Book Reviews


This may be the most important monograph in the field of Islamic legal studies over the last fifty years. This is not only because of the astounding scope of the book, which offers a history of Islamic law from its origins to modernity, a thorough account of the substance of Islamic law, and a critique of the field of Islamic legal studies. Much more than that, it sets out a suggestive and ambitious new paradigm, a grand narrative of the meaning of Islamic law, in a way that has not been attempted since Schacht’s Introduction, published in 1964. Schacht’s scheme was one of post-classical decline followed by modern reforms, a narrative that continues to influence Islamic scholarship despite its critics. Hallaq self-consciously relies on Foucault to supplant that paradigm with one of pre-modern efflorescence followed by modern obliteration. Schacht, by the way, is not mentioned even once; Hallaq is no longer the revisionist of “Was the Gate of ijtihād closed?”, but the master of the discipline.

For readers of Islamic Law and Society, this is a must read. But it is also a hard and long read, with 550 pages of dense text, beautifully and precisely written, and always demanding full attention. In this review I will aim to provide a survey of the contents of the book, bring to the fore some of its many engaging insights, and then point out what I believe to be cardinal flaws in this new paradigm.

But first, the key argument. Of all the accusations against the Shari‘a, the one Hallaq is most adamant in refuting is Islamic law’s failure to separate law from morality. In western scholarship, the moral dimension of Islamic law is mostly seen as merely rhetoric, a dispensable waffle; and at worst, as one of the reasons for Islamic law’s irrelevance and detachment from reality, a cause for inefficiency and paralysis. Hallaq, however, does not see this lack of separation as a failure. On the contrary, the morality at the centre of the Shari‘a is its distinctive strength. In fact, “Islamic law’s presumed “failure” to distinguish between law and morality equipped it with efficient, communally based, socially embedded bottom-up methods of control that rendered it remarkably efficient in commanding willing obedience” (p. 2). The moral order is an integral part of the Shari‘a, and enhances willing submission to the law in a way modern codes cannot emulate. This moral centre is closely associated, if not actually identical, with the religious dimension of the law. Without taking religion into account, we lose sight of much of what compels individuals to obey Islamic law: awareness of an omniscient God, hope of an afterlife, moral status in society and one’s own view of oneself.
It is this view of the Shari’a as a moral order that underlies much of the book, and, given the huge range of topics, lends it a surprising level of internal cohesion. The book opens with a methodological introduction, which places the book within the history of Islamic legal studies as well as within the trajectory of post-colonial theory. The main body of the work is divided into three parts. Part I is devoted to the pre-modern period. It deals with the origins of Islamic law, Islamic legal theory, legal education, courts of law in practice and the relationship with the state. Part II is a coherent exposé of the substance of Islamic law, presented from the viewpoint of morality and practice. Part III deals with what Hallaq sees as the misfortunes of the Shari’a in modernity, first under colonial regimes and then under the post-colonial nation-states, from Indonesia to Morocco. It concludes by offering a survey and a critique of modern legal methodologies, from Rashid Rida to Fazlur Rahman and Muḥammad Shaḥrūr.

The introduction includes Hallaq’s definition of his subject matter. Hallaq argues that the Shari’a is defined by key immutable structures of authority and discursive and cultural practices. Its distinctive features, in the pre-modern era, included a particular modality of legal education, a set of legal functionaries, and “a unified notion of justice” (p. 16). This unified notion of justice relied on the religious ethic of the Quran, on the integrity of the community, on a fairly cohesive body of legal doctrine, on the moral community as a participant in the law court, and on a particular relationship between legal knowledge and political power.

The introduction is also a self-conscious attempt to place the book in the context of Islamic legal studies, itself a child of the colonial project. Hallaq posits (and demonstrates in the course of the book) that the scholarly production of Islamic legal studies was originally sponsored by colonialist regimes as a strategy of power. Yet, going beyond Said’s original argument, Hallaq then argues that the effects of this discourse on the cultures of both the West and Islam are unpredictable. They include the rise of subversive discourses that grow from the colonial ones, and the rise of a post-modern perspective on the ashes of the modernist one. This book in itself, Hallaq evidently believes, is such an example: it grows from the Islamic legal studies discourse and at the same time tries to subvert it. It is important to emphasize that Hallaq candidly reflects on this book as a scholarly achievement that is also a political statement.

Part I begins with a discussion of the origins of Islamic law, arguing that morality and religion were at the centre of the Shari’a from its inception. The law did not arise from administrative practices, which were then Islamicised; it emerged from the sunan, which were primarily religious in nature. What we do see over time is the formalisation of Hadith as against practice-based sunan, a process linked to the size of the empire and the mobile nature of the legal experts. The formative period of Islamic law also saw the emergence of the independent legal expert, which is seen as a distinctively Islamic institution. The law does not emanate from the ruler, but from those who possess legal knowledge as an epistemic quality that is the final arbiter in law-making. Again, this is linked to the inherent morality integral to Islamic law. The possession of legal knowledge, and therefore legal authority, was partly judged through moral