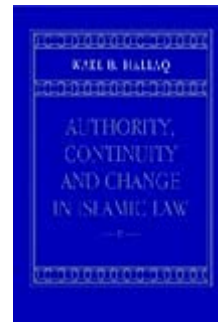




Wael B. Hallaq. *Authority, Continuity and Change in Islamic Law.* Cambridge: Cambridge University Press, 2001. xiv + 269 pp. \$65.00 (cloth), ISBN 978-0-521-80331-1.



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The study under review deals with the development of juristic authority discursively constructed through a juristic typology, which “ranks legists according to the various levels of hermeneutical activity in which they are regarded as competent to engage” (p. x). The study deals with the sources that were produced during and after the Sunni legal schools were consolidated and officially recognized around the middle of the fourth/tenth century. The continuity (*taqlid*) and change (*ijtihad*) in the law involved sustained defense of the established and a new or less authoritative doctrine, respectively. The materials dealing with juristic typology serve two purposes: the study of self-perception of the tradition from within, and critical assessment of the traditional account from outside to study the absolutist claims made for the founder of the legal school.

The study also undertakes to show how the presumed authority of the founders of the four Sunni schools was raised to absolute claims about them in order to augment the school authority without which the legal system could not have continued to exist. More importantly, the functional dominance of school authority provided many forms of reproduction and mechanical application of authoritative doctrine. The defense of the school remained as an important goal of the intellectual activity of the legists. The activity was a defense of a methodol-

ogy and hermeneutics upon which depended a variety of individual legal opinions and resolution of cases. Each school was founded upon a set of identifiable theoretical and positive principles, which continued to evolve under practical and positivistic applications. By the middle of the tenth century the legal school was defined by its substantive boundaries, represented by a massive bulk of particular cases and opinions that were articulated by a vast number of jurists who were related to it in each generation, beginning with the presumed founders and their immediate followers, and ending with the jurists of later centuries. The legal opinions on various topics represented carefully worked out doctrinal accretions and a staggering plurality in the school’s juridical production. The authoritativeness of these opinions was based on the technical vocabulary designed to distinguish an operative terminology whose function was to determine the authoritative hierarchy of legal opinions. The inner dynamics of legal doctrine under the rubric of operative terminology permitted the adaptation of legal opinions according to the requirements of time and place. The dynamic of legal change lay in the hermeneutical activity. The legitimization and formalization of the change was mediated through the authority of the jurist-consult and the author-jurist. The mufti created the link between social practices and the law, thereby articulating in piecemeal fashion the changing requirements of legal doctrine.

The author-jurist together with the mufti created and shaped the authoritative legal text. The main focus of the book is the post-formative period, which begins with the time when the schools had already reached maturity around the middle of the fourth/tenth century.

To estimate the contribution of Wael Hallaq's study in Sunni legal tradition we need to contextualize it within the Western studies of Islamic legal tradition. For almost half a century Sunni legal studies were dominated by the pioneering works of Joseph Schacht whose textual-historical analysis based on limited juridical sources had championed certain essentialist characterizations of Islamic legal tradition that continue to be quoted as authoritative and almost immutable by posterity. Some of these opinions were challenged and corrected by N. J. Coulson in his history of Islamic law; others were revised by Norman Calder whose breadth of knowledge in both Sunni and Shi'ite juridical sources provided him with a rare overview of the question of authority in Islamic legal tradition. In the case of Sunni jurisprudence, it is Wael Hallaq's comprehensive study of the primary Sunni sources dealing with the legal theory, biographical dictionaries on legal scholars, and extensive repositories of substantive law along with his reconstruction of the history of legal schools that marks a new era for Sunni legal studies in the West. In fact, his well-articulated revisions of the prevalent views about the evolution of legal schools commonly held by the Western and Muslim legal scholars have greatly improved on the existing scholarship on the subject. His arguments and supporting evidence gathered from meticulous reading and interpretation of the Sunni sources are impeccable. No student of Sunni legal tradition can afford to ignore Hallaq's decisive contribution in the present study as well as his other works published in the last ten years. The present study is particularly important in understanding the way Sunni juristic authority was constructed in the tenth and eleventh centuries and the way it continues to hold the Sunni community together under the aegis of their legal schools ascribed to the founders, the Imams, whose juridical authority was only gradually legitimized by succeeding generations of legal scholars.

But the motives of the later generation of jurists to work towards formalization of the theoretical and applied unity of legal rite, going back to the founding Imams, is, unfortunately, only partially answered by Hallaq. One of the methodological problematics in "orientalist" scholarship has been to view the Islamic tradition in general, and the theological-juridical development in particular, only through the majoritarian Sunni sources.

Shi'ite sources are largely ignored in this "orthodoxy-heterodoxy" divide maintained by almost all orientalist. That there was immense debate between Shi'ite and Sunni jurists on many large issues connected with legal authority and the ultimate legitimization of a particular legal school is borne out by the khilaf literature produced almost at the same time in Baghdad and other major centers of legal studies by major representatives of all the legal schools. The tradition of khilaf literature is very rich in the Imamite legal school.

What could have been the motivation of gradually promoting the four Sunni representatives of *imamat al-sughra* (the lesser juridical imamate) to such prominence after the termination of *imamat al-kubra* (the greater theological-legal imamate of the Four Caliphs), can be answered by taking into account the political and theological situation of the centuries that followed the Medina paradigm for Muslim life in the eighth century. Closer attention to the Shi'i-Sunni polemics about the continuation of the authoritative revelatory sources following the death of the last of the Rightly Guided caliphs in 660 can point to what Norman Calder saw as the main issue in the development of methodological stratagems to legitimize the juridical authority of the founding Imams in Sunni as well as Shi'ite jurisprudence in the tenth and eleventh centuries. The occultation of the Imam in Shi'ism was no different in its implications than the end of the Rightly Guided caliphate in Sunnism. Both communities were working towards the legitimization of their claim to authoritative blueprint for Muslim life in the midst of the decline of political power and its claim to legitimacy as the protectors of the Shari'a. Since political authority was not to be entrusted with the juridical authority for the autonomous Muslim community that remained more or less united under the recognized religious practice, there was a need to connect the community to the great imams in the madhhab. All other considerations drawn by Hallaq through the meticulous study of *ijtihad* and *taqlid* and the qualifications of the *mujtahid*, mufti, and so on are secondary to this theological need to provide a sense of continuity in practice for later generations. It is worth keeping in mind that the sunan works are in response to this general need for authoritative link to the source of correct practice that had become divisive and disruptive of the sense of unity of the Sunni community. Development of law is a living experience of the community in its political and social contexts. The lack of sociological as well as theological dimensions in the analysis of how the Sunni madhhabs came to occupy such a central role in the Muslim identification with Islam can be at the

most a partial treatment of the important development.

To be sure, the academic production of different genres of the juridical texts was in response to the larger picture of theological-political situation confronting the Sunni leadership with the rise to power of the Shi'ite dynasties beginning with the Buyids, and continuing with Hamdanids, Fatimids, and Ilkhanids that culminated in the sixteenth century in the rise of the Safavids. The question that still remains to be probed deals with a number of Imamite jurists listed in Subki's dictionary as Shafi'ites in their legal methodology. What was the reason for this listing of the well-known Shi'ite jurists under

the Shafi'ites? This question can be explored by taking into account the Shi'ite claims to the "living Sunna" of the Prophet through the Shi'ite Imams and the counter-claims of the Sunni jurists for their four major Imams, of whom some were the contemporaries of Ja'far al-Sadiq (d. 748), the founder of the Ja'fari madhhab.

Hallaq's treatment of the lesser juridical imamate in Sunni legal tradition, hence, remains incomplete without its proper anchoring in the much broader and larger question about the "greater theological-juridical imamate" that was being debated in the twelfth through the fourteenth centuries.

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