REVIEW

Rewriting Islamic Law: The Opinions of the ʿUlamā towards Codification of Personal Status Law in Egypt by Tarek Elgawhary, 2019. New Jersey: Gorgias Press, £95, xi +223 pp. ISBN: 978-1-4632-3908-4 (hbk).

Sumeyra YAKAR
Iğdır University, Iğdır, Turkey
sumeyra.yakar@igdir.edu.tr

Rewriting Islamic Law: The Opinions of the ʿUlamā Towards Codification of Personal Status Law in Egypt written by Tarek Elgawhary is a valuable academic contribution about the codification of Islamic law in general and its reflection of Egyptian legal system in particular. The central theme of the book is to scrutinize the underlying logic of the codification, its implications for personal status laws, and contextual relationship between legal scholars (*ʿulamā*) and political authorities in Egypt at the end of 19th century. The structure of the book does not follow a specific chronology during the representation of the scholars and their opinions. This makes following the chronological development of ideologies inconsiderably complex and complicated for the readers.

The introduction of the book provides a sensibly structured approach to evidence the transnational dynamics of codification attempts during the late period of the Ottoman Sultanate. The book comprises four main chapters that are organized in accordance with the advocative or rejective opinions of scholars related to codification. In each chapter, the author pursues a specific outline in which the scholar's educational life, his intellectual opinion regarding codification and his legal approach related to thrice-pronounced divorce ruling are respectively introduced. While some chapters are more convincing than others in terms of legal infrastructure, each chapter is at least likely to make the reader conceptualize the debates of codification and realize the methodological diversity within the scope of Islamic law.

The introduced scholars hold different educational backgrounds ranging from secular to traditionallly trained ones which enable readers to realize the nuanced details of their codification arguments. The first chapter introduces positive assertions and legal contributions of al-Minyāwī and Qadrī Pasha for the initial period of codifying personal status law (p. 45, 58). Although the state appointed legal committee managed to form a code of law for Egyptian citizens, methodological ambiguity concerning the eclectic approach (*talfīq*) brought pressure on their attempts. There are different types of eclectic approaches within the Islamic law system as Fekry explains.[1] Firstly, a scholar can choose a practical ruling among other schools' opinions (*furūʿ*) in accordance with the capacity of ruling to provide an applicable solution for any perplexing issues, without taking into account its legal methodology. The practicality and applicability of the chosen ruling is the main consideration for the scholars who adopt this eclectic approach. Secondly, a particular methodology (*uṣūl*) of school of law is pursued with the intent of providing an appropriate solution that is not solved with the

methodology of the affiliated school. Rather than selecting a practical ruling, the focus of the scholars who espouse the second eclectic approach is to assess the evidence and to identify an appropriate methodology among legal methodologies that exist within other schools with the intent of producing a legal solution. For the first two chapters, the author refers frequently to scholars' application of eclectic approach when they opt for a specific ruling among other schools' rulings, but he barely mentions what type of eclectic approach they espouse during the selection process of rulings. It would be useful to see more explanations about the methodology that these scholars applied in order to reach the solution. While the first eclectic approach gives precedence to the pragmatic applicability of a legal ruling, the second eclectic approach prioritizes the legal compatibility with the classical methodology of Islamic law. Taking only the decision without the methodology will create problems in the practical implementation of rulings with regard to an uncertain method of ruling. Since the school affiliation of citizens shows variety either being a follower of Hanafī, Shāfī or Mālikī, as common schools of law in Egypt, people will intentionally choose not to obey the codified ruling.

In chapter two, the reformist scholar, ʿAbduh and the traditional scholar, Shākir seem to advocate codification with the eclectic approach in order to protect the Islamic legal system from infiltration of Western norms and to produce an applicable legal system for the solution of personal problems (p. 106). They, especially Shākir, identify the failure of legal system with the individual reasoning of scholars and offer collective reasoning as a solution to protect the Islamic identity of Muslim world. The legal debates of supportive scholars not only evince their struggles to avoid the Western influence and the failure of Muslim scholars to compete with modern legal standards but also display their zeal to evidence the practicality and compatibility of Islamic law with the exigencies of the modern world through codifying it. The main argument of the scholars who support the eclectic approach is that the *sharīʿa* is large enough to create a codified civil law rather than adopting the codes of Western legal system during the codification process of personal status law (pp. 99, 104).

Chapter three demonstrates an intellectual overlap of two opposite scholars towards the rejection of codification. While Riḍā symbolizes a modernist and reformist figure who emphasizes the necessity of developing an approach depending on the *sharīʿa* centered ideology, a conservative and classical scholar, al-Kawtharī, supports the imitation-based *sharīʿa* system by arguing that the compilation of the existing legal rulings within the four canonical schools of law is sufficient and offers an authoritative interpretation of the primary sources (pp. 115, 136). Al-Kawsarī's anti-reform position and support of imitation (*taqlīd*), as the author implies, induce him to defend the schools of law and to reject the codification of personal status law. He does not lean towards the idea of choosing one legal opinion without the knowledge of rulings' methodological background (p. 143). From the view of these two scholars, the formulation of codified personal status law is a direct threat to 'inherited *fiqh*' which means orthodoxy. Selecting random opinions that exist within classical Islamic law or taking the opinion of one scholar and equating it with canonical schools cause a modern manifestation of placing human reason over the revelation and classical Sunni methodology. They directly reject the concept of codification and emphasize the problematic nature of codification methodology which is applied by the scholars of the codifying committee of personal status law. The last chapter, similar to the penultimate one,

also presents negative arguments towards the outcome of codification by accepting the theoretical process of codification. As the author highlights, the distinctive feature of these scholars, including Ḥusayn and al-Muṭīʿī, arises from their intellectual endorsement to the need of codification but their negative critiques against the state authorities are owing to their non-cooperative policy with the religious scholars during the formation of codes (pp. 163, 185). This group of scholars state that the exclusion of scholars from the committee not only leads to the infiltration of Western codes into Islamic legal system but also results in losing their opportunity of proving the adoptability and applicability of Islamic law with modernity.

The main strengths of the book are its comprehensible representation of an accessible anthology regarding codification; its clear focus on personal status law; and its potential to broaden the readers' mind with respect to the intellectual diversity of scholastic debates over the codification. One has the sense that the author is dedicated to draw the framework of sophisticated discussions behind the conceptual formation of codification and the problematic nature of this process and really wishes to convince the reader about the necessity of having codified rulings. The author refers to the argument of some scholars, such as al-Minyāwī and Ḥusayn who compare French civil code with Mālikī school of law with the intent of evidencing the high proportion of integration of Mālīkī rulings into the French legal system (pp. 45, 164). During the last period of the Ottoman Sultanate, the codification is considered as a necessary solution to deal with the challenges of Western influence and domination within the Muslim territories. The author refers to the scarcity of the Ottoman intellectual context for the initiations related to the codification of Islamic law when he states: "This is not to diminish the importance of Ahmet Cevdet as a major contributor to the project of codification of Islamic law, but rather demonstrates that codification of the Islamic law in the Ottoman context did not have the same intellectual and social ramifications as it did in Egypt (p. 26)." To see further comparisons between the Egyptian civil code and the *Majalla* (which is the first codification attempt of Islamic law compiled by Ahmed Cevdet) might be more convincing for the reader to give credit to the author's argument. Ahmed Cevdet determines the main principle of codification to be the identification of a line between the rulings that do not change and those that change with respect to the time, place, and customs of the society. However, the author's emphasis on the divergent intellectual contexts and the scarcity of the Ottoman intellectual milieu oversimplifies the role of the *Majalla* since its codification methodology was mainly followed by the legal experts who participated into the codification process in Egypt.

Another point that leads to the perplexity to the reader is the author's assertion regarding the influence of the early phase of the feminist movement on the codification. The author claims that despite the fact that the supportive stance of this movement for the codification is obvious, it is difficult to observe the influence of this movement upon the intellectual debates regarding the codification process on account of being largely their intellectual works in the French language. Since the feminist movement in Egypt initially produced works in French rather than Arabic, Egyptian scholars who did not know French could not read and analyze their codification ideas. The influence of the feminist movement upon the thinking of the Egyptian scholars stayed restricted to "what they [the scholars] saw, not what they read (p. 84)." However, the argument somehow underestimates the role of

translation activities that enabled Arabic readers to acquaint themselves with the ideology of feminist movements. As the writer mentioned in Chapter one, al-Azhar was good at language education for translators, and some Egyptian scholars knew French and were able to access sources in French.

The practical implementation of codification and the intellectual discussions are deeply scrutinized in each scholars' opinion on the thrice-pronouncement divorce issue. With the intention of representing their opinions throughout practical implementation, the author chose to analyze the specific issue of thrice-pronounced divorce counting as one (revocable divorce) or three (irrevocable divorce). Reference is made to two main textual narrations; one is narrated on the authority of the Companion Rukāna and the other is narrated from ʿUmar ibn al-Khaṭṭāb (pp. 109, 150). The scholars who base their stance upon Rukāna's narration argue that it is a revocable divorce while the scholars who justify their opinion through ʿUmar's narration maintain that the thrice-pronouncement divorce is irrevocable. The comprehensive analyses of the scholars' opinions regarding the thrice-pronounced divorce not only offer to assess the practical effects of codification in daily life but also shed light on the roots of variation in the scholars' interpretation methods and their outcomes. The author cogently introduces the debates related to the authenticity of these narrations and then the interpretation of scholars who employ different legal principles to reiterate their stances. Especially for the last two chapters, the depth analysis of scholars' ideas regarding *ijtihād* (legal reasoning), *taqlīd* (unquestioning acceptance of the legal decisions of a religious authority) and *talfīq* (legal eclecticism) provides insight into the origin of diverse opinions on codification. The definition and conceptualization of these legal terms in addition to the doctrine of *al-siyāsa al-sharʿiyya* (doctrine of governance and politics) reflect the position of scholars towards the codification of personal status law.

The primary intended audience is legal and religious studies students as well as academics looking for deep knowledge of Islamic law, the intellectual enhancement of codification, and the origin of personal status law in Egypt. In this respect, the book provides a very important piece of the puzzle and stimulates further reflection of this issue.

NOTES

1. Fekry divides the eclectic approach into two categories; he uses the term *talfīq* for the first eclectic approach and denominates the second approach as *takhayyur*. See also Ibrahim, Ahmed Fekry, "Talfīq/Takhayyur," *The [Oxford] Encyclopedia of Islam and Law,* Oxford Islamic Studies Online, accessed August 20, 2020, http://www.oxfordislamicstudies.com/article/opr/t349/e0082