# THE IMPACT OF COLONIALISM AND NATIONALISM ON THE MARGINALIZATION OF ISLAMIC LAW IN THE MUSLIM WORLD

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## ABSTRACT

Islamic law was once the mainstream legal system in the world, but due to various reasons, especially Western colonialism and nationalism, it has in fact declined. Therefore, the purpose of this article is focused to conduct a longitudinal analysis of impact on Islamic law during the colonialist and then nationalist periods. The study was conducted by way of content analysis as well as through the application of inductive and deductive methodologies. The conclusion drawn is that the decline of Islamic law is hindered by the infiltration of Western secularist laws and the internal obstacles from Muslim nation-states, nevertheless Islamic law has never stopped moving forward. There are two main reasons for this is, first, because Western laws are in fact an experiential product developed by Western countries in a specific historical context and which only represents the ideology of Western societies and their citizens. Second, although the nationalist elites of Muslim nation-states have seriously reflected on Western laws in the process of development, combined with the guided willingness of the general public, Islamic law has been deliberately marginalized. In fact, due to the destructive influence of colonial forces as well as the nationalization by Muslims themselves, the function of Islamic law in all aspects of life has been weakened, and then the crisis brought to the Muslim world by this is unprecedented.

**Introduction**

Islam is the fastest spreading religion in recent decades and its believers have become the second largest religious group in the world, especially in European and American countries (Esposito, 2002; Poston, 1992; Nielsen, 1992). In fact, rapid development has been a characteristic of Islam since its inception. Since 610 AD, the Prophet Muḥammad PBUH preached Islam in Makkah, pursuant to which he and his followers had established their political foothold in Medina 622 AD for the first time after more than thirteen years of brutal persecution.

In Madinah, Prophet Muḥammad PBUH, as a leader, successfully constructed an unparalleled *"ummah"* (i.e. a Muslim community with a shared future for humanity). Consequently, the *"Charter of Madinah"* (the *"Charter"*) was established as a *"constitution"*, which not only preserved the structure and the agreements of previous tribes, but also recognized the legitimacy of their existence and covenants. Allowing the existence of various tribes and making alliances meant that they had to adhere to moral principles as part of the new political system, rather than racial arrogance or tribal conflicts (Haykal, 1976).

Under the leadership of Prophet Muḥammad PBUH, Islam was able to spread rapidly, and before his demise (i.e. 632 AD), most of the Arab Peninsula was completely under Muslim control, which knocked on the doors of the two superpowers, namely the Byzantine Empire in the north and the Sassanian Kingdom in the east. Under the new system, various tribes continued to integrate, while brotherhood and solidarity were formed, and thus, Islam achieved great success in history (Watt, 1961). 10 years later, large territories such as Palestine, Syria, and Egypt under Byzantine rule, especially Iraq under the Persian Empire, were conquered by Muslims.

In 732 AD, a hundred years after the demise of Prophet Muḥammad PBUH, the Islamic territory (commonly referred to by the classical Muslim jurists and historians as *"Dār al-Islām"*, i.e. the Islamic state) had covered Spain as well as southern France, spanning across North Africa, connecting Syria, Iraq (including today's Iran), and extended to India and neighboring Central Asia. The emergence of this situation was mainly attributed to the Abbasid *"Hundred Year Translation Movement"* (750-850 years), during which a large number of ancient Greek classics were translated into Arabic during this period. This prompted Islamic civilization to reach its peak, where schools of thoughts flourished and had a decisive impact on Roman law as well as the revival of Western culture and the rise of Europe as a whole. At the end of the 15th century, the Islamic territory had expanded from the Atlantic coastline of West Africa, across the Sahara and Sahel deserts, covering East Africa, Maldives, India, Malaysia, Indonesia, the southern Philippines, and Southeast Asia, even in the southern and northwestern regions of China.

It is worth noting that the dissemination of Islam and its ability to widely integrate different societies, ethnic groups, and religions were not limited to political advantages, economic prosperity, and cultural vitality possessed by Muslims at that time, because even when Muslims were at a disadvantage and under the direct rule of invaders and colonialists, Islam continued to spread and successfully changed the way of life for many people. For example, in 1258 AD, when the Abbasid Caliphate was conquered by Mongol invaders led by Hulagu Khan (1217-1265) and Baghdad became a ruin, the conquered Muslims completely *"domesticated"* the barbaric invaders and integrated them into the mainstream Islamic civilization of the world (Amold, 1986). In modern times, although Muslims around the world have suffered military repression from colonialists, and although they themselves and their territories were under colonial rule, they were not only able to continue to survive, but also spread Islam to areas that their predecessors had never visited (Amold, 1986). However, due to various and different reasons, especially Western colonialism and nationalism, the visible might of Islam has gradually weakened and eventually been reduced. Accordingly, the significance of this research is that only by fully understanding the root cause of the problem, can the Islamic legal system be revived again.

**The Concept of Islamic Law**

Indeed, before discussing the impact of colonialism and nationalism on Islamic Law, the concept of Islamic Law should first be clarified. It is obvious that the observers who tend to underestimate the local and regional differences between Muslim communities around the world are puzzled by the unity and diversity of the international Muslim community. Thus, they suggest that some vastly different

fundamental principles should be artificially mixed into a set of uniform patterns to replace the so-called *"unreasonable provisions"* of Islamic law that are suspected of having *"a coercive nature"*. Some people even believe that the Muslim world is nothing more than a colossal entity composed of a group of self-governed individuals and fragmented cultures, and Islam is neither a religion nor a way of life, and the Muslim *"ummah"* is not a recognized entity in their own right. Therefore, in the era of nation states, Islam should be regarded as a component of an ethnic group, but in our mind would that be the Arabic Islam, the Persian Islam, the Turkish Islam, the Nigerian Islam or Sub-Saharan African Islam, the Malaysian Islam and Indonesian Islam or Southeast Asian Islam, the Indian Islam or the South Asian Subcontinent Islam, the Chinese Islam or Eastern Islam?

In fact, the term *"Islām"* is an Arabic word, which literally means submission, that is total submission to Allāh - the Sole and the Only God. Islam is closely related to its Arabic cognate terms, which mainly indicates and refers to peace, honesty, integrity, humility, purity, health, and obedience (Ibn Manẓūr, 1994). Strictly speaking, Islam is not generally understood in modern or contemporary Western societies as a simple or pure spiritual relationship between humans and the Creator, as the Qur'ān and the Ḥadīth (or the Sunnah, i.e. the sayings and the deeds of Prophet Muḥammad - PBUH) apply the term "*Dīn*" (i.e. religion) to define Islam as a way of life. Thus, whether from a linguistic, sociological, or legal perspective, this term always refers to a way of human life that is not an experiential pattern that divides material and spiritual levels, but rather a continuous unity that integrates various aspects; namely, the unity of individual and society, economy and politics, art and wisdom, spirit and body, which are not only closely connected to each other, but also rely on the ethics, morality, and values reflected in religious beliefs to be sustained. It is worth to note that in the Qur'ān and the Ḥadīth, the above-mentioned meanings of Islam hold an absolute position, as they are not only a guiding source of Islamic spirit and morality, but also a major component of Islamic law, serving as the judicial foundation for the Muslim community around the world for more than 1400 years.

In addition, due to the close relationship between the term *"fiqh"* (i.e. jurisprudence) and *"Sharī'ah"* (i.e. Islamic law), the former is often mistakenly defined as the latter. However, in Arabic, the literal meaning of the term *"fiqh"* refers to contemplation or profound understanding, and which is in fact different from the pure instructions and commands. As a professional term, scholars generally understand *fiqh* based on the system and instructions obtained through training and the recognized principles of *Sharī'ah*. Moreover, the purpose of *fiqh* is social governance, which can be adopted by Muslim societies while also providing flexibility in terms of regulating individual and collective behaviour. With regard to the *Sharī'ah*, for Muslims, it is a system of fundamental legal principles and values recorded in the Qur'ān and the Ḥadīth, as well as secondary sources, such as *Ijmā'* (i.e. consensus) and *Qiyās* (i.e. analogy which is based on the Qur'ān and the Ḥadīth). Relatively speaking, *fiqh* is composed of the insights and judgments of qualified jurists, whose function is to explain and elucidate the *Sharī'ah* in order to be systematically applied to different eras and situations. Therefore, there is only one and eternal *Sharī'ah*, while the *fiqh* has diversity and flexibility, which has led to many schools of Islamic jurisprudential or legal thought, such as *Sunnī*, *Shi'ī*, and their branches.

It should be noted that the rich and colorful characteristics of *fiqh* not only reflect the keen insight and outstanding character of Islamic jurists, but more importantly also reflect the needs of the Muslim *ummah* whether it be social, political, or cultural in different times and situations. In order to face the constantly changing needs of the Islamic society, it is necessary to adopt a flexible system that conforms to the *Sharī'ah*. Therefore, Islamic jurists have played an extremely important role and assumed significant responsibilities in the long river of history. As judicial experts and social guides, both individually and collectively, they have traditionally mainly engaged in *ijtihād*, i.e. the effort made by Islamic jurists to infer legal rules based on detailed evidence from their sources to a certain extent (Al-Āmidī, 2003; Al-Shawkānī, 2000; Al-Khuḍarī, 1969), or when the Islamic jurists use all their abilities to infer legal rules from their sources and apply them to a specific practical problem (Abū Zahrah, 1958), committed to addressing ideological, political, cultural, social and other issues in any time and space based on the principles of the *Sharī'ah*, and doing their best to solve various problems faced by the Islamic society.

Finally, by considering that the terms *Sharī'ah* and *fiqh* both are often translated into *"Islamic law"* in English and other modern European languages, it should be pointed out that although the core content of both terms is legal affairs, such as contracts, torts, etc., from a conceptual perspective, it is obviously different from the *"law"* that is commonly understood and used as a term in contemporary Western countries in at least two aspects. First, compared to Western law, the *Sharī'ah* and *fiqh* involve a vast range of aspects, such as personal hygiene, dietary habits, clothing, social etiquette, and morality, in which none of them will be truly regarded as governing a society in the West. Second, in any Western country, the legal system is considered a tool for expressing people's will and social emotions at any stage of evolution. On the contrary, although the *Sharī'ah* and *fiqh* also explore social issues and are committed to behavioral norms, they completely transcend the functions of secular laws and can provide guidance to individuals and supervision on social behaviour to a greater extent. This is also the main reason why Islamic law has regained its high ground in various disciplines during contemporary times and it has surpassed the boundaries of law imposed by Western regimes (Mallat, 1993 and 1994; Wilson, 1998). Therefore, in the ongoing current debates on Muslim social issues, the *Sharī'ah* and *fiqh* have already become the focus of attention from all walks of life ('Abd al-Rahim, 1996).

**Colonialism and Islamic Law**

Colonialists began to rise with the advent of the Renaissance period, and many territories of the Ottoman Empire gradually entered the process of being colonized by the Western countries to the extent that in the decades from the late 19th century to the early 20th century, the entire Muslim world was almost completely under the Western colonial rule. Against this irreversible historical backdrop, the most oppressive colonial policies were those of Tsarist Russia and the former Soviet Union towards Muslims in Crimea, Caucasus, and Central Asia. In fact, at the beginning of the 16th century, when the terrible Ivan Vasilievich (Ivan IV, also known as Ivan Reidi, 1530-1584) occupied the Khanate of Kazan in 1552, the Russian imperialists continued to expand on a large scale in the next three centuries *"to provide security and civilization"*, so that their sphere of influence eventually included the southern the Himalayas and Siberia in the Far East. The ultimate goal of Tsarist Russia was to exploit and plunder the agricultural and mining resources of its colonial rule areas, and to achieve this goal, it forcibly implemented a Russianization policy on local residents and forced them to convert to Eastern Orthodox Christianity. As for Muslims, various resistance movements in the region were brutally suppressed by Russia. Thousands of men, women, and children dying from Russia's sophisticated weapons, and the Islamic culture has also suffered an unprecedented disaster. It is worth noting that Russian colonialists did not directly intervene in the Sharī'ah courts because they believed that such courts represented a corrupt and inevitably self-destructive culture, and therefore intervention was seen as unnecessary (Kurat, 1992).

However, after the Bolshevik Revolution in 1917, this situation completely changed because Bolshevik members at that time firmly believed that religion was the *"opium"* of the people. Forming a view that the extinction of religion must be accelerated, they thus engaged in a cruel struggle and effort against this *"dangerous substance"* through all possible means, and hence, the former Soviet regime engaged in an unprecedented and persistent attack on religion (Ramet, 1993). During the period following this revolution, it was only because Lenin (inheritor of the theories of Marx and Engels, founder of the former Soviet Communist Party and Soviet regime, 1870-1924) sought to win over all the oppressed people under the Tsarist Russia regime that the Muslims and the Islamic culture were temporarily suspended in radical and cruel persecution measures (Kurat, 1992). During 1928, all the Sharī'ah courts in Uzbekistan were closed; between 1929 and 1939, over 14000 mosques and all traditional schools (commonly referred to as *"Madarasah"* by Muslims) in Central Asia were also closed, and a large number of Islamic scholars in this region were detained, imprisoned, exiled, and killed. Moreover, the regime at that time replaced the modified Arabic alphabet for centuries by introducing Roman (and later Cyrillic) letters, in order to eradicate the spiritual and cultural roots of young people (Kurat, 1992).

Compared with the former Soviet Union, the Eastern European and the Balkan regions, although Western Europe did not exhibit a fanatical anti-religious situation, its colonialists strategy was to consistently Christianize indigenous peoples (including followers of the Eastern Orthodox Church), while not only focusing on economic exploitation of their different colonies, but also controlling and dominating the politics and culture of the local residents. It is evident that the Western missionaries and their supporters were motivated by political motives rather than religious factors. The brutal and barbaric methods adopted

by the Western colonialists to suppress resistance movements in order to settle in their respective colonies were no less than those of Tsarist Russia and the former Soviet Union. Although their respective colonial governance styles were different, their ultimate objective was completely the same in terms of the *Sharī'ah* courts, traditional schools, Arabic language, Islamic culture and values, as discussed (Karpat, 1991).

It is well known that the policies of French colonialists were premised on assimilation and centralization, by transplanting various *"organs"* of the West to the colonized to eliminate their traditional ideologies. Therefore, in destroying the latter's social, cultural, and legal systems, they were more extreme and terrifying than other imperialist regimes. After 1830, the French colonizers gradually excluded the Arabic language commonly used by the colonizers in the process of settling themselves in Algeria, while subtly making French as the mainstream language in the area through various means. Meanwhile, by controlling traditional Islamic learning and education centers, such as *"Zāwiyah"* (i.e. learning corners), *"Kuttāb"* (i.e. Islamic private schools), and *"Madāris"* (i.e. Islamic traditional schools), etc., as well as by maintaining the *"Ḥubus"* or *"Awqāf"* (i.e. donations from Muslims) on which their finances rely, the French ensured the extinction of these institutions and the Islamic ideas and values they represent. In order to accelerate the disappearance of Islamic values in the minds of Muslims, the French colonizers continuously had introduced to Algeria French laws, codes and court system that lacked confidence in the values of fairness and justice even in France - a discriminatory system that disregarded French customary law and surrounded indigenous people of Algeria with various control, fine, and imprisonment networks. The punishment for indigenous *"criminals"* was quite severe, and only officials in a mixed group with administrative decision-making power could be exempted. This iron fist rule also existed in circuit courts that tried civil and criminal cases and in this kind of court, the French magistrate conducted the trial harshly. Further, the jury members were all French (Nouschi, 1992).

In Morocco, the French colonial administrative agency implemented regulations in May of 1930, which are similar to those announced by Dutch colonialists in Indonesia, as a political tool for the French colonizers, known as *"Berber Dahir"*, which was placed under the judicial jurisdiction of the French colonizers to suppress criminal acts regardless of their identity on the territory of Berber. For all patriots in Morocco, this was a public attack on both Arabicism and Islam, and a threat to the unity of the kingdom and national unity. Therefore, the King of Morocco, its scholars, especially its middle class and its Western educated leaders, united in a nationwide movement to oppose against the *"Berber Dahir"* both domestically and internationally. Some left-wing elements, including France, also supported the resistance movement in Morocco (Nouschi, 1992; David, 2012). In this situation, coupled with significant changes in the international situation, such as the defeat of France in 1940, the policies that caused divisions by the colonial regime were eliminated, the unity of the kingdom was maintained, the unity of the people was consolidated, and the integrity of the Islamic faith and the *Sharī'ah* was largely ensured.

Compared with the French colonialists in different direct colonies, the British colonialists first represented the East India Company, and then represented the British royal family stationed in India for various profit-making operations. Therefore, their attitudes and policies were completely different from the former. The East India Company requires employees to always maintain two comprehensive goals, one is to extract economic surplus from the agricultural economy through taxation and another is to maintain effective political control and domination through minimal participation. In the pursuit of these goals, especially in the early stages of British colonial rule over India, administrative personnel from both the East India Company and the British-controlled Indian regime found themselves suitable to follow the political system, including the law, prior to colonization. To achieve this goal, the British colonizers recommended local *"intermediaries"* as new members, while preserving their military and political power for future use (Anderson, 1993). Therefore, the administrative power of judicial trial in both civil and criminal aspects still maintains the pattern of Mughal rule.

It is worth noting that during the Mughal rule, most officials engaged in legal affairs were Muslims, and the criminal law was also the Islamic criminal code that Muslims had always used. In terms of civil law, the Mughal regime had implemented Islamic law against Muslims and Hindu law against Hindus. In addition, in order to facilitate the operation of this system, the Mughal regime also handled legal affairs in accordance with the views of the *Maulvis* (i.e. the Indian Islamic scholars or jurists) and *Pandits* (i.e. Brahmin scholars) who were affiliated with the courts. In 1772, the Mughal Empire government officially

stipulated that *"in all suits regarding inheritance, succession, marriage and caste and other usages or institutions, the laws of the Koran with respect to Mohamedans, and those of the Shaster with respect to Gentoos (Hindus) shall be invariably adhered to"*. Therefore, the two classic works on Islamic law that were highly valued during the Mughal rule - *Al-Hidāyah* (the Guide) and *Fatawa Alamgiri* (i.e. the Judicial Interpretation), during the British rule of India, especially in the courts and among scholarly administrative officials, were still accorded high honor and respect (Fyzee, 1987).

However, with the development of the Anglicizing trends, India, as a colonized territory, was inevitably embedded in a mixed legal structure, and therefore the so-called *"Anglo-Muhammadan Law"* also gracefully entered the historical stage. It is worth noting that this structure is not only limited to India in the Commonwealth, but also has a very broad and far-reaching impact in other territories under British colonial rule, such as Malaysia, Zanzibar, Sudan and Nigeria. Thus, in terms of the Anglicizing trends discussed, it was essentially a political belief that existed since 1772. Nonetheless, as the local laws did not seem to provide for a system of reciprocity in various matters, colonialists had to rule according to the Roman legal formula of *"justice, equality, and conscience"*. Furthermore, this formula was interpreted by British colonizers in 1887 as referring to the applicability of the British legal system to any society and environment, and the prohibition of customs that they find repulsive has become increasingly unrestrained. Accordingly, during 1860, Islamic criminal law and trial procedures were completely replaced by a system based on British law, and by 1875, apart from family law and certain property rights transactions law, the New British Colonial Code had completely replaced all the themes of the mixed structure of the *"Anglo-Muhammadan Law"* (Anderson, 1993).

It is worth noting that in the second half of the 19th century, customs and practices of people became another source of legislation and legal changes, and became extremely prominent. It should be noted that Islamic jurists believe that customs (*'Urf*) and practices (*'Āddah*) are auxiliary and effective sources of legislation in law when they do not conflict with the provisions of the scriptures, but are declared invalid by colonial rulers (Al-Zuḥaylī, 1998). Since the early 1850, especially after the Punjab Laws Act of 1872, the customs regarding tax collection had been more closely followed by the British colonialist policies, but the main issue accompanying this trend was that *"custom was seldom fixed and permanent"* (Anderson, 1993). Therefore, in various parts of India under the British colonial rule, the *"Anglo-Muhammadan Law"* was not only the result of the continuous merger of Anglicization and customary law, but also underwent significant changes over time.

In the case of the Indonesian archipelago, customs played an important role in the traditional Islamic legal system that was well established before colonization, so they should have had extreme significance under Dutch colonial rule. For example, in Java, the courts were not only well established long before the arrival of Dutch colonialists, but also applied and enforced a mixed rule system of Islamic law and local customs, and there were occasional conflicts between the two. The rulers and the ruled often had their own opinions on this issue. In the late 19th century, the mainstream view among Dutch colonialists was that Indonesian law was essentially Islamic law. If there was a conflict between Islamic law and customs anywhere in Indonesia, the Dutch inevitably lean towards local customs. In other words, the colonial authorities opposed the universal proposition of Islamic law.

Thus, since 1830, the Sharī'ah Court in Java had been under the control of the Dutch colonizers under the *"Landraden"* (i.e. Land Council), and although authorized to issue laws, it only enforced questionable judgments. In 1882, when the Dutch colonial authorities recognized these so-called Sharī'ah courts, the situation that was already unacceptable to Muslims worsened. First, this type of Sharī'ah court actually was called *"Priesterraden"* (i.e. Priests' courts) at the time. Although this misconception has been strongly refuted by the renowned Islamic scholar and the administrative advisor to colonial rulers Christian Snouck Hurgronje (1857-1936) at that time, the term *"Priesterraden"* had been continuously used by colonizers, which resulted in its retention in Javanese and the new term "*Raad Agama*" (i.e. religious court) in Javanese continued to be used for decades even after Indonesia's independence. The more important fact is that the restructuring adopted on the principle of non-interference in religion did not provide relevant education and basic training for the staff of such courts, nor did it provide them with any compensation, and instead lead to the inevitable outcome of corruption and low professional abilities. Therefore, unlike other Islamic countries, the Islamic judicial system and so-called judges in Java did not receive support from modernists. On the contrary, these corrupt and incompetent judges were also disliked

and even despised by Westernized intellectuals and upper Java aristocratic bureaucrats, and the latter naturally formed alliances with colonial rulers in the long-term struggle between Islamic law and customs (Lev, 1972).

More ironically, the court system established in 1882 for the purpose of restructuring was based on attempts made by Dutch colonial administrative agencies in Indonesia during the 1920s and 1930s, resulting in extremely sharp contradictions in legal regulations, as well as issues of political legitimacy and ideology. In order to change the situation, the inappropriate label *"Priesterraden"* was replaced by the authorities with the name *"Penghulu"* (i.e. mosque administrator who also decides over Islamic matters) court, while judges and other court staff also received fixed salaries. Also, an Islamic court of appeal (*Mahkamah Islam Tinggi*) was created. In addition, disputes over inheritance rights were transferred from the Sharīʿah court to the *"Landraden"* ruling. However, despite the intense and persistent debate among the indigenous people caused by this restructuring action, the Dutch colonial administration, supported by Westernized intellectuals and upper-class aristocratic bureaucrats, managed to cope with protest movements. The situation in Indonesia was in very stark contrast compared to Morocco.

In sum, there were significant differences in the policies adopted by different European imperialist forces in governing their respective colonies. While they had been well prepared and extremely cruel in their attempts to combat resistance movements and destroy Islamic legal institutions and systems, as well as attempting to forcibly replace them with Western *"things"*, the former Soviet Union and its allies were even better at using violence. In addition, Western European colonial rulers encouraged indigenous peoples to change their religious beliefs, not just to *"save the soul"*, but because do that missionaries could be effectively utilized. For example, in 1905, the Governor General of the Commonwealth in Sudan specifically targeted South Sudanese people and demanded, *"teaching those savages the elements common sense, good behaviour and obedience to Government authority"* ('Abd al-Rahim, 1969).

It should be noted that when the French adopted a French colonial policy to assimilate the indigenous people they colonized, the British colonized their colonies through existing administrative structures, including the Sharīʿah courts and their judges. Meanwhile, although Dutch colonizers appeared to be less cunning, their purpose in manipulating customary law in Indonesia was to systematically instill Dutch values in the colonized population and establish Dutch colonial mechanisms in the colonies, in order to replace traditional Islamic models and strengthen their long-term dominance over the colonies. Therefore, the important role played by colonialists, regardless of what they did or the way they colonized, was to weaken and ultimately eliminate traditional Islamic cultural organizations and legal systems in all colonies by promoting Western values and fundamental principles, in order to become tools for colonialists to control and exploit the colonized people.

In the post-colonial period, especially after World War I, in the relevant agreements signed between Turkey and Western powers, there was an unreasonable requirement to abandon Islamic law and apply Western law. The Constitution of Iraq (1921) was a Western product of British forces imposed on Iraq; in 1926, while the French rulers of Syria attempted to deprive them of their overall judicial power by abolishing the Sharīʿah court and limiting it to the scope of family law, but failed due to opposition from the Syrian people. Further, in 1937, Egypt was forced to abolish Islamic law by the Western Imperialist Alliance and implemented secular law (Al-Ashqar, 1986).

Thus, it is fair to conclude that the important role played by European colonialists, whether in the West or the former Soviet Union, and regardless of their differences in methods and approaches, is to further weaken and in many cases completely eliminate the Islamic educational, legal, judicial, administrative as well as governing institutions. Their ultimate aim was to replace this with Western ideology, whereby the administrative and cultural institutions would serve as imperialist means of controlling and exploiting Muslim world, and not for socioeconomic development.

**Nationalism and Islamic Law**

In the above-mentioned context, one of the most far-reaching consequences is the fragmentation of Islamic countries and the Muslim world, which is not only reflected in political significance, but also in the cohesive nature of the overall moral order and psychology. In other words, the aforementioned

situation is the actual factor that led to the division of the Muslim community with a shared future. This is not only manifested through political ideology, but also in the overall sense of moral order and psychological cohesion. Muslim nation-states today are deeply immersed in an unprecedented crisis of civilization, as severe existentialism, extreme nationalism, and deteriorating social and political causality have had a negative impact on both Muslims and non-Muslims.

To address this severe challenge, Islamic scholars and politicians have been working tirelessly since the era of nation-states, in order to establish suitable models to overcome difficulties and to respond to challenges. However, many and various so-called *"Islamic models"* are often defended by ignorant and extreme conservatives. In addition, the many and various common forms of nationalism, dogmatism, and authoritarianism have also led many people to adopt Western models that often harbor malice and hostility at both individual and societal levels, and to write books and speeches from different backgrounds to encourage people to resist or abandon Islam including the values and fundamental principles which it advocates.

The collapse of the Ottoman Empire in 1922 and the establishment of a republic in Turkey in 1923 marked the end of the Caliphate system, pursuant to which Islamic territories entered the era of nation-states, the most distinctive of which was Turkey under the rule of Mustafa Kemal Ataturk (1881-1938). As a leader, Kemal is said to have grown up with the beliefs of atheists and remained unchanged throughout (Kinross, 1993), who in fact believed that *"there is only one civilization [i.e., Western civilization] and if a nation is to achieve progress, she must be a part of this one civilization"* (Versan, 1984). Turkey, under his leadership, in the aftermath of the First World War, was transformed into an ultra-secular nation-state based on the Western model in the 19th century.

In 1924, less than a year after the establishment of the Republic of Turkey, Kemal's regime had completely abolished the Caliphate system, the *Sharī'ah*, as well as the relevant courts. Meanwhile, *Shaykh al-Islam* - the important position of the authoritative interpreter of Islamic law - had also come to an end, *"Madāris"* and *"Awqāf"* had been replaced under the direct supervision of the Prime Minister's office by a secular affairs management committee. In fact, the committee controls the mosque and has the power to appoint a religious leader and preacher, manage Mufti, supervise relevant institutions and train personnel, and provide legal guidance to them. In fact, the secular government of Turkey has more power in managing religious affairs than the former Ottoman Empire (Dumont, 1984). Consequently, in order to further complete Westernization, Kemal's regime had implemented a series of other long-term measures, including eliminating the content of Arabic and Persian in Turkish, and using Latin letters instead of Arabic letters to write Turkish.

Similarly, in other regions, the *Sharī'ah* was replaced by secular civil, commercial, and criminal codes such as in Switzerland, Italy, and Germany (Shaw, 1977). It is worth noting that the first article of the Swiss Civil Code required judges to follow the established legal principles and traditional rules in hearing certain cases. This system was copied and inserted in the Turkish Code, but the rules associated with Islamic tradition were accordingly omitted. In this regard, the reason why many full editions of the European Codes were incorporated into the 1926 Turkish Civil Code is that: *"There are no essential differences among the needs of the nations which belong to the family of modern civilized societies. The constant economic and social relations have actually made one family out of civilized humanity. It is unnecessary, therefore, to deal with the allegation that the application of the Turkish Civil Code, whose principles were borrowed from a foreign country, will not serve the needs of our country"* (Liebesny, 1975). Meanwhile, the Westernization of Kemal's doctrine and Turkey's nationalism in all aspects of life reached an unprecedented state of fanaticism, including attempts to westernize Islam and Turkey in order to adapt to the spirit of the times (Paul, 1984). At the same time, in other Muslim nation-states, in order to emulate the experiences of Turkey under Kemal's rule, various individuals, groups and even some governments constantly pursued westernization at all levels and aspects of their societies by numerous means, including laws and legislation ('Abd al-Rahim, 2005).

In Egypt, the nationalist under the name of modernist reformer 'Alī 'Abd al-Rāziq (1888-1966) had advocated that Islam was only concerned with purely spiritual matters, and therefore could not become the foundation of a social and political system. In addition, Ṭāha Ḥusayn (1889-1973), the outstanding figure of the modernist movement, who after the signing of the Anglo-Egyptian Treaty in 1936, wrote an article *"Mustaqbal al-Thaqāfah fī Miṣr"* (i.e. The Prospects of Culture in Egypt), which strongly advocated for the widespread acceptance of European life and ideas. He urged his compatriots to accept various levels of European civilization and the Western way of life in an almost deliberately provocative manner regardless of *"the good and the bad; the sweet and the bitter; the attractive and the repulsive; the praiseworthy and the blameworthy; all the same"* (Ḥusayn, 1982). In terms of legal scope, this attitude is at least prevalent among some ruling classes in Egypt.

Furthermore, from a judicial perspective, the exercise of foreign judicial jurisdiction in Egypt under the system of submissive agreement (Liebesny, 1955), which consisted of European regime consuls and their representatives, as well as the establishment of the *"Special Court"* in 1848 to handle commercial cases involving foreigners and Egyptians, received great support from the Egyptian ruling class. In 1875, while *Majallah al-Ahkām al-Adliyyah* (which is *"The Ottoman Civil Code"* and the meaning of term is *"The Book of Rules of Justice"*) was in the process of compilation, the Egyptian government issued a civil code that was clearly French in guiding principles and most legal aspects, and similar laws, rules, and regulations, including the criminal code, the commercial code, and related judicial systems, were also promulgated in the same year (Anderson, 1968).

In 1876, a *"Mixed Court"* was established with foreign and Egyptian judges as staff, and was authorized to exercise judicial jurisdiction in all cases involving foreigners. At the same time, the Sharī'ah court was gradually reduced from a court with overall judicial power to a court that only heard and adjudicated personal and family affairs. In 1875, the original Islamic judicial situation in Egypt had been completely changed:

> "In the National as well as the Mixed Courts the administration of justice was based on a whole series of codes some of which owed little, and some nothing, to the Sharī'ah; and these codes were applied by a class of lawyers trained in the European tradition".

> (Anderson, 1968, p. 222)

Although Islamic modernism and judicial reforms initiated by Muḥammad 'Abduh (a religious scholar, jurist, and liberal reformer in Egypt, 1849-1905), Qasim Amin (a lawyer and a liberator of women in Egypt, 1865-1908), and other renowned Islamic scholars, led to the reformatting of laws and regulations related to personal and family affairs. These not only received widespread acceptance and praise, but were also successfully implemented. However, it must be noted that in many regimes that embrace modernism and reform, the form of family law may sometimes undergo radical changes. For example, in 1956, the Tunisian government not only prohibited polygamy, but also considered it a criminal offense; the divorce procedure was revised in a radical manner and further limited to only the court having the power to terminate the marriage relationship (Schacht, 1964). Therefore, it is not surprising that the modernist legislation announced by the Tunisian authorities at that time was essentially as extreme and secular as the judicial reform model of the Kemal activists in Turkey (Anderson, 1959; Schacht, 1964; Couston, 1964).

In comparison, many other Muslim nation-sates strive to maintain traditional legislative methods to varying degrees, and judicial changes are only allowed when absolutely necessary, such as Saudi Arabia, Northern Nigeria, Afghanistan, Morocco, Iran, Yemen, Oman, and other Gulf countries. On the one hand, it is because these countries have never experienced direct rule by Western colonial powers, and on the other hand, their geographical location limits the direct influence of Western countries. For example, Saudi Arabia has never accepted any foreign legal system, and therefore is naturally regarded as the best *"model"* of those so-called traditional Islamic countries in the Muslim world. Between 1926 and 1927, Ibn Sa'ūd (1880-1953), a proponent of the ideas of Ibn Taymiyyah (1263-1328) and founder of the Kingdom of Saudi Arabia, envisioned the establishment of a code of law or legal system that not only relied on the doctrines of the Hanbali school of thought, but also was based on extensive Islamic jurisprudence, referring to the viewpoints and theories of all schools of Islamic law. Each specific system

or principle should be adopted, regardless of the faction, as long as their legal views or propositions are entirely based on proper training.

However, due to the protest and pressure from the dominant scholars of the Hanbali school of thought, and with the mediation of Muḥammad bin ʿAbd al-Wahhāb (1703-1792), King Ibn Saʿūd had to abandon his original plan and support the Hanbali school of thought. Nevertheless, the *Sharīʿah* was established as the basic law of the kingdom, with judges holding the position of the Sharīʿah court and enjoying overall judicial power. The customary tribal law was deposed, and the legal administrative system or known as the *"Qānūn"* (i.e. the regulations allowed by *Sharīʿah* in principle) system was formed by a committee of government ministers and approved by the king to take effect. In order to avoid any possible confusion with secular legislation (which is not allowed by the *Sharīʿah* in principle), the administrative system has been named both *"Niẓām"* (i.e. regulation) and *"Marsūm"* (i.e. decree) rather than using the term *"Qānūn"*.

In northern Nigeria, when Britain's *"protectorate"* extended to the territories under the rule of Fulani Sultanates and Emirates in 1900, traditional government institutions and Islamic law based on Marxist jurisprudence remained vibrant, and although bad habits had not yet been completely eradicated, they had retreated behind the scenes, leaving only some special courts composed of those capable of handling all affairs. This was because although the British colonial rulers promised to uphold indigenous laws and customs when establishing *"protected areas"*, they preferred Islamic law over ever-changing bad customs and practices. In contrast, in Afghanistan, customs have limited the application of the *Sharīʿah* method based on the traditional theory of the Ḥanafī School of Islamic Law (Schacht & Bosworth, 1974; Liebesny, 1975).

In Yemen and other Gulf countries, the various traditional schools of Islamic law usually combined customary practices in litigation procedures and maintained them for a long time after World War II. Thus, northern Yemen advocates the *Zaydiyyah* school of Islamic law, which is a mix between the *Ḥanafīyyah* and *Jaʿfariyyah* jurisprudence, while southern Yemen applies the viewpoint of the *Shafiʿīyyah* school of thought. It is worth noting that despite this, both North and South Yemen apply the Sharīʿah to hear and adjudicate civil and criminal cases. Similarly, in the Gulf Duchy, a binary legal and court system composed of *Shiʿī* and *Sunnī* factions meets the needs of various local residents. In addition, by signing treaties and with special relationships, the judicial power of the UK also had a certain influence on the Gulf Duchy before its independence. However, with the materialization of independence and the rapid development of the oil industry, especially the adoption of the Egyptian and continental European models (as well as the legal and court systems) by Arab nationalist countries since 1960, the aforementioned situation has undergone significant changes. In fact, the rapid accumulation of oil wealth not only changed the social structure of Gulf countries, but also led to fundamental changes in the social structure of the entire Arabian Peninsula (including the traditionally conservative Kingdom of Saudi Arabia) and even the entire Muslim world. Thus, as far as the countries in question are concerned, the enormous pressure that has gradually emerged is to promote extreme changes in their political and legal fields, rather than the actual reforms required by the times (Liebesny, 1975). Among the many syndromes caused by these pressures, various uprisings under the guise of Islam and different wars under the guise of nationalism have emerged one after another, such as the military riots that shocked the Muslim world in the solemn and dignified Makkah Mosque from November to December 1979, the Iran-Iraq War from 1980 to 1988, and Iraq's invasion of Kuwait in 1990. Such incidents were direct or indirect results of the misinterpretation of Islamic law and the influence of extreme nationalism.

It should be noted that the criticism or unfavorable judgement on traditionalism in the past few decades, especially in the popular form of *Wahhabīyyah-Ḥanbalīyyah*, has been launched both inside and outside the Kingdom of Saudi Arabia, and this criticism has come from supporters of both Westernization and secularization, and even more meaningfully from renowned scholars and advocates of Islamic revivalism from the University of Al-Azhar in Egypt. Muḥammad al-Ghazāī (1917-1996) clearly stated that although these people were determined to return to Islam in their own laws and beliefs, they had the wrong goal as their starting point; before reviving the *uṣūl* (i.e. principles), they first promoted and advocated for *furūʿ* (i.e. details). For example, before ascertaining and ensuring that *niẓām al-siyāsah* (i.e. the political system) is based on the *Sharīʿah*, they first promoted and advocated for the execution of *ḥudūd* (i.e. criminal law). Therefore, it should be considered that the Islamic system, through its display in the Arabian Peninsula,

provides us with a clear basis for its purpose and methods, because only in these Muslim nation-states do thieves face punishment of amputation of hands, and adulterers face punishment in the form of whipping. That is to say, in an era of extreme hatred towards similar laws that have been declared suspended, only the Muslim nation-states insist on applying them. It cannot be denied that prohibitions of theft and adultery are part of Islam, but strangely, many people identify and consider this to be the entire concept of Islam. In essence and intrinsically speaking, any Muslim would like to see the Islamic criminal law be properly and justly enforced, so that rights, security, and virtues of human beings can be effectively protected. Moreover, Muslims do not want to see the thief's hand cut off while this punishment is abandoned in cases of embezzlement of large amounts of national treasury funds (Al-Ghazāī, 1975). In fact, Muḥammad al-Ghazāī concluded that as long as tyranny of the government and economic disparities between the ruling class and the ruled class continue to exist in the Arabian Peninsula, and as long as the struggle of the people is to ensure their basic survival, there is no application of the *Sharī'ah* in these lands (Enayat, 1982).

In addition, Muḥammad al-Ghazāī pointed out that a system which oppresses Muslims and non-Muslims, with obvious errors, extreme cruelty, and absurd misinterpretations or *fatāwā* (i.e. explanations or rulings on a certain issue), were deliberately created by some so-called Islamic scholars, and were actively spread in the name of Islam and upright and honest ancestors (Al-Ghazāī, 2009). For example, many of the *fatāwā* issued by the Permanent Committee for Scientific Research and Verdicts in Saudi on whether women are legally allowed to drive vehicles, whether they can work in areas where men are usually present, and whether they can wear bras have ruled that such conduct is *harām* (i.e. illegal or should be prohibited and not allowed). Therefore, in modern times, the above situation has led to the loss of the original brilliance of the all-encompassing and vibrant Islamic law. In fact, this result is the betrayal and replacement of the spiritual teachings and the moral norms of Islamic law by the prevailing authoritarianism and extreme nationalism (Abou El Fadl, 2011). Moreover, since World War II, the Saudi's *Wahhabī-Ḥanbalīsm* doctrine has been widely and effectively spread throughout the Muslim world and beyond regions and countries. Examples of countries that most welcome this kind of doctrine, among others, are North Nigeria and Afghanistan, which were once under the rule of the Taliban regime. Meanwhile, Kuwait, Bahrain, and the United Arab Emirates, which are very close to Saudi Arabia in terms of geographical environment and the cultural background, have chosen to adopt the so-called modernist judicial model that has been accepted by Egypt, Syria, and Iraq. This is due to the fact that most of the civil and criminal laws of these Gulf countries were formed in the 1960s and 1970s, some of which were directly derived from the founder of legal modernism, 'Abd al-Razzāq Aḥmad al-Sanhūrī (1895-1971), while others were formed under the immense influence of this jurist (Liebesny, 1975).

It should be noted that after the First World War, the judicial system that dominated northern Nigeria and the Arabian Peninsula was neither the traditionalism of the above types nor the pan-Westernization and secularization of the Kemal doctrine model, which was greatly supported in the Muslim world. In contrast, against the backdrop of a general increase in revival awareness and dedication to Islam, the core theme of modernization was to promote the adaptability and restoration of Islamic law in modern living environments, known as *"ijtihād"* (Weeramantry, 2001) However, this does not necessarily mean that contemporary Muslims must maintain complete consensus on promoting the modernization of justice and the rule of law. On the contrary, there are many different ways that are worthy of attention and reference, and the situation in many Islamic countries today does indeed require such action (Coulson, 1964).

Therefore, in contrast to the occasional limited foreign influence in the early stages of Islamic history, the so-called *"judicial reform"* that was able to be implemented under rising political pressure and in an era of accelerated decline and degradation of various European sources and traditions, was a widely and systematically borrowed Western legal system, resulting in public organizations, including military armed forces, administrative management, legal and educational systems. This gradually formed a mixed system parallel to tradition and modernity but one that was always in conflict with one another, and which was absurdly gathered in the same disintegrated and divided authoritative regime. The conditions that were created for resisting this background eventually led to the Kemal Revolution and the emergence of the Turkey Republic after the First World War (Liebesny, 1975; Zurcher, 1993).

In sum, the patterns prevalent during the era of nationalism and constitutionalism in Muslim nation-states, although for different reasons, indicate a relatively isolated pattern between the jurists of Islamic law and the authorities of governments. It now appears that the popular vote approved by non-Islamic jurists is seen as a legitimate force in the politics of various Muslim nation-states. In other words, the emergence of *"social-institutionalism"* and *"law-governmentalism"* has brought about legal hegemony, which largely dominates the legislative process and judicial practice of Muslim nation-states. Moreover, the authorities and their legislative branches often serve as the only think tanks for legislation, but Islamic jurists have no practical role in legislation, so their role and application of Islamic law and its legal principles have become even more uncertain in real life. Therefore, this paper believes that this reflects the true portrayal of the marginalization of the Islamic legal system by the authorities and governments of Muslim nation-states.

## Conclusion

To conclude, there are both internal and external reasons for the negative impact on Islamic law, but no matter how significant the internal reasons may be, without intervention from Western colonialists, the Muslim world would not have necessarily accepted Western law, or the degree of acceptance may not have been so intense. However, due to the destructive influence and approach of Western powers, the function of Islamic law in politics, economy, society, culture, education, and other aspects have been weakened, and the crisis brought to the Muslim world by this is unprecedented and unparalleled.

Further, many modern Islamic countries have been driven by nationalism to become independent and have entered an era of Westernization and secularization in various fields. Authoritative regimes dominated by authoritarian rules established after the independence of Muslim nation-states have led to further deterioration of the image of Islamic law. Fundamentally speaking, secularism gradually developed and formed in the later stages of modern European history and was largely influenced and substantiated by special social and historical conditions. In other words, secularism is the result of a long and brutal struggle between the church and the government, as well as between the church and individual priests with modern ideas and scientific knowledge. However, secularism, which used historical theoretical research methods to understand and deal with social, political, and philosophical issues, has ultimately been transformed into a *"religion"* that is essentially anti-religion.

Consequently, the movement of secularism in the West and then in the Muslim world has also led the ruling class and supporters of nationalist countries to generally believe that Westernization and secularization are fundamental elements and prerequisites for the modernization and development of the human society. The Islamic law which in fact is fundamentally different from secular law, is seen as the biggest obstacle to modernization, and thus inevitably faces so-called *"reforms"* by Westerners and secularists, ultimately resulting in the dominance of Western law.

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