmed Cevdet Pasha, a prolific author himself, nor the other highly learned members of the committee he headed, left any account 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 Mecelle, 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 ‘Abdu l-Hamid II in putting an end to the Mecelle work. Ali Suavi briefly dealt with the methodological problems of modernizing Islamic law in an article. However, we need to wait for Ziya Gökalp to turn the issue into a public debate.

Cevdet Pasha’s work is an important turning point which illustrates best the response of fiqh to Tanzimât. The Mecelle 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 Mecelle 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.

It is well-known that Abü Hanîfâ, Mâlik, Shâfi‘î and Ibn Hanbal, the founders of the four Sunni schools of law, distanced themselves from the state. The Shiite jurists, or imāms, had experienced even a greater tension with the state.

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 'ulama’ apparently also found their arguments convincing.

In this process Ahmed Cevdet Pasha played the most significant role. His writings, especially his Tezâkir, provided a wealthy source for students of late 19th century Ottoman intellectual history. Of all his intellectual products, Mecelle 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 Mecelle, 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” (kulliyyyät) 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. Ahmed Cevdet Pasha, along with other members of the Mecelle commission, drawing from the works of such scholars as Ibn Nujaym and Khādim, codified the basic 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 exegetes analyzing its historical roots in classical fiqh literature as well as

36 For his most well-known Islamic law manual see, Abû Sa’îd Muhammed b. Mustâfa b. Uthmân al-Khâdimî (Turk. Hadîmî), Maşûmi’ al-Haqqî’îq. For a commentary on it by the author see, Manâfî’ al-Du’â’îq Sharh Maşûmi’ al-Haqqî’îq. These books have many editions. There is also a translation into Turkish by the son of the author, Abdullah b. Muhammed b. Mustafa Hanâfi al-Khâdimî, (1192/1778), Ustâl-i Fikrîden Hüâyî’i, Maşûmi’ al-Haqqî’îq (Istanbul: Mahmûd Bey Maîbûsî, 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 Mecelle.
37 For a modern study on Khâdimî, see Yaşar Sarıkaya, Abû Sa’îd Muhammed al-Ḥâdimî (1701-1762): Netzeverle, Karriere und Einfluss eines Osmanischen Provinzgelehrten (Hamburg: Verlag Dr. Kovac, 2005).
present day applications, has grown around Mecelle in various languages since its first appearance.\(^{37}\)

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.\(^{38}\)

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 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.\(^{39}\)

The Mecelle’s approach acknowledges the importance of social change and reflects the traditional ‘ulamā’\(^{\circ}\) social change is acceptable unless it contradicts the general Islamic

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\(^{38}\) The Mecelle, Article no: 1.

\(^{39}\) The Mecelle, If.
norms, which, as we know, do not deal with details, leaving room for the ‘ulanā’ 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 ‘ulanā’ 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 Mecelle 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 (kanûn) in the Ottoman State and, the place of ‘urf, which can be imprecisely translated as culture, in fiqh as practiced by the Ottomans.

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 Muqaddima to Turkish. 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.

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Halil Inalcı, *The Ottoman Empire: Classical Age 1300-1600* (London: Weidenfeld and Nicolson, 1973), 1-13, 70-76.


Ahmed Cevdet Paşa (1312/1895), *Mi‘yâr-i Södel* (Istanbul: Karabet ve Kasbar Mat-
Cevdet Pasha was an eclectic revivalist. He headed the Mecelle 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 Sheikhü l-islâm and other traditionalist ‘ulamâ’.

The attempts to transform fiqh into a modern code as well as adopting Western laws were indeed consequential for the ‘ulamâ’ 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 ‘ulamâ’.

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 Namik Kemal and Ziya Gökalp. This line is reflected by the similarities in their political and intellectual careers: (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 ‘ulamâ’ 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

ba’asî, 1303; Adab-ı Sedad min ‘Ilmi l-Adab (Istanbul: Matbaa’yi ‘Amire, 1294). For the new editions, in modern Turkish, of these two books and other logic books from the same period, see Kudret Büyükçökten (ed.), Mantık Metinleri (Istanbul: Işaret Yayınları 1998). See about his Ottoman History also Christoph Neumann, Das indirekte Argument. Ein Plädoyer für die Tanzîmât. Die geschichtliche Bedeutung von Ahmed Cevdet Pâýas Ta’rîfî (LT-Verlag: Münster, 1994).
generation of Tanẓīmāt 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).

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 Qur’an 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”.43 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.

“Following the example of Cevdet Pasha”, who defended fiqh in the Tanẓīmāt era against those who called for its replacement with the adopted European laws, writes Tanpınar, “Namuk Kemal and Ali Suavi, defended fiqh and Islamic law in the state institutions, and …were led to the idea of pan-Islamism”.44 This assertion was further explored by subsequent studies on the works of leading Young Ottomans such as Namuk Kemal, Ziya Pasha, and Ali Suavi.45 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.46

43 Tanpınar, Türk Edebiyatı Tarihi, 153.
44 Ibid.
45 Mardan, The Genesis; Türköne, Türkiye'de İslamcılık Doğuşu.
46 The article Sungu contributed to the volume on Tanẓīmāt I in 1940 seems to have sparked this process.
Findley and Mardin drew attention to the emergence of this new class with a different identity, role, and means of communication. 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”, 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 for the secularization of law which had started with *Tanẓimât*. He defended *fiqh*, especially as Islamic law, and drew freely from its materials. 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”. 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,

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47 Findley, *Bureaucratic Reform in the Ottoman Empire, Ottoman Civil Officialdom*; Mardin, *The Genesis*, 124.
48 Mardin, *The Genesis*, 405; Türköne, *Türkiye’de İslamiçığın Doğuşu*, 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 *shari‘a*.
50 Türköne, *Türkiye’de İslamiçığın Doğuşu*, 127-144.
Descartes, Bacon, Rousseau, Voltaire, Condorcet, Turgot, Robespierre, Danton, Garibaldi, Silvio Pellico, Montesquieu, Locke, Volney, and Emile Acollas, his private tutor in France. 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 mezwert (Arabic shūrā); natural law with shar'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”.53

Another prominent Young Ottoman thinker was Ali Suavi. He was a revolutionary 'âlim who combined political and intellectual activism in his life. Like other Young Ottomans, he also called fiqh to the defense of 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 fikh ['Islamic law'] in a language that everyone would understand”.54

At the same time, he criticized the malpractices of the shar'a and the 'ulamâ' 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 shar'a. “In letters sent to the newspapers of the capital he condoned 'Abdu l-Hamîd's action, attacked Midhat, expressed once

52 Ibid., 332-336.
53 Ibid., 349.
54 Ibid., 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), 1065-1062. This article can be found in modern Turkish script, see Turkonu, Türkiye'de İslamiyet'in Doğuşu, 283-289. On Suavi and his life and views see especially Mardin, The Genesis, 360-364; Huseyin Çelik, Ali Suavi ve Dinemi (İstanbul: İletişim Yayınevi, 1994).
more his belief that liberty was something of which the people should profit, not just ministers like Midhat. In a statement reminiscent of Kmalzâde, he presented a hierarchical image of society which was centered on the sharâ: “the ‘āmerâ (rulers) rule over the people and the ‘ulamâ rule over ‘āmerâ and sharâ rules over the ‘ulamâ”.

Suavi was not only critical of the bureaucrats but also of the ‘ulamâ, 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 ‘ulamâ 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. 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 ‘Abdu l-Hamîd II, whose antagonism 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.

57 Quoted in Mardin, The Genesis, 368.
58 Ibid., 374.
59 Ibid., 383.
The Young Turks and their Synthesis of *fiqh* and Social Science: A Disrupted Debate on Theory and Methodology

Namuk 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”. 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”.

Lewis observes that “The Young Turks seem to have been less concerned with political theory than their nineteenth-century predecessors”. 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 Auguste Comte, whose positivist sociology inspired Ahmed Riza 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.

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62 Ibid.
within which he constructed the first elaborate theoretical formulation of Turkish nationalism.

In line with synthesizing intellectuals from Tanzimat 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 (tasawwuf). His solution to the conflict between fiqh and sociology was “ijtimayi usul-i fiqh” which can be translated as “Societal Usul al-Fiqh”. 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 usul 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. Şereif, Halim Sabit, Şerafeddin (Yaltkaya), Mansurizade Sait. M. Şereif tried to apply the same synthesizing approach to ilm al-kalam (Islamic Theology), and called for a “societal theology” (ijtimai‘i ilm al-kalam). However, from the ranks of the Young Turks, two objections were raised against Gökalp’s “Societal Usul al-Fiqh”. One was by Said Halim Pasha the other was by İzmirli İsmail Hakkı, both rejecting the injection of Durkheimian sociology into fiqh.

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64 Parla, Ziya Gökalp, Kemalizm ve Türkiye’de Kapitalizm, 79-85.
65 The Turkish word “İstimaâyâl” 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, “İstimaâyâl Mecmua”, in DEI 21, 490.
66 Pasha here indicates a princely but not a military title.
Ziya Gökalp: Societal Uşûl al-Fiqh

At the outset of his article “Fiqh and Sociology”\(^{67}\), the first in the series of articles he published in \(\text{İslâm Mecmûası}\) on the theory and method of the fıkh-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 (tadbîr) 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 fıkh which focused on two categories: religious worship and legal relations. Akhlâq, ethics and morality, dealt with the internal spiritual (wijdînî) dimensions of these deeds and thus were not treated separately in fıkh. However, since the Tanzîmât generation, fıkh became almost synonymous with “Islamic jurisprudence/law.” Consequently, fıkh was used particularly for the second category of deeds.

Gökalp claimed that the Ottomans applied two major approaches to the study of society: Tadbîr (management/administration) and fıkh. 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. Fıkh studied worship (ibâdât), legal relations (muâ‘amlât) and morality (akhlâq) 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 fıkh approaches. The

\(^{67}\) Ziya Gökalp, “Fîkah ve İctimâ‘îyyât”, in \(\text{İslâm Mecmûası}\), 1332/1914 (2): 40-44. I have transcribed Gökalp’s articles on this issue in Latin script. See, Recep Şentürk, \(\text{İslâm Dünyasında Modernleşme ve Teşkilîhelin}^{\text{}}\) (İstanbul: İz Yayıncılık 2006), 284-308. On Gökalp’s views on the social sciences see also M. Sait Özervar, “Transferring Traditional Islamic Disciplines into Modern Social Sciences in Late Ottoman Thought: The Attempts of Ziya Gökalp and Mehmed Serafeddin\(^{7}\), in \(\text{MW}^{97}\) (April 2007): 317-330.
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 endeavour in his articles. The intellectual circle around him elaborated on the details of his project in İslam Meimūcan. 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 (ḥasan) and evil (qubh) concerning deeds. For the Muʿtaṣila, the rationalist theologians, reason alone determined the quality of righteousness or evilness of a deed.

Gökalp rejected categorically the rationalist Muʿtaṣila 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 (]interface consciousness).

Gökalp thus argued that logic did not understand the “sacred” (muʿazzee, a word he coined to correspond to the concept of “sacred” which had not existed in Turkish or Arabic68), for otherwise consciousness (wjīdān)

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68 The divide between sacred and secular was foreign to the traditional Muslim Turkish
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 Sunni 'ulamā’ (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 (shar') determined righteousness or evil of a deed with reference to two criteria. The first of these criteria was dogma (nass), and the second culture (urf). Nass consisted of the evidences in the Qur'ān and the Sunna, the example of Prophet Muḥammad. 'Urf, culture, was the collective consciousness that manifested itself in the community’s life and daily practices. The judgments (hukm pl. abhām) attributed to the deeds by dogma (nass) were either obligatory (wājib) or forbidden (harām), whilst by culture ('urf), well-regarded (ma'rūf) or ill-regarded (munkar). Mundāb, recommended, was a subcategory of wājib; and, makrāḥ, discouraged, is a subcategory of harām, forbidden. Mubāḥ, permissible, was the attribute of a deed which did not fall in the aforementioned normative categories.

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

… the role of 'urf is not only to distinguish what is ma'rūf (well-regarded), then what is, munakar (ill-regarded). … when it is required, 'urf takes the place of nass 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 'urf is the same as abiding by nass.” Muslims are responsible for following the rules that are not clearly stated in the nass (text of Qur'ān or Sunna), as well as for promoting the ma'rūf, and preventing the munkar. Ma'rūf, 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, usul, and, on “sociology.” That is to say the Islamic shar'a is both divine and social.

ontology. The lack of this dichotomy played a great role in forestalling conceptual grounding of theocracy and secularism.
Having thus opened a conceptual space for his sociology in *usūl al-fiqh*, Gökalp explored the relationship between divine and social aspects of the *shari'a*. The former was immutable, while the latter was changeable depending on the “social type” (*enmûzeğ*) to which a society belonged. What was “well-regarded” in one type of society might be “ill-regarded” in another one. Consequently, the *shari'a* rules derived from them change over time. Gökalp argued against rationalist *fuqaha* 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 *İlām Mecmûası*, 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 (*naql *shari'a*) and social law (*icumâr* *shari'a*). Traditional *shari'a* is beyond evolution. Social *shari'a*, 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 derived from the *nâs* (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, *'urf, and the consensus of *fuqaha* must accommodate itself to the requirements of the social life of the age.\(^{71}\)

Gökalp opposed two intellectual groups: first, traditional *'ulamâ*, 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.

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\(^{71}\) *Ibid.*, 44.
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 "ulamâ" 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: İslâm Mecmûası. In his numerous articles in this journal, Gökalp introduced his program in more detail and tried to demonstrate how it was going to be implemented with the cooperation of fuqahâ and social scientists:

Societal Uṣûl al-Fiqh studies social origins of fiqh, but can never claim to replace fiqh. This is similar to nasî which cannot have such a claim in usûl al-fiqh. The roles of iftâ' and qada' belong to those fuqahâ who deal with farâ' al-fiqh, but not to those who specialize in usûl al-fiqh. As to those who specialize in usûl al-fiqh, one of their divisions is responsible for guiding fuqahâ in the world of nasî, and the other in the social world. The fuqahâ cannot consider themselves independent of either group.73

With this new intellectual division of labour, as we observe in the later issues of İslâm Mecmûası, he successfully gained the support of some sociologists and 'ulamâ' who contributed to the project with their writings. Among them were leading figures such as Rizaeddin Fahirreddin, Halim Sabit, Mansurizade Said, Mustafa Şerif, 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”, ijtihâdî ‘ilm al-

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 fuqaha’, gained prominence in İslam Mecmuası through the writings of Rızâ’eddîn b. Fakhreddîn. The reformist approach to fiqh searched for other historical figures to support their ideas so as to establish themselves traditionally. İslâm Mecmuası argued for a functional fiqh with the gate of jihat open and the zealotry of madhhab left behind. As to social science, the theories that are incorporated in its intellectual endeavour were mostly French, especially Durkheimian.

**Opposition to the fiqh-social science Synthesis**

Now we can have a look at the opposition to Gökalp’s Societal Uṣūl 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 Ismail Hakki 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 ‘Abdu l-Hamîd II prior to the 1908 revolution, and while it was in power until the collapse of the Ottoman Empire.

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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, Sheikhu l-islâm Mustafa Sabri in his book Religious Revivalists (Dînî Mücedditler) criticized Gökalp 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 Ismail Hakki, 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.

İzmîrî İsmail Hakki: Critique by a modernist Scholar

İzmîrî İsmail Hakki (1868-1946), a Young Turk ‘âlim criticized Societal Usûl al-Fiqh in a series of articles in Sebîlû r-reşâd. In this way, İzmirli was involved in a public debate with the authors of İslam Mecû’îsî about their concept of fiqh. In typical traditional fashion, his criticism were made in response to a reader, a student of religious sciences named Irakli A. K., who asked him twelve questions. 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 Sebîlû r-reşâd 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 Sunnite School (Ehl-i Sünnet Mezhebi) on moral good and bad (hüsni and qubl)? (4) What is the doctrine of Abû Yusuf on culture (urf)? (5) What is the meaning of the following fiqh principles? First, “Reasoning (ijtihâd) is not accepted in the existence of textual reference (nass)” and, second, “Abiding by ‘urf is the same as abiding by text.” (6) It is said that “for some fuqaha’, 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-i ahl-i Medine)? (9) What are the principles of analogy (qiyaş) and consensus (ijmâ’)? Is analogy reducing judgment (i‘âlma) to dogma? (10) Did the doctrine of Dâwûd al-Zâhîrî conflict with social life? (11) Is fiqh reasoning (ijtihâd) a result of the need for adjustment to culture, ‘urf? (12) Is there a need for Societal Usûl al-Fiqh? If we assume that there is such a need, what are the governing principles in this issue?

The questions raised by this student suggest how Gökalp’s project was perceived by some ulamâ’. The reinterpretation of fiqh that Gökalp and his group presented in İslam Mecmûası seems to have undermined the prevailing understanding of Usûl al-fiqh. İzmîrlî concluded his series of articles on the Societal Usûl al-Fiqh with a negative judgment:

None of the reasons for the necessity of Societal Usûl al-fiqh logically require this result. All of them are refuted by fiqh and usûl al-fiqh. The principles of usûl 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, share‘â. 80

Nevertheless, İzmîrlî 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 Usûl al-fiqh is evident”. 81 He briefly explained how this project should be carried out. This new usûl 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 Usûl al-fiqh, the adoption of which, similar to Mecelle, should be made mandatory for the courts.” As to the issue of naming, İzmîrlî does not

81 İzmîrlî, “İetimâ‘i Usul-i Fikha İhtiyac Var mı?”, 215.
object to call a *fiqh* which would be thus rewritten a Societal *Uṣūl al-Fiqh*. If Societal *Uṣūl al-Fiqh* were to be rewritten, it must be rewritten as he described it. A Societal *Uṣūl al-Fiqh* which is completely different from *uṣūl 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 *Uṣūl al-fiqh* in his scholarly works which had a significant impact on Turkish intellectuals. His influence lasted longer than Gökalp’s Societal *Uṣūl al-Fiqh*. İzmirli agreed with Gökalp and his friends on the diagnosis, which was that the science of *fiqh* needed rejuvenation; however, they opted for different solutions.

**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

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82 Ibid., 216.
84 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 *İm al-Kalām*, in opposition to M. Şerafeddin’s Social *İm al-Kalām*, which, owing to Gökalp’s influence, appeared for the first time in *İslam Memı̇'ı̇s* ed. For the writings of İzmirli on the New *İm al-Kalām*, sec, *Sıhlı r-reşid* Vol. 22, no 549-550: 30-32.
functions in the Ottoman State. His intellectual career included a degree in political science from Switzerland\textsuperscript{85} and his political career included key roles in opposition against Abduл-Hamid II in the ranks of the Young Turks, and later, in CUP governments. He wrote in French.\textsuperscript{86} Ironically enough, despite his education in the modern social 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 \textit{Les Institutions politiques dans la société 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’i’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,

\begin{quote}
C’est donc au Fikh que nous devons demander de créer et de régler toute notre organisation tout notre système économique dans le sage esprit du Cheriat pour qu’ils répondent à la conception philosophique du bonheur humaine telle qu’il est engendrée par l’Islamisme. Car alors ils seraient exemples des vices et des
\end{quote}

\textsuperscript{85} 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, \textit{İslam Dünyasında Modernle ve Toplumbilim}, 411-448.

\textsuperscript{86} It is reported that he wrote his books and articles first in French then had them translated to Turkish (Kara, \textit{Türkiye'de İslamcılık}, 76). His \textit{Buhranlarız} (Our Crisis) includes seven previously published pamphlets (first published in 1919, later editions by Düzdağ, M. Er-tuğrul (ed.), \textit{Buhranlarız} [Istanbul: Tercüman Gazetesi, n.d.] and Özalp, N. Ahmet, \textit{Said Halim Pasha Bütün Eserleri} [Istanbul: Anka yay., 2003]. There is another book by him which is more important for our concerns here: \textit{Les Institutions politiques dans la société musulmane} (first published in Rome, 1921, also published as “Notes pour servir à la réforme de societé” in \textit{Orient et Occident}, 1922) and was translated to English as \textit{The Reform of Muslim Society} (1967).
défauts graves de ceux des peuples d’Occident et qui sont dus à ceux des peuples d’Occident et qui sont dus à ceux de leur système social.\(^7\)

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 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.

‘Ulamā’: Uncritical acceptance of sociology

These critiques levelled 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.\textsuperscript{88}

Similar to sociologists like Gökalp, who tried to use \textit{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, \textit{Dārū l-Hikmet i-İslāmiyye}, provides an example of the eclectic or the pro-synthesis ‘ulamā’ approach. It was a governmental organization housing the elite scholars in \textit{fiqh}, \textit{kālām}, and \textit{akhlāq}, including İsmail Hakkı, Ahmet Cevdet, Ahmet Rasim Avni, Ali Rıza, Ahmet Sirani, Ferit Bey, Huseyin Avni, Huseyin Kamil, Haydarizade İbrahim Efendi, İsmail Efendi, Mehmet Akif [Ersoy], Mehmet Necip, Mehmet Şevket, Muhammed Hamdi Elmalı, Mustafa Āxum, Mustafa Sabri, Mustafa Safvet, Mustafa Tevfik, Recep Hilmi, Sadreddin Efendi, Said Efendi [Bediuzzaman], Seyit Nesiş, Şerif Saadeddin Pasha.\textsuperscript{89} The academy was established during the reign of Mehmet Reşat V and Sheikhu l-islām Musa Kazım in 1918, and remained in existence until 1922. The Islamic Thought Academy published \textit{Ceride-i ʿIlmiyye}, the

\textsuperscript{88} Hanioğlu, Abdullah Cevdet, 130ff.; Mardin, \textit{The Genesis}, 10ff., 16-21

\textsuperscript{89} Sadık Albayrak, \textit{Son Dövür İslam Akademisi} (İstanbul: Şamil Yayınları, 1972), 164-205.
Journal for Islamic Sciences. 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”.90 One of the roles of the Academy was to publish “books about the usûl, fundamentals, and fursût, 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 (ijtîmadâyâh), history and reasons for development and decay”.91 The Academy, which actively responded to the critiques of fiqh,92 was the last major Ottoman effort to revive fiqh and to demonstrate its public relevance.

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 Tanzimât reforms no longer existed in the Kemalist reform movement. However, without the legacy of the eclectic and

90 Ibid., 81.
91 Ibid., 95f.
92 Ibid., 126f.
synthesizing intellectuals since the Tanzîmât, Kemalist reforms would have been impossible.93

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.94 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 ‘ulamâ’. Their task was easy this time, for they had no contenders, as the ‘ulamâ’ order and fiqh were officially outlawed.95 The rule was no longer “in the name of God” but, as the new constitution stated, “in the name of Nation”.96 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.”97

94 Nuray Mert, Laiklik Tartışması Kivranmalı Bir Bağl: Cumhuriyet Kurularken Laik Düşünce (İstanbul: Bağlam Yayınları, 1994).
95 For a sociological observation on fiqh during the Republican era in Turkey, see, Şerif Mardin, Religion, Society and Modernity in Turkey (Syracuse, NY: Syracuse University Press 2006), 264. Mardin argues that “the disappearance of fiqh erased the earlier organic bond between law and justice or law as justice” (264).
96 Lewis, The Emergence of Modern Turkey, 260.
97 Parla, Ziya Gokalp, Kemalizm ve Türkiye’dede Korporatizm, 209.