

Changes in the Scope of *Fiqh* in Historical Perspective and Its Evaluation through Secularization

Mustafa Ünal *

Makale Türü/Article Type: Araştırma Makalesi/Research Article

Gönderim/Received: 20.07.2026, Kabul/Accepted: 09.09.2026, Yayın/Published: 30.09.2026

Abstract: Secularization is a process examined in various fields of the social sciences and may be understood not only as the rejection of religion but also as the gradual decline of the determining role of religious beliefs in regulating human thought and action. This study examines the historical transformation of the concept and scope of *fiqh* from the perspective of secularization. *Fiqh* has been defined differently throughout Islamic intellectual history, and its scope has undergone significant changes. In the early period, the concept was used in a relatively comprehensive sense and could encompass matters that were later distinguished as belief, morality, and worship. Over time, these fields were progressively separated from *fiqh*, while the concept of Islamic law became increasingly associated with its remaining legal content. In the modern period, this transformation became more pronounced through the differentiation of *fiqh* from religion and its evaluation within the conceptual framework of modern law. In response to this development, the concept of “Muslim *fiqh*” was also employed to emphasize the historical and human character of *fiqh*. This study argues that the secularization of *fiqh* should not be understood merely as a development that began with modernity, Westernization, or the emergence of the modern state. Rather, the modern period represents an acceleration of a process whose roots can be traced to earlier changes in the scope of *fiqh*. The study first examines the use and scope of the concept in early narrations and then analyzes the definitions of *fiqh* developed throughout history in order to identify changes in its conceptual boundaries. It also discusses approaches that evaluate *fiqh* primarily according to the requirements of time and place, as well as approaches that detach *fiqh* from social life and reduce it to an epistemological discipline. In this context, the study argues that the historical narrowing of the scope of *fiqh* reflects a broader transformation in the relationship between religion, normativity, and social life. Thus, the secularization of *fiqh* is presented as a historical process extending beyond the modern period.

Keywords: *Fiqh*, Secularization, Islamic Law, *Fiqh* of Muslims, Morality.

* Assoc. Prof., Necmettin Erbakan Universtiy, Faculty of Law, Konya/Türkiye, ORCID: 0000-0003-3454-9694, e-mail: mustafaunal@erbakan.edu.tr

Atıf/Citation: Ünal, Mustafa. “Changes in the Scope of *Fiqh* in Historical Perspective and Its Evaluation through Secularization”. *DiHA: Journal of Interdisciplinary Legal Studies*, no 3 (2026): 21-36. <https://doi.org/10.5281/zenodo.22958255>



Bu çalışma Creative Atıf-GayriTicari-Türetilmez 4.0 Uluslararası (CC BY-NC-ND 4.0) ile lisanslanmıştır. | This work is licensed under a Creative Commons Attribution-NonCommercial- NoDerivatives 4.0 International (CC BY-NC-ND 4.0).

Fıkıhın Kapsamındaki Değişimlerin Tarihsel Perspektiften İncelenmesi ve Sekülerleşme Açısından Değerlendirilmesi

Özet: Sekülerleşme, sosyal bilimlerin çeşitli alanlarında incelenen ve yalnızca dinin reddedilmesi değil, dinî inançların insan düşüncesi ve eylemlerini düzenlemedeki belirleyici rolünün zamanla azalması şeklinde de anlaşılabilen bir süreçtir. Bu çalışma, fıkıh kavramının ve kapsamının tarihsel dönüşümünü sekülerleşme kavramı çerçevesinde incelemektedir. Fıkıh, İslam düşünce tarihinde farklı şekillerde tanımlanmış ve kapsamı önemli değişiklikler geçirmiştir. Erken dönemde nispeten kapsamlı bir anlamda kullanılan fıkıh, daha sonraki dönemlerde kelâm, ahlâk ve ibadet olarak ayrışacak meseleleri de içermekteydi. Zaman içerisinde bu alanların fıkıhtan ayrıştırılmasıyla birlikte fıkıhın kapsamı daralmış ve geriye kalan hukukî muhteva giderek İslam hukuku kavramı üzerinden ifade edilmeye başlanmıştır. Modern dönemde ise fıkıhın dinden ayrıştırılması ve modern hukuk kavramsallaştırması içerisinde değerlendirilmesiyle bu dönüşüm daha belirgin hâle gelmiştir. Buna karşılık fıkıhın tarihsel ve beşerî niteliğini vurgulamak amacıyla “Müslümanların fıkıhı” kavramı da kullanılmıştır. Çalışmanın temel iddiası, fıkıhın sekülerleşmesinin yalnızca modernite, Batılılaşma veya modern devletin ortaya çıkışıyla başlayan bir süreç olarak değerlendirilemeyeceğidir. Aksine modern dönem, kökleri daha önceki dönemlerde fıkıhın kapsam ve anlamında meydana gelen değişimlere uzanan bir sürecin hızlandığı aşamayı ifade etmektedir. Bu doğrultuda çalışmada öncelikle erken dönem rivayetlerinde fıkıh kavramının kullanımı ve kapsamı ele alınmakta, ardından tarihsel süreçte yapılan fıkıh tanımları üzerinden kavramın sınırlarında meydana gelen değişimler incelenmektedir. Ayrıca fıkıhı zaman ve mekânın gereklerine göre değerlendiren ve onu toplumsal hayattan kopararak epistemolojik bir disipline indirgeyen yaklaşımlar ele alınmaktadır. Sonuç olarak fıkıhın kapsamının tarihsel süreçte daralmasının, din, normatiflik ve toplumsal hayat arasındaki ilişkinin dönüşümüyle bağlantılı olduğu ileri sürülmektedir.

Anahtar Kelimeler: Fıkıh, Sekülerleşme, İslam Hukuku, Müslümanların Fıkıhı, Ahlak.

Introduction

Secularization can be used directly as the rejection of religion, but it is also used in a very broad perspective in the sense that beliefs are not the first determining factor in regulating human thoughts and actions. In this respect, secularization is expressed as a process and classified in different stages. So much so that it can even be stated that a belief advocates secularization.

Fiqh is a concept that has been defined differently throughout history, and its content has been expressed in different ways. *Fiqh*, which was used directly instead of the concept of religion in the early periods, has undergone a change over time. Initially, issues of belief and morality were extracted from *fiqh*. As such, different discussions were held on the concept of *fiqh*. In the following period, the use of the concept of Islamic law became widespread with the removal of the field of worship (ibâdât) from *fiqh*. However, this concept was not always consciously used to express this content, but sometimes it was used directly to express *fiqh* in its early meaning. The concept of Islamic law has also been criticized. As a result of these criticisms, instead of using the concept of *fiqh* again, some people used the concept of *fiqh* of Muslims. In line with this concept, it was explained that the remaining part of *fiqh* should be evaluated in accordance with the time and place in which we live, keeping the areas of belief, morality and worship separate. The main emphasis here is on understanding *fiqh* in terms of the time rather than shaping time according to *fiqh*. However, in this activity of understanding *fiqh*, the lives of the societies were seen to be at a level that would override the meanings of the texts (*nuşûs*). In addition to all these concepts, there have also emerged some people who have studied

fiqh in a way that is detached from life. These jurists' approach to *fiqh* remained at the epistemological level. Therefore, it was not considered that *fiqh* should be handled in the context of faith and morality and that it exhibited an ontological structure within the Muslim society. This whole process of looking at *fiqh* has shown a secularization from the early period to the present day.

Although there have been many studies on religion and secularization¹, there is no direct study on how *fiqh* has been secularized in history. Although the explanations about *fiqh* are generally about the detachment of *fiqh* from social life in the last two centuries and its perception within the concept of law in the West (Gencer, 2012: 34-39; Türcan, 2005: 11-22), it has been ignored that the change in the content of *fiqh* actually dates back much earlier. In this study, the concept of *fiqh* and the secularization process within its scope are examined from the first period. In this respect, this study differs from the previous literature.

1. Secularization

Secularism comes from the Latin word secular, which is used to refer to an area such as generation, time period and space that is independent of religion.² In this context, the term implies the present moment with the concept of time and signifies the worldly nature with the notion of space.³ This concept, which has developed in the West and expresses a very broad content, has been used to express meanings such as "belonging to the world", "worldly", "non-religious".⁴ Secularization has been used to refer to all aspects of social life such as economics, politics, and law that are independent of faith. Secularization is expressed as the attitude of disregarding beliefs at making decisions and directing actions in practical life.⁵ The concept of belief used to define secularization refers to religion, all folk beliefs and all teachings defined as supernatural.⁶ Supernatural phenomena are briefly defined as all perspectives in which belief or instinct is at the center instead of the method of experimentation and observation. Laicism, unlike secularization, refers to the state acting independently of religion rather than society or individuals. It signifies that the state does not take any religious reference in matters it will decide on and maintains an equal distance from all religions.⁷

¹ S. Nakib Attas, *İslam, Sekülerizm ve Geleceğin Felsefesi* (İstanbul: İnsan Yayınları, 1995); Ramazan Altıntaş, *Din ve Sekülerleşme* (İstanbul: Pınar Yayınları, 2005); Mustafa Özden, *Müslüman Kelamında Sekülerleşme Süreci* (Ankara: Ankara University Institute of Social Science, 2005); Robinson Francis, "İslam'da Sekülerleşme," *Sosyal Bilimler Enstitüsü Dergisi* 13 (2002): 343-355; Talip Küçükcan, "Modernleşme ve Sekülerleşme Kuramları Bağlamında Din, Toplumsal Değişme ve İslâm Dünyası," *İslam Araştırmaları Dergisi* 13 (2005): 109-128; İbrahim Hakkı Aydın, "Seküler Ahlak Bağlamında Din-Ahlak İlişkisi," *Atatürk Üniversitesi İlahiyat Fakültesi Dergisi* 35 (2011): 1-23; Behçet Batur, "İslam ve Sekülerleşme: İbn Halduncu Bir Çözümleme," *Sırat* 2 (2021): 35-55; Murat Canpolat, *Hukukî Açısından Sekülerizm ve İslâmiyet* (Fırat University Institute of Social Science, 2007); Ejder Okumuş, "Modernleşme, Sekülerleşme ve Din," *Kamu Hukuku Arşivi* 10 (2007): 1-22; Yasin Aktay, *İslam ve Sekülerleşmenin Kaynakları* (İstanbul: Vadi Yayınları, 2021); Ali Bayer, *Sekülerleşme ve Din* (Ankara: İksad Yayınları, 2022).

² Aydın, "Seküler Ahlak Bağlamında Din-Ahlak İlişkisi," 4; Canpolat, *Hukukî Açısından Sekülerizm ve İslâmiyet*, 13.

³ Ramazan Altıntaş, "Teolojik Sekülerleşmenin Neden Olduğu İnanç ve Davranış Problemleri," *Cumhuriyet Üniversitesi İlahiyat Fakültesi Dergisi* 6, no. 1 (2002): 62; Özden, *Müslüman Kelamında Sekülerleşme Süreci*, 4; Mustafa Tekin, "Batı'da Sekülerlik ve Türkiye Müslümanlığının Seküler İçerimleri," *İnsan ve Toplum* 2, no. 4 (2012): 183.

⁴ Aydın, "Seküler Ahlak Bağlamında Din-Ahlak İlişkisi," 4; Canpolat, *Hukukî Açısından Sekülerizm ve İslâmiyet*, 13; Özden, *Müslüman Kelamında Sekülerleşme Süreci*, 6; Elif Uysal, "Din, Uluslararası İlişkiler ve Dış Politika Üzerine Kavramsal Bir Çerçeve," *Necmettin Erbakan Üniversitesi Siyasal Bilgiler Fakültesi Dergisi* 4, no. 1 (2022): 89.

⁵ Aydın, "Seküler Ahlak Bağlamında Din-Ahlak İlişkisi," 5; Okumuş, "Modernleşme, Sekülerleşme ve Din," 2; Yasin Yılmaz, "Peter Ludwig Berger'in Sekülerizm Anlayışı ve Türkiye Gözlemleri," *Tezkire* 30, no. 77 (2021): 170-171.

⁶ Volkan Ertit, *Sekülerleşme Teorisi: Sekülerleşen Türkiye'nin Analizi* (Ankara: Liberte Yayınları, 2020), 47.

⁷ Volkan Ertit, "Birbirinin Yerine Kullanılan İki Farklı Kavram: Sekülerleşme ve Laiklik," *Akademik İncelemeler Dergisi* 9, no. 1 (2014): 108-109.

Secularization does not directly mean the rejection of a belief.⁸ While it includes this meaning, It also means that one's beliefs should not be the determining factor in some areas of one's life. Therefore, secularization does not only mean detachment from one's beliefs for a Muslim individual.⁹ However, it signifies a process where the belief factor alone is not the primary determinant of thoughts and actions; in fact, over time, the belief factor may be relegated to a secondary position. In the West, different theories have even been put forward to measure the secularization of the individual in this process and classifications have been made accordingly.¹⁰ In this context, secularization is defined as the shift from the focus on the hereafter to the focus on the world.¹¹ When the determinant factor in actions and deeds is not belief, even if a person claims to be attached to their faith, they fall within the scope of secularization.¹² Likewise, Christian theologians have argued that the source of secularization is based on their holy books and therefore the Bible should be interpreted according to changing times and places.¹³ In this context, criticisms of efforts to distinguish between the worldly and the secular spheres, which have turned into an activity of constructing judgments solely on the basis of evidence or intentions can also be evaluated in this context. This study focused on the secularization of *fiqh*, especially in terms of these meanings. The change in the jurists' view of *fiqh* over time was evaluated through the definitions on the concept of *fiqh*, the determination of the scope of *fiqh* and criticisms.

2. Development of The Concept and Scope of Fiqh

Fiqh means “to know something, to understand it well and completely, to comprehend deeply”¹⁴. Rağıb al-İsfahani defined the concept of *fiqh*, which is mentioned in twenty places with different verb forms in the *Qur’ân*, as “reaching a ready knowledge and hidden (*ğayb*) knowledge” and “knowing the provisions of *Sharia*”¹⁵. Considering its meanings in the *Qur’ân*, *fiqh* is expressed as the act of continuous understanding and is not used as a fixed state or knowledge.¹⁶

⁸ For different definitions of secularization, see Bayer, *Sekülerleşme ve Din*, 11–12.

⁹ Cemaleddin Çelik, “Sekülerleşmenin Kuramsal Sosyolojik Serüveni,” *Journal of Islamic Research* 28, no. 3 (2017): 210; Ertit, *Sekülerleşme Teorisi*, 64; Tekin, “Batı’da Sekülerlik ve Türkiye Müslümanlığının Seküler İçerimleri,” 186.

¹⁰ Bayer, *Sekülerleşme ve Din*, 72–73; Küçükcan, “Modernleşme ve Sekülerleşme Kuramları Bağlamında Din, Toplumsal Değişme ve İslâm Dünyası,” 111–112; Tekin, “Batı’da Sekülerlik ve Türkiye Müslümanlığının Seküler İçerimleri,” 186–187; Aydın, “Seküler Ahlak Bağlamında Din-Ahlak İlişkisi,” 5.

¹¹ Tekin, “Batı’da Sekülerlik ve Türkiye Müslümanlığının Seküler İçerimleri,” 187.

¹² Francis, “İslâm’da Sekülerleşme,” 343; Özden, *Müslüman Kelamında Sekülerleşme Süreci*, 7; Ertit, “Birbirinin Yerine Kullanılan İki Farklı Kavram,” 108; Altıntaş, *Din ve Sekülerleşme*, 175; Tekin, “Batı’da Sekülerlik ve Türkiye Müslümanlığının Seküler İçerimleri,” 187.

¹³ Altıntaş, *Din ve Sekülerleşme*, 66.

¹⁴ Al-Bağdāwī, *al-Gāyet al-Kuşvā fi Dirāyet al-Fetvā*, I/206; Abū Hāmid al-Ghazālī, *al-Mustasfā* (Bayrūt: Dār al-Ma’rifah, 1993), 5; Ömer Nasuhi Bilmen, *Hukuk-ı İslāmiyye ve Istilahatı Fikiyye Kamusu*, vol. 1 (İstanbul: Bilmen Yayınevi, 1976), I/13; Majmūatu min al-Muallifin, *al-Mawsūat al-Fiqhiyyat al-Kuwaitiyya*, vol. 32 (Kuwait: Vizāret al-Ewkāf wa al-Shu’ni al-İslāmiyya, 1404), XXII/193; Commission, *Mawsūat Nadratu al-Nāim Fi Mekarimi Ahlak al-Rasuli al-Qarim (s.a.v)* (Jeddah: Dār al-Wesile, 1998), 3137; Muhammed Abū Zahra, *Methodology of Islamic Law* (Bayrūt: Dār al-Fikr, n.d.), 9; Ali Haydar Efendi, Hocaeminefendizāde, *Dureru al-Hukkām Sharh Medjelle al-Ahkām*, vol. 1 (İstanbul: Diyanet İşleri Başkanlığı Yayınları, 2017), I/27; Abdul Karim Zaidān, *al-Medhal li-dirāseti al-şeri’ati al-İslāmiyy* (Lebanon: Müessesetü’r-Risāleti Nashirun, 2005), 99; Hayreddin Karaman, “Fıkıh,” *Türkiye Diyanet Vakfı İslām Ansiklopedisi* 13 (1996): 1; Ahmet Akman and Mustafa Ünal, “Mecelle 1. Madde Doğrultusunda Fıkıh, Hukuk, İslām Hukuku ve İslām Hukukçusu,” in *Mecelle Üzerine Etütler I*, edited by Ahmet Akman and Mustafa Ünal (Ankara: Adalet Yayınevi, 2020), 9.

¹⁵ Al-İsfahānī, *al-Mufredāt fi ġaribi al-Qur’ân* (Dimashq: Dār al-Kālem, 1412), 642–643; Karaman, “Fıkıh,” 1; Kemal Yıldız, “Din Adına Konuşmanın Fıkıh-Tefakküh Açısından Değerlendirilmesi,” *Dinbilimleri Akademik Araştırma Dergisi* 5, no. 2: 165.

¹⁶ Faruk Beşer, *Bilgi, Fıkıh ve İctihat* (İstanbul: Nun Yayınları, 2016), 155.

In terms of content, *fiqh* was used in the early periods to express religion as a whole. It expressed the knowledge of the *Qur'an* and hadith without any distinction.¹⁷ *Fiqh* was seen as the organization of the *Qur'an* and *Sunnah* for human practice, and in this respect, it was stated that Islamic thought was directly *fiqh*.¹⁸ Over time, the content expressed by the concept of *fiqh* has narrowed. Especially with the formation of sub-disciplines, the classification of the science required new definitions in terms of the content of *fiqh*. Abū Hanīfa defined the concept of *fiqh*, which was used to cover all the information obtained from the *Qur'an* and hadith in the early periods, as “the knowledge of one's rights and obligations”¹⁹. Gazzālī stated that what was meant by *fiqh* in the early period was as understanding things that cause a person to not value the world, tie them to the afterlife, and cover their hearts with the fear of Allāh, preventing the corruption of the self and deeds.²⁰ He stated that the concept of *fiqh* in the *Qur'an* primarily refers to faith.²¹ With this statement, he stated that Abū Hanīfa's definition is understood as the knowledge of what is in favor and against the human being in all areas of faith, deeds, morals, and conscience, without any restrictions. As a matter of fact, Abū Hanīfa named his work on faith as *Fiqh al-Akbar*. In time, the issues related to this field began to be handled under titles such as “ilmü usûlî'd-dîn”, “ilmü't-tevhid” and became a separate branch of science. Topics related to internal purification, spiritual development and good morals were called “*fiqh al-bâtın*”. However, over time, these topics were reclassified under the headings of “morality” and “sufism” forming new branches of knowledge.²² Ebū Hanīfa's definition of *fiqh* was later supplemented with the word “practical (amelen)”, indicating that *fiqh* deals with the rulings regarding the actions of individuals. The sciences of belief, morality and conscience were left out.²³ After the “practical” entry, the “shar'î” entry was added to the definition of *fiqh*, and the knowledge obtained only by the intellect or sense organs was also excluded from the scope of *fiqh*.²⁴ As a matter of fact, this definition became widespread and was defined in the first article of the Medjelle as “*Ilm-i fiqh is to know the matters of shar'î practical*.”. As it can be seen in this definition, the scope of *fiqh* is narrowed in terms of shar'î-practical matters. Another definition attributed to Imam Shafî'i, which has gained widespread acceptance, is “*fiqh is the totality of the knowledge of shar'î practical rulings deduced from the detailed evidence*.”²⁵ As can be seen, this definition also emphasizes shar'î practical.

It is seen that legal acts are to be evaluated within the scope of *fiqh* with the registration of shar'î practical, and that matters of faith and morality are outside the scope of *fiqh*, even though they have many issues that are intertwined with each other.²⁶ Even though the shar'î practical restriction was originally used for the classification of sciences and was not directly intended to understand *fiqh* separately from faith and ethics, over

¹⁷ Karaman, “Fıkıh,” 1; Beşer, *Bilgi, Fıkıh ve İċtihat*, 93–96.

¹⁸ Bedri Gencer, “Bizzat İslām Düşüncesi Olarak Fıkıh,” *Mostar* 84 (2012): 35.

¹⁹ Sadr Al-Sheria, *Tenkih al-Uşul Fi Ilmi'l-Uşul* (Mişr: Matbaat-ı al-Mahmüdiyya al-Tijariyyat bi al-Azhar, 1356), 6; Al-Taftazānī, *Sharh al-Talwih 'alā al-Tawdih*, vol. 1 (Mişr: Mektebetu Shabiḥ, 1957), 16; Bilmen, *Hukuk-ı İslāmiyye ve Istilahatı Fikiyye Kamusu*, 1/14.

²⁰ Al-Ghazālī, *İhyā' u 'Ulūmî'd-Din*, vol. I (Bayrūt: Dār al-Kutub al-'Ilmiyyah, n.d.), I/32.

²¹ See Surah al-A'rāf, 7:179; Surah al-Hashr, 59:13; Al-Ghazālī, *İhyā' u 'Ulūmî'd-Din*, I/32.

²² Ahmet Yaman and Halit Çalış, *İslām Hukuku* (Ankara: Bilimsel Araştırma Yayınları, 2018), 21.

²³ Sadr Al-Sheria, *Tenkih al-Uşul Fi Ilmi'l-Uşul*, 6, 8; Al-Taftazānī, *Sharh al-Talwih 'alā al-Tawdih*, 16–17; Bilmen, *Hukuk-ı İslāmiyye ve Istilahatı Fikiyye Kamusu*, 1/14; Ali Haydar Efendi, *Dureru al-Hukkām Sharh Medjelle al-Ahkām*, I/29; Asım Cüneyd Köksal, “Fıkıh, Ahlak ve Vicdan,” *Sabah Ülkesi* 63 (2020): 86.

²⁴ Sadr Al-Sheria, *Tenkih al-Uşul Fi Ilmi'l-Uşul*, 8; Commission, *Mawsūat Nadratu al-Nāim Fi Mekarimi Ahlak al-Rasuli al-Qarim* (s.a.v), 3138; Talip Türçan, *İslām Hukuk Biliminde Hukuk Normu* (Ankara: Ankara Okulu Yayınları, 2016), 44–45.

²⁵ Al-Baḍāwī, *Minhāj al-wuṣūl Ilā 'ilmi al-Uşul* (Bayrūt: Dār Ibn Hazm, 2008), 51; Ali Haydar Efendi, *Dureru al-Hukkām Sharh Medjelle al-Ahkām*, I/28; Karaman, “Fıkıh,” 1.

²⁶ Türçan, *İslām Hukuk Biliminde Hukuk Normu*, 13.

time, *fiqh* came to be seen as knowing the matters of *furu'* and understanding the principles with their subtleties. In this form, *fiqh* came to be seen more as a formal science. The procedural methods used to obtain judgements began to be interpreted in line with the results desired to be achieved away from the objectives of *fiqh* by moving away from the principles of ethics. People began to emerge who understood *fiqh* in this way, away from the sciences of belief and morals, and tried to gain favor with the sultans, and strived to assume the position of qadi or administrator.²⁷ The concept of *fiqh* had become secularized by being detached from the sciences of belief and morality. In direct proportion to this situation, people emerged who demanded the science of *fiqh* for worldly benefits.

Within the scope of *fiqh*, rights are analysed in four categories. These can be classified as the rights of Allah, the common rights that prevail over the rights of Allah, the common rights that prevail over the rights of servants, and the rights of servants. Allah's rights refer to the public order established by Islam and the rights concerning the public. The rights of servants, on the other hand, refer to the rights that directly belong to individuals. This distinction shows itself especially in the field of criminal law.²⁸ This distinction has not resulted in a *shari'*-practical record. Therefore, the nomenclature here belongs to the subject of the right and should not be seen as related to secularisation.

When *fiqh* and morality begin to be understood as two separate fields, *fiqh* will only be a set of forms and rules. In this case, *fiqh*, whose nourishing veins have dried up, will display a puny appearance and there will be no possibility of explaining the religion with this form of *fiqh*.²⁹ In general, religion and morality are considered as the sources of legal systems.³⁰ Therefore, this can also be said for *fiqh*. However, the binding shaping of *fiqh* by religion and morality, as in the first period, has disappeared and it has become like other legal systems. However, it is not possible to consider *fiqh* as separate from morality due to the secularization of the minds. This can be understood especially through the classification of the *maslahahs* contained in rulings of *fiqh*.

Maslahahs are classified as *zarūriyyāt*, *hājiyyāt* and *tahsinīyyāt*.³¹ *Zarūriyyāt* is defined as the fundamental rights and values that are indispensable for the existence and vitality of society, and although there are different classifications, they are generally listed as five elements: life, religion, generation, intellect and property. *Hājiyyāt*, on the other hand, is defined as the benefits that ensure the orderly functioning of the life of the individual and society, and that cause difficulty, distress, and unrest in the absence of them. Contracts such as sale, rent, and *karz* were cited as examples. In case of violation of the provisions concerning these two groups, in addition to otherworldly sanctions, direct worldly sanctions are envisaged for individuals.

²⁷ Al-Ghazālī, *İhyā' u 'Ulūmī'd-Dīn*, I/32–33; Shāh Waliyyūllāh, *Hujjat Allāh al-Bāliġa*, edited by Es-Seyyid Sābık, vol. 1 (Bayrūt: Dār al-Jil, 1426), I/261.

²⁸ M. Ākif Aydın, *Türk Hukuk Tarihi* (İstanbul: Beta Yayınevi, 2017), 156–157; Coşkun Üçok, Ahmet Mumcu, and Gülnihal Bozkurt, *Türk Hukuk Tarihi* (Ankara: Turhan Kitabevi, 2019), 85; Halil Cin and Ahmet Akgündüz, *Türk Hukuk Tarihi* (İstanbul: OSAV Yayınları, 2017), 185, 300; Mustafa Avcı, *Türk Hukuk Tarihi* (Ankara: Adalet Yayınevi, 2023), 273, 328; İrem Karakoç, *Rühū'l-Mecelle (Medhal)* (Ankara: Yetin Yayınevi, 2022), 427–433; Muharrem Midilli, "Allah Hakkı ve Kul Hakkı Arasında Hanefi Ceza Hukukunun Kamusalılığı," *KTÜİFD* 4, no. 1 (2017): 70–74.

²⁹ Ali Bardakoglu, "Fıkıh Çözüm mü Üretir, Sorun mu?" *Eskiye* 29 (2014): 168.

³⁰ Kemal Gözler, *Hukuka Giriş* (Bursa: Ekin Yayınevi, 2020), 46–52; Haluk Hadi Sümer, *Hukuka Giriş Kavramlar & Kurumlar* (Ankara: Seçkin Yayınevi, 2023), 3–4; Mustafa Avcı, Mehmet Aykanat, and İbrahim Ülker, *Hukuk Başlangıcı ve Metodolojisi* (Ankara: Adalet Yayınevi, 2023), 34–40.

³¹ Al-Ghazālī, *al-Mustasfā*, 174–175; al-Shātibī, *al-Muwāfakāt*, edited by Es-Selmān, Abū 'Ubayda Mashūr b. Hasen, vol. 2 (Dār Ibn 'Affān, 1417), II/17.

Therefore, these two groups are directly addressed as the subject of *fiqh*. In the case of *tahsinīyyāt*, which is used for benefits that facilitate and beautify life, such as the development of moral virtues and the observance of good manners, although not to the extent of necessity or need, no worldly sanctions or rewards are generally envisaged for those who obey or violate the provisions concerning the situation of *tahsinīyyāt*.³² This has led to the view that this part of the *maslahat* is only related to morality and is outside the scope of *fiqh*.³³ In fact, the *fiqh* has prescribed different provisions and evaluations for these situations, such as *fard*, *wācib*, *haram*, *mendub* and *makruh*. The fact that the consequences are otherworldly does not mean that an area is outside the scope of *fiqh*. On the contrary, *fiqh* states that actions have both worldly and otherworldly sanctions or rewards and their rulings.³⁴ In this respect, *fiqh* differs from the modern definition of law. As a matter of fact, as will be seen in the next part of the study, this distinction has led to the characterization of Islamic law. The exclusion of this area from *fiqh* is a direct manifestation of secularization.

Fiqh, like morality, originates from the divine will and encompasses all areas of life. In this respect, a system based on morality is formed.³⁵ Analyzing *fiqh* separately from morality reveals a return to the concept of law in today's sense. However, rule of law is a form of morality subject to a worldly sanction by public authority. As such, the term "minimum morality" is used for law.³⁶ Modern legal systems, on the other hand, have problems with the justification of morality. There are many theories on the justification of morality and these theories shape the law.³⁷ In addition, these theories can also see a situation that was previously considered immoral as moral. For example, acts of euthanasia or adultery may be considered unlawful on the grounds of immorality, but may later be considered lawful.³⁸ The rules of jurisprudence and the rules of morality are derived from the same divine source and there is no contradiction between them.

Fiqh does not only examine the area sanctioned by public authority. The rulings of *fiqh* are classified as *diyānī* (religious) and *qāḍā'ī* (legal) concerning their otherworldly and worldly consequences.³⁹ In fact, this classification was not created for the sole purpose of secularization and to make a distinction between the otherworldly and the worldly among the rulings of *fiqh*. This classification is used to express the situation in which a ruling that is actually *haram* is juridically permissible due to reasons such as the fact that the evidence does not always reflect reality, security and stability of law.⁴⁰ Therefore, the judicial decision does not turn

³² Al-Ghazālī, *al-Mustasfā*, 174–175; al-Shāṭibī, *al-Muwāfakāt*, II/17–23; Ibn Āshūr, *Maqāṣid al-Shari'ati al-Islamiyya (Philosophy of Islamic Law)* (İstanbul: Rağbet Yayınları, 2013), 221–223; İbrahim Kâfi Dönmez, "Maslahat," *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* 28 (2003): 82; Ertuğrul Boynukalın, "Makāsidi'sh-Şeria," *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* 27 (2003): 424–425.

³³ Abdurrahman Taha, *Ahlak Sorunsalı* (İstanbul: Pınar Yayınları, 2021), 74.

³⁴ Köksal, "Fıkıh, Ahlak ve Vicdan," 84; Türcan, *İslam Hukuk Biliminde Hukuk Normu*, 15.

³⁵ Ahmet Yaman, "Fıkıh – Ahlak İlişkisi İslâm Ameli Ahlakının İlke ve Uygulamaları Çerçevesinde Bir Giriş," *Usul İslam Araştırmaları* 9, no. 9 (2008): 102–103; Bardakoğlu, "Ahlakın Fıkıh Kuralları Arasında Buharlaşması," *Eskiye* 35 (2017): 62.

³⁶ Ahmet Yaman, "Fakih ve Ahlak – Fıkıh Etiği Üzerine Bazı Notlar-," *Usul İslam Araştırmaları* 26 (2016): 8; Bardakoğlu, "Ahlakın Fıkıh Kuralları Arasında Buharlaşması," 59.

³⁷ Taha, *Ahlak Sorunsalı*, 24–26.

³⁸ Muhammed Sulu, "Ötenazi Üzerine," *MÜHF-HAD* 22, no. 2 (2016): 561–565; Özge Demirörs and Sevinç Arslan Hızal, "Türk Ceza Hukuku Açısından Ötenazi," *Ankara Üniversitesi Hukuk Fakültesi Dergisi* 65, no. 4 (2016): 1492–1495.

³⁹ Talip Türcan, "İslâm Hukukunda İki Farklı Geçerlilik Alanı: Kazâi ve Diyâni Hüküm Ayırımı," *İslâmi Araştırmalar Dergisi* 19, no. 1 (2006): 160–161; Davut Yaylalı, "İslâm Hukukunda Kazâi-Diyâni Hüküm Ayırımı," *Dini Araştırmalar* 5, no. 15 (2003): 29; Köksal, "Fıkıh, Ahlak ve Vicdan," 84.

⁴⁰ Türcan, "İslâm Hukukunda İki Farklı Geçerlilik Alanı," 160; Yaylalı, "İslâm Hukukunda Kazâi-Diyâni Hüküm Ayırımı," 32–33; Fatih Orhan, "Hukuki Normların Ahlakilik Sorunu ve Fıkıhın Buna Yaklaşımı," in *Olağandışı Dönemlerde Ahlak ve Vicdan Ekseninde Değişim, Süretilik ve Sürdürülebilirlik*, vol. 1 (Konya: Türkiye İmam Hatipliler Vakfı Yayınları, 2021), 184–186.

the haram into halal.⁴¹ This situation reveals that *fiqh* is also directly concerned with the otherworldly. However, based on this distinction, one gets the impression that *fiqh* is concerned with the *qāḍā'ī*, and the conceptualization of Islamic law is influenced by this distinction. This understanding of the distinction between *diyānī* and *qāḍā'ī* seems to be a manifestation of the secularization of *fiqh*.

Separating *fiqh* and morality as a classification is not only a matter of definition. In the process leading to this distinction, different situations that led to secularization emerged. The first of these reasons is the prioritization of form over content. Rather than why a behavior is performed, the focus has been on the ways in which this worship can be performed and the content has been put on the back burner. This applies to different areas of *fiqh*, such as prayer and fasting, as well as different areas of *fiqh* such as sale and lease contracts.⁴² Another reason for this situation is that while the rules are brought to the forefront, the purpose of these rules is pushed to the background. Even if the purpose of a rule that was established in a certain period has been forgotten, there are those who advocate the continued application of this rule.⁴³ Another reason is that the areas of public law were not analyzed much by the jurists in the development process of classical *fiqh*. It has been criticized that more weight has been given to the private law field when more examination could have been made in this field on public morality and the measures that the public authority should take to protect public morality.⁴⁴ The loss of the attitude of acting in an *iḥsān* while doing a job appears as an important reason that leads to secularization. Because while people only acted with the aim of not violating an imperative norm, they lost the habit of doing what is better, what is recommended.⁴⁵ The detachment of issues from the whole of *fiqh* by dealing with them separately is also expressed as a cause of secularization because it leads to the forgetting of the general objectives of *fiqh*.⁴⁶ The general opinion that the gate of *ijtihād* was closed⁴⁷ led to the fact that *fiqh* was not seen as a living structure from within life by prioritizing transmission over *ijtihād* over time.⁴⁸ This situation affected secularization by causing *fiqh* to be seen as a more frozen structure.

Even though it excluded matters of belief and ethics, *fiqh* continued to express a broad content. *Fiqh* began to be classified as “*uṣūl al-fiqh (fiqh methodology)*”⁴⁹ which deals with the proofs from which the rulings are derived and the methods of obtaining rulings through these proofs and “*furu' al-fiqh (jurisprudence)*”⁵⁰ which deals with practical issues. Over time, *furu' al-fiqh* has been analyzed in different classifications. The part related to the halal and haram matters between the person and Allāh was classified as *ibādāt*, while the part related to politics, economy and law was classified as *mua'mālāt*. Later on, the section on criminal law was

⁴¹ Abū Dāwūd, *Sünen*, Bab el-Akdiye, no. 7; Al-Shāfi'ī, *al-Umm li al-Shāfi'ī*, vol. 7 (Bayrūt: Dār al-Fikr, 1990), 7/40; Yaylı, “İslām Hukukunda Kazâi-Diyânî Hüküm Ayırımı,” 30–31.

⁴² Yaman, “Fıkıh – Ahlâk İlişkisi,” 95–96; Bardakoğlu, “Ahlâkın Fıkıh Kuralları Arasında Buharlaşması,” 62–63.

⁴³ Bardakoğlu, “Ahlâkın Fıkıh Kuralları Arasında Buharlaşması,” 64.

⁴⁴ Bardakoğlu, “Ahlâkın Fıkıh Kuralları Arasında Buharlaşması,” 65.

⁴⁵ Bardakoğlu, “Ahlâkın Fıkıh Kuralları Arasında Buharlaşması,” 66.

⁴⁶ Bardakoğlu, “Ahlâkın Fıkıh Kuralları Arasında Buharlaşması,” 70.

⁴⁷ Joseph Schacht, *An Introduction to Islamic Law* (Ankara: Otto Yayınları, 2018), 69–71; see Wael B. Hallaq, “Was the Gate of Ijtihad Closed?” *International Journal of Middle East Studies* 16, no. 1 (1984): 20–21.

⁴⁸ Bardakoğlu, “Ahlâkın Fıkıh Kuralları Arasında Buharlaşması,” 71.

⁴⁹ Al-Ghazālî, *al-Mustasfâ*, 5; Taşköprizâde Ahmed Efendi, *Miftâh alsa'âda wa mişbâh al-siyâda fî mawzû'ati al-'ulûm* (Bayrūt: Dār al-Kutub al-'Ilmiyya, 1985), 163; Bilmen, *Hukuk-ı İslâmiyye ve Istilahatı Fikiyye Kamusu*, I/15

⁵⁰ Ahmet Akgündüz, “Fürû,” *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* 13 (1996): 249.

separated from the field of *mua'mālāt* and classified as *ukubāt*, and the section on family law was separated and classified under the title of *munākahāt*.⁵¹

The aim of *fiqh* is expressed as people's attaining happiness both in this world and in the hereafter by knowing and acting in accordance with the shar'i-practical provisions. Although shar'i-practical issues were counted among the subjects of *fiqh* and the fields of belief and morality were excluded from its scope, it was emphasized that the aim of *fiqh* was happiness in the hereafter as well.⁵² However, even though scholars such as al-Ghazālī criticized the jurists for secularizing and using *fiqh* for worldly interests, it was generally emphasized that *fiqh* aims for happiness in the hereafter. However, over time, in contradiction with this aim of *fiqh*, the conceptualization of "Islamic law" (*hukuk-ı İslâmiyye*) was introduced by removing the field of worship from the concept of *fiqh*.

3. Development in The Focus of The Concepts of Islamic Law and Muslims' Fiqh

It has been stated that the conceptualization of *fiqh* as Islamic law was first realized with the *Mecelle* prepared under the chairmanship of Ahmet Cevdet Pasha during the *Tanzimat* period.⁵³ This is based on the fact that the first article of the *Mecelle*, while defining the science of *fiqh*, states that this science consists of the rulings on *ibādāt* that pertain to the hereafter and the rulings on *munākahāt*, *mua'mālāt* and *ukubāt* that pertain to the world.⁵⁴ Although the main basis of the distinction here is the relations between people and their obligations directly to Allāh, the definition of worldly rulings gives the impression that it prepares the conceptualization of Islamic law and that there is an area of secularization within *fiqh*. However, in the continuation of the explanations on the first article, it is stated that the part called worldly rulings are the *sharī'ah* regulations that human beings need in line with the will of Allāh⁵⁵ and it is understood that this distinction is a classification in terms of subjects. Therefore, although it is not correct to say that the *Mecelle* directly formed the conceptualization of Islamic law or is a manifestation of secularization, it can be stated that it contains a definition in terms of transition to the conceptualization of Islamic law.

After the *Medjelle*, Ziya Gökalp's approach to *fiqh* is observed to be divided into "*menâsik-ı İslâmiye*" (Islamic rituals) and "*hukuk-ı İslâmiye*" (Islamic law). Thus, Ziya Gökalp directly used the concept of Islamic law by separating the area related to worship.⁵⁶ This division faced criticism from scholars of the time, stating that it was not suitable for *fiqh*.⁵⁷ However, there were no criticisms directly against the concept of *hukuk-ı İslâmiye* (Islamic law).⁵⁸ It is highly probable that Gökalp was influenced by the West in making this distinction. As a matter of fact, he considered law as a field in which society should be westernized.⁵⁹ The fact that the Western understanding of law does not include matters of belief and morality, nor does it include the

⁵¹ Ali Haydar Efendi, *Dureru al-Hukkām Sharh Medjelle al-Ahkām*, I/29–30; Bilmen, *Hukuk-ı İslâmiyye ve Istılahatı Fıkıyye Kamusu*, I/14; Yaman and Çalış, *İslam Hukuku*, 22; Bilal Aybakan, "Muâmelât," *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* 30 (2005): 318; Bardakoglu, "Ceza (Fıkıh)," *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* 7 (1993): 477.

⁵² Hacı Reşit Paşa, *Ruh al-Medjelle*, vol. 1 (İstanbul: Dâr al-Hilafet al-Âliye, 1326), 65; Yusuf Qarađawî, *İslam Hukuku, Evrensellik-Süreklilik* (İstanbul: Nida Yayınları, 2016), 33.

⁵³ Recep Şentürk, *İnsan Hakları ve İslâm: Sosyolojik ve Fikhi Yaklaşımlar* (İstanbul: Etkileşim Yayınları, 2007), 146.

⁵⁴ Ali Himmet Berki, *Açıklamalı Mecelle-i Ahkâm-ı Adliyye* (İstanbul: Hikmet Yayınları, 1979), 17.

⁵⁵ Berki, *Açıklamalı Mecelle-i Ahkâm-ı Adliyye*, 18.

⁵⁶ Ziya Gökalp, "Fıkıh ve İctimâiyat," *İslâm Mecmuası* 1, no. 2 (1329): 42.

⁵⁷ Şentürk, *İnsan Hakları ve İslâm*, 164.

⁵⁸ Talip Türcan, "Fıkıhdan İslâm Hukukuna," *İslam Hukuku Araştırmaları Dergisi* 6 (2005): 11–22.

⁵⁹ Funda Arslan Bilgin, "Ziya Gökalp ve Batı Algısı," *Medeniyet ve Toplum Dergisi* 4, no. 1 (2020): 106.

field of worship, which is solely between the person and Allāh, paved the way for such a distinction to be made.

Rather than Gökalp's definition, it was Schacht's use of the concept of Islamic law that made an impact all over the world. Schacht did not see *fiqh* as a legal order as a whole, but stated that within the scope of *fiqh*, there was an area mixed with non-legal elements that could be expressed with the concept of Islamic law.⁶⁰ The concept of Islamic law, which Schacht used for *fiqh* by excluding the field of ibādāt, became widespread in the West. In Western literature, *fiqh* is defined by attributing law to religion (e.g. "Islamic Law" in English, "Droit Musulman - Loi Islamique" in French, "Islamisches Recht" in German). This conceptualization in the West started to be used by Muslims as well, and in Arabic, it became "*al-Fiqh al-Islāmī*" and in Turkish, it is referred to as "*İslām hukuku*". This term entered Turkish in the early 20th century.⁶¹ With this conceptualization, in addition to the field of belief, the subjective moral rules, such as ibādāt and the prohibition of direct suicide, were excluded from the scope of *fiqh*. The advisory provisions of *fiqh* have been relegated to the background and its imperative and prohibitive provisions have been brought to the forefront. While *fiqh* included even the regulation of the behavior of a person living alone on an island, the concept of Islamic law included regulations only in areas where there was a social life. Furthermore, the source of the concept also changed. The term *fiqh* which directly originated from the *Qur'ān* and hadiths, was replaced by the term Islamic law borrowed from the West.⁶² This has not completely secularized the concept of Islamic law, but it has increased the change in the concept of *fiqh* in the first period and made it express a field equivalent to the scope of modern law. Therefore, this can also be considered as a degree of secularization. In this direction, some of those who worked in the field of Islamic law in the 20th century argued that *fiqh* should be understood with this scope.⁶³ Although the scope of the concept of Islamic law is determined in this way, there are Islamic jurists today who use this concept directly instead of the concept of *fiqh*.⁶⁴ Therefore, the use of this concept today is due to the widespread use of the concept and does not always indicate a conscious choice.

Fiqh, which was deduced by the jurists by deducing from the detailed evidences, lost its meaning of being the law of the jurists when the word Islam was added to the concept of law and it was defined as the attribution of law to religion. In this form, *fiqh* was perceived as if it had no other source, and it began to give the impression that its formation was based entirely on the Qur'an and hadiths and that the jurists did not have any contribution. This conceptualization created the impression that *fiqh* as a whole was closed to discussion and change, and that any human intervention had no share in its formation. It also led to the sanctification of the rulings that the jurists had obtained as a result of their efforts.⁶⁵ This situation was interpreted as the

⁶⁰ Schacht, *An Introduction to Islamic Law*, 201.

⁶¹ For different instances where the term is used see Gökalp, "Fıkıh ve İctimâiyat," 42; Haydar Efendi, "Hikmet-i Hukuk-ı İslâmiyye," *Sebilü'r-Reşad* 1, no. 1 (1324): 15; Troyskili Ahmet Taceddin, "Duma ve Hukuk-ı İslâmiyye," *Tearüf-i Müslimin* 1, no. 5 (1326): 80.

⁶² Gencer, "Bizzat İslam Düşüncesi Olarak Fıkıh," 39; Türcan, "Fıkıhdan İslâm Hukukuna," 15–17; Akman and Ünal, "Mecelle 1. Madde Doğrultusunda Fıkıh, Hukuk, İslâm Hukuku ve İslâm Hukukçusu," 24–25.

⁶³ Musa Carullah Bigiyef, *Kavâid-i Fikhiyye* (Ankara: Ankara Okulu Yayınları, 2018), 129.

⁶⁴ Yaman and Çalış, *İslam Hukuku*, 25; Abdullah Acar, "İslam ve Batı Medeniyetinin Hak, Emanet ve Adalet Anlayışları," *Necmettin Erbakan Üniversitesi İlahiyat Fakültesi Dergisi* 47 (2019): 294, 304.

⁶⁵ Qarađawî, *İslâm Hukukuna Giriş* (İstanbul: Nida Yayınları, 2019), 32; Yaman and Çalış, *İslam Hukuku*, 25; H. Yunus Apaydın, *Din ve Fıkıh Yazıları*, edited by Murat Şimşek (İstanbul: Haciveyiszade İlim ve Kültür Vakfı Yayınları, 2018), 47.

lack of universality and continuity in *fiqh*, and in order to overcome this situation, advocates of a new view emerged that conceptualized *fiqh* not as Islamic law but as the *fiqh* of Muslims.⁶⁶

Christian theologians interpreted the Bible according to changing times and places and claimed that the foundations of secularization stemmed directly from their holy book.⁶⁷ Schacht referred to the *Sunnah* as a living tradition.⁶⁸ With this expression, he attached great importance to the traditions of societies in determining the provisions of *fiqh*. There are different Islamic jurists who have different views in this direction. Recently, there are writers who argue that *fiqh* should not be called Islamic *fiqh*, but the *fiqh* of Muslims, and that *fiqh* has not come to be believed in, and that it should be separated from belief in this respect, and that it has come to show how to behave.⁶⁹ They argue that making *fiqh* merged with belief would make it rigid and that this would be an injustice to *fiqh*.⁷⁰ This viewpoint can lead to the conclusion that individuals actions are independent of their beliefs and that rulings on behavior can be determined contrary to the purposes and moral values of Islam, allowing for the possibility of a secularized understanding of *fiqh*. As a matter of fact, in line with this view, the belief that the implementation of *fiqh* is a necessity eliminates, custom is interpreted in a very broad way in determining the rulings of issues and takes the place of the *Sunnah*, and it is stated that what is essential is the culture of societies. In expressing this, they argue that they do not actually act contrary to the *Qur'ān*, but that the *Qur'ān* and hadiths texts, except for those related to belief, should be understood in line with the cultures of societies.⁷¹ Instead, explaining the changes in *fiqh* rulings with their proofs⁷² and emphasizing that this does not contradict the belief but rather is an element of the universality and continuity of *fiqh*⁷³ as a requirement of this belief will prevent jurisprudence from becoming rigid.⁷⁴ Therefore, there will be no need to define it as a field of behavior separate from belief.

Currently, the majority of Islamic jurists do not define *fiqh* as the *fiqh* of Muslims. However, they use the concept of Islamic law and deal with issues outside of practical life in their studies. They engage in discussions about matters that are not applied in societies where Islamic law is not implemented. They conduct studies even on issues they do not practice or believe in with their hearts.⁷⁵ On the contrary, there would be no problem in analyzing the solutions of *fiqh* within any legal system. However, those who are Islamic jurists today discuss issues that are not the subject of *fiqh*. Many of these studies are in the form of adapting issues that have recently entered modern legal systems, such as insurance and finance issues, into the Islamic legal system. However, in a society where *fiqh* is practiced as a whole, these issues may not even be needed. However, the fact that *fiqh* is dealt with in a formal way, independent of matters of belief and morality, causes

⁶⁶ Bardakoğlu, "Fıkıh Çözüm mü Üretir, Sorun mu?" 165–166; Kâşif Hamdi Okur, "Kur'an İslam'ı Söyleminin Fıkıh Usûlü Açısından Değerlendirilmesi (Türkiye Örneği)," in *Modernleşme, Protestanlaşma ve Selefileşme* (İstanbul: İsar Yayınları, 2019), 368–373.

⁶⁷ Altıntaş, "Teolojik Sekülerleşmenin Neden Olduğu İnanç ve Davranış Problemleri," 66.

⁶⁸ Schacht, *The Origins of Muhammadan Jurisprudence* (London: Oxford University Press, 1967), 58–62.

⁶⁹ Reshid Rizā, *Tafsir al-Qur'ān al-Hakim (Tafsir al-Manār)*, vol. 7 (Mısır: al-Hey'et al-Misriyyat al-'amma li al-kuttāb, 1990), VII/139–140; Bardakoğlu, "Fıkıh Çözüm mü Üretir, Sorun mu?" 150.

⁷⁰ Bardakoğlu, "Fıkıh Çözüm mü Üretir, Sorun mu?" 151, 174.

⁷¹ Reshid Rizā, *Tafsir al-Qur'ān al-Hakim (Tafsir al-Manār)*, VII/140; Gökalp, "Fıkıh ve İctimâiyat," 42; Abdülaziz Bayındır, "Kur'an'a ve Geleneğe Göre Sünnet," *Kitap ve Hikmet Dergisi* 31 (2020): 4–5, 11–12; Ali Bardakoğlu, *İslâm'ı Doğru Anlıyor muyuz?* (İstanbul: Kuramer Yayınları, 2019), 220–222; Bardakoğlu, "Fıkıh Çözüm mü Üretir, Sorun mu?" 154, 165–166.

⁷² Mehmet Erdoğan, *İslâm Hukukunda Ahkâmın Değişmesi* (İstanbul: MÜİFAV Yayınları, 1990), 37–86.

⁷³ Qaradâwî, *İslâm Hukuku, Evrensellik-Süreklilik*, 138–139, 173–175; Erdoğan, *İslâm Hukukunda Ahkâmın Değişmesi*, 64–65.

⁷⁴ Şentürk, *İnsan Hakları ve İslâm*, 149, 164.

⁷⁵ Sayyid Qutb, *Fî Zilâli al-Qur'ân*, vol. 1 (Bayrūt: Dār al-Shuruk, 1972), I/68.

studies to be carried out outside its purpose.⁷⁶ The fact that *fiqh* is studied in a way that is detached from life in a society that is not shaped in line with the Islamic faith shows that the understanding of *fiqh* by Islamic jurists is seriously secularized.

Conclusion

Secularization is used to express a time and place where religion becomes ineffective. This concept, which is used to express what belongs to the world, is expressed as the attitude of not taking into account beliefs in practical life at the point of making decisions and directing actions. In this regard, secularization encompasses not only the complete rejection of religion but also all stages where life is perceived as separate from religion. This does not require that a person who experiences secularization in his life should be considered as secular. Secularization is a process and appears in a relative form. Therefore, it is possible for a person to lead a religious life in general, although secularizing in certain areas of his life.

The term *fiqh* was originally used to refer to religion as a whole. Over time, the term evolved as matters of faith and ethics were dealt with under different branches of knowledge. It can be said that this classification of *fiqh* shows the first secularisation of the concept of *fiqh*, as some areas began to be excluded from its scope, even though the rulings are derived from Islamic sources. However, as stated in the definition of secularisation, it cannot be said that this situation has completely secularised *fiqh*.

Following the exclusion of belief and moral issues from the concept of *fiqh*, topics discussed under the heading of worship (*ibādāt*) were also removed. Instead, the term Islamic Law began to be used instead of *fiqh*. This shift in terminology was observed during the legal reforms of the Tanzimat period. Ottoman jurists in the Tanzimat era started using the term Islamic Law. This term was adopted by referencing Western legal terminology, associating it with religion. The narrowing scope of *fiqh*, as reflected in this term, clearly indicates the progression of secularization within *fiqh*.

In the concept of Islamic law, the attribution of law to religion has given sanctity to law as a whole. This sanctity has caused Islamic law to be understood as a rigid concept. In order to prevent this and to express that the parts of *fiqh* outside the fields of belief, morality and *ibādāt* change in line with the cultures of societies, the concept of the *fiqh* of Muslims was developed. With this concept, *fiqh* is actually detached from its origin and interpreted in accordance with the time and place in which it is lived. The limits of this interpretive activity clearly reveal a secular understanding of *fiqh*.

Today, *fiqh* is studied as a theoretical field of discussion. However, the development of *fiqh* has emerged as a result of living in a society. *Abū Hanīfa* emphasized with the title of his work "*Fiqh al-Akbar*" that belief contains the most superior subjects in *fiqh*. However, the fact that contemporary Islamic jurists, detached from faith and morality, work on *fiqh* in a society that has not been shaped in line with the Islamic faith clearly shows secularization. Therefore, Islamic jurists should not only examine different issues arising in modern legal systems under Islamic Law but also focus on how *Fiqh* can reconnect with life. Otherwise, the inevitable consequence will be the ongoing progression of secularization.

⁷⁶ Quṭb, *Fī Zilālī al-Qurʾān*, II/988.

Değerlendirme / Review

Bu makale, en az iki kör hakem tarafından incelenmiş, intihal taramasından geçmiş, araştırma ve yayın etiğine uygundur, CC BY-NC 4.0 ile lisanslanmıştır. / *This article was peer-reviewed by at least two independent reviewers and screened for plagiarism, it complies with research and publication ethics, licensed under CC BY-NC 4.0.*

Beyanlar / Declarations

The author used artificial intelligence (AI) solely for language editing and proofreading.

Kaynakça | Bibliography

- Abdul Karim Zaidān. *al-Medḥal li-dirāseti al-şerī‘ati al-İslāmiyy*. Lebanon: Müessesetü’r-Risāleti Nāshirun, 2005.
- Abū Dāwūd, Sulayman Ibn al-‘Ash‘ath Ibn Ishāq al-Sajistānī. *Sunen*. Bayrūt: al-Mektebat al-‘Asriyye, n.d.
- Abū Zahra, Muhammed. *Methodology of Islamic Law*. Bayrūt: Dār al-Fikr, n.d.
- Acar, Abdullah. “İslam ve Batı Medeniyetinin Hak, Emanet ve Adalet Anlayışları.” *Necmettin Erbakan Üniversitesi İlahiyat Fakültesi Dergisi* 47 (2019): 277–312.
- Akgündüz, Ahmet. “Fürû.” *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* 13 (1996): 249–250.
- Akman, Ahmet, and Mustafa Ünal. “Mecelle 1. Madde Doğrultusunda Fıkıh, Hukuk, İslâm Hukuku ve İslâm Hukukçusu.” In *Mecelle Üzerine Etütler I*, edited by Ahmet Akman and Mustafa Ünal. Ankara: Adalet Yayınevi, 2020.
- Aktay, Yasin. *İslam ve Sekülerleşmenin Kaynakları*. İstanbul: Vadi Yayınları, 2021.
- Ali Haydar Efendi, Hocaeminefendizâde. *Dureru al-Hukkām Sharh Medjelle al-Ahkām*. Vol. 1. İstanbul: Diyanet İşleri Başkanlığı Yayınları, 2017.
- Al-Baḍāwī, Nāşir al-Dīn Abū Saīd (Abū Muhammed) Abdullāh b. Ömer b. Muhammed. *al-Ġāyet al-Ḳuşvā fi Dirāyet al-Fetvā*. Vol. 1. Bayrūt: Dār al-Berāir al-İslāmiyya, 1429.
- Al-Baḍāwī, Nāşir al-Dīn Abū Saīd (Abū Muhammed) Abdullāh b. Ömer b. Muhammed. *Minhāj al-wuşul Ilā ‘ilmi al-Uşul*. Bayrūt: Dār Ibn Hazm, 2008.
- Altıntaş, Ramazan. *Din ve Sekülerleşme*. İstanbul: Pınar Yayınları, 2005.
- Altıntaş, Ramazan. “Teolojik Sekülerleşmenin Neden Olduğu İnanç ve Davranış Problemleri.” *Cumhuriyet Üniversitesi İlahiyat Fakültesi Dergisi* 6, no. 1 (2002): 55–84.
- Apaydın, H. Yunus. *Din ve Fıkıh Yazıları*. Edited by Murat Şimşek. İstanbul: Hacıveysizade İlim ve Kültür Vakfı Yayınları, 2018.
- Arslan Bilgin, Funda. “Ziya Gökalp ve Batı Algısı.” *Medeniyet ve Toplum Dergisi* 4, no. 1 (2020): 100–112.
- Attas, S. Nakib. *İslam, Sekülerizm ve Geleceğin Felsefesi*. İstanbul: İnsan Yayınları, 1995.
- Avcı, Mustafa. *Türk Hukuk Tarihi*. Ankara: Adalet Yayınevi, 2023.
- Avcı, Mustafa, Mehmet Aykanat, and İbrahim Ülker. *Hukuk Başlangıcı ve Metodoloisi*. Ankara: Adalet Yayınevi, 2023.

- Aybakan, Bilal. "Muâmelât." *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* 30 (2005): 318–319.
- Aydın, İbrahim Hakkı. "Seküler Ahlak Bağlamında Din-Ahlak İlişkisi." *Atatürk Üniversitesi İlahiyat Fakültesi Dergisi* 35 (2011): 1–23.
- Aydın, M. Âkif. *Türk Hukuk Tarihi*. İstanbul: Beta Yayınevi, 2017.
- Al-Ghazālî, Abū Hâmid. *İhyâ' u 'Ulûmî'd-Dîn*. Vol. I. Bayrût: Dâr al-Kutub al-'İlmiyyah, n.d.
- Al-Ghazālî, Abū Hâmid. *al-Mustasfâ*. Bayrût: Dâr al-Ma'rifah, 1993.
- Bardakoğlu, Ali. "Ahlâkın Fıkıh Kuralları Arasında Buharlaşması." *Eskiyeni* 35 (2017): 51–94.
- Bardakoğlu, Ali. "Ceza (Fıkıh)." *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* 7 (1993): 470–478.
- Bardakoğlu, Ali. "Fıkıh Çözüm mü Üretir, Sorun mu?" *Eskiyeni* 29 (2014): 147–178.
- Bardakoğlu, Ali. *İslâm'ı Doğru Anlıyor muyuz?* İstanbul: Kuramer Yayınları, 2019.
- Batur, Behçet. "İslam ve Sekülerleşme: İbn Halduncu Bir Çözümleme." *Sırat* 2 (2021): 35–55.
- Bayindir, Abdülaziz. "Kur'an'a ve Geleneğe Göre Sünnet." *Kitap ve Hikmet Dergisi* 31 (2020): 4–22.
- Bayer, Ali. *Sekülerleşme ve Din*. Ankara: İksad Yayınları, 2022.
- Berki, Ali Himmet. *Açıklamalı Mecelle-i Ahkâm-ı Adliyye*. İstanbul: Hikmet Yayınları, 1979.
- Beşer, Faruk. *Bilgi, Fıkıh ve İctihat*. İstanbul: Nun Yayınları, 2016.
- Bigiyef, Musa Carullah. *Kavâid-i Fıkhiyye*. Ankara: Ankara Okulu Yayınları, 2018.
- Bilmen, Ömer Nasuhi. *Hukuk-ı İslâmiyye ve Istılahatı Fıkhiyye Kamusu*. Vol. 1. İstanbul: Bilmen Yayınevi, 1976.
- Boynukalın, Ertuğrul. "Makâsîdüş-Şeria." *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* 27 (2003): 423–427.
- Canpolat, Murat. "Hukukî Açıdan Sekülerizm ve İslâmiyet." Master's thesis, Fırat University Institute of Social Science, 2007.
- Cin, Halil, and Ahmet Akgündüz. *Türk Hukuk Tarihi*. İstanbul: OSAV Yayınları, 2017.
- Cin, Halil, and Gül Akyılmaz. *Türk Hukuk Tarihi*. Ankara: Seçkin Yayınevi, 2024.
- Commission. *Mawsûat Nadratu al-Na'im Fî Mekarimi Ahlak al-Rasuli al-Qarim* (s.a.v). Jeddah: Dâr al-Wesile, 1998.
- Çelik, Celaleddin. "Sekülerleşmenin Kuramsal Sosyolojik Serüveni." *Journal of Islamic Research* 28, no. 3 (2017): 209–223.
- Demirörs, Özge, and Sevinç Arslan Hızal. "Türk Ceza Hukuku Açısından Ötenazi." *Ankara Üniversitesi Hukuk Fakültesi Dergisi* 65, no. 4 (2016): 1481–1516.
- Dönmez, İbrahim Kâfi. "Maslahat." *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* 28 (2003): 79–94.
- Erdoğan, Mehmet. *İslâm Hukukunda Ahkâmın Değişmesi*. İstanbul: MÜİFAV Yayınları, 1990.
- Ertit, Volkan. "Birbirinin Yerine Kullanılan İki Farklı Kavram: Sekülerleşme ve Laiklik." *Akademik İncelemeler Dergisi* 9, no. 1 (2014): 103–124.
- Ertit, Volkan. *Sekülerleşme Teorisi: Sekülerleşen Türkiye'nin Analizi*. Ankara: Liberte Yayınları, 2020.
- Francis, Robinson. "İslam'da Sekülerleşme." *Sosyal Bilimler Enstitüsü Dergisi* 13 (2002): 343–355.

- Gencer, Bedri. "Bizzat İslam Düşüncesi Olarak Fıkıh." *Mostar* 84 (2012): 34–39.
- Gökalp, Ziya. "Fıkıh ve İçtimâiyat." *İslâm Mecmuası* 1, no. 2 (1329): 40–45.
- Gözler, Kemal. *Hukuka Giriş*. Bursa: Ekin Yayınevi, 2020.
- Hacı Reşit Paşa. *Ruh al-Medjelle*. Vol. 1. İstanbul: Dār al-Hilafet al-Âliye, 1326.
- Hallaq, Wael B. "Was the Gate of Ijtihad Closed?" *International Journal of Middle East Studies* 16, no. 1 (1984): 3–41.
- Haydar Efendi. "Hikmet-i Hukuk-ı İslâmiyye." *Sebilü'r-Reşad* 1, no. 1 (1324): 15–16.
- Al-İsfahânî, Abû al-Ğâsım Hüseyin b Muḥammed b. er-Râğıb. *al-Mufredât fî ġarîbi al-Qur'ân*. Dimashq: Dār al-Ğalem, 1412.
- Ibn Âşhûr, Muhammad Tâhir. *Maqâşid al-Shariati al-Islamiyya (Philosophy of Islamic Law)*. İstanbul: Rağbet Yayınları, 2013.
- Karakoç, İrem. *Rûhü'l-Mecelle (Medhal)*. Ankara: Yetin Yayınevi, 2022.
- Karaman, Hayreddin. "Fıkıh." *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* 13 (1996): 1–14.
- Köksal, Asım Cüneyd. "Fıkıh, Ahlak ve Vicdan." *Sabah Ülkesi* 63 (2020): 84–89.
- Küçükcan, Talip. "Modernleşme ve Sekülerleşme Kuramları Bağlamında Din, Toplumsal Değişme ve İslâm Dünyası." *İslam Araştırmaları Dergisi* 13 (2005): 109–128.
- Majmûatu min al-Muellifin. *al-Mausûat al-Fiqhiyyat al-Kuweitiyya*. Vol. 32. Kuwayt: Vizâret al-Ewkâf wa al-Shuûni al-İslâmiyya, 1404.
- Midilli, Muharrem. "Allah Hakkı ve Kul Hakkı Arasında Hanefi Ceza Hukukunun Kamusalılığı." *KTÜİFD* 4, no. 1 (2017): 65–87.
- Okumuş, Ejder. "Modernleşme, Sekülerleşme ve Din." *Kamu Hukuku Arşivi* 10 (2007): 1–22.
- Okur, Kaşif Hamdi. "Kur'an İslam'ı Söyleminin Fıkıh Usûlü Açısından Değerlendirilmesi (Türkiye Örneği)." In *Modernleşme, Protestanlaşma ve Selefileşme*. İstanbul: İsar Yayınları, 2019.
- Orhan, Fatih. "Hukukî Normların Ahlâkîlik Sorunu ve Fıkıhın Buna Yaklaşımı." In *Olağandışı Dönemlerde Ahlak ve Vicdan Ekseninde Değişim, Sürekiilik ve Sürdürülebilirlik*. Vol. 1. Konya: Türkiye İmam Hatipliler Vakfı Yayınları, 2021.
- Özden, Mustafa. "Müslüman Kelamında Sekülerleşme Süreci." PhD dissertation, Ankara University Institute of Social Science, Ankara, 2005.
- Qarađawî, Yusuf. *İslam Hukuku, Evrensellik-Süreklilik*. İstanbul: Nida Yayınları, 2016.
- Qarađawî, Yusuf. *İslâm Hukukuna Giriş*. İstanbul: Nida Yayınları, 2019.
- Quṭb, Sayyid. *Fî Zilâli al-Qur'ân*. Vol. 1. Bayrût: Dār al-Shuruk, 1972.
- Reshîd Rizâ, Muhammad. *Tafsîr al-Qur'ân al-Hakîm (Tafsîr al-Manâr)*. Vol. 7. Mişr: al-Hey'et al-Mısriyyat al-‘ammeti li al-kuttâb, 1990.
- Sadr Al-Sheria, Ubeydullâh b Mas'ûd al-Mahbûbi al-Bukhârî. *Tenkih al-Uşûl Fi İlmi'l-Uşûl*. Mişr: Matbaat-ı al-Mahmûdiyya al-Tijâriyyat bi al-Azhar, 1356.

- Schacht, Joseph. *An Introduction to Islamic Law*. Ankara: Otto Yayınları, 2018.
- Schacht, Joseph. *The Origins of Muhammadan Jurisprudence*. London: Oxford University Press, 1967.
- Shāh Waliyyūllāh, Ahmad b 'Abdirrahīm b. al-Shahīd. *Hujjat Allāh al-Bāliġa*. Edited by Es-Seyyid Sābık. Vol. 1. Bayrūt: Dār al-Jil, 1426.
- Al-Shāfi 'ī, Abū 'Abdullah Muḥammad b Idrīs. *al-Umm li al-Shāfi 'ī*. Vol. 7. Bayrūt: Dār al-Fikr, 1990.
- al-Shātibī, Abī Ishāq Ibrāhīm Ibn Mūsā Ibn Muḥammad al-Lakhmī. *al-Muwāfakāt*. Edited by Es-Selmān, Abū 'Ubayda Mashūr b. Hasen. Vol. 2. Dār Ibn 'Affān, 1417.
- Al-Taftāzānī, Mas'ūd b 'Omer b 'Abdullāh. *Sharḥ al-Talwīḥ 'alā al-Tawḍīḥ*. Vol. 1. Miṣr: Mektebetu Shabīḥ, 1957.
- Şentürk, Recep. *İnsan Hakları ve İslām: Sosyolojik ve Fıkhî Yaklaşımlar*. İstanbul: Etkileşim Yayınları, 2007.
- Sulu, Muhammed. "Ötenazi Üzerine." *MÜHF-HAD* 22, no. 2 (2016): 551–574.
- Sümer, Haluk Hadi. *Hukuka Giriş Kavramlar & Kurumlar*. Ankara: Seçkin Yayınevi, 2023.
- Taha, Abdurrahman. *Ahlak Sorunsalı*. İstanbul: Pınar Yayınları, 2021.
- Taşköprizāde Ahmed Efendi. *Miftāḥ alsa 'āda wa mişbāḥ al-siyāda fī mawzū 'āti al- 'ulūm*. Bayrūt: Dār al-Kutub al- 'Ilmiyya, 1985.
- Tekin, Mustafa. "Batı'da Sekülerlik ve Türkiye Müslümanlığının Seküler İçerimleri." *İnsan ve Toplum* 2, no. 4 (2012): 181–204.
- Troyskili Ahmed Taceddin. "Duma ve Hukuk-ı İslāmiyye." *Tearüf-i Müslimin* 1, no. 5 (1326): 80–82.
- Türçan, Talip. "Fıkıhdan İslām Hukukuna." *İslam Hukuku Araştırmaları Dergisi* 6 (2005): 11–22.
- Türçan, Talip. "İslām Hukukunda İki Farklı Geçerlilik Alanı: Kazâi ve Diyâni Hüküm Ayırımı." *İslâmi Araştırmalar Dergisi* 19, no. 1 (2006): 159–167.
- Türçan, Talip. *İslam Hukuk Biliminde Hukuk Normu*. Ankara: Ankara Okulu Yayınları, 2016.
- Uysal, Elif. "Din, Uluslararası İlişkiler ve Dış Politika Üzerine Kavramsal Bir Çerçeve." *Necmettin Erbakan Üniversitesi Siyasal Bilgiler Fakültesi Dergisi* 4, no. 1 (2022): 85–99.
- Üçok, Coşkun, Ahmet Mumcu, and Gülnihal Bozkurt. *Türk Hukuk Tarihi*. Ankara: Turhan Kitabevi, 2019.
- Yaman, Ahmet. "Fakih ve Ahlāk - Fıkıh Etiği Üzerine Bazı Notlar-." *Usul İslam Araştırmaları* 26 (2016): 7–550.
- Yaman, Ahmet. "Fıkıh – Ahlāk İlişkisi İslām Amelî Ahlākının İlke ve Uygulamaları Çerçevesinde Bir Giriş." *Usul İslam Araştırmaları* 9, no. 9 (2008): 87–118.
- Yaman, Ahmet, and Halit Çalış. *İslam Hukuku*. Ankara: Bilimsel Araştırma Yayınları, 2018.
- Yaylalı, Davut. "İslām Hukukunda Kazâi-Diyâni Hüküm Ayırımı." *Dini Araştırmalar* 5, no. 15 (2003): 29–36.
- Yıldız, Kemal. "Din Adına Konuşmanın Fıkıh-Tefakkuh Açısından Değerlendirilmesi." *Dinbilimleri Akademik Araştırma Dergisi* 5, no. 2: 159–178.
- Yılmaz, Yasin. "Peter Ludwig Berger'in Sekülerizm Anlayışı ve Türkiye Gözlemleri." *Tezkire* 30, no. 77 (2021): 165–178.