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Book Review of The Impossible State by Wael Hallaq

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In his book *The Impossible State*, Wael Hallaq argues that the modern state is a bad fit for Muslims. This is so because the paradigm of “Islamic Governance”, developed through centuries of Islamic rule, and the modern state of the West are incompatibles if not altogether contradictory. The modern state, a European invention and an expression of the unique unfolding of Europe’s history, being premised on the deep penetration by the nation state of its population, a separation of powers between the executive, legislative and the judiciary that is always faltering, a separation between the is and the ought and the primacy of the political over everything else goes against the very grain of the Islamic non-state. The latter, by contrast according to Hallaq, is organized organically around the center of God’s sovereignty, Sharia being the moral code, the privileged expression of His Will. The translation of Sharia the moral code into law unfolds through the work of a learned juristic class that acts as mediator between the community, to which the jurists are organically connected, and God the sovereign. The world of Islam is moral by excellence that rejects the separation between fact and norm, for whom the “political” is confined to executive rulers of rotating dynasties that remain external to the embryonic tight embrace between jurists and community, whose role is to tax, organize armies, and regulate on the margins. In this universe, the “the care of the self” by the individual Muslim to fashion oneself as moral according to the dictates of the Sharia is the organizing principle of life, which is in contradistinction to the pitiable plight of the modern Western citizen whose subjectivity is fashioned by the state for its own selfish utilitarian ends. Pulling a Huntington-inverse, Hallaq argues that not only the modern state thrown by Europe into Muslim shores by force a bad fit for Muslims, it is decidedly inferior to the counter model of Islamic governance. For Muslims, due to their “paradigm” of governance, had lived in peace and tranquility for centuries, spared the revolutions and tumults of Europe, as they had been historically free of the tyranny of monarchs, the cruelty of feudalism.
and the abuses of the church, all of which had forced their European compatriots to rebel!

Hallaq ends by on the one hand inviting the West to recognize the radical-ness of the Muslim other and to give up its imposed universalisms. Indeed, he invites the West to open its heart and mind to the Islamic model, for who knows it might learn to be enlightened by it. On the other, he expresses skepticism of contemporary projects of Islamic reconstruction of law such as Islamic finance because the modern state is the background assumption and the locus for such projects. The problem according to Hallaq is that such attempts proceed to reconstruct law while leaving aside the reconstruction of the moral Muslim who Islamic governance assumed to be the ontological prior to law and litigation. Deprived of the moral context that lend them the quality “Islamic” such projects are either inauthentically so or are doomed to failure.

If comparing Islamic governance, an “event” located in pre-modernity, with the modern European state strikes you, dear reader, as odd, you are not alone. Surely, there is pre-modern European “governance” that could be more properly and profitably compared with its Islamic counterpart in historical time, and indeed Hallaq shows hints here and there of recognizing similarities of constitutional structure between the pre-modern two. But to compare a “paradigm” (the Islamic) that had prevailed before the advent of modernity and the spread of global capitalism and its imperialist arm that had dismantled all pre modern societies, European and otherwise, to a state model (the Western) that emerged in its aftermath, is surely like comparing, well, apples to oranges.

One thing that allows for this comparative sleight of hand is the repeated use of the word “paradigmatic” which Hallaq seems to have a special affinity to as he repeats it more than any other word in the text (the word “organic” is a distant second). Curiously he only uses it in relation to the “Islamic” and rarely if ever does he say, “the paradigmatic modern state”. That is because Hallaq wants to keep the relationship between the “norm” of the Islamic state obscurely confused with its historic reality and the use of the term “paradigmatic Islamic governance” allows for this obfuscation leaving the reader to wonder whether Hallaq is describing a juristic normative version
of this “governance” or a historical account of it. Hallaq’s methodological assumption is that the norm (the paradigm) precedes the real in the sense that Islamic history can be summed up as the attempt to realize the norm, sometimes Muslims succeed other times they fail. In short, history is of no import as it is driven by the norm as either a successful or a failed expression of it so why bother with the distinction between pre-modernity and modernity. Essence is all.

Hallaq’s approach is to be contrasted with that of the renowned historian of Islamic law Baber Johansen who provided us with a rich account of Islamic regulation of land rent that highlighted the shifting privileges and entitlements in the relations between landowners and land tenants over consecutive periods of time in Islamic history. If these shifts showcased anything, it was that there was no such thing as a “paradigmatic” account of the legal norm regulating the relationship between landowners and their tenants in Islamic society. Hallaq would object that land rent rules described by Johansen were simply rules worked out by the various jurists over time translating the moral code of Sharia, a task that was always history-bound and therefore shifting according to historical contexts. It was the moral code that remained stable, an expression of the oeuvre of Islamic governance. But it’s hard to see what “moral code” could these drastically differentiated rules possibly be an expression of, rules that vary in scope from giving tenants security of tenancy over the land to making their tenancy extremely insecure! For Johansen history is as constitutive of the norm as the norm is constitutive of history.

Curiously, when it comes to the modern state of the West, the approach is radically different. There, the modern state is nothing but history, saturated by it through and through, and it is the history of Europe. Hallaq writes,

The history of the state is the state, for there is nothing in the state that can escape temporality. It is therefore a historical product of a particular, culture-specific location: Europe, central and Atlantic-not Latin America, not Africa, not Asia. As Carl Schmitt averred, the “state has been possible only in the West”.

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What Hallaq wants to say is that the modern state is hostage to its history of production and transforming it into a universal norm is wrongheaded if not altogether impossible. So while the East is all “norm” with history a casual intruder, the West is all history, without a transcendental norm. All this is perhaps well deserved, for a culture that places sovereignty in the state instead of God, deserves to be stuck in historical time, trapped in its own secular particularity.

Hallaq’s account of what he calls the “form-properties” of the modern state, locates them squarely in their deracinated history. He does so by leaving no stone unturned in the literature of philosophy, critical theory and legal theory to shed the most unflattering light on this modern state and its “formal-properties”. Indeed, the critique he marshals is quite devastating, nihilistically making use of writings from Western authors on the left with those on the right, quoting simultaneously and at times in one paragraph Bourdieu (a leftist French intellectuals) and Glendon (a conservative legal writer), Adorno (Marxist critical theorist) and MacIntyre (catholic moral philosopher), Foucault (a leftist post-structuralist historian) and Gray (a conservative critic of the enlightenment). So not only does Hallaq compare the pre-modern with the modern, but he also compares the paradigmatic (in the case of the Islamic) with the critical (in the case of the modern state).

Curiously, while Hallaq shows an impressive mastery and understanding of this Western literature of critique, he seems unaware of its implications. Critique is premised on the act of unmasking of the structural dynamics that remain latent and hidden behind normative evocations. Not only does Hallaq treat the critique the West as an account of the modern state’s paradigm treating the “behind” that the critique digs and unearths as the “front” of the system, but he also seems completely uninterested in adopting an equivalent critical posture in relation to the “Islamic”.

Hallaq’s writing is rife with anthropomorphisms (“Sharia is patient”), conclusions about history made deductively, the use of quotes to refute or assert historical claims, all of which undermine his undeniable mastery of Islamic thought and often make teaching his writings to students all the more difficult.
Furthermore, Hallaq is a conservative theorist of identity. He bemoans the loss of patriarchal rule in the West and frets over its demise in the Islamic world, he is appalled by the high rate of taxation in the industrial West and compares it unfavorably with the meager 2.5% of Zakat on growth of income, and without a hint of disquiet reassures his readers that contrary to popular opinion, Jihad was not obligatory in Islam because there were slave soldiers whose task it was to wage war. But Hallaq is “paradigmatic” of those who have populated the field of Islamic law in Western academia the last couple of decades. Scholars who refuse to accept that the demise of “Islamic governance” was final and irretrievable and that Muslims pine more for rights and liberties than they do for political Islam as the recent events in Egypt made clear as day.