

ing how the relationship between modernity and religious practice can be conceptualized. Several of the chapters touch directly on how modern politics and social organization affect the materiality of shrines and the practices surrounding them. Be it the Iranian soldier's mausoleum, Nasreddin Hodja's tomb, or the use of mass gatherings in post-2003 Iraqi politics, contemporary saints and their pilgrims can tell us much about how everyday religious practices constitute a space of negotiation between the state and its citizens.

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**An Introduction to Islamic Law**, Wael B. Hallaq, Cambridge: Cambridge University Press, 2009, ISBN 978-0-521-67873-5 (pbk), 200 pp.

Wael Hallaq is one of the leading scholars in the field of Islamic law, and well-qualified to evaluate the historical Shari'ah, in comparison with both modern legislation and today's heavily politicized presentation of Islamic law. The first point Hallaq makes in the introduction of his work, appropriately, is the fact that the Shari'ah historically did not include politics in its broad list of items; rather "it did its best to distance itself from politics and to remain an example of the rule of law, while the Shari'ah has now ironically become a fertile political arena, and little else in terms of law" (p. 1). Perhaps because of its highly politicized associations, the term Shari'ah today provokes distaste and even fear among non-Muslim audiences.

To explain the historical Shari'ah, Hallaq begins his first chapter with the history of the rise and development of Shari'ah. He employs a rather new format of "Who is who in the Shari'ah" to discuss the people who made the law, specifically figures who shaped the structure of the Islamic law. This includes, first of all, author-jurists (*faqih*s), muftis, judges and law professors who might at times have combined positions. A striking point Hallaq makes here is that traditional Islamic legal personnel were not subject to the authority of the state. Furthermore, the time-honored maxim of the supremacy of Shari'ah actually left little room for Muslim governments to touch upon the sacred sources of the law for interpretation.

How the law was founded is discussed in the second chapter. Hallaq opens his account with the role of human reason in the expansion of Islamic law, and concludes that *usul al-fiqh* or Islamic legal theory is an outcome of the "marriage" between revelation and Muslim reasoning. Hallaq contends that the array of opinions give Islamic law a pluralistic quality that can be characterized by flexibility and accommodation.

The third chapter deals with the emergence of legal schools, generally known as *madhhab* in Islamic language. These schools are named after a "master-jurist" who was assumed to be the school's founder. Here, Hallaq explains how the early interest in law and legal studies evolved within the environment of the "study circles," where

scholars of the Qur'an and the traditions of the Prophet began to discuss legal issues and general principles of Islam. The important conclusion Hallaq draws from his approach to the emergence of the legal school is that legal authority thereafter became epistemic rather than political, social or even religious (p. 35). Indeed, the Shi'ah school to which Hallaq briefly refers at the end of this chapter is somewhat of an exception to this generalization.

In the next chapter, Hallaq studies legal education and the rise of the law college (*madrabah*) that provided a point of contact between law and politics. This contact, along with religious legitimacy, eventually gave rise to means through which the ruling elites attempted to increase their political authority. Hallaq gives a good description of how jurists and judges emerged as civil leaders who found themselves, by the nature of their profession, involved in the day-to-day business of civic duties. The ruling caliphs, and later sultans and *amirs*, surrounded themselves with competent jurists who would assist them not only in judicial administration, but also provided the legitimacy they needed.

Under the heading of "Shari'ah's society," Hallaq discusses the Islamic legal system and how Muslim courts operated in an informal structure within the framework of a moral community. Hallaq does not talk about the lack of procedural law in the system, rather he prefers to describe the role of informal arbitration and informal law courts. Along this line, he speaks about dynamics of mediation which is represented by "peacemakers" and "amicable settlement." He values the Muslim court system as affording a sort of public arena for anyone, and criticizes the modern courts as "the highly formalized processes" which were unknown to Islam.

After a brief description of the role of the *qadi*, certified witnesses and scribes of the court, Hallaq turns to the position of women in the Islamic legal system. He concludes that in the pre-modern era, Muslim women were full participants in the life of the law. Hallaq devotes the next chapter to the Ottoman judicial system in order to illustrate the pre-modern scheme of adjudication and its philosophy. Hallaq also puts forth several other judicial issues which are not exclusive to the Ottoman period. Some of them include *siyasah shar'iyah*, which is political rule according to the prescription of Shari'ah; the *mazalim* court, which Hallaq calls the court of grievances; the office of *muhtasib* (supervisor) whose duties were often overtaken by the *qadi* during the Ottoman period; and finally the writing of the *qanun* (code of law) as a supplement to Shari'ah.

Under the title "Colonizing the Muslim world and its Shari'ah," the book moves on to the modern period in chapter seven. With the European encroachment on Muslim lands throughout the nineteenth and twentieth centuries, two modern elements of "nation-state" and "capitalism," according to Hallaq, changed the Muslim legal landscape. This change, which Hallaq names "the dramatic transformation in the structure of Islamic law," did not necessarily happen by replacement of Islamic law with modern legislation. Rather it occurred mostly because of the shift in loyalty from religion to state, which imposed a different commitment for citizens. He takes a look at the colonization and modernization pressures on Ottoman Egypt and Iran. His account of Iran suffers from some inaccuracy, to which I now turn .

Hallaq's coverage of the Shi'ah doctrine of the Imamate seems to represent the exaggerated (*ghali*) views rather than standard Twelver Shi'ah view. He quotes an unconventional Shi'ah statement saying that: "it is divine law that forbade our Imams being given the name prophecy, not reason" (p. 107). On the Shi'ah doctrine of Imamate, the standard works include two books by al-Hilli and al-Muzaffar (mentioned below), which are still the most highly valued and widely taught works in Shiite seminaries. Hallaq states: "reform proposals [of Iran] as the one drafted in 1851 categorically failed" (p. 108). This statement is not accurate. In 1851 the Iranian grand vizier at the time, Mirza Taqi Khan (d. 1852), initiated some reforms which did not fail during their expected lifetime. Such reforms include: the reorganization of the army, the foundation of the polytechnic school called Dar al-Fonun, and an official newspaper. The Iranian Constitution of 1906 envisioned a committee of five *mujtahids* (not *mullas*) to check the legislation, although this stipulation was not carried out until the abolition of the Constitution in 1979. Stating that *mujtahids'* *fatwas* during the Qajar period "could pronounce any imperial decree invalid with impunity" is also inaccurate (p. 109). Each of the seven Qajar kings had their particular relations with the *'ulama*, none of which fit properly into the abovementioned generalization. The Tobacco Protest of 1890, which began with a circulated *fatwa* on the authority of the *marja'* of the time, was an isolated case, and does not typify the relationship between the court of Naser al-Din Shah (d. 1896) and the mosque.

In the chapter on "The law in the age of nation-state," Hallaq contends that the Shari'ah law was dismantled, except for rituals and family law. Hallaq blames the transformation of Islamic law on the wrong or undue application of juridical devices such as neo-*ijtihad* and *darurah* (lit. necessity). The former seems to Hallaq largely free of limitation, and the latter has been widened in scope by today's Muslim legists—so much so that the law in its entirety has been redefined with a utilitarian principle of necessity. This assertion ignores the fact that the application of interpretive devices was in line with a natural adaptation of the law. The neo-*ijtihad* is not only a device, but rather an essential process of adaptation. Hallaq repeatedly emphasizes the role of the modern nation-state—marked by positive law—in the transformation of Shari'ah, as if the development of Muslim nation-state were all the same, and the positive law expresses only the will of the state regardless of other constituent elements of civil society, such as "public opinion."

Following his argument on "dismantling the Shari'ah legal system" as a result of the Muslims' adoption of the ready-made format of the nation-state and positive law, Hallaq, in the next chapter, regards the re-Islamization trends of 1970s and the early 1980s as only "a halt" to the collapse of the religious force. Hallaq's brief look at the changing situations in the four key Muslim countries of Egypt, Pakistan, Iran and Indonesia does not allow him to be precise enough, especially in the case of Iran. In the Shi'ah tradition, the Imam and jurist in charge (*wali*)—by proxy of the Imam—cannot be named "the lawgiver," a term Hallaq uses (p. 152). Hallaq repeatedly confuses the role of the *wali* (the jurist in charge) with that of *marja'* (a supreme jurist in knowledge of the Shari'ah), oblivious of the fact that the precondition of *marja'iyyah* for the jurist in charge is omitted by the constitutional amendment of

1989. The author's observation that Ayatollah Khomeini (d. 1989) viewed Islamic law as a derivative of the state (p. 150) does not fit Ayatollah Khomeini's thought. It is true Ayatollah Khomeini said that the interest of Islamic government precedes everything else and can even put a halt to religious duties such as prayer. The term "*hokumat*" used by Ayatollah Khomeini in this context applies to "government," not to the modern conception of the state, of which he had no idea.

In his concluding remarks, Hallaq sets forth his rather new perception of Islamic law and its transformation. He characterizes the Shari'ah law as a process of explicating doctrine, an interpretive and heuristic project which does not fit into a definition of law proper. He quotes *Black's Law Dictionary* to define law in its modern sense: "a body of rules of action or conduct prescribed by [a] controlling authority." According to this definition, Hallaq claims law is a manifestation of the state's authority, and does not apply to the traditional Islamic law which essentially lacks such state authority. Attributing roles of control and management to this law would be a distinctly modern misconception, a back-projection of our notions of law as an etatist instrument of social engineering and coercion. And finally, "There is no law proper without the state" (p. 169). Hallaq even goes out of his way to reduce the complex phenomenon of modernity to the emergence of the state.

What made Hallaq draw such sharp contrast between the traditional and current legal practices apparently lies in his rather fresh conception of the role of nation-state and legislation in shaping the very essence of law. No doubt the emergence of nation-state and modern legislation impacted the format and scope of the applicability of the law. But it seems unrealistic to assume that the commanding element of law and the necessity to abide by it were born with the emergence of the nation-state. Should the appearance of the nation-state be the criterion to define law proper, then we should look for other rubrics for Roman law and British law, or to reduce these versions of laws to moral values, as Hallaq tends to do with Islamic law. Hallaq describes the imperative facet of positive law as "a totalizing statement of what *must* be done" (p. 165). He admits that at least theoretically, this facet cannot be absent from Islamic rules of *al-ahkam al-shar'iyyah*. Nevertheless, central to his argument is the practical flexibility and accommodation which he envisions as an inherent part of the Islamic traditional legal system. With a different outlook, however, one can claim that this practical flexibility owes its legitimacy to the lack of procedural law in Islam rather than juridical formulas or tricks on which Hallaq relies. One may also find the modern techniques of communication more accountable for increasing the commanding force of today's legislation than imposing a new *must* for what to be done, as Hallaq describes.

Hallaq's assertion that modern legislation has dismantled the Shari'ah's institutional structures, such as the financially independent colleges and the legal environments, needs more explanation of what specific cases he is referring to. His generalization of the issues is not applicable to the Shi'ah seminaries of Iran and Iraq. The financial independence of the Shi'ah clerical institutions of Iran and Iraq ironically started at the beginning of the nineteenth century and continued throughout the twentieth century regardless of the rise of the nation-state in Iran and

Iraq. Moreover, the rise of both the nation-state and the Iranian constitutional regime were supported by a number of high ranking *'ulama* who, contrary to some other *'ulama*, did not see a contrast between the codification of Islamic law and the traditional Shari'ah.

Concerning the commanding facet of the law, Hallaq is well aware that Islamic legal norms (*al-ahkam al-shar'iyyah*) by definition are imperative. But he places this imperative in theory in order to give leeway to practical fluidity (often disorder) of the law, which he chose to call flexibility and accommodation. Two elements of command and control are parts of the lawful sanctions embedded in each legal system, including Islamic law. Modern technology and advanced communication conceivably had more impact than the nation-state in providing more space for the application of positive law.

Of course, Hallaq's efforts to elaborate on and to reorient Islamic legal methodology are praiseworthy. But the question is how one could content oneself with the old judicial formulas and variable juristic *fatwas* while a number of traditional Muslim scholars, including Abu Sulayman (b. 1935), Taha Jabir Al-Alwani (b. 1935) and even Ayatollah Khomeini, considered the traditional *ijtihad* and its methodology as not adequately responding to the complexity of today's legal problems. How can we speak of neo-*ijtihad* without recognizing the need for codification of the law and standardizing its application by setting new procedural law? We may rightly criticize the nation-state, colonialism and capitalism as Hallaq did. It is hard, however, to conclude that Muslims of the early twentieth century wrongly abandoned the existing system of "distributive justice" of the *fiqh* in order to adopt the logic of "winner take all" of positive law as Hallaq characterizes.

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**Musiques d'Iran: La Tradition en Question**, Jean During, Paris: Geuthner, 2010, ISBN 978-2-7053-3828-2 (pbk), 347 pp

In a video interview recently posted on the internet, the popular iconoclastic Iranian musician Mohsen Namjoo opened a trenchant critique of Persian classical music tradition, especially as it has been codified in the institutions of the *radif* system. Namjoo situates his attack on the *radif* as coming from his own experiences as a student at the national conservatory in Tehran, and from what he perceives to be the limiting and authoritarian tendencies of the *radif* within the broader traditions of musical creativity in Iran. This discussion, which itself echoes and builds upon the earlier infamous attack on Persian classical music traditions (what is generally termed by Iranians as *musiqi-yi sunnati*) by the modernist poet Ahmad Shamlu, is a manifestation of long-