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The Concept of Public Law in Wael B. Hallaq's Paradigm in Islamic Jurisprudence

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One of the most important issues in the field of law is the existence of public law that differ from contemporary public law. This is especially the case when these rights are grounded in ethical principles. This is because legal scholars generally believe that modern public law is a positivist system that is disconnected from ethics. They argue that, assuming there is a relationship between public law and ethics, historically there has been no domain in which this relationship has been practically realized. In his paradigm, Hallaq believes in the existence of a public law that is different from modern public law, and he views the pre-modern history of Islamic law as a domain in which ethics and public law are integrated. Thus, he criticizes the separation of law and ethics in modern public law as a historical issue unique to the modern era. This article explores the concept of public law within Hallaq's paradigm (in Islamic jurisprudence). The central question of the article is the existence of a distinct public law within Islamic law and its relationship to ethics from the perspective of Hallaq's paradigm. The methodology of this article is descriptive-exploratory, and it concludes that, according to Hallaq's paradigm, there exists an independent public law that differs from modern public law. The difference lies in the fact that it is an ethical public law, meaning that ethics is one of its foundational elements. Furthermore, there exists a historical period in which the combination of ethics and public law was realized, and that period is the pre-modern Islamic society.

Keywords: *ethics, Wael B. Hallaq's paradigm, public law, modern state, Islamic jurisprudence.*

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1. Introduction

Public law is one of the main branches of law in contemporary times. Public law governs relationships in which the state, as the sovereign, is at least one of the main parties involved. Whether this relationship is between the state and its citizens or between the institutions of the state itself. Some legal scholars argue that the subject of public law is the state or its authority, which is also related to the concept of statehood.

Wael B. Hallaq, a Palestinian-Canadian scholar, is a prominent jurist who has dedicated his legal project to defending Islamic law. This project is known as Hallaq's paradigm, a term he himself uses. In his project, Hallaq argues that what is referred to today as law, including public law, is not the entirety of law, but rather only one paradigm of law. He asserts that another form of law existed historically, whose principles and components are entirely different from modern law. Therefore, this legal system has its own public and private laws, which must be examined within the context of the entire paradigm. According to Hallaq, the main issue for Western legal scholars, especially legal historians and Orientalist jurists, is their view that Islamic law, in general, is inauthentic and derivative of other legal systems, such as Roman law.

As Hallaq states: "The existence of public law in Islamic Sharia is one of the issues that Western Orientalist jurists reject" (Hallaq, 2014a). He also notes: "They believe that public law only exists in the contemporary legal system, while Islamic

Sharia itself was created after the death of the Prophet" (Hallaq, 2014a, 2014b).

Hallaq further argues that not only is Islamic Sharia an authentic law, but it also has its own independent existence and was the central focus of Islamic civilization. This law includes not only private law but also its own public law, with distinct principles and characteristics, the most prominent of which is its ethical nature. Therefore, although Hallaq dedicated most of his project to defending the paradigm of Islamic Sharia, his later writings focused on research concerning public law within Islamic Sharia, particularly in his famous book *The Impossible State*.

The study concludes that, although Hallaq believes that public law in Islam today is unfeasible due to its ethical nature, he still asserts its historical existence in Islam and offers guidance to Islamic societies on how to revive it, and which aspects can be scientifically and methodologically revived. This underscores the importance of studies like this one, which investigates public law in Hallaq's project.

Despite the extensive research he has conducted and the numerous studies on these topics, limited research has been carried out in this field and further investigation is required. For instance, although some of Hallaq's books have been translated into Persian, no research has been conducted on his book *The Impossible State* in relation to Hallaq's paradigm within Iran, except for an article on his book *The Impossible State* by researchers Seyed Alireza Hosseini and colleagues in 2018, published in the *Journal of Public Law Research* (Issue 58) under the title "The Impossible State: A Critical Reading of Hallaq's Theory of the Impossibility of the Modern Islamic State."

The question of the modern Islamic state, its conflict or compatibility with Islamic thought, is a significant issue in Hallaq's work. This article addresses the existence of this state, its applicability, and Hallaq's model in the centuries-long history of Islam before the modern era.

Therefore, this study, as a contribution to the study of Wael Hallaq's project, which is primarily concerned with Islamic law, is essential. It uses a descriptive-exploratory method to examine the nature and dimensions of public law in Hallaq's paradigm. Methodologically, Hallaq must adopt this approach, as his paradigm is a part of his methodology. His method does not fall under traditional methods, but rather some of Hallaq's innovations constitute his unique approach, which is based on the paradigms of philosopher Thomas Kuhn, the discourse of French philosopher Michel Foucault, and Carl Schmitt's concept of "the margin around the center."

Since Hallaq believes his paradigm of Islamic law is fundamentally different from the modern legal paradigm, he uses the modern paradigm as a standard for self-recognition. However, the nature, dimensions, structure, and legal criteria of his paradigm are entirely different from modern paradigms. To achieve this, he employs the concepts of Kuhn's paradigm, Foucault's discourse, and Schmitt's "framework of the margin." For example, whereas for Foucault, power creates knowledge, and thus public law (power) creates its own knowledge (legal knowledge to legitimize the state and political power), for Hallaq, this feature of new law belongs to the modern paradigm. In contrast, in Islamic law, it is the knowledge (legal and jurisprudential) that must align with the public authority (Sharia determines limits for power).

Thus, knowledge becomes part of the structure of public law in Islam, manifested in *Usul al-Fiqh* (Principles of Jurisprudence) and the *Usul al-Madhahib Islamiya* (Principles of Islamic Schools). This contrasts with modern public law, which consists of three branches (legislative, executive, and judicial). As Hallaq states, the Islamic Sharia paradigm is different from the modern legal paradigm, indicating that the position of the three branches of government (legislative, executive, and judiciary) in Islamic public law is very different from modern public law.

In modern public law, sovereignty is vested in the executive branch, whereas in the Islamic paradigm, the judiciary plays a key role, originating from society, with the executive branch having very limited functions. Often, executive power has been granted to external forces with minimal influence on society. The same holds for Schmitt's concept of "the margin framework." According to this view, Hallaq argues that every public law has a central theme, and other systems and topics become marginal. In other words, any change in the central theme affects all the margins. The essence of public law is power, which is held by the state, and all other institutions are merely peripheral. However, in Islamic public law, ethics plays a central role, and it is within the domain of Sharia. All other institutions, including authority structures, are ethical (Hallaq, 2014a).

If there are two major legal schools, one based on ethics and the other on positivism, which does not consider ethics a necessary part of law (Tabbitt, 2005), Hallaq is among the scholars who regard Islamic Sharia as an ethical law, with its own public law. This contrasts with the modern public law of the new era, in which ethics is not a fundamental component of public law.

Therefore, in his paradigm, Wael B. Hallaq falls into the group of those who advocate for the combination of law and ethics. The central framework of his paradigm is the ethical nature of Islamic law, with ethics serving as the foundation throughout the history of Islamic law (Hallaq, 2016a). He is considered one of the scholars who emphasizes the concept of ethics in explaining law. From the perspective of the communitarian virtue-oriented approach (Kymlicka, 2017), Hallaq examines the impact of ethics on law and believes that in pre-modern Islamic societies and Islamic law, law and ethics were indeed combined, with public law governed by ethical content for over a thousand years in these societies.

The discussion of this issue is crucial both for proving the independence of Sharia as a legal school and for demonstrating the existence of a public law different from that of the modern era, which is a positivist, non-ethical law.

The research hypothesis posits that by applying Hallaq's paradigm to Islamic Sharia, a specific explanation of the concept of public law is created, which will differ from modern public law.

The aim of this research is to determine whether public law exists outside of modern public law, whether Islamic Sharia has its own public law, what Wael Hallaq's paradigm in Islamic Sharia is, and whether it can offer a public law distinct from modern public law.

2. Introduction to Wael B. Hallaq's Paradigm

2.1. *The Main Subject of Public Law in Hallaq's Paradigm*

Hallaq argues that although there are shortcomings in Islamic history, he believes that within the framework of principles, assumptions, and systems, Islamic jurisprudence forms a complete paradigm. When a part of a paradigm is compared to another paradigm without considering its context, a methodological error has been made.

Based on this, before comparing Islamic law to the laws of the modern state, it is first necessary to examine Islamic law itself. According to Hallaq, this should be done directly based on principles that are rooted in modern public law (despite the shortcomings of the modern state in fulfilling its claims). Hallaq distinguishes between the concept of the state as a political entity and public law as it exists in any legal system. For this reason, in several chapters of his famous book The Impossible State, he uses the term Islamic sovereignty (al-hukm al-Islami) instead of the concept of an Islamic state (Hallaq, 2014, p. 38). Islamic law should be introduced as an independent paradigm. Therefore, to achieve this goal, it is essential to identify the paradigm that can present Islamic public law.

It seems that Hallaq succeeded in this task by using Foucault's concept of discourse and later transforming his intellectual project into a paradigm. He also incorporated other elements, such as borrowing concepts like the central and peripheral frameworks from Carl Schmitt and the concept of paradigm from Thomas Kuhn, thereby constructing his own methodology (Hallaq, 2018).

Most importantly, Hallaq's conceptual engagement with Islamic public law is noteworthy. His conceptual approach does not stop at the subjective aspect of a concept but also takes its external dimensions into account, believing that concepts have a "gender" and should be recognized with regard to their external characteristics. Some of these genders are related to the past, some to the present, and some to the future. For example, he approaches the concept of the modern state and Islamic governance in a way that encompasses its historical past, its present meaning, and a perspective for the future. This conceptual approach is reflected in his paradigm. Therefore, to understand Hallaq's paradigm, it is not enough to introduce the term "paradigm"; rather, his paradigm must be understood in historical context and within the framework of his own thought. Hallaq's paradigm has both a practical and epistemological dimension, both of which are of special importance. Therefore, this section of the paper is dedicated to the theoretical aspect: introducing each of the above concepts.

Since Wael B. Hallaq has a unique approach to the study of Islamic public law, though none of his books are specifically dedicated to the topic of his methodology, his methodology has gradually evolved. For this reason, he states, regarding his earlier work Can the Shari'a Be Restored, published previously: "I would like to point out that many of the opinions I expressed in this research have changed significantly since the time of writing" (Hallaq, 2016b).

2.2. Theoretical Method of Hallaq's Paradigm

Hallaq's methodology in his paradigm can be divided into at least three levels: the first level is the concept of discourse from Foucault, the second level is the concept of paradigm taken from the philosopher of science Kuhn, and at the third level, the concepts of central and peripheral frameworks are borrowed from the political theorist Carl Schmitt and applied to law. Later, he solidified the foundation of his paradigm by creating an organic relationship between these three levels and incorporating his own additions. As he himself states:

"We understand this meaning of paradigm, and thinkers such as Carl Schmitt, Kuhn, and Foucault are essential in shaping this concept for us. Although in some respects, our thesis differs from theirs" (Hallaq, 2014, p. 39).

2.2.1. The Concept of Paradigm

To introduce Hallaq's paradigm, a brief introduction to the concept of "paradigm" must first be given. In fact, there are over twenty meanings attributed to the term "paradigm" (Mohammadpour, 2010). We can define paradigms generally as follows: Paradigms are grand perspectives within which scholars present their smaller theories. This system functions like a worldview, unconsciously coloring every scientific theory, and the scholar may not be aware that they are enclosed within this overarching ideology. Without a paradigm, knowledge is not science but remains in the pre-scientific stage (Hosseini, 2018).

The concept of paradigm was first introduced to the academic world by the philosopher of science, Thomas Kuhn, in his famous book The Structure of Scientific Revolutions. Through this transition, Kuhn advanced the post-positivist and empiricist era of science, a period that the philosopher Karl Popper had initiated with his theory of science. Kuhn showed that science is not just the expression of a truth derived from experience, but science and the community of scientists are intertwined. In other words, science is something embedded in the scientific community, so Kuhn directed science from an absolute truth standpoint to a sociological perspective (Kuhn, 1970). Thus, the social dimension of science emerged, and what was once considered an absolute truth turned into a social truth within the scientific community. Kuhn demonstrated that there is a broad umbrella over experience that determines which scientific statements are considered valid, which are not, and which scientific fields have priority. This umbrella is broader than the specific expertise or scientific discipline in which each scientist works. The existence of two different scientific subjects does not necessarily mean one is true and the other false; rather, it means one is within one paradigm, and the other is in a different one. By introducing science to the social domain, Kuhn opened the way for applying this concept in the humanities, including law. Hallaq utilized this possibility. Therefore, Hallaq's paradigm is the one he uses to study and explain Islamic law in the pre-modern history of Islam (Hallaq, 2014a). This demonstrates his profound knowledge of both new law and the place of the concept of paradigm in today's world. Thus, Hallaq's paradigm has two facets: on one hand, it addresses Islamic public law, which he refers to as "Islamic governance" (Hallaq, 2019), and on the other hand, it critiques modern law.

As mentioned earlier, although about twenty meanings have been attributed to the term "paradigm," Hallaq, at the end of The Impossible State, defines paradigm as a model or organization. Sometimes this term refers to a set of assumptions, documents, and ideas that are prevalent at a given time (this usage is from Thomas Kuhn). However, it can also refer to the ideal state of something or an idea, such as the ideal state of Islamic governance, which the author discusses in this book (Hallaq, 2014b). Thus, the basis of Hallaq's paradigm in public law consists of three main pillars: the concept of discourse from the French philosopher Foucault, the central and peripheral frameworks from the German legal scholar Carl Schmitt, and the concept of paradigm from the famous philosopher of science, Kuhn.

The question arises as to how Hallaq establishes the connection between these concepts. To explain this, we need to address not only the term "paradigm" but also the other two levels.

2.2.2. *The Concept of Discourse:*

In his book The Archaeology of Knowledge, Michel Foucault defines discourse as "a type of institutional practice (discursive acts) that follows specific rules" (Foucault, 1972). These acts are carried out by agents within a social, scientific, legal, or intellectual system, and they are all related to language and speech. Hallaq relied on this concept from his earliest works, thereby distinguishing himself from Orientalist legal scholars. For example, in his book The Authority of Islamic Jurisprudence, he mentions in the introduction that his research is based on historical investigation. It is clear that this Foucauldian concept does not simply study history based on external events, but aims to highlight the invisible subjects and identify the hidden relationships between them (Hallaq, 2007a, 2007b).

As he states in The Classes of Jurists, "This is discourse," and then provides a discursive definition, stating that studying the classes alone is insufficient. One must also consider the historical and contemporary domain of legal activity, which links it to a larger structure and the development of that religious structure, leading to the connection of the constituent elements and the creation of a model. He criticizes Orientalist scholars who do not study Islamic law using this method. As a result, they fail to present Sharia as a discourse and model and consequently do not establish a sustainable methodology for it (Hallaq, 2007b). These scholars no longer view it as a living space where laws dynamically operate; rather, they later perceived it as a self-sustaining system of laws originating from outside the Islamic society (Hallaq, 2014a). He regards the viewpoints of Western jurists as discursive, and believes their opinions are not merely statements from scholars studying Islamic rulings in an objective manner. Instead, Hallaq argues that there is a deep foundation within discourse that transforms the work of each researcher into a model (Hallaq, 2007a).

For Hallaq, it is clear that discourse is not limited to what is said. It also delves into the unsaid; thus, interpreting discourse requires an effort to discuss the unspoken assumptions and their language (Hallaq, 1994, 2001). Constructs such as discursive periods, their evaluation, their relationship, and their integration from one culture to another vary and change within cultures (Hallaq, 2016a). Any theory without an appropriate historical perspective remains incomplete and corrupted and will undoubtedly be confined to the present supporters of that theory (Hallaq, 1981).

The discursive method, as a grand approach, was applied by Hallaq from the very beginning in his writings (whether research-based or books), with the innovation he introduced. The use of this method in the study of Islamic jurisprudence is a new development that begins with Hallaq. For example, in Foucauldian discourse, there is a direct relationship between power and knowledge, where power creates knowledge. However, according to Hallaq, the reverse may be true: power and knowledge are intertwined, and in Islamic history, knowledge controls power (Hallaq, 2001).

2.2.3. *Concepts of (Central Framework/Periphery):*

Carl Schmitt, the famous German legal philosopher, was disbarred from returning to the university due to his support for the Nazi regime during World War II. Schmitt believed in the politicization of public law and is well-known for his fierce opposition to liberalism. Recently, Western readings of his early views, mostly by leftist philosophers, have emerged. Despite criticism of Schmitt's theories, especially regarding their adoption by authorities that could produce an oppressive regime like the Nazi regime, Schmitt's methodological use of duality in his approach remains significant. The second concept means that every political power has a root that forms the central framework of that power, and other social issues and systems become marginalized within the system. Schmitt argued that the root of the modern Western state lies in the fact that any change in it brings about changes at the margins.

Hallaq succeeded, to a large extent, by incorporating Schmitt's model of (central framework/periphery) into his own legal paradigm. He borrowed Schmitt's (central/peripheral framework) model (Hallaq, 2019). When a framework shifts from the periphery to the center, he quotes Schmitt: "The problems of other frameworks are solved in the central framework; these problems become secondary because when the central framework's problems are solved, the remaining issues are automatically resolved" (Schmitt, 2011, 2014).

However, Hallaq innovates in this regard, and one can say that he alters Schmitt's duality of central/periphery in a way that the periphery is not only peripheral but is both central and focal. In other words, when work is done on the periphery, it is simultaneously done at the center. He points to this view especially in the context of Orientalism and the work of Orientalists in Islamic law. Hallaq believes that when Orientalism worked on Sharia, it did not merely focus on Sharia, but also on the West itself. Hallaq asserts that such an Orientalist scholar recognizes Islamic Sharia by comparing it with the modern public law project. For this reason, he quotes Edward Said, who said: "In Orientalism, we do not study the East, we study the West itself." Therefore, he argues that knowledge never exists without bias (Hallaq, 2019).

3. The Practical Methodology of Wael Hallaq's Paradigm:

3.1. *Aspects of Hallaq's Practical Methodology in Islamic Sharia*

Based on the reality that, in Hallaq's paradigm, it is not power that creates independent knowledge, but rather, this is only the case in the modern paradigm. In Islamic Sharia, the situation is reversed, meaning that knowledge is what defines the face and limits of power. Therefore, knowledge and the foundations of epistemology are recognized as one of the two aspects of Islamic knowledge, namely Usul al-Fiqh, which itself is a method for understanding the ethical language of Islamic Sharia (Hallaq, 2007a). Although knowledge is central, it is the practical aspect of law that, in reality, constitutes the practical wisdom of Islamic Sharia.

Thus, according to Hallaq, the methodology of Islamic law has two aspects, one of which is knowledge (Usul al-Fiqh). Based on this, he dedicated one of his major books to it, The History of Islamic Legal Theories: An Introduction to the Usul al-Fiqh of the Sunni Schools, which has been translated into many languages.

Secondly, the principles of sects in Islamic Sharia; where attempts are made to demonstrate the capabilities of Sharia in establishing a legal system. It is here that, in addition to highlighting the practical aspect, Hallaq addresses the question of the absence of Islamic Sharia in Islam itself. This is particularly important because Orientalists argue that Sharia was derived from outside the core of Islam, reaching its peak after several decades, and that the door to Ijtihad (juridical reasoning) was closed. Hallaq has dedicated several books to this issue, with the most important being Religious Power: Imitation and Renewal in Islamic Jurisprudence, where he wrote about the introduction of Ijtihad and authored other works and studies on Ijtihad and imitation, especially those discussing the non-closing of the door to Ijtihad (Hallaq, 2007b).

3.2. Usul al-Fiqh in Islamic Jurisprudence

Not only does Hallaq regard Usul al-Fiqh as a practical Islamic legal tool, but he also quotes the consensus that the ultimate goal of Usul al-Fiqh is the establishment, codification, and practical implementation of law (Hallaq, 2007a).
This serves as a means to understand Sharia, and for this reason, Hallaq dedicated one of his fundamental works, The Foundations of Islamic Jurisprudence, to the formation and development of Usul al-Fiqh. Usul al-Fiqh is a method of deriving legal rulings. Throughout history, Muslims have created and developed their laws by synthesizing three dimensions of ethical, rational, and linguistic life. Due to its historical aspect, Hallaq, in his book on Usul al-Fiqh, states that the use of theories (in the plural form) is optional, not arbitrary. The objective is to convey the message that the scope of this research cannot be reduced to ideas that have no connection to different historical practices (Hallaq, 2007a). The characteristics of the Islamic legal paradigm (legal/ethical) are unprecedented in any previous legal school. However, this knowledge has evolved in response to the realities of Muslim societies. For this reason, Hallaq argues that this science was not invented by a single person, and its inventor, contrary to popular belief, was not Imam Shafi'i, as claimed in his book Al-Risalah (Hallaq, 2016a, 2016b).
This science has roots in the past, in revelation and the Quran, and like any social concept, its past is part of it. This is why bringing such concepts without considering the historical aspect, the system, and the social network in which they were formed, and placing them into the modern paradigm, distorts them. Therefore, Hallaq considers this to be a problem for those who attempt to resolve the issue of integrating the modern age with Islamic Sharia by returning to Usul al-Fiqh within the framework of modern public law. He does not see their project as successful (Hallaq, 2014b).

3.3. The Principles of Islamic Sectarian Law

One of the features of Islamic law in Hallaq's paradigm is that it does not use judicial precedent as it is found in common law. However, this does not mean that the judiciary does not play a legislative role, as Sharia replaces judicial practice with another issue—the consolidation of religion and its foundations in Islamic Sharia. This leads Islamic jurists to issue fatwas and engage in Ijtihad (independent legal reasoning). When these principles were raised by the founders of religions and their earliest followers as previous legal standards, they were compelled to return to these earlier principles. However, this does not mean the closing of the door to Ijtihad in this law; rather, it signifies that the principle of religion becomes the criterion and framework for Ijtihad and legal reasoning.
This is especially evident in the four major Sunni schools of jurisprudence. Thus, Hallaq regards the consolidation of these schools and their fundamental principles as the second aspect of his paradigmatic method.

The importance of the development of Islamic law for Hallaq lies in the fact that, in it, neither political authorities, nor the state, nor judges set the laws that are common in modern law. As he states: "The moral law, which was a broad social phenomenon, existed outside the political power, in time and place. This meant that no power, including the executive, could dominate it" (Hallaq, 2019).
This was accomplished by a well-known group over a long historical process, known as the jurists, through whom the establishment and development of legal schools occurred (Hallaq, 2016b). Islamic Sharia in the early period of Islam was based on the Quran itself and established by the Prophet Muhammad. The key point is that when the Prophet (PBUH) passed away, a state based on a nascent Sharia was inherited, whose core framework was a moral legal system. Following this, a long process of reciprocal interaction between the text and the social reality of Muslims, along with a methodological approach called religion, developed, which both extracted legal principles from sacred texts and responded to societal realities while evolving itself. As Hallaq himself states:
"However, this rationality had a social and historical foundation. Therefore, the intellectuals of society adhered to this social aspect in their rational encounters and legal deductions. Law was a social phenomenon, not a governmental one. Thus, the link between law and society was not severed, and the parties appeared before the judge without the mediation of a lawyer, in civilian attire" (Hallaq, 2001, 2007a).
For this reason, jurists were bound by the fundamental truths of the underlying social and economic infrastructure (Hallaq, 2012). They adhered to their legitimate and Sharia-compliant culture, which was primarily attributed to society, and, as Hallaq says, they were devoted to their legal culture (Hallaq, 2012).
Although these schools are known by famous names, such as the four Sunni schools and the Ja'fari school, they were, firstly, a historical movement. The ideas of these schools were not exclusive to their founders; they received them from their teachers and others (Hallaq, 2007b). Instead, sometimes the opinions of their students were more in line with religious rulings, and these opinions later became the official doctrine of the sect rather than the founder's opinion. Secondly, these schools transitioned from specific topics of jurisprudence to general principles known as Qawa'id Fiqhiyyah (juridical maxims), eventually forming a complete legal system with their own methods for issuing rulings, training jurists, and solving new legal issues. For instance, the Shafi'i school became known as the Shafi'i Madhhab (Hallaq, 2007a). This means that each school had a complementary system that responded to societal needs. Consequently, each Mujtahid (juridical scholar) issued specific rulings, which were not only not mentioned by the school but were possibly contrary to the school's opinion or the consensus of all jurists (Hallaq, 2007a). With historical developments, the expansion and diversification of society, the changing principles of Usul al-Fiqh, and the emergence of new legal sources, the schools developed their own complete legal systems with distinct features. Thus, the religious community was organized according to its (legal/ethical) roots (Hallaq, 2014a).

4. Public Law in the Thought of Hallaq

The definition and the main subject of public law were presented at the beginning of this research; however, since its secondary components differ from modern law, Hallaq points out that his paradigm becomes apparent when compared with the materials and principles of modern law. Therefore, we dedicate this section to exploring these aspects to reveal its unseen dimensions.

4.1. Sovereignty as the Fundamental Subject of Public Law

Hallaq's view on public law in his paradigm is that the main subject of public law is public power. In the modern era, this power finds its expression in the state and its great tool, sovereignty. In contrast, in pre-modern stages, such as in Islamic Shari'ah, it finds its expression in a model that Hallaq calls "Islamic Government" (Hallaq, 2014a). Hence, the modern meaning of the state is a historical subject specific to modern societies. Therefore, public law is not an independent and definable subject but rather a relative one, depending on the relationships between individuals; whenever these relationships change, the law changes as well. Therefore, according to Hallaq, if we want to understand public law, we should not follow an essentialist definition. We must refrain from rigid and static essentialism in examining public law.
Thus, if the main subject of modern public law (the state) is taken as the focus, this concept is used by Hallaq as well. The explanation of the concept of the state opens a window into public law in Hallaq's paradigm. Although the subject of the state and the study of the state constitute the content of his famous book The Impossible State, which, aside from his scholarly position, is the primary reason for his fame as a jurist, Hallaq's theory on the state is never identical to the "state theory" of other jurists. For Hallaq, while the modern state has both content and form, what is more important in his paradigm is not the content of the state, because the content varies, but the form remains constant (Hallaq, 2016b).

4.2. Principles of the Modern State

According to Hallaq's paradigm, it must be said that modern public law has both a metaphysical and theoretical aspect and a practical and institutional aspect. His greatest criticism of modernity is that it has transformed the divine power that existed in the pre-modern era into state power and its institutions. The state has become its own god. Hallaq states: "The state became the god of gods, as if there were no god other than the state" (Hallaq, 2019).
In Hallaq's view, the structure of the state can be summarized as follows:
First, the modern state is the historical product of a specific culture, namely European and American culture. The history of the state is itself the history of the state. This historical determination is what makes other regions and societies outside the framework of the organized state for this type of government (Hallaq, 2019).
Second, the modern state establishes its sovereignty on the metaphysical basis of creating an abstract entity called the nation, which everyone must obey.
Third, this places the power of legislation on one hand and the use of violence on the other, solely in the hands of the state. Law becomes the political expression of that power and sovereignty, which belongs to the state. Therefore, the state is the only source and legislator for exercising its sovereignty (Hallaq, 2019). This law is often seen as favoring the wealthy majority (Hallaq, 2016a).
Fourth, the modern state has established itself on a stable bureaucratic system; the administrative system is an integral part of the modern state, and it cannot be removed even with a revolution (Hallaq, 2014a). In this way, the individual is shaped within its institutions, severed from previous communities, and his existence is left only for the state (Hallaq, 2016a).
Fifth, through cultural integration. There is an inevitable relationship between the state and culture, and no state allows the existence of incompatible cultures by politicizing a specific culture or state culture (Hallaq, 2014b).
Therefore, what introduces us to the main subject of modern law, i.e., the state, is its form, not its content. This will be fully clear when we recognize the intellectual foundations of such a state and its practical tools (Hallaq, 2014b).

4.3. Wael Hallaq's Paradigm in Islamic Public Law

When Wael Hallaq rejects the modern state's public law within the framework of his paradigm, he defends the Islamic government paradigm and its historical experience despite the criticisms it faces (Hallaq, 2014: 46). The main difference between these two models lies in their worldview and outlook on the world and humanity. Public law in Islam, which applied Shari'ah, viewed the land under its rule as Dar al-Islam (the land of Islam), was continuously dynamic, in motion, and changing. Islamic Shari'ah was a moral law based on a metaphysical worldview, where its sovereignty belonged to God.
Shari'ah Islam, with the belief that it is linked to a higher value that transcends human selfish desires, completely structured the framework of Islamic human systems. This was implemented by the jurists within a detailed and restricted mandate, which we today call the executive branch, whereas the modern state makes decisions about religious institutions, organizes them, and subjects them to its own laws (Hallaq, 2019).
This means that in the Islamic paradigm, all legal institutions, including the judicial and executive systems, as well as the legislative system itself, are subject to Shari'ah. However, Shari'ah is not an established organization but an accumulative subject, relying not only on the opinion of a particular jurist (Hallaq, 2019), but also rooted in the Quran and Sunnah throughout history and responsive to societal needs. As a result, not only specific laws but also the methodology itself evolved (Hallaq, 2012).
Hallaq argues that Islamic public law not only differs from modern public law but is fundamentally incompatible with it (in the sense that integration between them is impossible). To demonstrate this profound difference, he has sought to show the most significant features of Islamic government within the framework of the relationship between the three powers in Islamic law:
For this purpose, Hallaq has selected the duties of three institutions related to law: the Mufti, the judge, and political power. According to Hallaq, the Mufti, due to his knowledge of Shari'ah, the meanings of the Quran and Hadith, played a legislative role, and although his opinions were not binding, they were sought by judges who referred to them in courts for decision-making (Hallaq, 2014b). The Mufti's work was based on Shari'ah and the interests of the community, not under the control of power and its interests.
Likewise, the judge was subject to Shari'ah, not to the law of power, even though they were appointed and dismissed by it. One sign of judicial independence was that the duties of judges were determined by the egalitarian values and rulings found in the Quran. This meant that by giving priority to the poor and

the oppressed, judges saw themselves as defenders of society (Hallaq, 2014b). They represented the people and the general will of the non-elite before the authorities. Thus, jurists and judges appeared as community leaders through their profession. Based on this, Hallaq argues that law was created by society (the ummah creates the law) (Hallaq, 2014b).
Furthermore, the executive branch, largely in the hands of rulers alienated from society, carried out its duties under Shari'ah in exchange for revenue through taxation. Hallaq compares their role to that of servants who could be replaced by others. Therefore, power in Islamic history always changed, while Shari'ah remained constant. He rejects the claim, often made by Orientalists, that it was an "Eastern despotism(Hallaq, 2014b).

5. Conclusion

Islamic Shari'ah has its own distinct public law, which differs from the public law found in modern legal systems.
The relationship between Islamic public law and modern law is not a historical one; that is, modern law is not a more advanced historical version of Islamic law, nor is Islamic Shari'ah derived from previous legal systems. Rather, Islamic Shari'ah maintains its independent existence and represents a separate and distinct paradigm. It must be regarded as an independent legal school.
Hallaq's model is a successful method for introducing Islamic public law and has been able to present its nature, principles, formation process, and implementation.
Hallaq's paradigm is a successful method for introducing Islamic public law and has effectively explained its nature, principles, formation, and execution.
The main characteristic of Islamic public law, based on Wael Hallaq's paradigm, is its moral and communal nature. In contrast, modern public law, which is positivist, views law as independent of ethics and as being imposed on society from above through its institutional tools.

Authors' Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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