



HALLAQ'S RESEARCH ON ISLAMIC LAW AND ITS SIGNIFICANCE

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Annotation

This article is dedicated to the scientific research of Wael Hallaq, a renowned scholar in the field of Islamic law, and its theoretical and practical significance. Hallaq's research plays a crucial role in studying the history of the formation of Islamic jurisprudence (fiqh), its stages of development, and its state in the modern era. His works, such as "Islamic Law: Past and Present", examine the theoretical foundations of Sharia law, the process of issuing fatwas, as well as the distinctions between traditional and contemporary Islamic law. This article highlights Hallaq's profound contributions to understanding the dynamic interplay between historical Islamic legal traditions and their modern applications, offering insights into the broader legal systems and cultural contexts of Muslim societies.

Keywords

Wael Hallaq, Islamic law, fiqh, Sharia law, fatwa, contemporary Islamic law, legal systems, Muslim societies, legal culture, historical analysis.

Wael Hallaq has conducted in-depth research on Islamic law, encompassing its theory, history, development, and transformations in the modern era. His studies focus on understanding Islamic law not only as a legal system but also as an ethical and social system. Below are the key aspects of his research on Islamic law:

Hallaq's book *The Origins and Evolution of Islamic Law*⁵ is dedicated to the emergence and historical development of Islamic law. It analyzes how Islamic law was initially formed based on the Quran, Hadith, and the fatwas of the companions. This system later evolved through legal schools (madhabs). Today, Islamic law and the Islamic state continue to provoke significant debates worldwide. In the West, Islam, the Prophet Muhammad (PBUH)⁶, his mission, and teachings have always been subjects of ongoing interest. Contemporary writings and discussions on the Islamic state and Islamic law, as well as research and critique, have become important topics for several reasons. One of the most important reasons is the threat posed to the current structures of Western states. This situation stems from the existence of man-made state structures and their

⁵*The Origins and Evolution of Islamic Law* (Cambridge University Press, 2005).

⁶ Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 2003), 125.



dominance over state institutions and legislation. New conflicts and contradictions are emerging. As the Western population turns to Islamic teachings when problems arise, there has been a growing interest in researching and critically analyzing Islamic teachings in this context⁷.

Although scholars such as Ignaz Goldziher⁸, Duncan Black Macdonald⁹, Josef Schacht¹⁰, Norman Calder¹¹ and Kulson¹² have expressed numerous opinions on Islamic law, no one has conducted in-depth work on Islamic law within the context of modern states. This responsibility was undertaken by the leading professor of the 21st century, Wael Hallaq. Hallaq's views on Islamic law consist of two main aspects.

Firstly, Hallaq considers Islamic law to be a human-regulated and evolving system. He believes that in the past, Islamic law interacted with societies, but the supremacy of the law remained intact. However, due to colonial influences, Islamic law has deviated from its original purpose.

Secondly, Hallaq views Islamic law as an ethical philosophy and believes that its compatibility with modern legislation is not high. In this regard, the study and critique of Islamic law is a significant topic in his works.

According to Hallaq's views on sources, there are three main sources of Islamic law: Arabian Customary Law, Near Eastern Legal Culture, and the rulings from the Qur'an. Hallaq regards the first two sources as pertaining to the pre-Islamic period. The Arab pre-Islamic traditions are briefly referred to by Hallaq as Arabian Customary Law, which reflects the social, cultural, and political diversity of the region. The third source consists of the rulings from the Qur'an, which were established by Prophet Muhammad.

According to Hallaq, the rulings of the Qur'an did not create immutable legal principles but rather anticipated change and development. This theory of change is extensively explored in his three books: *Origins and Evolution of Islamic Law*, *History of Islamic Legal Theories*, and *Shari'a: Theory, Practice, and Transformation*. Hallaq argues that Islamic law incorporates pre-Islamic Arab customs. He states, "Although many new rules and principles were introduced, old institutions and ancient customs remained largely unchanged. Much of Arab law found its place in sharia, but this did not happen without modifications"¹³. As

⁷ *An Introduction to Islamic Law* (Cambridge University Press, 2009) 74.

⁸ **Goldziher, Ignác.** *Introduction to Islamic Theology and Law*. Translated by Andras and Ruth Hamori. Princeton: Princeton University Press, 1981

⁹ **Macdonald, Duncan Black.** *Development of Muslim Theology, Jurisprudence, and Constitutional Theory*. New York: Charles Scribner's Sons, 1903

¹⁰ **Schacht, Joseph.** *An Introduction to Islamic Law*. Oxford: Oxford University Press, 1964

¹¹ **Calder, Norman.** *Studies in Early Muslim Jurisprudence*. Oxford: Clarendon Press, 1993

¹² **Coulson, Noel James.** *A History of Islamic Law*. Edinburgh: Edinburgh University Press, 1964

¹³ *An Introduction to Islamic Law* (Cambridge University Press, 2009) 79.



examples, he mentions oaths (oaths taken in legal disputes), date palms, blood money, trade contracts, and others.

The social, political, and economic conditions of Near Eastern legal culture influenced Islamic law. According to Hallaq, "long before the emergence of Islam, Mecca and Medina had a history of settlement stretching back many centuries, and they were within the sphere of Near Eastern culture. The developed legal experience of Arab society later provided the foundation for sharia." Hallaq believes that the Qur'an was directed at creating new legal systems through social, economic, and religious reforms. He also emphasizes that during the time of Prophet Muhammad (PBUH), legislation had not yet fully formed. Moreover, he highlights that "Prophet Muhammad (pbuh) left behind a political system with state structures and ideas of justice, along with a highly developed legal framework for that time"¹⁴. Hallaq asserts that Islamic law developed as a combination of many cultural, political, and social factors. It adopted elements from Arab and Near Eastern cultures. Furthermore, Hallaq's works play a crucial role in studying the development and transformation of Islamic law¹⁵. Wael Hallaq defines the "formative period" as follows: "This historical period is when the legal system evolved from its primitive stages into a discernible form with its own distinct characteristics"¹⁶.

When discussing the formative period, Hallaq examines the existing literature on the subject and emphasizes that only three books specifically address this issue, with particular reference to Josef Schacht's *Origins of Muhammadan Jurisprudence*¹⁷. According to Schacht, the formative period spans the mid-third century of the Hijri calendar. However, others disagree with this view and consider the formative period to have ended by the mid-fourth century. Hallaq, in contrast to both of these opinions, supports an intermediary perspective and divides the formative period into two phases: the phase of shaping sharia and the phase of defining sharia. According to Hallaq, Islamic law has two main characteristics: it is human-formed and changeable, and it is based on ethical principles.

Hallaq emphasizes that there are several misconceptions among Western scholars regarding the beginning and duration of the formative period. In his view, "determining the starting point of the formative period is more complex than determining its end. This issue, one of the key questions in the history of Islamic law, has turned out to be very difficult. The problems regarding these beginnings stem more from unconfirmed assumptions rather than historical facts."

¹⁴ Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oxford: Oneworld Publications, 2008), 64.

¹⁵ *The Origins and Evolution of Islamic Law* (Cambridge University Press, 2005) 86.

¹⁶ *An Introduction to Islamic Law* (Cambridge University Press, 2009) 45.

¹⁷ Josef Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1950), 112



Hallaq also criticizes certain assumptions made by Western scholars (particularly Schacht), such as the idea that Arabia was culturally backward and that Islamic law was not based on Arab traditions but was instead adopted from the Byzantine-Roman and Sassanian civilizations. According to Hallaq, two main issues exist regarding the beginning and sources of the formative period: one is the difficulty in precisely determining its duration. If this period is considered to start from the time of Prophet Muhammad (PBUH), then its sources would be tied to that period. However, Western scholars tend to link the development of legal theory to the second century of the Hijra, which makes their assumptions contradictory.

According to Hallaq, Islamic law was not only formed but its sources also developed historically. He explains the stages of the formation of Islamic law as follows: the content of the Qur'an was complete during the life of Prophet Muhammad (PBUH); the Sunnah period was shaped during the caliphs' rule; the Hadith period was fully developed during the time of Umar ibn Abdulaziz. The role of Ijtihad (independent juristic reasoning) and Ijma (consensus) played a part at each stage¹⁸.

Hallaq criticizes Western scholars, particularly Joseph Schacht, for linking the formative period solely to Imam Shafi'i. In contrast, Hallaq emphasizes that the formative period was the result of the efforts of many jurists and caliphs over a span of 350 years. The Qur'an, Sunnah, Hadith, and secondary sources (such as Ijma and Qiyas) developed together during the formative period. Hallaq argues that it is incorrect to understand Islamic law through a purely humanistic approach. He stresses the importance of considering historical factors in the formation and development of Islamic law. Hallaq believes that Islamic law and its sources developed over various stages. His concept of the "changeability of Islamic law" implies that all its sources evolved throughout historical periods. Moreover, Hallaq critiques the inaccurate views expressed by Western scholars regarding the formation of Islamic law and rejects the idea of linking this law solely to the efforts of a few individuals. For Hallaq, the sources of Islamic law and their historical development are an inseparable part of legal theory¹⁹.

The first two parts of the three sources mentioned above were invented by Hallaq and presented as sources of Islamic law. However, according to the Muslim worldview, these sources are actually external factors. From this perspective, the purpose of Sharia is to change, reform, or annul sources and rules where necessary. In places where there is no need for change, they continue. These sources were not

¹⁸*The Origins and Evolution of Islamic Law* (Cambridge University Press, 2005) 76.

¹⁹ Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (Syracuse: Syracuse University Press, 1996), 101.



separate foundations but were factors under the influence of Islamic law²⁰. In this way, natural and divine laws were formed. Islamic law is directly related to society, and making decisions about changing, annulling, or enforcing previous laws in society is of significant importance. Also, generally accepted laws can serve as a foundation for implementing legislation in the future. This feature is fully reflected in Islamic law and its sources. While Hallaq connected past Islamic law to society, the foundations of this relationship were incorrect, leading to incorrect influences and outcomes²¹.

Hallaq views the complete formation of Islamic law as the result of the efforts of jurists. Their task was to understand and systematize Sharia. The complete structure of Sharia, that is, its sources, was formed during the time of the Prophet (PBUH) based on divine revelation. Furthermore, the ideas regarding the relationship between Islamic law and modern nation-states are somewhat aligned with reality, as the structure of modern nation-states is a product of colonialism. However, this does not mean that Islamic law cannot be applied in such states, nor does it imply that colonial structures have always supported the implementation of Islamic law²². Islamic law is not a static or entirely changing structure. Its changes are made based on unchanging principles. Hallaq emphasizes the important role of schools of thought in shaping Sharia, through which the legal system adapted to regional and cultural needs. Islamic law and its ethical system, according to Hallaq, are centered on the moral and religious principles of Islamic law. The ethical legal system reflects the moral essence of Sharia, considering it not merely a body of laws but a system that preserves justice and ethics in Muslim society. The harmony between law and religion, in Hallaq's view, means that Islamic law requires not only the enforcement of laws but also adherence to internal moral standards²³. Transformations analyze how Sharia became weakened during the colonial era, confined only to religious matters. Hallaq stresses that Islamic law, by blending with Western legislation, lost its traditional independence. In *The Impossible State*, Hallaq discusses the complex relationship between the modern state and Sharia. He highlights that the structure of Sharia is difficult to align with modern nation-state systems, as Sharia focuses on regulating moral and religious responsibilities, while modern state systems are largely based on secular legislation. As an ethical system, Sharia, according to Hallaq, should be viewed as

²⁰ “Globallashuv jarayonida islomni tushunish muammolari” xalqaro ilmiy-amaliy konferensiya materiallari to‘plami II-III: “Важность сотрудничество центров по изданию фетв у торкских народов: проблемы и пути их решения” mavzusidagi tezis. “Hilol Media” nashriyoti, T., - 2023. 263 B, 160-161 bet.

²¹ John L. Esposito, *Women in Muslim Family Law* (Syracuse: Syracuse University Press, 2001), 56.

²² Vael Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (New York: Columbia University Press, 2013)

²³ Vael Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (New York: Columbia University Press, 2013)



an ethical rather than a legal system in the modern world. Hallaq compares Islamic law with Western legal systems, analyzing their key differences.

The sources of Western and Islamic legal systems differ. Islamic law is based on divine sources such as the Qur'an, Hadith, Ijma (consensus), and Qiyas (analogy), while Western legislation relies on secular state laws²⁴. The relationship between law and society in Islamic law prioritizes public interests, whereas Western law emphasizes individual rights. Ijtihad and adaptability: Hallaq places great importance on the ability of Islamic law to adapt to new circumstances through ijtihad (interpretation)²⁵. As a dynamic system, Sharia was historically dynamic and adaptable, but Hallaq emphasizes that it partially lost this ability during the colonial era. Hallaq views fiqh (Islamic legal doctrines) as a core part of Sharia and analyzes its role in adapting to local and regional needs²⁶.

Wael Hallaq frequently uses the term "paradigm" in his book, and it occupies a central place in his thinking. This term is one of the most frequently used in the text, even more so than the word "organic." Interestingly, Hallaq primarily associates this term with "Islamic" and almost never refers to it as the "paradigm of the modern state"²⁷. The reason for this is that Hallaq aims to blur the distinction between the "norm" (standard) of the "Islamic state" and historical reality, presenting it ambiguously. The term "Islamic governance paradigm" intensifies this confusion, leaving the reader uncertain whether Hallaq is describing a theoretical model developed by jurists or narrating a historical event. According to Hallaq's methodological approach, the norm (paradigm) comes before reality, and Islamic history is seen as an attempt to implement this norm, sometimes successfully and sometimes unsuccessfully²⁸. From this perspective, history is insignificant because it consists of successful or unsuccessful attempts to express the norm. Therefore, there is no need to distinguish between historical modernity and pre-modernity – the essence is the only thing that matters²⁹. This approach sharply contrasts with the views of Baber Johansen, a prominent scholar of Islamic legal history. In his research, Johansen extensively analyzes changes in land tenancy governance in Islamic history and their impact on the relationships between landowners and tenants. Johansen's studies show that it is impossible to generalize the legal norms between landowners and tenants in Islamic society in a "paradigmatic" manner.

²⁴ https://www.academia.edu/8424224/Almiraj_Sufi_and_Islamic_Study?sm=b&rhid=31347662764

²⁵ Chibli Mallat, *Introduction to Middle Eastern Law* (Oxford: Oxford University Press, 2007), 142.

²⁶ https://www.academia.edu/81462385/Academy_of_Islamic_Study?sm=b&rhid=31347662764

²⁷ R. Raihani, "Islamic Education and the Multicultural Society: Description of education for cultural diversity in two Islamic schools in Indonesia," *Int. Conf. Islam Muslim Soc. Towar. a Better Futur.*, no. November, pp. 1–18, 2014. [Online]. Available: <https://journal.uin-alauddin.ac.id/index.php/jicsa/article/view/778>

²⁸ Norman Calder, *Studies in Early Islamic Jurisprudence* (Oxford: Oxford University Press, 1993), 88.

²⁹ Baber Johansen, *Contingency in a Sacred Law: Legal and Ethical Norms in the Muslim Fiqh* (Leiden: Brill Academic Publishers, 1999) 23.



Hallaq objects to this, arguing that the land tenancy rules described by Johansen are actually a translation of the ethical code of Sharia, adjusted to the historical conditions of different periods³⁰. According to Hallaq, the ethical code remains unchanging and is seen as a manifestation of the principles of Islamic governance. However, it is difficult to understand how the very diverse rules described by Johansen could be expressions of an unchanging ethical code³¹. Sometimes they provide security to tenants, while at other times, they entirely weaken their position. According to Johansen, history shapes the norm, just as the norm shapes history³².

Interestingly, Hallaq's approach sharply changes when it comes to discussing the modern state in the West. Here, the modern state is viewed solely as the product of a historical process. Hallaq writes: "The history of the state itself is the state, for nothing in the state escapes the measurement of time. Therefore, it is a historical product that took place in a specific, culturally distinct place – Europe. It is a process that occurred not in Latin America, Africa, or Asia, but in Central and Atlantic Europe. As Carl Schmitt said, the state can only exist in the West." According to Hallaq, the modern state is doomed to its historical origins, and accepting it as a universal norm is both incorrect and even impossible. Therefore, while history in the East is relative, in the West, it constitutes the essence of everything.³³ Hallaq places the "formal characteristics" of the modern state in their historical roots. To achieve this, he uncovers every aspect in the literature of philosophy, critical theory, and legal theory, using the most unfavorable interpretation of the modern state. Hallaq simultaneously references both left-wing authors from the West (such as Bourdieu and Adorno) and right-wing conservative writers (such as MacIntyre and Gray).

While Hallaq's ability to critique the West is impressive, he appears to disregard the consequences of this critique. It can be understood that Hallaq's critique of the West is aimed at revealing the structural dynamics hidden behind normative conceptions. However, Hallaq accepts this critique as the paradigm of the modern state and presents the hidden dynamics of the critique as the explicit nature of the state.

³⁰ https://www.academia.edu/115967070/Islamic_Symbols_at_Indonesia_s_Islamic_University_Libraries_A_Semiotic_Study?sm=b&rhid=31347662764

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https://www.academia.edu/27207219/Correlation_Study_about_Islamic_Education_ISLAMIC_FUNDAMENTALISM_AND_NATIONALISM_A_Study_at_Darul_Marifat_Islamic_Boarding_School_East_java?sm=b&rhid=31347662764

³² Baber Johansen, *Contingency in a Sacred Law: Legal and Ethical Norms in the Muslim Fiqh* (Leiden: Brill Academic Publishers, 1999) 86.

³³ Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (Chicago: University of Chicago Press, 2005), 35.



Wael Hallaq's research is of significant importance in understanding the historical development of Islamic law, its relations with modern state structures, and its ethical essence³⁴. He studies Islamic law not only as a legal system but also as a system that embodies moral and social principles. Hallaq's works are essential sources for analyzing the complex relationship between Islamic law and modern society and for reinterpreting Sharia in a contemporary context³⁵. Harald Motzki, in his book *The Origins of Islamic Jurisprudence: Meccan Fiqh before the Classical Schools*, analyzes the early stages of the development of Islamic law (fiqh). He explores the historical roots of fiqh, particularly the early legal practices in Mecca and the Hijaz region. The book focuses on the initial legal principles, hadiths, and their influence on societal practices. Motzki emphasizes that the early rules of Islamic law during the Meccan period were formed to address social and economic problems. He demonstrates that the Meccan fuqaha (jurists) and their activities preceded the formation of the classical fiqh schools.

The role of hadiths in the formation of fiqh is examined separately in the book. Motzki uses hadiths as historical sources and investigates their reliability. He analyzes how the collection of hadiths was formed and their role in the development of fiqh. Motzki provides a detailed account of the social, political, and economic conditions of the early Muslim society in Mecca. He explains how Sharia rules, including those related to commerce, family matters, and property rights, were shaped.

Motzki uses historical documents and sources, including hadiths and fatwas, to show how the initial legal principles emerged. He focuses on how different social groups and their needs were taken into account during the early period of fiqh. In this book, he demonstrates how the jurists formed their legal decisions and how they developed rules through hadiths, Sharia principles, and qiyas (analogy). Motzki analyzes how jurists adapted to societal needs in their work. He emphasizes that Meccan fiqh laid the foundational groundwork before the classical schools emerged. During this period, Islamic law developed in response to the needs of society³⁶.

Hadiths were regarded as the primary legal source in the early stages of fiqh formation. Motzki analyzes the historical reliability of the hadiths and illuminates their role in the early Muslim society. Early Islamic law evolved as a flexible system responding to social, economic, and political needs. Motzki depicts the jurists as

³⁴ https://www.academia.edu/97910631/Investigating_Islamic_Financial_Market_a_Study_in_Jakarta_Islamic_Index

³⁵ Harald Motzki, *The Origins of Islamic Jurisprudence: Meccan Fiqh Before the Classical Schools* (Leiden: Brill, 2002), 45

³⁶ Harald Motzki, *The Origins of Islamic Jurisprudence: Meccan Fiqh Before the Classical Schools* (Leiden: Brill, 2002), 76.



both religious and social leaders, highly valuing their role in formulating legal rules.

Through this work, Motzki explores the early stages of fiqh in its historical, social, and religious context, offering a deep analysis of the development of Islamic law. This book is an invaluable source for researchers interested in the origins and early formation of fiqh.

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