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# İslâm

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## Araştırmaları

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### Dergisi

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sınırlarına işaret etmektir<sup>2</sup>. Bu iş ise farklı bir mesai gerektiriyor: Osmanlı İmparatorluğu'nun, uygarlığının, sınırları iyi tanımlanmış karşılaştırma sistemleriyle diğer siyasi-iktisadî birimlerle (Rusya [ve Orta Asya], Hindistan, Çin havzalarınınkiler hep gözönünde tutularak ve doğru dönemlendirmeler çerçevesinde) homolojik benzerliklerinin ve – varsa – kategorik benzemezliklerinin ortaya konması, belki daha geçerli ve daha yerinde bir *remapping* işinin önünü açar.

Güneş Işıksel

### **Islamic Maritime Law: An Introduction**

Hassan S. Khalilieh

Leiden: E. J. Brill, 1998. xxı+202 pages.

In general, the inclusion of the word “introduction” in book titles adds an unpretentious flavor. Khalilieh's *Islamic Maritime Law: An Introduction*, makes one think that this is not necessarily always the case, especially when the book introduces the reader to a hitherto unstudied field. In such cases, the word “introduction” should not be taken at face value, but rather be considered to indicate the pioneering character of the study. This is exactly the case with the book we are examining here, as it opens up a totally new research area which has received little attention from (legal) historians till now.

The book, published in 1998, is based on the author's PhD thesis, which he defended at Princeton University in 1995. As the title suggests, the author takes Islamic maritime law as his focal point and studies the topic in detail throughout the introduction, six chapters and conclusions.

In the introduction, the author familiarizes the reader with the specificities of the topic, research questions, sources and methods. Here, the author criticizes the view that the classical Islamic world feared the sea and argues that the negative attitude of certain caliphs and jurists should not be interpreted as the Islamic world's categorical aversion to the sea. Nevertheless, he admits

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2 D. Howard'ın – her nasılsa bu derlemede yer bulmuş – makalesinin kestirmeci son paragrafı ne demek istediğimizi anlatacaktır: “[...] The printing press, [...], European investment in long-distance trade, [...] the scientific method, the beginnings of industrial revolution [...] With these notions Ayn Ali and other writers of advice for kings shared little in common?”. Öyle midir gerçekten? Fuad Köprülü'nün mirası halen tepemizde asılı duruyor.

that during the first two centuries of the Islamic expansion, the regulations pertaining to ports and the sea remained vague and suggests that during this period Muslim authorities must have continued the relevant practices of the Byzantines and Persians. Later on, the same practices were to be included in Islamic maritime law by applying the term *'urf* (custom) to them.

The book focuses on the Mediterranean during the classical period (827-1252) and is based on sources such as *fatwas*, travel accounts and navigational literature, international commercial and diplomatic treaties, and the Geniza records of the Palestinian synagogue in Cairo, which include business letters, court records and other legal documents. Despite the fact that the latter records were produced by the Jewish community of Cairo, they do shed light on the practice of Islamic maritime law, since this community operated within an Islamic legal context. Consequently, these records enable the author to extend the methodology of S. D. Goitein and A. L. Udovitch to a new field by examining how Islamic legal theory was translated into practice.

Following the introductory remarks, in the first chapter the author examines the terminology related to ships, their equipment and capacity, and informs the reader about the theoretical and practical classification of ships in Islamic sources. In the second chapter, regulations and practices related to the rights and duties of ship owners, crew and passengers are discussed in detail. Here the author also deals with issues such as the legal implications of joint ownership, the transformation of the ship owners' authority to agents, the administration of ships, and principles pertaining to the employment of the crew.

From this chapter onwards a comparative perspective that would present the similarities and differences between Islamic regulations and practices and those of preceding and succeeding naval powers is wanting. While the author does occasionally refer to Malayan sea law and compares it with his case, he pays little attention to the laws and customs that dominated the Western hemisphere. For instance, after having noted that the prime officer on board ships in the Islamic Mediterranean were not the captains, but the representatives of the ship owners, the author fails to note that throughout the seventeenth and eighteenth centuries this was also the case with the ships of the Dutch East India Company (VOC) as well. Such comparisons and concomitant analyses, which otherwise would have provided us with insight into the patterns of interaction between different naval powers across time and space, are missing. Murat Çizakça's seminal work, *A Comparative Evolution of Business Partnerships: The Islamic World and Europe with Specific Reference to the Ot-*

*toan Archives* (published by the same publisher in 1996) is a solid example of the potential that such a comparative approach can offer. This comparative approach would have helped the author to challenge the assertion “that the modern law of the sea ... is essentially of Western origin...”<sup>3</sup> an assertion which the author apparently dislikes, but avoids challenging throughout his book. Çizakça’s work could also have been a good guide on how to incorporate the Ottoman experience and sources into the study of Islamic law and society if Khalilieh had not limited his focus to the 9<sup>th</sup>-13<sup>th</sup> centuries.

If we put these flaws to one side, then we can say that the book provides us with innovative information on different aspects of Islamic maritime law. This is especially true for Chapter Three, where the author deals with maritime commercial law in detail. The types and rules of constructing ship-leasing contracts is the first theme that the author examines in this chapter. Here we learn that Islamic maritime commercial law approved both contracts that specified a destination and seasonal leasing contracts. The author also informs us about the specific conditions under which one of the parties could breach the contract and the juridical consequences of such acts. Transportation of goods (taxes and tolls), the laws of jettison and general average, collision of ships and salvaged goods are some of the other themes which are examined in detail in Chapter Three. The following chapters on military maritime law (Chapter Four), territorial waters (Chapter Five), disciplinary laws (Chapter Six) and religious traditions (prayer, fasting, hajj, zakât etc.) at sea (Chapter Seven) have similar features, providing the reader with substantial and detailed information on relevant aspects of Islamic maritime law. However, while reading about specific regulations, at certain points, the reader would like to learn more about the general principles which shaped these regulations.

These main chapters are followed by the conclusion in which the author relates the findings for his research questions. Here the author points to the lack of historical and documentary evidence regarding the regulations at sea during the first and second Islamic centuries and explains this situation with the insignificant role the Arab merchants played in the Mediterranean sea, the gradual integration of various ethnic and religious groups into the Islamic *umma*, and, most importantly, the prevalence of pre-Islamic maritime laws and practices which underwent a process of Islamicization in later periods. The author also concludes that during the third century (*Hijdra*) and afterwards *usûl al-fiqh* played an important role in determining the specific laws and

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3 Hassan S. Khalilieh, *Islamic Maritime Law: An Introduction* (Leiden: E. J. Brill, 1998), p. IV.

customs, and that *qiyâs* was employed to compare legal maritime problems to situations on land. The author also concludes that Muslim jurists, be they of the same or different law schools, disagreed amongst themselves on several issues. According to the author, these differences might have stemmed from personal legal opinions as well as from differences between different local maritime customs.

The pioneering character and the considerably detailed information that is included on the laws, customs and practices of Muslim merchants and seafarers makes this monograph a must for university libraries for the use of Oriental and Medieval studies' readership.

Finally, this book is not only welcome in its own right, but it heralds the way to new publications on a number of relevant topics, such as the interaction of Islamic maritime law with other laws and customs in the Mediterranean and elsewhere, and the implementation of Islamic maritime law under the Ottomans up until the nineteenth century.

Ismail Hakkı Kadi

### **Ottoman Wars 1700-1870: An Empire Besieged**

Virginia H. Aksan

London: Pearson Education Limited, 2007. xviii+599 pages.

Historians in the West acknowledge that the period from 1750 to 1850 is the first age of global imperialism, when Britain and France, after internally refreshing their military and economic power as a result of the scientific and industrial revolution, fought one another for world domination in many places, including the territories of the Ottoman Empire. On the other hand, this era, for the Ottoman historians, is recognized as the age of transformation, in particular a search for renewal in the military system, as the Imperial Engineering Schools and new fighting forces began to evolve with the defeats and economic crises that necessitated certain radical reorganization and dramatic changes in the Ottoman *ancien régime*. The challenges to the classical system of the Ottoman thesis of rule began around 1730 and ended with a new order in around 1830. In this era, while the Ottomans were busy transforming from the inside on the one hand, they also confronted the rock of British economic imperialism and the relentless pursuit of Russian and other European territorial ambitions along the northern frontier.