

Legal Convergence: Bridging Classical Fiqh School with Contemporary Legal Theory

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Abstract:

In the rapid globalization and modernization era, Islamic law faces the challenge of remaining relevant and responsive to developments. The classical schools of jurisprudence, which have been the basis of Islamic law for centuries, now face complex contemporary issues. Contemporary legal theory offers a new approach that has the potential to integrate Islamic law with modern dynamics. This study explores the convergence between the classical schools of jurisprudence and contemporary legal theory, highlighting the urgent need to unite these two legal traditions. This study uses an interdisciplinary approach to analyze legal integration's main characteristics, challenges, and opportunities. This study also explores the flexibility of the classical schools of jurisprudence in adopting modern legal concepts. The study results are expected to provide a conceptual and practical framework for legal convergence, which can be applied to Islamic legal reform in various contexts. This convergence is important in addressing contemporary legal issues such as bioethics, cyber law, global financial regulation, and environmental challenges, paving the way for a productive dialogue between the Islamic legal tradition and modern legal systems.

Keywords: legal convergence, classical fiqh schools, contemporary legal theory, Islamic legal reform

A. Introduction

In the rapid globalization and modernization era, the world of Islamic law faces a significant challenge in remaining relevant and responsive to the developments of the times. The classical schools of jurisprudence, which have been the foundation of Islamic law for centuries, now face the complexity of contemporary issues that scholars have never encountered. On the other hand, contemporary legal theory continues to develop, offering new approaches to understanding and applying law. This situation drives the urgent need to unite classical jurisprudence's treasures with modern law's dynamics.

The convergence between classical schools of jurisprudence and contemporary legal theory is an academic challenge and a practical necessity to address legal issues in modern Muslim societies. This process involves an in-depth analysis of the characteristics of both legal traditions, identification of potential areas for integration, and exploration of the flexibility of the schools of jurisprudence in adopting modern legal concepts.

Several recent studies have attempted to explore these aspects of convergence. For example, Al-Atawneh's study on Islamic legal reform in Saudi Arabia shows the country's efforts to incorporate elements of modern law into its traditional Sharia system¹. On the other hand, Hosen examines the potential for dialogue between Islamic law and international human rights law, highlighting the potential for integration in various fields².

However, the existing literature still has significant gaps. Many studies focus on specific Islamic or modern law aspects without providing a comprehensive framework for converging the two. In addition, analysis of the intrinsic flexibility of classical fiqh schools in adapting modern legal concepts is still limited. The concrete challenges and opportunities in this integration process have also not been thoroughly explored.

This study aims to fill this gap by thoroughly analyzing the main characteristics of classical fiqh schools and contemporary legal theories that need to be bridged.

¹ Muhammad Al Atawneh, "Authority-Holders (Wulat Al - Umur) in Contemporary Islamic Politics and Governance: The Case of Saudi Arabia," *Middle East Critique* 26, no. 2 (April 3, 2017): 123–36, <https://doi.org/10.1080/19436149.2017.1313930>.

² N Hosen, *Research Handbook on Islamic Law and Society*, Elgar Original Reference Series (Edward Elgar Publishing, 2018).

This study will also explore the challenges and opportunities in the integration effort and investigate the extent of the flexibility of classical fiqh schools in adopting modern legal concepts.

Using an interdisciplinary approach that combines doctrinal analysis of Islamic law, comparative legal theory, and contemporary case studies, this study aims to significantly contribute to the effort to unite the classical fiqh tradition with contemporary legal needs. The results of this study are expected to provide a conceptual and practical framework for legal convergence that can be applied to Islamic law reform in various contexts.

In the face of the complexity of contemporary legal issues such as bioethics, cyber law, global financial regulation, and environmental challenges, the convergence between classical Islamic jurisprudence and contemporary legal theory is becoming increasingly important. This research is expected to pave the way for a more productive dialogue between the Islamic legal tradition and modern legal systems and provide a basis for developing more comprehensive and adaptive legal solutions in contemporary Muslim societies.

B. Method

This study uses a qualitative approach with an interdisciplinary design, combining doctrinal analysis of Islamic law, comparative legal theory, and contemporary case studies. The primary method is library research, enriched with comparative analysis.

Data sources include classical fiqh books, contemporary legal theory works, and recent academic literature. Data collection was conducted through an in-depth literature study and document analysis. The study employed content analysis, comparative, and hermeneutic methods to identify key themes, compare the characteristics of classical fiqh schools and contemporary legal theories, and interpret classical legal texts in a modern context. The research was conducted in three stages: preparation (collecting sources and developing an analytical framework), implementation (in-depth analysis and identifying areas of convergence), and conclusion (synthesis of findings and formulation of a convergence model). This approach comprehensively explores the characteristics, challenges, opportunities, and flexibilities in legal convergence between classical fiqh schools and contemporary legal theories.

C. Findings and Discussion

1. Main Characteristics of Classical Islamic Jurisprudence Schools and Contemporary Legal Theories that Need to be Bridging

a. Characteristics of the Classical Fiqh School

The classical schools of fiqh, which developed from the 8th to the 13th centuries CE, have several key characteristics that form the foundation of traditional Islamic law. A thorough understanding of these characteristics is essential to identifying areas that require bridging with contemporary legal theory.

1) Legal Sources and Methodology

The classical fiqh school consistently bases its thinking on the primary sources of Islamic law, namely the Qur'an and the Hadith. Kamali emphasizes that the interpretation of these two sources forms the core of the classical Islamic legal methodology³. In addition, *ijma'* (consensus of scholars) and *qiyas* (analogy) are also significant secondary sources in the development of law.

The methodology used in classical fiqh schools involves a complex process of *ijtihad*. Hallaq explains that *ijtihad* in the classical context consists of a series of strict rules of interpretation, including a deep understanding of classical Arabic, the historical context of revelation, and the principles of legal deduction⁴.

2) Focus on Personal Law and Worship

One of the hallmarks of the classical fiqh school is its strong focus on personal law (*al-ahwal al-shakhsiyyah*) and worship. Abou El Fadl shows that legal elaboration in marriage, divorce, inheritance, and worship rituals dominate classical fiqh discourse⁵. This focus reflects the socio-political context of the classical era in which public law was often outside the direct jurisdiction of the *fuqaha*.

³ M H Kamali, *Shari'ah Law: An Introduction*, The Foundations of Islam (Oneworld Publications, 2008).

⁴ W B Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament*, NONE (Columbia University Press, 2012).

⁵ Khaled Abou El Fadl, Ahmad Atif Ahmad, and Said Fares Hassan, *Routledge Handbook of Islamic Law* (Routledge London, 2019).

3) Historical Contextuality

Although the classical schools of jurisprudence strive to be universal, they cannot be separated from the historical context in which they were formed. Ali argues that many of the fatwas and legal rules developed by the classical schools reflect their time's social, economic, and political realities⁶. This contextuality becomes a challenge when faced with a very different modern reality.

4) Internal Pluralism

Although often viewed as monolithic entities, the classical schools of jurisprudence exhibit significant internal pluralism. Auda emphasizes that differences of opinion (*ikhtilaf*) among classical jurists were tolerated and even considered a blessing that enriched the Islamic legal tradition⁷. This pluralism provides flexibility in legal interpretation but complicates modern codification efforts.

b. Characteristics of Contemporary Legal Theory

Contemporary legal theory, which has developed mainly since the 20th century, has characteristics that differ significantly from the classical schools of fiqh. Understanding these characteristics is important for identifying potential areas for convergence.

1) Rational and Empirical Approaches

Contemporary legal theory emphasizes rational and empirical approaches in the development and analysis of law. According to Tamanaha, modern legal theory emphasizes empirical evidence and logical arguments rather than textual or traditional authority⁸. This approach allows for greater flexibility in responding to social and technological changes.

2) Analytical and Comparative Methodology

The methodology used in contemporary legal theory tends to be more analytical and comparative. Twining explains that modern legal theory often uses an interdisciplinary approach, combining insights

⁶ N Calder, C Imber, and R Gleave, *Islamic Jurisprudence in the Classical Era* (Cambridge University Press, 2010).

⁷ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law* (International Institute of Islamic Thought, 2008), <https://doi.org/10.2307/j.ctvkc67tg>.

⁸ B Z Tamanaha, *A Realistic Theory of Law* (Cambridge University Press, 2017).

from sociology, economics, psychology, and other disciplines in legal analysis⁹. The comparative approach is also strongly emphasized, with the comparative study of legal systems from different countries and traditions being an important component in the development of legal theory.

3) Focus on Public Law and Constitutional Law

In contrast to the focus of the classical fiqh school, contemporary legal theory pays excellent attention to public law and constitutional law. Hirschl shows that constitutionalism, human rights, and economic regulation are central themes in modern legal discourse¹⁰. This focus reflects the state's central role in contemporary life and the complexity of the relationships between individuals, society, and the state.

4) Adaptability to Social Change

One of the characteristics of contemporary legal theory is its adaptability to rapid social change. Cotterrell argues that modern legal theory explicitly recognizes sizes and seeks to respond to social, economic, and technological change dynamics¹¹. This is reflected in the development of new areas of law, such as cyber law, environmental law, and bioethics.

c. Areas that Need to be Bridging

Based on the analysis of the above characteristics, several key areas requiring a bridge between classical fiqh schools and contemporary legal theory can be identified:

- 1) Legal Reasoning Methodology: There needs to be an effort to integrate classical ijihad methodology with modern analytical and empirical approaches.

⁹ W Twining, *General Jurisprudence: Understanding Law from a Global Perspective*, Law in Context (Cambridge University Press, 2009).

¹⁰ R Hirschl, *Comparative Matters: The Renaissance of Comparative Constitutional Law* (Oxford University Press, 2014).

¹¹ R Cotterrell, *Law, Culture and Society: Legal Ideas in the Mirror of Social Theory*, Law, Justice, and Power (Ashgate, 2006).

- 2) Scope of Legal Application: It is necessary to expand the focus of fiqh from the personal and worship domains to the areas of public law and state administration.
- 3) Contextualization of Legal Principles: Classical fiqh principles must be contextualized in contemporary socio-political realities.
- 4) Integration of Legal Sources: There must be a dialogue between authoritative sources in classical fiqh and empirical and comparative sources in modern legal theory.
- 5) Flexibility vs Stability: A balance between legal flexibility in responding to change and the stability of fundamental principles must be sought.

2. Challenges and Opportunities in Efforts to Integrate Classical Islamic Jurisprudence with Contemporary Legal Theory

a. Challenges in the Integration Process

1) Resistance to Change

One of the main challenges in integrating classical Islamic jurisprudence with contemporary legal theory is resistance to change, especially from traditionalists. An-Na'im argues that many traditional scholars view efforts to reform Islamic law as a threat to the authenticity and integrity of tradition¹². This resistance can slow down the integration process and create polarization within the Muslim community.

2) Complexity of Concept Harmonization

Harmonizing concepts from two different legal traditions is a significant technical challenge. Hallaq points out that many concepts in classical fiqh, such as *'illah* (legal reason) or *maslahah* (public interest), have nuances and complexities that are difficult to translate directly into a modern legal framework¹³. This harmonization process requires expertise in traditions and intellectual creativity to create conceptual bridges.

¹² A A An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a* (Harvard University Press, 2010).

¹³ Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament*.

3) Risk of Losing Essence

In the integration process, there is a risk that the essence of one or both legal traditions may be diluted or lost. Emon warns that overly aggressive efforts to "modernize" Islamic law may result in losing ethical and spiritual values at the heart of the fiqh tradition¹⁴. On the contrary, excessive reliance on classical fiqh concepts in a modern context may reduce the effectiveness and relevance of the law.

4) Tension between Universality and Particularity

Classical schools of jurisprudence often claim the universality of their principles, while contemporary legal theory tends to acknowledge the particularity of socio-cultural contexts. Menchik explains that bridging the tension between the claim of the universality of Islamic law and the recognition of the diversity of modern contexts is a significant philosophical and practical challenge¹⁵.

5) Issues of Legitimacy and Authority

The question of who has the authority to integrate and reform Islamic law is a sensitive issue. Zaman shows that the shift in authority from traditional ulama to modern Muslim intellectuals and state institutions has created tensions in contemporary Islamic legal discourse¹⁶. Determining the source of legitimacy for these integration efforts is a significant challenge.

b. Opportunities in the Integration Process

1) Enriching the Legal System with Ethical and Spiritual Values

Integrating classical Islamic jurisprudence with contemporary legal theory opens opportunities to enrich the modern legal system with strong ethical and spiritual values. Auda argues that the concept of *maqasid al-shariah* (the objectives of the *Shari'ah*) can provide a

¹⁴ A M Emon, *Islamic Natural Law Theories* (OUP Oxford, 2010).

¹⁵ J Menchik, *Islam and Democracy in Indonesia: Tolerance without Liberalism*, Cambridge Studies in Social Theory, Religion and Politics (Cambridge University Press, 2016).

¹⁶ R M M Ringer, *Islamic Modernism and the Re-Enchantment of the Sacred in the Age of History* (Edinburgh University Press, 2020).

strong ethical framework for developing modern law, especially in areas such as human rights and social justice¹⁷.

2) Increasing the Relevance of Islamic Law in a Global Context

The integration process can enhance the relevance of Islamic law in the contemporary global context. The reformulation of fiqh principles in modern legal language and framework can facilitate a more productive dialogue between the Islamic legal tradition and the international legal system.

3) Creating a More Comprehensive and Adaptive Legal Model

Combining classical fiqh schools and contemporary legal theory can create a more comprehensive and adaptive legal model. Kamali argues that this integration can produce a legal system that is responsive to social change and rooted in strong ethical principles¹⁸.

4) Revitalization of Ijtihad in a Modern Context

Integration efforts open up opportunities to revitalize the concept of ijtihad in a modern context. Ramadan suggests that using modern methodology in the ijtihad process can enrich and broaden the scope of Islamic legal thought, enabling it to respond effectively to contemporary issues¹⁹.

5) Contribution to Global Legal Pluralism

This integration also allows Islamic law to contribute significantly to the global legal pluralism discourse. Benton and Ford argue that synthesizing Islamic legal tradition and modern legal theory can enrich the global understanding of legal pluralism and the interaction between legal systems²⁰.

¹⁷ Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*.

¹⁸ M H Kamali, *Principles of Islamic Jurisprudence*, Islamic Law and Jurisprudence Series (Islamic Texts Society, 2003).

¹⁹ T Ramadan, *Radical Reform: Islamic Ethics and Liberation*, Oxford Scholarship Online (OUP USA, 2009).

²⁰ Prabhakar Singh, "Lauren Benton and Lisa Ford. Rage for Order: The British Empire and the Origins of International Law, 1800–1850 Andrew Fitzmaurice. Sovereignty, Property and Empire, 1500–2000," *European Journal of International Law* 28, no. 3 (November 13, 2017): 975–86, <https://doi.org/10.1093/ejil/chx060>.

3. The Flexibility of the Classical Islamic Jurisprudence School in Adapting Modern Legal Concepts

a. Flexibility Mechanism in the Classical Fiqh School

1) The concept of *ijtihad*

Ijtihad, or independent legal reasoning, is a key mechanism for flexibility in classical fiqh. Hallaq asserts that despite historical claims of the "closing of the door of *ijtihad*," this concept remains an essential tool for adapting Islamic law²¹. In a modern context, *ijtihad* can be used to reinterpret classical sources in response to contemporary realities.

2) The principle of *Maslahah* (Public Interest)

Maslahah is a key concept that provides flexibility in applying Islamic law. Opwis explains that this principle allows for legal adjustments based on public interest considerations, paving the way for adaptation to social and technological changes²².

3) *Qawa'id Fiqhiyyah* (Rules of Fiqh)

Universal and flexible fiqh principles provide a framework for legal adaptation. Kamali points out that principles such as "difficulty brings ease" and "change of law according to changing times" provide a conceptual basis for the flexibility of Islamic law²³.

b. Examples of Adaptation of Modern Legal Concepts

1) Reinterpretation of the Concept of Usury in the Context of Modern Finance

One significant example of adaptation is the reinterpretation of the concept of *riba* in the context of the modern financial system. El-Gamal explains how classical Islamic jurisprudence principles on *riba* have been adapted to develop Islamic financial products compatible with the global economic system²⁴.

²¹ Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament*.

²² F M M Opwis, *Maṣlaḥah and the Purpose of the Law: Islamic Discourse on Legal Change from the 4th/10th to 8th/14th Century*, Studies in Islamic Law and Society (Brill, 2010).

²³ Kamali, *Shari'ah Law: An Introduction*.

²⁴ M A El-Gamal, *Islamic Finance: Law, Economics, and Practice* (Cambridge University Press, 2006).

2) Use of Technology in Worship

Modern knowledge of the principles of fiqh has produced more accurate and consistent methods for determining the times of worship.

3) Reformulation of the Concept of Jihad in the Context of International Relations

The concept of jihad has undergone significant reinterpretation in modern international relations. Kattan explains how contemporary scholars have reformulated the idea of jihad, emphasized non-military aspects and focused on moral and spiritual struggle in a peaceful global context²⁵.

4) Adaptation of Family Law

Islamic family law has undergone significant adaptation in various Muslim countries. Mir-Hosseini describes how classical fiqh principles on marriage and divorce have been reinterpreted to accommodate social changes and demands for gender equality²⁶.

5) Development of Islamic Bioethics

Islamic jurisprudence has shown significant flexibility in response to advances in medical science and biotechnology. Padela explains how the principles of Islamic medical ethics have been developed based on classical Islamic jurisprudence sources to address issues such as organ transplantation, euthanasia, and genetic engineering²⁷.

c. Limits of Flexibility

Despite significant flexibility, the classical schools of jurisprudence also have certain limits in adapting to modern legal concepts.

1) Unchangeable Fundamental Principles

²⁵ V Kattan, *From Coexistence to Conquest: International Law and the Origins of the Arab-Israeli Conflict 1891-1949* (Pluto Press, 2009).

²⁶ Z Mir-Hosseini, *Islam and Gender: The Religious Debate in Contemporary Iran*, Princeton Studies in Muslim Politics (Princeton University Press, 2021).

²⁷ Aasim Padela, "Methodological and Discursive Considerations for Islamic Bioethics Research and Writing," *TAFHIM: IKIM Journal of Islam and the Contemporary World* 16, no. 1 (June 28, 2023): 1–34, <https://doi.org/10.56389/tafhim.vol16no1.2>.

Some fundamental principles in fiqh are considered unchangeable or '*qat'i*'. Ali explains that principles such as the oneness of Allah, the obligation of prayer, or the prohibition of killing without rights are considered aspects that cannot be compromised in the adaptation process²⁸.

2) The Tension between Textualism and Contextualism

The adaptation of fiqh to modernity often faces tensions between textualist approaches, emphasizing strict adherence to sacred texts and more flexible contextualist approaches. Moosa illustrates how this tension can limit the maneuvering capacity to adapt Islamic law to contemporary realities²⁹.

3) Issues of Legitimacy and Authority

The question of who has the authority to adapt and reform Islamic law remains a complex issue. Zaman suggests that the absence of a central authority in Sunni Islam can result in diverse and sometimes conflicting interpretations of the adaptation process³⁰.

4. Implementation Challenges and Resolution Strategies

a. Challenges in Practical Implementation

1) Institutional Resistance

One of the main challenges in implementing legal convergence is resistance from established legal and religious institutions. Hefner explains that many traditional Islamic educational institutions and religious courts in Muslim countries are often reluctant to adopt approaches that are considered too "modern" or "secular"³¹. This resistance can hinder the integration process and practical implementation of the convergence results.

2) Complexity of Legislation

Integrating reformulated fiqh principles into national and international legal frameworks is a challenge. Barlinti highlights the complexity of creating legislation that effectively bridges Islamic

²⁸ Calder, Imber, and Gleave, *Islamic Jurisprudence in the Classical Era*.

²⁹ E Moosa, *What Is a Madrasa?* (Edinburgh University Press, 2015).

³⁰ Ringer, *Islamic Modernism and the Re-Enchantment of the Sacred in the Age of History*.

³¹ R W Hefner, *Shari'a Politics: Islamic Law and Society in the Modern World* (Indiana University Press, 2011).

legal concepts with international legal standards, especially on human rights and family law issues³².

3) Diversity of Interpretations

The diversity of interpretations in Islamic legal traditions can challenge practical implementation. Yilmaz shows that differences in views between various Islamic schools of thought and schools of thought can result in diverse and sometimes conflicting approaches in efforts for convergence³³.

b. Resolution Strategy

1) Gradual and Contextual Approach

A gradual and contextual approach to implementing legal convergence is essential to overcome resistance and complexity. An-Na'im suggests that Islamic legal reform should be carried out gradually, considering the specific socio-cultural context of each Muslim society³⁴.

2) Multidisciplinary Dialogue

Enhancing dialogue between Islamic jurists, modern legal theorists, and legal practitioners is a key strategy. Kamali emphasizes the importance of academic and professional forums that facilitate the exchange of ideas and experiences between different legal disciplines³⁵.

3) Integrated Education and Training

Developing educational and training programs that integrate classical fiqh studies with modern legal theory is an important step. Hosen highlights the need for curriculum reform in law faculties and Islamic educational institutions to prepare a new generation of legal experts who can bridge the two traditions³⁶.

³² Yeni Salma Barlinti, "Harmonization of Islamic Law in National Legal System: A Comparative Study Between Indonesia Law and Malaysian Law," *Indonesia Law Review* 1, no. 1 (April 30, 2011), <https://doi.org/10.15742/ilrev.v1n1.95>.

³³ I Yilmaz, *Muslim Laws, Politics and Society in Modern Nation States: Dynamic Legal Pluralisms in England, Turkey and Pakistan* (Taylor & Francis, 2016).

³⁴ An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a*.

³⁵ Kamali, *Shari'ah Law: An Introduction*.

³⁶ Hosen, *Research Handbook on Islamic Law and Society*.

4) Codification and Standardization

Efforts to codify and standardize reformulated Islamic legal principles can assist in practical implementation. Baderin proposed the development of a "Restatement of Islamic Law" that integrates fiqh principles with international legal standards as a guide for legal practitioners and policymakers³⁷.

D. Conclusion

The legal convergence between classical fiqh schools and contemporary legal theory is a complex but essential intellectual and practical project. An analysis of this process's characteristics, challenges, opportunities, and flexibilities shows that despite significant obstacles, there is great potential for creating a productive and meaningful synthesis.

This effort is about modernizing Islamic law and how the Islamic legal tradition can make a meaningful contribution to the global legal discourse. The success of this convergence will depend on the ability of Muslim jurists and thinkers to conduct a creative dialogue between their intellectual heritage and contemporary realities while maintaining the integrity of the fundamental principles of Islam.

Finally, the legal convergence between classical fiqh schools and contemporary legal theory offers an opportunity to develop a more inclusive, adaptive, and ethical legal paradigm. This paradigm is expected to respond effectively to the complexity of global challenges while remaining rooted in strong spiritual and moral values. Although the journey towards this convergence is fraught with challenges, it represents an important step in the evolution of Islamic legal thought and its contribution to global justice.

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³⁷ Mashood A. Baderin, *International Human Rights and Islamic Law*, Oxford Monographs in International Law (OUP Oxford, 2003).

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