

Shari'a: Theory, Practice, Transformations

Wael Hallaq

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In his "Introduction," Hallaq states that this work approaches the field of Islamic law in a way that few other scholars have attempted. "To write the history of Shari'a is to represent the Other," he argues; "history, both Islamic and European, is the modern's Other, and ... in the case of Islam this history is preceded by another Other – namely contemporary Islam" (p. 1). This

approach, which treats the Shari`ah as an aggregate of its history – its theory, institutional and societal applications, and implications in projects of power – also draws the discipline of Islamic legal studies into its analysis. For Hallaq, the “extraordinary innocence” of modern scholarship concerning Islamic law and society “proceeds ... unaware of (its) culpable dependency ... on the ideology of the state” (p. 5). His approach brings together two intellectual aims: (a) to illumine the conditions of production and power relations within which Islamic legal knowledge, as an academic discipline, was built and (b) to further elaborate upon the Shari`ah’s development as a system of thought, practice, and institutions throughout its history. My review will focus upon how these two major strands interweave and the new contributions the author makes to the study of Islamic law and society.

The book is divided into the three broad sections mentioned in the subtitle: theory, practice, transformations. Part 1 deals with the introduction and development of Islamic law as “a system of knowledge and practice,” an “episteme” (p. 15). Its five chapters cover the Shari`ah’s emergence from the Near East’s “synthetic legal tradition” (p. 18); the rise of the *fuqaha*’ and *usul al-fiqh*; the development of institutions of legal education, such as the *halaqah* and the madrasa; the interaction between Islamic law and society, including the roles of the mufti and the *musannif*; and the treatment of government within Shari`ah sources of the pre-modern period, with particular emphasis on the relationship between executive power and the Shari`ah.

Part 2, which outlines the development and differentiation of legal doctrine, covers the relationship between “law” and “religion” as well as the treatment of various legal areas: contracts and obligations, family law and succession, property and ownership, offenses, jihad, and the courts. Part 3 delves into the modern period, during which Hallaq posits the occurrence of a “transformation in episteme and structure” (p. 21) brought about through processes of state formation and jural colonisation in India, the Ottoman Empire, North Africa, Iran, Egypt, Malaysia, and Indonesia. The work concludes with two chapters on the search for new legal methodologies in the late-nineteenth and twentieth centuries and the repercussions of the “structural death” (p. 15) of the Shari`ah episteme as well as the role for Islamic law in the Muslim nation-state.

Hallaq’s explications of Shari`ah concepts, legal theories, and the bases upon which his broad comparative project rest are admirably clear and eminently readable. Thus his book will prove immensely useful to scholars of Islamic law and students of comparative law, Islam, and the Muslim world. His synthetic account analyzes Islam’s early development, the growth of legal institutions and Islamic elites, the rise of empire, as well as capitalism

and the state – all of which have impacted Islamic law and must therefore be part of the analytic framework for research and study.

Foucauldian and Nietzschean analyses of power, language, and knowledge play a central role in Hallaq's deconstruction of the field of Islamic legal studies. "The most central and determinative fact about the academic field within which this book situates itself is that it was born ... out of the violent, yet powerfully homogenising ventures of nineteenth-century Europe ... born within, and out of, a global project of domination" (p. 6). "The invented narrative of 'Islamic legal studies' aided not only in fashioning colonialist policies that transformed the native legal cultures, but also in shaping the culture of empire itself" (p. 10).

Part 3 is perhaps the most original in its treatment of recent legal history and the relationship between the processes of state formation and Shari'ah transformation. For the author, "the most pervasive problem in the legal history of the modern Muslim world has ... been the introduction of the nation-state and its encounter with the Shari'a" (p. 359). It begins with analyses of the state as a field of power and the conflicts introduced by the encounter between two fundamentally different systems: the modern state (as "imported" [p. 360] by European colonialism) and Islamic law. Here, Hallaq's reliance on Foucauldian theories of power may have resulted in an account of colonial rule as hegemonic, whereas a less deterministic view of colonialism would lend itself to even more nuanced explorations of how local Muslim elites, in their struggles against colonial usurpation, themselves played critical roles in reshaping Islamic law in the modern state. For example, British colonial intervention in Malaya had several unintended effects, among them the elevation of Islamic law as a source for legitimacy among Malay elites (Iza Hussin, "The Pursuit of the Perak Regalia: Law and the Making of the Colonial State," *Law and Social Inquiry* 32, no. 3 [2007]), indicating that the project of colonial dominance was never complete and that local elites played critical (rather than supporting) roles in redefining Islamic law. Hallaq asserts that the colonial production of "legal hybridity" – elements of Shari'ah translated, codified, and rigidified for the purposes of colonial extraction and control – constructed a paradox from which local Muslim elites could not escape. "What they deemed to be the unjust law of occupation was the only available and legitimate means by which they could bargain against their occupiers" (p. 379).

The author understands the contemporary place of Islamic law in the Muslim nation-state as an outcome of this process of jural colonisation and state encroachment. The central symbolic value of "Islamic family law" acquired its place in Muslim self-identity "not only because it was built into

Muslim knowledge as an area about which they should display sensitivity, but also because it represented ... the last fortress of the Shari'a to survive the ravages of modernisation" (p. 446). Even this field of law, however, was "severed" from its hermeneutic and institutional ecology (p. 447). Into these moments of epistemic crisis arose neo-*usul al-fiqh* thinkers, whom Hallaq arranges along an analytic continuum, from Muhammad Sa'id al-Buti to Abdulkarim Soroush, with `Abd al-Wahhab Khallaf, Rashid Rida, Fazlur Rahman, Hazairin, Hasbi Ash-Shiddieqy, Muhammad Sa'id `Ash-mawi, Muhammad Habib al-Marzuqi, and Muhammad Shahrur occupying intermediate positions. Despite this variation in contemporary Muslim thought, Hallaq argues, all have failed to "provide indigenous solutions to the epistemic havoc wrought by modernity" (p. 542).

This monumental work draws upon the author's earlier books, in particular *A History of Islamic Legal Theories* (1997) and *The Origins and Evolution of Islamic Law* (2005). Hallaq has built a new contribution upon these foundations, however, the most important of which is the charting of a new trajectory for Islamic legal studies that is both deeply engaged with social science theoretical projects and sharply aware of the implications of the academic study of Islamic law for contemporary politics.

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