

An Introduction to Wael B Hallaq's Works and Thoughts

*Abdul Basit

***Dr. Mahmood Ahmad

Abstract

This article presents an introduction to the works and thoughts of Wael B. Hallaq (b. 1955), a renowned scholar of Islamic law and Islamic Intellectual history. Introducing Hallaq's works and thoughts this study maintains that Hallaq's is the author of dozens of scholarly articles and books and his teaching and research deal with the problematic epistemic ruptures generated by the onset of modernity and the socio-politico-historical forces subsumed by it; with the intellectual history of Orientalism and the repercussions of Orientalist paradigms in later scholarship and in Islamic legal studies as a whole; and with the synchronic and diachronic development of Islamic traditions of logic, legal theory, and substantive law and the interdependent systems within these traditions. His writings have explored the structural dynamics of legal change in pre-modern law, and have recently been examining the centrality of moral theory to understanding the history of Islamic law and modern political movements.

Keywords: Wael B. Hallaq, Introduction, works, thoughts

* Instructor Islamic Studies Virtual University Lahore/ PhD Scholar
Department of Islamic studies and Arabic, GCU, Faisalabad

** Assistant Professor of Islamic Studies, Department of Islamic studies
and Arabic, GCU, Faisalabad

Introduction

Wael B. Hallaq is a famous Scholar of twentieth century. He was born in Nazareth, Palestine in 1955. He is specialized in Islamic Law. He did his PhD from USA, University of Washington. He served as Assistant Professor in McGill University and taught Islamic Law. He was promoted as full professor of Islamic law in 2005 in McGill University. He is one of the leading scholars of Islamic Law. His work is available in multiple languages as it is translated into Arabic, Hebrew, Indonesian, Italian, Persian, Turkish etc. There is nothing to know about his biography except different websites, his interviews, YouTube lectures etc. I had come to know that in subcontinent only one scholar (Jasim KP) from India, wrote something about Him on M.A level. His topic of research is "Wael Hallaq contribution to Islamic Jurisprudence: A critical analysis". He himself contacted me to improve his research by Academia.com. Wael Hallaq himself answered as follows when I asked about his biography from Him: "I am sorry to say that I do not know any biography written on me. I wrote something brief and indirect to the Arabic translation of Sharia, which just appeared (2018) in Beirut. This is a special introduction to that book, so it is found nowhere else. If you have questions, specific questions, I will try my best to answer them. But do please read that introduction; it might be very useful to you. I am now traveling and do not have a pdf of it, so unfortunately, I cannot help you now. I return to New York September 2, and can have my assistant pdf and send you the

Intro within 2-3 weeks from that date".² This article presents an introduction to the works and thoughts of Wael B. Hallaq.

Publications

His publications types are: 1. Authored Volumes, 2. Series Edition (Only one series edition with name'', Themes in Islamic Law, 7 vols. (published by Columbia university press), Edited Anthologies, Articles, Encyclopedia entries.

Books

1. The Impossible State: Islam, Politics, and Modernity's Moral Predicament (New York: Columbia University Press, 2012). It's much reviewed book in the world. It is about relationship b/w Islamic law and modern state. Reviews of Said Salah³, Lama Abu-Odeh⁴ and Iza Hussain⁵ are important in this regard. Its theme is that modern state is bad fit for application of Islamic law.

²Wael Hallaq <wh2223@columbia.edu> Jul 14, 2018, 4:11 AM To abdul.basit.attari2014@gmail.com

³ Wael B. Hallaq, The Impossible State: Islam, Politics, and Modernity's Moral Predicament (New York: Columbia University Press, 2013), Reviewed by Said Salih Kaymakci. <https://themaydan.com/2016/12/book-review-wael-hallaqs-impossible-state-said-salih-kaymakci/>

⁴ Lama Abu-Odeh, Book Review of The Impossible State by Wael Hallaq, Georgetown University Law Center 2013. <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2279&context=facpub>

2. Sharia: theory, practice, transformations (Cambridge, UK; New York: Cambridge University Press, 2009). It can be said completion of his two famous books 1) History of Islamic legal Theories and 2) Origins and evolution of Islamic Law. It can be considered as preface of his book "The impossible state". Mark D. Walton reviewed this book. Welton appreciated his efforts and especially impressed by his legal doctrine of jihad.⁶
3. An introduction to Islamic law (Cambridge, UK; New York: Cambridge University Press, 2009). This book is a summery of all his books specially Sharia (Theory, Practice and Transformations).
4. The origins and evolution of Islamic law (Cambridge, UK; New York: Cambridge University Press, 2005). Its main theme is to clear the concept of development of Islamic law in formative period. In my opinion the concept of variation of Islamic law is clearly understood from this book. He says about development of law: "Far more complex than plotting the end-point of the formative period is that the determination of its beginning. It is no exaggeration to mention that of all the main questions in Islamic legal history, the problems involved in studying These beginnings have proved the foremost challenging. The problems related to

⁵ Iza Hussin, Impossible state a discussion of wael Hallaq's Islam, Politics, and Modernity's Moral Predicament, American Political Science Association, June 2014, volume 12/No.2. <https://www.jstor.org/stable/43279923>

⁶ Mark D. Welton, Shari'a: Theory, Practice, Transformations (review), The Middle East Journal, Middle East Institute, Volume 63, Number 4, Autumn 2009. <https://muse.jhu.edu/article/362811>

“beginnings” have for long stemmed more from unproven assumptions than from any real historical evidence. Hence, the classic Orientalist creed that the Arabia of the Prophet was a culturally impoverished region, which when the Arabs built their sophisticated cities, empires and legal systems, they could not have drawn on their own vacuous cultural resources. Instead, it's maintained, they freely absorbed the cultural elements of the societies they eventually conquered, including (but especially) the Byzantino-Roman and Sassanid civilizations. In this account, Syria and Iraq become the loci of legal transmission.”⁷ A Review Essay has been written by David S. Powers on this book as ‘Wael B. Hallaq on the Origins of Islamic Law’.⁸In his opinion there is minor difference b/w Joseph Schacht and Hallaq’s ideology about Formative development of Islamic law.

5. A history of Islamic legal theories: An introduction to Sunnī uṣūl al-fiqh (New York: Cambridge University Press, 1997). It can be said the Preface of his book ‘Origins and Evolution of Islamic law’ ‘Theme of this book is to elaborate development of Islamic legal theories. Special role of Imam Al-Shafii and Imam Al-Shatibi for development of legal theories has been discussed in this book.

To analyze his ideas about Islamic law, A reader/researcher must read his books in following order:

⁷ Wael B. Hallaq, *Origins and Evolution of Islamic law* (Cambridge University Press, New York),04.

⁸David Powers, *Islamic law and society*17(2010)126-157
<https://www.jstor.org/stable/25704003?seq=1>

- 1) An Introduction to Islamic Law
- 2) The origins and evolution of Islamic law
- 3) A history of Islamic legal Theories
- 4) Authority, Continuity and change in Islamic law
- 5) Shari'a, theory practice and transformations.

Articles

His articles are near about sixty. Most important from these articles are given below:

1. Qur'anic Constitutionalism and Moral Governmentality: Further Notes on the Founding Principles of Islamic Society and Polity, || Comparative Islamic Studies, 8, 1-2 (2012): 1-51. ⁹
2. "Groundwork of the Moral Law: A New Look at the Quran and the Genesis of Sharia," Islamic Law and Society, vol.16 (2009): 239-79. ¹⁰
3. "Islamic Law: History and Transformation," The New Cambridge History of Islam, vol. 4, ed. R. Irwin (Cambridge: Cambridge University Press, 2010): 142-83. ¹¹

⁹https://www.academia.edu/11170733/Qur_%C4%81nic_Constitutionalism_and_Moral_Governmentality_Further_Notes_on_the_Founding_Principles_of_Islamic_Society_and_Polityhttps://www.researchgate.net/publication/249576380_Groundwork_of_the_Moral_Law_A_New_Look_at_the_Qur'an_and_the_Genesis_of_Shari'a

¹⁰https://www.researchgate.net/publication/249576380_Groundwork_of_the_Moral_Law_A_New_Look_at_the_Qur'an_and_the_Genesis_of_Shari'a

¹¹https://www.researchgate.net/publication/316522804_Islamic_law_History_and_transformation

4. "What is Sharia?" Year book of Islamic and Middle Eastern Law, 2005-2006, vol. 12 (Leiden: Brill Academic Publishers, 2007): 151-80.¹²
5. "Juristic Authority vs. State Power: The Legal Crises of Modern Islam," Journal of Law and Religion, 19, 2 (2003-04), 101-116.¹³
6. "Can the Sharia be Restored?" in Yvonne Y. Haddad and Barbara F. Stow Asser, eds., Islamic Law and the Challenges of Modernity (Walnut Creek: Altamira Press, 2004), 21-53.¹⁴
7. "Muslim Rage 'and Islamic Law," Hastings Law Journal, 54 (August, 2003), 1-17. "The Quest for Origins or Doctrine? Islamic Legal Studies as Colonialist Discourse," UCLA Journal of Islamic and Near Eastern Law, 2, 1 (2002-03), 1-31.¹⁵

From above discussion it is clear that why it is said that Hallaq is not a man but he is like an institution in his personality and work.

Important Discussions

Important topics for discussion before W.B Hallaq are as follows:

- 1) Sharia and its Implementation
- 2) Islamic Law and Islamic Legal theories
- 3) Authority of Jurists

¹² https://www.academia.edu/11170698/_What_is_Sharia

¹³ https://www.researchgate.net/publication/269477848_Juristic_Authority_vs_State_Power_The_Legal_Crises_of_Modern_Islam

¹⁴ <http://iglp.law.harvard.edu/wp-content/uploads/2014/10/Hallaq-Can-the-Sharia-be-Restored.pdf>

¹⁵ <https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1016&context=tobriner>

- 4)Islamic State and its properties
- 5)Modern State and its features
- 6)Modern law and its features

Thoughts

His findings are about the Islamic Law (Sharia), and Modern Law.

Concept of Sharia

According to Hallaq Sharia is " A Man-Made Law' 'founded by Mohammad (Peace be upon Him). And modifications are in its nature to extract "Law' 'from its sources according to Legal Theories. It can be explained by following books and articles.

- 1) what is Shari'a?¹⁶
- 2) can sharia 'a be restored?¹⁷
- 3) Sharia (Theory, Practice, Transformations)

His book "Sharia" includes basic and necessary discussion to understand Islamic law, its practice, transformation and universality in all over the world. The writer says: "This book outlines and explains the difference between the sharia in practice and its doctrine and its presentation in the history. It also entails the functioning of sharia in society, its association with the politics and its transformation alongside modernity in the nation

¹⁶ Wael B. Hallaq, presented (30 pages article) on the Coulson Memorial Lecture held on 12 March 2007.

¹⁷ This is 9 pages article published "in Yvonne Y. Haddad and Barbara F. Stow Asser, eds., Islamic Law and the Challenges of Modernity (Walnut Creek: Altamira Press, 2004), 21-53.

states."¹⁸ In this book writer want to say that the main problem is with the term of 'Sharia. With passage of time the concept, understanding and implementation of sharia changes according to need of society. He says: "As the subject of this book, the sharia 'a is taken to be the total sum of its synchronic and diachronic history. In other worlds, understanding the sharia 'a of a particular time and place is untenable without coming to terms with its cumulative tradition for its own history continued to be at every turn of its life, which became an integral part to provide life experience."¹⁹

4) Was the Gate of Ijtihad Closed?

In his article "was the gate of ijti had closed "he suggested that ijti had must not be closed, it's allowed in all circumstances during all periods of evolution of Islamic law. Then why he claimed that ijti hadic modifications lead to deviation of law? The answer is that, according to him, ijti had is only for jurists not allowed for judges. Here it's compulsory to understand the difference between judges and jurists. It can be explained in two ways:

A) The judges of Formative period

B) The judges of colonial period

In first case a jurist appointed as a judge while in 2nd case a law expert was appointed as a judge. In addition to above two situations, the third one is that jurists who belong to ancestors related to prophetic period denied mostly to be appointed as a Qadi. It means when a jurist appointed

¹⁸ Hallaq, Sharia 'a (Theory, Practice, Transformations), Cambridge University Press 2009, 07

¹⁹ Hallaq, Sharia,17

by state, some modifications are undertaken by him which are not supported by Sharia but these are considered as Islamic law.²⁰

Concept of Hallaq about Islamic Law

To understand his ideas about Islamic law following articles and books are helpful:

- 1) Islamic law: History and Transformations
- 2) Authority, Continuity and Change in Islamic Law
- 3) The Quran and the role of Islamic Law
- 4) The origins and evolution of Islamic law
- 5) Islamic Legal Interpretation (MUFTIS and THEIR FATWAS)
- 6) An Introduction to Islamic law
- 7) Notes on the Term Qarina in Islamic legal discourse
- 8) From Fatwas to Furu: Growth and change in Islamic Substantive Law
- 9) From Regional to Personal Schools of Law? A Reevaluation

According to his Philosophy Islamic law is not product of Muslim State While Modern Law is product of Modern State. He says, In His book "An introduction to Islamic law": "This is to say Shari'a was not the product of Islamic Government unlike Modern Law, which is significantly the

²⁰ Wael B. Hallaq, *The Early Essays on the History of Islamic Legal Theories* / ed. and trans. Atsushi Okuda (Tokyo: Keio University Press, 2003; in Japanese, *Authority, continuity, and change in Islamic law* (Cambridge, U.K.; New York: Cambridge University Press, 2001).

product of state".²¹ Historical development of law or Islamic law according to Wael B. Hallaq may be explained as follows:

- A) Development of law during Prophetic period
- B) Development of law during Caliph period
- C) Development of law during formative period
- D) Development of law during Ottoman empire's period.
- E) Development of law during colonial period
- F) Development of law during Modern period (national-states evolution)

In his book "introduction to Islamic law" Dr. Wael Hallaq discussed colonial period and mentioned modifications in family law, inheritance law, women rights, court development history, authorities of judges, military role for succession of established government etc. At the end he concludes that Islamic law or Sharia law of today is modified, deviated from its base."²² According to Wael B. Hallaq Muslims of today are facing two major problems. First is about modern national-states while the second is about Shari'a. He says: "Two main challenges are posed for the Modern Muslims. They have to reconcile the ontological fact of the state and the associated power of state and secondly to bring governance based on Sharia. The second challenge is much severe as the Muslim states have ignored their efforts to bring a genuine form of Sharia governance."²³

²¹ Wael B. Hallaq, *An introduction to Islamic law* (Cambridge University Press 2009),08.

²² Hallaq, *An introduction to Islamic law*, 85

²³W.B Hallaq, *The impossible state: Islam, Politics, and Modernity's Moral predicament* (Columbia University Press New York, n.d),2.

I think he is right; we have a desire to act upon Sharia but it's difficult in national-states of today. Then what's the solution of this problem. Establishment of Sharia free national modern states or Sharia based Islamic states? Only Muslim states are not our objectives.

Sorry to say, today, our States are Muslim states in between modern law and Sharia implementation. While our requirement is to establish Sharia based Islamic states, not only modern Muslim States. Then how can we achieve this goal? The answer is that the contradiction between two must be finished. It can be done with implementation of Sharia principles. Wael B Hallaq says: "There is no contradiction in the modern state and Islamic Sharia as the highest authority in the Muslim states is attributed to Islam. If there is no contradiction in the modern state working on its mechanism, laws and regulations, it is possible to develop, progress and become a step closer to advancement without the obstacles."²⁴

According to Wael B Hallaq the term "Law "is not Islamic term. When a term is used by other language then it doesn't mean only a "Term "it means a new concept or Philosophy. In his article "what is Sharia? "He says:" In writing any history of the other, we encounter a profoundly epistemic, and perhaps insoluble, problem of linguistic representation. The problem is derivative of the fundamental quandary that Nietzsche called the "Legislation of language", which establishes" the first law of

²⁴ Hallaq, Sharia a Theory, Practice, Transformations (Cambridge University Press 2009),2.

truth", Where a word becomes a concept "having" to fit countless more or less similar cases, which are never equal and thus altogether unequal".²⁵

His adds: "Islamic law itself is a modern creation. It is observed in Europe for over a century that the practicality of Islamic Law is mere disappointment and it was fabricated to look so. There is no compatibility between the Islamic law and European Law. It has been made to look non-effective, deficient and filled with incompetency. It was made to look more relevant at the personal level and was ostracized from the state and society."²⁶

According to Wael B Hallaq fiqh is not only understanding of Divine will I.e. understanding of Quran o sunnah but it's system or mechanism to solve social issues as well as all other issues including metaphysics and theology. He says: "The pluralism of the fiqh was not only a hermeneutical expression of the Divine Will, but also a system, a mechanism, and a process that to create the social order by an established order. This perspective reflects the dual capacity of fiqh. At first, it placed the law in a position to define Islam and created a linkage between metaphysics and theology on one side with the social world on the other side. Secondly, it infused the legal and social norms to create moral order for the meditation and not the imposition alone."²⁷

²⁵W.B Hallaq, what is Sharia, 01,
https://www.academia.edu/11170698/_What_is_Sharia

²⁶ W.B Hallaq, what is sharia,02,
https://www.academia.edu/11170698/_What_is_Sharia

²⁷W.B Hallaq, History of Islamic Legal Theories,07

One of the most important point given by Wael B Hallaq in his article "what's Shari'a" is that "Law" is an ijthadic process or it's context-specific approach to understand and solve issues. He says: "The law wasn't an abstraction. The application of law was not for all as the individuals were not considered equal. All individuals are considered distinct from each other and unique which made Ijtihad very context specific. It justifies the no blind following of the justice by Islam and law was never stated in the form of legal codes but a process of Ijtihad practiced in hermeneutics to emphasize doing the right thing in given situation of human existence."²⁸

Here a common point which is necessary to understand that is "ijthadic process". Each Jurist and Qadi go through this process to give solution of the problem. From here we came to know that both of these things i.e. law and Fiqh have similarities between them. It's easy to understand from the given statement of Wael B Hallaq: "The fiqh has merely been restricted to guide the judges for issuing directions and judgments to resolve the issues in different situations to consider the facts and make sound judgments. The full manifestation of fiqh cannot be realized unless the jural principles are integrated with the social realities and brought under one umbrella."²⁹ The only difference between two from above discussion is that fiqh leads to Shari'a while law leads to society. So fiqh is based on revealed message while law is human practice. Both have a lot of common principles as "Ijtihadic Process."

Islamic law is given by Muslim jurists based upon Islamic legal theories. These theories were formulated to determine rulings which were not

²⁸ W.B Hallaq, History of Islamic Legal Theories,12.

²⁹ W.B Hallaq, History of Islamic Legal Theories,20.

explained by Quran o Sunnah. He says: "Now, the true purpose of Islamic Legal theory was to articulate the rulings for the scenarios where the above stated two sources could not provide the solution."

Wael B. Hallaq points out misconceptions of western's society about Islam, Islamic law (Sharia), Islamic Violence, Islamic political system as well. He says: "This book (An Introduction to Islamic Law) can erase the misconceptions associated with the Islamic law and these misconceptions are removed through the detailed understanding of the long history and the changes that occurred over a long period of time which has transformed the real state of Islamic Law into what is observed today".³⁰He says about Islamic law: "without the sovereign's juridico-political administration (Siyasa shariyya) the sharia would also become a hollow system."³¹

The origin and evolution of Islamic law

According to Wael B. Hallaq Islamic Law is developed from three integral parts: Eastern legal cultures, Arabic Customary law, Qur'ānic Reforms. The writer says:"The book covers a long history expanded on three centuries which presents the development of Law which was drawn on the Eastern Legal culture, the customary laws of Arab and reforms by the Holy Quran".³²

Concept about Juristic Authority

³⁰ Hallaq, Introduction to Islamic Law, 01.

³¹Hallaq, An Introduction to Islamic Law, 73.

³²W.B Hallaq, The origin and evolution of Islamic law(Cambridge University Press, 2005) ,1.

To understand his ideas about Juristic Authority his important book is Authority, Continuity and Change in Islamic Law. This book includes discussion of concept of Authority in Islam and its function. Writer says: "Book is about the function of authority in Islamic law, and how it is constructed, augmented, and utilized."³³In his book "Authority, continuity and change in Islamic Law" Wael B. Hallaq explains three things: Authority, Continuity, change.

What's authority? how it's developed? Here authority means different schools of thoughts and their principles to determine the Will of God. Imam or Mujtahid was authority for development of Islamic law. Continuity means this developmental process was continuous and here is also a space to change it. Following basic questions are under discussion in this book. What's meant by change in Islamic law? Sharia, theory, practice and transformations leads to change in Islamic law? How sharia converted into Islamic law in modern states? Modern states are secular states, while sharia is religious and moral concept of law formation, while Islamic law has dual nature so how modern states can be Islamic states? The articles and books of wael B Hallaq mentioned above, must be necessary to understand to find answers of all these questions. Who has authority to give or form law? what is relation b/w concept of authority of modern states and formative period and prophetic period? Authority was based on Ijtihad, while later on it developed the concept of taqlid, what's relationship between two i.e. authorized persons in school of thoughts i.e. Mujtahedeen and their followers or Muqlideen? it was a

³³ W.B. Hallaq, Authority, Continuity and Change in Islamic Law (Cambridge University Press, 2004),1.

continuous process as well as variable in nature, while later on it remained constant and non-variable. These are the most important discussions of his book "Authority, Continuity and Change in Islamic Law".

Modern state and Islamic State

To understand his Ideas about Modern state and Islamic State his important book is "The Impossible State: Islam, Politics, and Modernity's Moral Predicament" (A complete book of almost 166 pages)³⁴. This book is about Islamic legal, political and social values. It also elaborates status of moral values or their importance in different modern states. Lama Abu Odeh comments on it as follows: "It is argued by Wael Hallaq in the book The Impossible State that the Modern state does not fit the Muslims due to the incompatibility of Islamic governance with the Western States".³⁵ In my opinion, this book is a combination of a number of misconceptions. Different topics and discussions which are irrelevant from each other are merged here. It has different dimensions and areas of understanding and implementation, so it is a combination of confusions about Sharia, Islamic State, Islamic Law, Modern State, Modern Law, Politics and Moral Values.

1.5 Sources of W.B Hallaq

Main sources of Thoughts of Wael B. Hallaq are: Goldziher, Joseph Schacht, Collins, Goitein, Talal Asad, Juynboll, Imam Malik, Imam Shafii, Imam Shatibi, Ibn-e-Rushed, Abi Laila, Imam Ibn e Tamiya, Syed Rasheed

³⁴ The Impossible State: Islam, Politics, and Modernity's Moral Predicament (New York: Columbia University Press, 2012).

³⁵ Book Review of Wael B Hallaq's Book the Impossible state by Lama Abu Odeh.

Rida. Hallaq's Sources are very important to understand and analyze his ideology about Islamic law and nation States.

Conclusion

Wael B. Hallaq's is the author of dozens of scholarly articles, and his books include *Ibn Taymiyya Against the Greek Logicians* (Oxford, 1993); *A History of Islamic Legal Theories: An Introduction to Sunni Usul al-fiqh* (Cambridge, 1997); *Authority, Continuity and Change in Islamic Law* (Cambridge, 2001); *Origins and Evolution of Islamic Law* (Cambridge, 2005); and *An Introduction to Islamic Law* (Cambridge, 2009). His *Shari'a: Theory, Practice, Transformations* (Cambridge, 2009) examines the doctrines and practices of Islamic law within the context of its history, from its beginnings in seventh-century Arabia, down to the present. His latest work, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (Columbia University Press, 2013), has won Columbia University Press's Distinguished Book Award for 2013-2015. Hallaq's work has been widely debated and translated into Arabic, Hebrew, Indonesian, Italian, Japanese, Persian and Turkish, among others. Hallaq's ideas are being discussed in the world due to their importance. His thoughts are based on teachings of founders of Islamic law as well as founders of oriental approach to analyze Sharia. His books and articles are a big source of knowledge to understand oriental approach about Sharia.