

# **An Islamic Critique of Modernity**

**A discussion of Hallaq's Argument for the Incommensurability of  
Islamic Governance and  
the Modern Nation State**

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Religion and Society (RESA)  
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Incommensurability of Islamic Governance and the Modern Nation State**

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## Thanks

For services rendered and years of variously productive meetings

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## Summary

In this master thesis, we investigate Wael B. Hallaq's critique of modernity as presented in his *The Impossible State*. We try to understand in what way it is a critique of modernity, and the way its author uses Islamic sources and a presentation of 'paradigmatic Islamic governance' as a critical tool for interrogating modernity. The first part of the thesis will be concerned with understanding modernity. We look at the emergence of some of its central categories such as the private and public spheres, instrumental reason as well as the central philosophical problem of the 'separation of fact and value.' The second part is a detailed presentation of Hallaq's argument. In the third, we discuss the merits and consequences of the critique. The methodological tools to be used are taken from the field of Discourse Analysis, as presented by Phillips and Jørgensen in *Discourse Analysis as Theory and Method* (2002).



## Preface

In this master thesis, I will be attempting to understand an issue that has become increasingly important to me during my studies. The study program of which I am a part – *Religion and Society* – is one in which a certain methodological anarchy reigns. This is because the program is relatively new and plastic, but also because it exists in between other, more rigid scientific traditions. As a student of this program, I've been exposed to sociology, anthropology, the theology of Christianity and Islam, interreligious studies, philosophy and the history of ideas, among many other fields. My particular interest as it has crystallized has been ethical issues and the pressures of modernization on both the part of the world where it originated and those parts which have had to, so to speak, import modernity. To understand secularity is to understand that we are living in a world where it is very hard to maintain the beliefs and practices that untold generations before us have held to be as natural as the sky itself. For many it is not hard, it is downright impossible. And so, although the times we live in are exciting, and although there is ample reason to rejoice in the titanic and incomparable achievements of human civilization these last couple of centuries, one cannot help but feel a sense of loss. We live, as Heidegger said, "in the age of the world-picture," and this is something entirely new. When God or his chosen people speak of the community of all human beings in the Quran or the Bible, it is as something vague and imprecise. Now, the entire world is interconnected, and we can be precise about the fact that there are 7.3 billion people living their lives and affecting the lives of others. But my general fascination with this theme does not translate easily into a research question. Nevertheless, I think it necessary to attempt to understand as much as possible of what this new mode of being entails. I will be looking at an example of the ways we look back to our traditions and see an element of human or divine beauty in those traditions which we feel have become lost on the way to our world of space exploration, cell-phones and the aptly named world wide web. One of the central questions is: In what way does it make sense to criticize modernity itself?





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## Introduction

This following work is an investigation of something we will call an *Islamic critique of modernity*. In order to understand what this involves, we will first have to find out what is meant by modernity, which is a term that is used in various ways in different contexts. We will be working under the supposition that modernity connotes a specific way of understanding the world as an interconnected whole and as inherently pluralistic; an understanding which first developed in the latter part of the Age of Enlightenment and which by the end of the First World War had become paradigmatic in the Western world. Scholars and non-scholars alike understand modernity to be a distinct temporal age in the world and as something which arose from and broke with ages hence. Charles Taylor represents this break in his book *A Secular Age* as the difference between a world in which it was near impossible not to believe in the local or national deity and a world in which belief in God is but one option among many. Taylor tells the story of the gradual movement from one of these states of understanding to the other, connecting it not only to the rise of science and secular argument, but also to changes in the churches of Europe and the ascendance of the nation-state. We will base our investigation of modernity on Taylor, but include elements from other theorists. Jürgen Habermas has written about the public sphere as something specifically modern, while Peter Beyer, in his book *Religion in Global Society*, describes the connection between globalization and the rise of capitalism. We will connect the arguments of these authors to show some central features of modernity.

The work which is the main focus of this thesis is Wael B. Hallaq's *The Impossible State*. It is a book-length argument for the view that the modern nation-state is fundamentally incommensurable with that which he calls 'paradigmatic Islamic governance.' That is, the modern state is built upon assumptions that are antithetical to the principles of the Shari'a, which are the backbone of Islam. It has displaced moral living as the central domain in favour of political and economic interests, separated the legal from the moral and replaced God as the ultimate sovereign. Certain thinkers and activists, both within Islam and without have tried to understand what has happened to that organic and effective unit of ethical, legal and societal thought since the fall of the Ottoman Empire. Often, the history of modern Islam is told as one of loss and of disconnect. These thinkers are not only the fundamentalists bent on re-establishing an Islamic caliphate, waging holy war against

infidels, although these latter groups receive a disproportionate amount of Western media (and scholarly) attention. There are moderate Islamists too who perceive some kind of threat from the rapid changes inherent in modernization, and who feel that in some way their traditional way of life is under attack. And indeed, Islamists are not by any means alone in feeling wary of the implications of the rapid changes we've seen in the last centuries. Western authors from Rousseau through Kierkegaard, Nietzsche and Dostoevsky to Camus have all had things to say about the darker sides of the modern project and its influence on people's lives. An extreme example of this can be found in Alasdair MacIntyre's book *After Virtue*, in which the author offers a critique of the post-Enlightenment conception of the moral – arguing that moral argument has ceased to make sense. His claim is that “all those various concepts which inform our moral discourse were originally at home in larger totalities of theory and practice in which they enjoyed a role and function supplied by contexts of which they have now been deprived (MacIntyre 2007: 12).”

There are many reasons to pay close attention to Hallaq's arguments. For one, he explicitly cites and engages with MacIntyre's critique of the modern conception of morality and shows the ways in which Islam is one of those moral discourses which have been deprived of their larger totalities and as such has become fragmented. For another, he expertly points to certain key problems inherent in concepts like the modern nation-state and the modern citizen. He also discusses the issues which have been the focus of Charles Taylor, namely the rise of instrumental reason and the subjugation of public language to scientific hegemony – the new moral majority. And not least, he tries to attend to what he sees as a moral crisis within Islam. Others share his view that traditional Shari'a and its tools for moral reasoning, *ijtihad*, have been largely displaced. Hallaq connects this to a pernicious doctrine generated by the European Enlightenment and more or less forced upon the rest of the world. That doctrine is the separation of fact and value, of legality and morality, of reason and *reasons*.

Hallaq and the other authors already mentioned have affirmed the idea, now near-universally agreed upon, that modernity is something which arose in a specifically Western (i.e. European and North-American) context. The colonialist tendencies of Western countries, especially in the Middle East and the Maghreb, and the particular understanding of religion which the Western countries brought with them have resulted in anti-Western sentiment gaining a foothold in the countries of this region.

There will be a certain ethical element to the discussion within this thesis, as the critique of modernity, whether it is raised by Islamic traditionalists or Western ethical philosophers, first and foremost concerns itself with the effect processes of modernization and globalization has on the way people live their lives and engage in moral discussion. We will attempt not to judge, but to engage in dialectics is nevertheless to interpret and generalize – and so to point to the extremes and possible middle ways between them. There is a certain sense of urgency here, because the issue of Western civilization and its discontents seems to be all we talk about in our global fora. One can see both that modernization, globalization and what some would call the decay of moral discussion have happened the way they did for a reason, and that there is ample ground and opportunity for criticism of this state of affairs. Indeed, we may have reached a point where this honest criticism is the only right way forward. Hallaq certainly thinks so.

### **Research Questions and Assumptions**

The central question behind Hallaq's *The Impossible State* is: *can there be such a thing as a modern Islamic state?* We will be grappling with the arguments of that author and see how his way of dealing with this question entails a critique of modernity. In order for us to fully understand that critique, we will have to spend some time trying to understand what modernity is. Chapter two of this thesis therefore deals with the history of European modernity. In chapter three we attempt an in-depth analysis of Hallaq's presentation of what he calls 'paradigmatic Islamic governance,' which he sees as incommensurable with modernity and 'paradigmatic nation-state,' which he understands as a product of modernity. We will see how, for Hallaq, the former is employed as critique of the latter. In part four we discuss the merits of Hallaq's critique. A central question to be dealt with in this chapter is: *Does Hallaq's critique make sense; i.e. can anything be done with the problems pointed to by our critic?*

To be able to even talk about an Islamic critique of modernity, several things have to be assumed. This is for reasons having to do with the scale of this present work but also the impossibility of constructing the elements of our discussion from scratch. Beyond giving cursory definitions of complex words like Islamic, Shari'a, modernity, globalization and discourse, we will have to lean on the writers who have explicated these terms. This is of course nothing new. Every work within the humanities arises out of a context wherein many

of the words we use have been given meanings which we readily assume correspond with reality in an unambiguous manner. In order for us to grapple with the central problem illustrated by *The Impossible State*, we will accept Hallaq's definitions of 'paradigmatic Islamic governance' and the modern nation-state. We are interested in what it would mean if Hallaq's arguments were true – and so we mostly take them at face value. As regards Islam and the nation-state, this means that we leave for others to poke holes in his specific arguments, opting instead to attend to the larger picture.

### **1.0 – Method and Theory – Discourse Analysis**

Before we go on to describe the theories of discourse analysis, we will look at two connected but differing ways of understanding history and change in a very general way. This relates to the theory and method which will be discussed below, and will be very useful when we later look at the historical outlook of Hallaq's Islamic critique.

To illustrate this general idea, we will paint brief caricatures of Hegel and Marx: Hegel had the idea that there is a kind of general or common spirit or *geist* of humanity, and that this spirit as a whole progresses towards betterment. The primary movement of history in this view is in the development of ideas, and these ideas in turn produce material gains.

The cliché about Marx, who was a young-Hegelian – part of a group of students so-named for building on and criticizing Hegel's ideas –, is that he simply turned Hegel's fundamental idea of history on its head. He made the material world primary to the ideal, and said that as humanity progresses materially, there will be a concurrent development of ideas. These are caricatures because one-sided; but they are useful as they afford us with the extremes of an axis on which we can place both the theorists of discourse analysis and later, Beyer, Taylor and Hallaq. Basically, one can say of the caricature-Hegel above that his view is "discourse is primary to material circumstance," whereas caricature-Marx holds that "material circumstance is primary to discourse." There is of course a middle way between discourse-as-productive and discourse-as-produced. One can simply say that 'sometimes material circumstance produces discourse and sometimes it is vice versa.'

## 1.1 – *Social Constructionism*

Discourse Analysis Theory is despite the name not *a* theory at all, but rather a range of theoretical and methodological tools that share some basic qualities and that revolve around that term, discourse. But what are discourses? One way to answer this question is to say that language is used in different ways in different contexts, be they social, political, educational, etc., and the words that are used acquire meaning through these contexts. Discourse analysis consists of recognizing these patterns of meaning and studying them both in themselves and in relation to other such patterns. We will make use of a single book for our purposes of approaching a method for the present investigation into an Islamic critique of modernity – Louise Phillips and Marianne W. Jørgensens *Discourse Analysis as Theory and Method*. In this book, a discourse is defined as “*a particular way of talking about and understanding the world (or an aspect of the world) (Phillips & Jørgensen 2002: 1).*”

There are several common characteristics to all theories of discourse analysis. For one, they are what is called *social constructionist*. Four onto- and epistemological premises underlie all social constructionist theories:

1) *A critical approach to taken-for-granted knowledge*

We cannot achieve the description of objective truth through language. To be able to talk about the world, we have to construct categories, but these categories are reflections of *how we see* the world, rather than how the world actually is.

2) *Historical and cultural specificity*

The categories we construct to understand and act in the world are tied to specific histories and cultures, and therefore *contingent*, meaning that they could have been otherwise. What is true at one time and in one place is not always true other times and places. Within social constructionist theories, the truths of a given society are called ‘products of discourse.’

3) *Link between knowledge and social process*

Language reflects social reality, and the construction of knowledge through categorizing is part and parcel of the social. The meaning of the words of our language is intimately connected to the way we use them socially, so language changes along with social process.



#### 4) *Link between knowledge and social action*

The social construction of knowledge has consequences in the social. Certain things become and are maintained as lawful or prohibited through the language which reflects the social realities of a given culture.

(Phillips & Jørgensen 2002: 5-6)

To briefly summarize: The central assumption of social constructionist theories is that language constructs and is constructed by social beliefs and processes. This implies another assumption: That both language and the social are in a constant state of flux. It might be helpful to think of social constructionism (and discourse analysis) as the study of *language* and *social/societal change*.

In a way, we are already used to seeing that the world can be understood and represented by language in different ways depending on the discourse. Consider the state of Norway. If we are considering Norway in the context of contemporary international law, Norway is by definition an independent state. But if we were listening to a historian of medieval Europe speaking about the state of Denmark, the Denmark then referred to would by definition include Norway. This leaves us with two competing claims: 1) Norway is independent and 2) Norway is part of Denmark. We have no problem understanding that while it is impossible for both of these claims to be universally true, they can nonetheless both be accepted if understood to be true *within given discourses*. The two claims can exist peacefully side by side, because we can easily show how it is only a matter of definition which is true. This is made easier still by the temporal divide between medieval and contemporary Europe. But there are also discourses that stand in opposition to one another in a more practical and less easily resolvable way. To think of examples, one need only look at a newspaper. We will return to this issue below.

Phillips and Jørgensen present three different methods within the discourse analysis tradition. The one which we will be deploying in this thesis is the theory worked out by the duo Ernesto Laclau and Chantal Mouffe in their collaborative book *Hegemony and Socialist Strategy* (1985) and in later articles by Laclau. We will see that Mouffe and Laclau combine the linguistic theories of the post-structuralists with the critical approaches of the post-Marxists to society and power relations. It will be useful to have a brief history of the

elements of this method in mind, and to this we now turn. A caveat and specification: The chapter on discourse analysis on which we base our method is itself an interpretation of the work of Laclau and Mouffe. This means that when the work of scholars such as Saussure or Gramsci is mentioned, it is always as Phillips and Jørgensen's interpretation of Laclau and Mouffe's use of these works. We cannot always refer to primary sources.

### **1.2 – Discourse Analysis as Post-Structuralist and post-Marxist**

Laclau and Mouffe's theory of discourse analysis is a combination and continuation of the ideas of post-structuralism and post-Marxism, with the addition of Gramsci's concept of *cultural hegemony*. The specifics of the philosophies referred to below are not important for our presentation of the method. The point of retelling the basic history of discourse analysis is twofold: We can see that 1) the method has its root in the social, political and academic reality of Europe, and that 2) the method is based on a modern epistemology which assumes that there is no truth in human affairs beyond what is socially constructed.

Below is a brief summary of the historical components of our method.

#### **Post-structuralism**

Structuralism is the name of a series of theories of language, connected to among others Ferdinand de Saussure, which sees language as a fixed system of signs to which we ascribe meaning (Phillips & Jørgensen 2002: 9-10). Saussure held that signs are of two parts: the *form (signifiant)* and the *content (signifié)*. The relation between these is arbitrary, meaning that there is no necessary connection between, say, the word sheep and the woolly animal which that word signifies in the English language. The signs acquire meaning not from belonging to the objects which they designate, but from their relation to each other. The words form a kind of net where the signs are assigned meaning according to their position in regard to the others, hence *structuralism*. Saussure delineated two dimensions of language, the *langue* and the *parole*. *Langue* as understood by Saussure is the structure of language itself – the way it is codified in dictionaries and books – while *parole* is the everyday use of language. This latter dimension was deemed by the early structuralists to be too arbitrary and changeable to be worthy of linguistic study. This latter point is telling in retrospect. The idea was to find the unchangeable and fixed *structure* of language, and so if there were elements of the way language was used in daily life which seemed to threaten

this stability, those elements were seen as anomalies. Structuralism represented a new and promising way to look at *language*, but not *change*. Phillips & Jørgensen aptly summarizes the post-structuralist critique of structuralism:

“Poststructuralism takes its starting point in structuralist theory but modifies it in important respects. Poststructuralism takes from structuralism the idea that signs derive their meaning not through their relations to reality but through internal relations within the network of signs; it rejects structuralism’s view of language as stable, unchangeable and totalising structure and it dissolves the sharp distinction between *langue* and *parole* (Phillips & Jørgensen: 10)”

To account for change in language, poststructuralism has embraced the role of the *parole*. When people make use of language in everyday life, they make errors and adjustments. Over time, some of these errors and adjustments take hold, and are repeated by so many that they become the new norm, or structure. The central point here is that this process is continual. This does not mean that there is no structure in language. There is, but not in the sense of that single, unchangeable and fixed entity which could not account for lingual change. Within poststructuralism, one understands that language and its signs are never unambiguous and fixed, but one nevertheless tries to treat them as if they are. Phillips and Jørgensen say this: “[s]tructures do exist but always in a temporary and not necessarily consistent state (Phillips & Jørgensen 2002: 11).” Modern linguistic theory then concerns itself with the study of both these structures and how they change over time.

### ***post-Marxism***

The cornerstone idea of Marxism is that of historical materialism, which sees society as divided in two ways: On the one hand between the workers (*proletariat*) and the capitalists (*bourgeoisie*), and on the other between what is called the base and the superstructure. The base consists of the raw materials, tools, technical know-how, and not least – the ownership of the above. The base of the society is the economy. The superstructure, which is built and dependent upon the base, consists of the state and its institutions; the judicial, political, educational and bureaucratic systems as well as the mass media and the church. These latter exist to give meaning to the former, which is characterized by the divide between the workers and owners of the means of production. The capitalists own the raw material and

productive tools and so also the products that are produced, while the workers own only their labour. This economic model is deterministic – it implies that material circumstance determines the politics of the state and the beliefs of the people. The superstructure supports the capitalist interests by building and maintaining an ideology of state which camouflages and legitimizes the inherently exploitive nature of the economy.

Marx' idea was that this "false consciousness" would be superseded by socialism and communism once the working classes realized the inherent inequality of the system. Once people really knew what was going on, they would rebel (Phillips & Jørgensen 2002: 30-31).

The simplest critique of Marxism then, is this: If the superstructure is always a mere product of the base and exists only to reinforce the latter, how will this "false consciousness" be overcome? This might remind us of the critique of structuralism which we outlined above, where we found that it could not account for change. Thinkers inspired by the basic Marxist idea have tried to overcome this problem by introducing a political element, a way for the superstructure to affect the base. This is no small adjustment to the original Marxist idea. To say that the superstructure can be used to the advantage of workers is to admit that the superstructure does not exist solely to subjugate the masses. This leads to another critique: If the superstructure can affect the base this way, there must be greater complexity in the system than allowed for by the simple divide between a ruling and a working class. And if one allows that the superstructure sometimes can work to the advantage of "workers" over "capitalists," it is no longer so clear that the system itself needs to be toppled through revolution, or that the dispossessed would or should want to burn it all down. All this does not mean that Marxism was all wrong all the time. The basic Marxist critique of society as one which is defined and dominated by those who have money and power to the detriment of those who only own their own labour still stands. But a theory of how and why people come to accept this reality was needed, and this is where Gramsci's ideas about *hegemony* come into play.

## ***Hegemony***

When we look at the idea of hegemony, we can begin to see how the threads from structuralism and Marxism come together, because to understand the power relations of society one must understand the language that is used to build and maintain those relations. Phillips and Jørgensen summarize Gramsci's idea of hegemony thus:

“To secure their position, the dominant classes have violence and force at their disposal. But more importantly, the production of meaning is a key instrument for the stabilization of power relations. Through the production of meaning, power relations can become naturalized and so much part of common-sense that they cannot be questioned. For instance, through a process of nation-building, the people of a particular geographical area may begin to feel that they belong to the same group and share conditions and interests irrespective of class barriers (Phillips & Jørgensen 2002: 32).

This idea of a language which “naturalizes power relations,” is one that theorists of discourse analysis have taken to heart. Hegemony is the name of social consensus about the power relations in society – those ideas people have of the world that are taken for granted and codified in our language and social institutions. Two central ideas of Marxism remain in Gramsci's theory of hegemony: that society is divided into classes and that the economic is primary and constitutes the basis of society. The introduction of the idea of hegemony does not, for Gramsci, mean that the economy is a mere expression of the political. On the contrary, material circumstances are still the primary movers of the social in his theory, and there is still a distinction between the base and the superstructure, as well as between the classes which are expressions of economic inequality. As we will see, Laclau and Mouffe take one further step away from Marx' historical materialism when they meld the base and the superstructure into one field: *discourse*.

“Philosophers have until now only interpreted the world – the point however, is to change it,” said Marx of his own work. The idea then was to offer a critique of the way society is constructed in order to effect change. When Mouffe and Chantal dispense with classes and the idea that the base determines the superstructure in a one-way relation, part of the inherent critique of society also falls away. They move back to interpreting the world. When we later look at critiques of modernity, this issue of whether it is the role of scholars to interpret or change the world will be important to have in mind. We will now look at the way Laclau & Mouffe dissolve the distinction between material and discourse.

### 1.3 – Laclau & Mouffe’s Discourse Analysis Theory

#### *The Social*

In Laclau and Mouffe’s understanding of the term, discourse includes not only language, but all social phenomena. We saw earlier that the poststructuralist strand of discourse analysis impels us to look at language as something that exists in a dynamic and changeable order and the same holds true for the social generally. That is to say, all human action which involves other people can be understood as discursive – “society and identity [are] flexible and changeable entities that can never be completely fixed.” The idea is not to get at objective truth in the platonic sense, but to understand how we create “objectivity” through social interaction.

“Where Marxism presumed the existence of an objective social structure that analysis should reveal, the starting point of Laclau and Mouffe’s discourse theory is that we construct objectivity through the discursive production of meaning. It is that construction process that should be the target of analysis (Phillips & Jørgensen 2002: 33)”

Within this theory, the Marxist tradition is transformed. The distinction between a “base” and a “superstructure” is made away with: There is no “material” versus “discursive,” all is discourse. Furthermore, the theory discards the idea that society can be neatly divided into classes which can be described objectively and which people belong to whether they are aware of it or not. Group formations in society are fluid and dynamic, and one cannot beforehand determine which of these groups will be “politically relevant” or in what way. On the axis we drew earlier with the caricatures of Hegel and Marx standing on opposite sides, Laclau and Mouffe’s theory stands near Hegel. But it is important to keep in mind that they have demolished the distinction between the material and the discursive, and so one can say both that the material is discursive and that “discourses are *material*” Phillips & Jørgensen use children as an example. In our language, we treat children as something “other” than adults, and we can analyze this difference by looking at the language. But children are also materially treated different in society through belonging to different institutions, occupying different physical spaces and being subject to different rules and laws. For Laclau & Mouffe, these material institutions are discursive elements. One could be tempted to think that on the axis between material and discursive, they stand in the middle,

but this is not the case. The reason they stand so near Hegel is that in their view “[p]hysical reality is totally superimposed by the social.” Physical reality exists, but it is mute. Only through our social actions does physical reality acquire meaning (Phillips & Jørgensen 2002: 35).

### ***Politics and Power***

Often, the way meaning is ascribed to discourse in a given society excludes other such ascriptions. We will introduce three concepts to examine how this works – *politics*, *objectivity* and *power*.

Politics, seen through the lens of discourse analysis, is where the constituents of a given social structure discuss what holds meaning. As we saw when we looked at the principles of social constructionism, there is a link between knowledge and social action which entails that ‘certain things become and are maintained as lawful or prohibited through the language which reflects the social realities of a given culture.’ The political within a society is the field on which we discuss what holds meaning and how. There can be internal disagreements in a political system, but these usually exist within a larger framework of overlapping consensus. For example, a political party can try to win an election by proposing a radical shift in a nation’s economic priorities, but they do so as a *political party* within an almost universally accepted framework of parliamentary democracy. That deeper political agreement is called *objective* within discourse theory. That which is called objective are those discourses which have become *sedimented*; they are often older than any of their adherents and are taken completely for granted by them. When a person is born in Norway, he or she is born into a social system that continually assumes and takes for granted that Norway is a parliamentary democracy. The distinction between the objective and the political within discourse theory is the distinction between those aspects of the social which we take for granted as fundamental, and those that are subject to change, for example via elections. This is not to say that it is impossible for the objective to become political or vice versa. The distinction between the two is fluid and changeable because discursive. In this theory of discourse, ‘objectivity’ is the same as *ideology*<sup>1</sup>. In taking for granted certain

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<sup>1</sup> This way of looking at ideology is at odds with the way it is used in other theories of discourse analysis, so the word ideology is seldom used. Laclau and Mouffe prefer to speak of ‘objectivity,’ which we have seen to be synonymous.

elements of the social, we overlook the fact that these elements are *contingent*, that they could have been otherwise. And because we take some truths for granted, we automatically exclude those other possibilities.

It is here that Foucault's understanding of *power* comes into play. Power can be broadly understood as "that which produces the social." It must be granted that power, then, is as vague a term as "discourse," but it is still useful, because it lets us see the contingency as well as the necessity of the things we take for granted. Our social world could have been constructed in a myriad different ways, but all those other ways become excluded by our 'objective' discourse. People cannot co-exist unless in agreement on various social rules and institutions, and those rules and institutions cannot exist without this agreement. In society there is a social pressure which continually reproduces one set of taken-for-granted truths to the exclusion of other such sets. That pressure is what we term *power* (Phillips & Jørgensen 2002: 36-38).

By now it will be clear that this particular iteration of discourse theory assumes that although everything is changeable and in flux, this does not mean that all of the other ways of structuring the social are available all the time. The distinction between the political and the objective shows that although many aspects of the social are up for discussion and can change quite rapidly, other, deeper structures are more stable and infused with more power. There is no clear distinction between those structures which are superficial and changeable and those that have stronger and deeper roots – it is a matter of degrees.

### ***Totality as myth***

One very serious implication of the above, if accepted, is that all theories which promise to give a total explanation of reality are by necessity false. Marxism and historical materialism for example, understands society to be an objective totality which can be divided into parts and understood. And in everyday life, we propound and enforce the idea that society is a totality in the same way. Laclau has called these kinds of ideas *myths*. Discourse analysis then, is the attempt to uncover these myths and to ask why this or that myth has become dominant in a given social structure (Phillips & Jørgensen 2002: 39).

It is however important to emphasize that although this view of discourse is useful for analysis, it is impossible to live and participate in society without taking things for granted.



When people within a given social structure discuss the ordering of that structure, they cannot partake in the discussion without sharing in the assumptions. And even the discourse analyzer speaks a given language, has a certain set of conceptual priorities and feels connected to some values more than others. All of this is to say that all the while discourse analysis deconstructs the objective, it is not immune to those same processes which are the subject of analysis.

“We are always dependent on taking large areas of the social world for granted in our practices – it would be impossible always to question everything.” (Phillips & Jørgensen 2002: 37).”

We have seen that what makes discourses material is that they are shared by people and written into our social institutions, and this is the way to understand what are called myths as well. Society does not exist as a fixed and external entity to which we belong, but through our collective attempts to define it. And so the people of Norway share in the myth of Norway, all the while arguing about what its essential qualities and values are. Phillips & Jørgensen asks the question: “[How is it that some myths come to appear objectively true and others as impossible?]”

### ***Identities and Groups***

Laclau and Mouffe make use of a concept called *interpellation*, which was coined by the Marxist philosopher Louis Althusser. It was introduced as a kind of alternative to the classic Western view of the individual as subject. Rather than looking at subjects as primarily entities in themselves, Althusser saw them as the products of the roles they play in society. As he was a Marxist, this became a question of which ‘class’ the subject belongs to. But Laclau and Mouffe, having dispensed with the classical Marxist notion of classes, sees interpellation as discursive. Interpellation is what happens when people acquire their positions in relation to discourses in society. Take for example the relation between the ‘teacher’ and the ‘student. Both of which are roles that come with assumptions about how to act in certain situations, and they are placed within a hierarchy when they are in a classroom. It is this feature, rather than the thoughts and actions of the individual, that define them in relation to society. There are social expectations as to how one should act depending on how one is interpellated in society. Laclau and Mouffe expand on Althusser’s concept by also seeing subjects as *fragmented* – that is, they are interpellated in different ways according to context. When at the store, we are ‘customers’, at work we are ‘co-

workers,' 'managers' or 'employees', to politicians we are 'voters', etc., all according to the discourse we currently embody. Sometimes these roles and discourses are at odds with each other. Laclau has in his later work made use of the psychoanalytical theories of Jacques Lacan, who views the individual as fundamentally fragmented by society, torn between the different roles he or she plays, but with an illusion (or myth) of wholeness which stems from the infant's symbiosis with the mother.

"By incorporating Lacan's understanding of the subject, discourse theory has provided the subject with a 'driving force' as it constantly tries to 'find itself' through investing in discourses (Phillips & Jørgensen 2002: 42)."

And so to claim identity is to identify with one or more discourses where one finds oneself represented. We form groups by being subject to interpellation. When a boy grows up to be a man, he acquires assumptions about what being a 'man' is really about, he identifies himself as being a man, and also as belonging to that group, 'men'. Gender identification can be problematic in itself, but it is not the only identification marker in society. We identify ourselves politically, socially, culturally and in terms of family. Sometimes, for example in elections where the different groups with which we identify are represented by different parties, we have to choose which of these identifications should be primary (Phillips & Jørgensen 2002: 43-44).

Then there is the issue of *representation*. To belong to a group is to be reduced to the characteristics of that group. A political party is a good example. The members of the party do presumably disagree about the finer points of their common political agenda, but there is an agreement that their common will should be represented by a political program. The individual reasons for belonging to the party are subsumed by that common will, and the members allow themselves to be represented. But it is not always the case that the individual chooses the group by which he or she is represented, and nor is it always the case that they get to define what belonging to that group signifies. Consider for example 'immigrants,' who are in a minority position and because they are unfamiliar with the social structures cannot easily find a common voice with which to represent themselves (Phillips & Jørgensen 2002: 42-47).

Different groups are in a struggle to define and represent themselves, and often they do so in a way that excludes others. War is a very violent example of this phenomenon: Two countries lay claim to a piece of land where people from both countries live. There is now ambiguity as to which of the countries can enforce the law there. If they cannot resolve the ambiguity diplomatically, they will engage in a literal struggle for hegemony. That is, both sides engage in the conflict and try to defeat the other. If one side is defeated and retreats, the other side claims ownership of the piece of land and enforces it with its law. That side has acquired hegemony – *their* discourse reigns supreme.

### ***Hegemony and Deconstruction***

The power to define is power *par excellence*, and to define is also to exclude. The political in society is the arena on which the struggle for the right to define what is right and true and good goes on. Laclau and Mouffe make use of the idea of *discursive struggle* by way of Gramsci's theory of hegemony, briefly outlined above, to describe this aspect of discourse. Few, if any discourses are subject to universal agreement even though some are more common and stable than others. Sometimes the truths of a given discourse stand at odds with those of another. The result is that the truth of either discourse becomes subject to ambiguity. The example above painted a literal instance of discursive struggle, but it is common for groups at all levels to engage in this kind of struggle for hegemony. To use war as an example is of course to take the easy way out – usually discursive struggle happens in subtler ways – it is the continual process by which people try to get to define 'objectivity.' But it is also a very vivid example. Consider that piece of land again. Immediately following the war between the two countries and the establishment of hegemony, that hegemony is still contestable, as there will still be people from both countries living there. But if the victor manages to maintain its hegemony – that is, if it manages to suppress the ambiguity of ownership – then over time the ambiguity will diminish. In terms of discourse, that piece of land will objectively become more part of the reigning country as time passes. After a while it will be taken for granted that that piece of land is part of the totality of the country.

"Hegemony is the contingent articulation of elements in an undecidable terrain and deconstruction is the operation that shows that a hegemonic intervention is contingent – that the elements could have been combined differently (Laclau 1993b: 281f.). Thus

deconstruction reveals the undecidability, while the hegemonic intervention naturalizes a particular articulation (Phillips & Jørgensen 2002: 48).”

The method of discourse analysis is essentially deconstructive, in that it seeks to show the contingency of all the things we take for granted by taking them apart. Laclau has described hegemony and deconstruction as ‘the two sides of a single operation.’ Whereas discourse analysis seeks to critically investigate the social structures that are taken for granted, hegemony consists of those very phenomena. But deconstruction does not mean destruction. More often than not, the discourse analyst shares in the assumptions that underlie the phenomena that are the subject of analysis. There is no real outside view of the social. For the critically minded, this can be construed as a problem or flaw of discourse analysis. In this view, discourse analysis enforces the pretense that it uncovers ‘real’ objectivity when it deconstructs the merely ‘apparently’ objective. But to say this would be to fundamentally misunderstand the theory at hand. The only assumption needed to employ discourse analysis is that all we have are assumptions. There *is no objective* in the social sciences, not in the sense of universal statements true always and everywhere.

Nonetheless, it is important to be precise about the fact that there will always be things that we take for granted, and that we cannot make ourselves immune to the forces of Foucault’s *power*, Gramsci’s *hegemony* or Althusser’s *interpellation* merely by having tentatively understood them (and having started to take them for granted). When the discourse analyst attempts to deconstruct and understand some element of society, she brings with her all sorts of assumptions – about the value of discourse analysis as a scientific tool, about the need to understand the element at hand, and not least about the larger totality in which her research is supposed to fit among much else.

#### **1.4 – Application of Method**

The method described above is best seen as a set of tools for, or backdrop to, the investigation of the matter at hand. When we look at our diverse set of authors, beginning with Charles Taylor, we will see that they all theorize about themes like religion, modernity and Islam in subtly different ways. Our methodological tools allow us to see the ways in which they can be seen as discussing similar ideas with differing conceptual entry points. To place them against the same backdrop allows us to synthesize some of their ideas and

present a single story or argument while also preserving their individual outlooks. This is arguably in accord with the spirit of discourse analysis, which after all tries to understand everything in the world of humans as discourse. The argument made in this thesis can be understood only if it is seen as a whole, and will perhaps not be realized until the very end.

We will be attempting to incorporate political science, history, ethics and theology insofar as they are relevant to the discourse of modernity and its critique. We should here pre-empt a criticism which is natural and to some extent justified: The scope of a master's thesis simply does not allow for the kind of syncretism here attempted. Well, perhaps, but it may also be the case that the kind of argument which is the purpose of this thesis can only be made by incorporating a wide variety of perspectives. Assuredly, the same kind of objection could be made if this paper was three times or even five times as long.

We can now begin applying the method by attempting an outline of the chapters to follow. We will begin by following Charles Taylor's story of the emergence of the modern self in *A Secular Age*. That book will form the backdrop for a later problematization of Hallaq's critique of modernity. In our discussion, Taylor's outlook will be contrasted to those of MacIntyre and Hallaq, especially seeing as his tone is no less problem-oriented but decidedly less apocalyptic. In the latter part of the chapter two, we take a look at some of the structural changes which happened concurrently with changes in modes of belief in Europe. We will try to show the emergence of the public sphere by way of Jürgen Habermas, and the beginnings of globalization as presented by Peter Beyer.

Then follows Hallaq's Islamic critique of modernity, with special emphasis put on his idea that there is a necessary incommensurability between the modern nation state and that which he calls Islamic governance. His critique ranges wide, and so our focus will be on his conception of the Islamic moral law, *Shari'a*, both as historical praxis and as counterpoint to the making and production of law associated with the modern nation-state.

We will then, in the concluding chapters of the thesis, evaluate the critique and note some of the merits and shortcomings of Hallaq's argument. We will compare his argument about modern conceptions of the moral with that of Taylor and MacIntyre, and see whether they are in fact in essential agreement about modernity's moral predicament. The question posed at the end of the preface – 'In what way does it make sense to criticize modernity?' – will be

discussed. There is a sense in which Hallaq, MacIntyre and Taylor are wrestling with the same questions, and so an attempt will be made at identifying and qualifying that bottom line.

### **1.5 – A Sketch of the Argument to be made**

The argument of this master thesis is a complex one which requires a lot of preamble. In order to understand what a critique of modernity entails, we have to first try to explain what modernity *is*. We will not attempt an exhaustive definition – instead we investigate modernity by describing the rise of two categories which are in common use today; the private and the public spheres. We will see that in earlier times these categories were in important ways melded together, and that they have separated only during the last four or five centuries. The private sphere is here understood in terms of self – that is, *each individual self*. From the ancient and medieval worlds where the individual was not clearly delineated as against the community arose a self-world which has been described as individualistic, perspectival or even atomistic. That self-understanding is now, in the West at least, ubiquitous if not necessarily hailed by all. The public sphere is that arena in which individuals or groups of individuals represent themselves and their case, whatever that may be. We can immediately see that these spheres are interconnected, if semantically distinguished. In order to make a case publicly, one has to have one privately, and so a private self is a kind of prerequisite for public discourse. The argument will be that this distinction arose in Europe and attained hegemony at a time when European powers were mapping, conquering or otherwise interceding in far-flung parts of the world. The result of this was that even as the European countries were undergoing their leap out of the Middle Ages and invented or discovered modernity, they brought their freshly wrought modern sensibilities with them where they went.

We will see that modernity, although hard to the point of impossibility to define exhaustively, entails differentiation (as that between public and private), secularization (which in some schemes is synonymous with differentiation), rejection of tradition<sup>2</sup>, capitalization, and more or less radical versions of individualism, as well as an idea of ‘the

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<sup>2</sup> One could of course argue that within modernity, there has also been the *re-articulation* of tradition, but this belongs more squarely to the *post-modern*, which one could argue is a subset of modernity. MacIntyre has often been described as one such re-articulator. Hallaq most definitely is one such author, and identifies himself as such (Hallaq: 169-170).

world-picture'. It would also be hard to define modernity without talking about the modern nation-state, bureaucratic society and their 'instrumental reason'. Modernity constitutes a wide discourse – it is at the same time discursively objective and political.

When we have sufficiently (for our argument) identified the discourse of modernity, we will look at a sub-discourse which we call *critique of modernity*, specifically the Islamic critique offered by Wael. B Hallaq. It is important from the get-go to really understand this simple fact, namely that criticism of one or more of the aspects of modernity happens from within. There have been many who have offered such a critique, and they have directed their ire against one or more or even the totality of the aspects above. Here, we will look at specifically *Islamic* iteration of this critique as it emerges from *The Impossible State*. That book offers a deep and salient critique of modernity all the while comparing and contrasting it to both his presentation of Islam as it functioned in pre-modern times and to Islam as a kind of realistic utopia – complete with (some) solutions for our modern predicament. Hallaq's argument is that what many see as a modern moral crisis within Islam and the Shari'a stems from an ill-fated attempt to impose upon the Islamic tradition a product of European modernity – the distinction between fact and value. In order for the Shari'a to function, he argues, no such distinction can be allowed. And so if the Shari'a is to be restored – Muslims have to find a way to restore what he calls 'the central domain of the moral.'

In the last part we discuss the critique. It will be argued that any kind of critique of modernity which contrasts it with either a historical or utopian discourse will have to square this alternative – make it fit – with the modern conception of the self and the public as socially constructed, *objective discourse*. It will also be argued that although modernity has its genesis in Europe, this does not mean that modernity can or should be avoided by any given tradition. As stated above, for our argument to make sense, we will have to have engaged with all of the above key-terms: modernity, self, public, Islamic, etc. In our discussion we will discuss the merits of Hallaq's critique and look briefly at the ideas of Abdoukarim Soroush, another Muslim intellectual.

## 2.0 – Modernity

We talk of modernity all the time, and so an answer to the question of what it is should be readily available. As we will see though, this apparent simplicity is deceptive. Etymologically, the word arose around the 16<sup>th</sup> century, stemming from the Latin word *modo*, meaning *right now, presently*. The questions that beg answering though, are these: Why did the need arise for such a term? Why did that term become one which we use to define ourselves as against those we call pre-modern?

In this chapter, we will be attempting to understand the advent of modernity as it pertains to our thesis by identifying three elements. First, we will join Charles Taylor in looking at the changes of the self from the beginning of the 15<sup>th</sup> century on. Then, we briefly look at Habermas' *The Structural Transformation of the Public Sphere* and Peter Beyer's *Religion in Global Society* in order to see the changes of social understanding and interaction in European society and how and why it spread beyond Europe.

Some preliminaries: There is a distinction to be made between modern as adjective and as noun. To be modern is not the same as to be a modern. One could argue that Plato was modern in the sense of being attuned to and then transcending the ideas and demands of his present time, or that Jesus or Muhammad were. But this kind of modernity is circumscribed and somehow lesser than what we usually mean when we talk about being modern. Sometime during either the very late Middle Ages or around the Enlightenment, another kind of modernity arose, one which makes the writers of that age and beyond more immediately relatable to our own age; a modernity too that is self-consciously modern. Precisely when or where the shift from pre-modern to modern happened is hotly debated subject in the fields of modernization and globalization theory, history of ideas as well as historical sociology. We will here, for the sake of simplicity, contend that the rise of the modern epoch corresponds roughly to the arrival of what Charles Taylor has called *A Secular Age*. We will mostly leave aside the discussion of the secular, except to say that modernity entails secularity; or at least, many the processes which produce modernity are the same as those to which we refer when speaking of the rise of secularity. This is not the same as to say that one has to be secularly oriented (for example in politics) in order to be modern, what is meant is simply that we are *in* secularity much the same way that we are *in* modernity . There is good reason to distinguish between secularity and secularism. Below, the movement from the conditions of belief in medieval Europe to those of modern Europe



will be seen as the social production and construction of *secularity*.<sup>3</sup> Put in terms of discourse analysis, secularity becomes the *objective* discourse by gradually supplanting central elements of the thought-world of medieval Europe. Recall that what we meant by objective was the kind of socially constructed but almost universally taken for granted background to our political discussions, and that when we discuss politically about what holds meaning and how, the objective is assumed. When we argue about what the secular is to mean, whether and how it should be attained; and when we identify ourselves as secular, we are doing so *politically*, that is; we are arguing about different and various *secularisms*.

The parallel to modernity should be clear. On the one hand, we are operating within modernity and we take for granted that we are modern. But we can also argue about what, precisely, modernity *is*, and we can use modernity politically. When a politician uses the word, it is often in the political sense: Say she, who belongs to political party A, wants to attain support for this or that political project; she will argue that her solution is the modern one. But then another politician from political party B might offer a different solution. This does not necessarily mean that he is not modern. Indeed, he might himself appeal to the modern and say that his solution and not that of political party A is the more modern. What is happening here? Well, exactly the same thing as happens in discussions about what the secular is supposed to mean – there is the *objective* modernity and the *political* modern. Usually, we distinguish between those parties that are progressive/liberal and those that are traditionalist/conservative. Both kinds of parties are modern, because they are arguing about modernity from within; and their members would most often describe themselves as modern, or at least as belonging to modernity. Above, we described this state of affairs as one in which we are self-consciously modern, and can here pose the question: When did we begin to describe ourselves as modern?

As stated above, the attempt to answer this question will proceed in three stages. First, we will try to understand ‘the pre-modern self’, that is, the way people understood themselves in and as against the world in medieval Europe, say around the 16<sup>th</sup> century. We will try to see the beginnings of what has happened to the self-understanding during the last five

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<sup>3</sup> Charles Taylor points to three interrelated definitions of secularity in *A Secular Age*: 1) the separation of church and state 2) the emptying of the public sphere (including differentiation of economic, cultural, political, etc. spheres) of religion and 3) the objective condition in which belief is but one option among many (Taylor 2007: 1-2)

centuries in order for our modern sensibilities to arise. Then, we will look at more structural changes, specifically by tracking the rise of the public sphere and how it gradually became understood as separate from the private. The argument will be that together, these offer a cursory but sound explanation for what separates modernity from ages hence. The final part of the chapter deals with how, concurrently with the imperialism and colonialism of European countries, this discourse came to dominate not only Europe, but the world at large. First then; the buffering of the porous self.

## **2.1 – The Ancient and Modern Selves**

Taylor begins chapter one of his book *A Secular Age* by asking a question: “Why was it virtually impossible not to believe in God in, say, 1500 in our Western Society, while in 2000, many of us find this not only easy, but even inescapable?” Taylor’s 800-page book is an attempt to answer that question. Three things had to happen for the modern outlook to emerge. These are all interconnected, and here presented in no particular order: Firstly, the world itself became ‘disenchanted’, i.e. emptied of inherent theological and magical meaning. Secondly, an alternative to the God- or spirit-centered world-view came into place – that of exclusive humanism. Thirdly, social structures, which orbited around the Church and its theology, as well as common ritual and common belief in God, gradually became worldlier and understood in their own terms (Taylor 2007: 25-26).

He wants us to keep in mind that whether we are speaking about the thought-world of 2000 or that of 1500, the way people parse reality is automatic; it comes before any philosophical or ethical system they construct or subscribe to. Recall the discourse analysis definition of the objective: it is that which is so deeply ingrained in the social that we take it entirely for granted – *sedimented discourse*. Taylor calls this automatic parsing our *naïve understanding*, and his claim is that this understanding has undergone a gradual but fundamental shift. Part of his argument is that only by going into detail and telling a larger story can the question be answered satisfactorily, and so his book in some ways resists quotation and summary. We will nonetheless try to glean what the upshot of that story is by looking at some of Taylor’s findings – particularly those pertaining to the change of the socially constructed world and self. Below, we look in some detail at what is meant by ‘disenchantment’, especially as it relates to self-understanding.

### ***The Porous Self***

The world which we have both left behind and carried with us as memory, that of 15<sup>th</sup> century Europe, was one wherein near everyone believed in the same God in roughly the same way. The structure and events of nature bespoke God's creation and will. Floods, droughts, storms and exceptional farmland yields were all understood as 'acts of God'. Kings and rulers justified their sovereignty by grounding it in that higher reality of God, and "the life of the various associations which made up society, parishes, boroughs, guilds, and so on, were interwoven with ritual and worship[...] One could not help but encounter God everywhere". The world itself was 'enchanted' (Taylor 2007: 25-26).

An aspect of this in the case of Christian Europe was that there were good and evil forces that could influence the lives of humans. There was God, his angels and the saints of worship, but there was also Satan and his demonic followers as well as forest-spirits and other malignant agents. People thus needed on the one hand to keep in good accord with the forces of good by attending church, worshipping at the saintly shrines and engaging in communal ritual and on the other to be on constant guard against demonic influences. Taylor here employs the concept of a 'porous self' – a self that is not as self-centered, whose borders are not clearly delineated as against the world. Another way of saying this is that the moral world-view and beliefs of Europeans during the 16<sup>th</sup> century were imposed on the world – the world itself became an agent by being socially and naïvely understood as enchanted. In an enchanted world, objects have the power to impose meaning upon us. One of Taylor's examples is about the medieval fear of demonic possession. In our time, we are apt to explain confused and anti-social behavior in terms of mind – we diagnose people with this or that psychological condition to explain the errant behavior. In medieval Europe by contrast, madness was commonly explained as the possession of a person by evil forces. Another example is that of the well-known (and élite) idea of the correspondences, wherein there are four basic temperaments or personality types which correspond to four bodily fluids – blood, yellow bile, black bile and phlegm. In this view a melancholy person is one who has an excess of black bile. But "black bile is not the cause of melancholy, it embodies, it *is* melancholy." Meaning for such a self, be it melancholic or phlegmatic, existed *in* the world, *in* objects; their meaning was external to the mind, and whether evil or good, it could enter the person and affect them – they were thus vulnerable. This specific vulnerability,

one which Taylor argues has gone away with the enchanted world, had profound effects on people. In a world where the self is thus vulnerable, and there are forces of good and evil corresponding to those within medieval Christian mythology, there is no clear line drawn between the inner and outer, physical and moral. What does this mean?

“First, disbelief is hard in the enchanted world. This is not so much because spirits are part of the undeniable furniture of things and God is a spirit, ergo undeniable. Much more important, God figures in this world as the dominant spirit, and moreover, as the only thing that guarantees that in this awe-inspiring and frightening field of forces, good will triumph. [...] In general, going against God is not an option in the enchanted world. That is one way the change to the buffered self has impinged. It removes a tremendous obstacle to unbelief (Taylor 2007: 34-37).”

The communal aspect of that social power which created this sense of self must not be underestimated. In order to defend their crops from evil spirits, entire communities engaged in ritualistic warding. That everyone joined in on these rituals was of great importance. If one individual broke ranks, the consequences were imagined to be dire.

“As long as the common weal was bound up in collective rites, devotions, allegiances, it couldn't be seen just as an individual's own business that he breaks ranks, even less that he blaspheme or try to desecrate the rite. There was an immense common motivation to bring him back in line (Taylor 2007: 42-43).”

This line of thinking also applies to the larger structures, even whole kingdoms. The individual beliefs in the enchanted world and communal ritual together made it near impossible for doubt and dissent. The world as a whole constituted a 'great chain of being' where everything and everyone from peasant to king had their place.

The point of retelling (parts of) Taylor's story about the thought-world of medieval Europe is to show how fundamentally it shifted and spread in the following 500 years. One might say, and Taylor has had this criticism levelled against him, that his investigation is limited to the European context. Taylor acknowledges this in the introduction to *The Secular Age* when he says that the kind of investigation he has undertaken should be repeated for other parts of the world, and rightly so. The European Middle Ages designates both a place and an era, and so the enchantment of its thought-world is unique to that circumstance. But there is an argument to be made that modernity had its genesis in Europe, and that in order to

describe it, one has to start there.<sup>4</sup> At least for a while during the 16<sup>th</sup> to 18<sup>th</sup> centuries when the process of modernization began, the materials from which the modern self was built were gathered mostly from European sources, although as Hallaq points out, Islamic philosophers had been working with of the Greek sources for centuries before they surfaced in Europe – Aquinas being a “thoroughgoing ‘student’ of Averroes and other Muslim philosophers of his kind (Hallaq 2014: 5).” The creation of modernity was interwoven with the processes of discovery and early colonization, and thus spread. A central aspect of the rise of modernity is that it corresponds with the arrival of the world-picture view of earth - the first vantage point from which one could see the world in its entirety was built in Europe. If the above is accepted, we can say that the contrary is also true; the non-European world was non-modern. Modernity would have to arrive from without.

Below, we look at some of the historical factors which facilitated the rise and diffusion of modernity. Let us for the sake of argument and because it seems plausible, assume that while this process was going on, first in Europe, then gradually taking hold as European countries established economic and military hegemony throughout the (to them) increasingly known world, other societies lived in their respective social imaginaries. It makes sense to think that these would be, if not ‘enchanted’ precisely as in Europe, then at least unitary in the same way. Hallaq, as we will see, argues that Islam in its golden age and up until near the fall of the Ottoman empire constituted not simply a religion but a ‘whole way of life’ which sat the parameters for life both private and public (although again, these were not clearly separated). Following what has been shown in the paragraphs above, we can say that this held true for Christian Europe during the Middle Ages as well<sup>5</sup>. This should be kept in mind when we look at the kind of argumentation which compares modern iterations of Islam with other religions such as Christianity; especially in the cases where it is argued that whereas the latter are ‘mere religions’ the former is a complete and final guide for all human endeavor.

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<sup>4</sup> The importance of Arabic astronomy and philosophy and the likes of Ibn Sina and Ibn Rushd notwithstanding.

<sup>5</sup> Taylor: «And so society, this utterly solid and indispensable reality, argues for God. Not only does it follow: I have moral and spiritual aspirations, therefore God is; but also: we are linked together in society, therefore God is. It is this facet, God’s existential-foundational role in society, which perhaps best explains how difficult it was to get our minds around the possibility that a society might exist which was not grounded in common religious beliefs. (Taylor 2007: 43)»

We can for example note a striking similarity with Hallaq's description of the moral cosmology of premodern Islam:

"[The] physical world is not a scientific site subject to cold and bland rational explanation and calculation but rather a natural world saturated with spirituality and psychology, one wholly subservient to moral actions taken by the very humans that were created by God. If mountains tremble, seas split, and 'nations' are abruptly wiped from the face of this earth, it is all because of moral failure or, at least, because of morally precipitated laws of nature (Hallaq 2014: 84)."

If we have succeeded so far in this chapter, we have painted a picture of a world where what we now would call religious beliefs *constituted* reality in a way it simply does not today, at least in the modern West. It is time then, to show how and why that enchantment lifted and how our naïve understanding changed to allow for modern self-hood. We look below at the change: A brief history from Protestant Reformation, through renaissance humanism and the scientific revolution to the rise of the nation-state. In doing so, however, we will try to keep our focus at the self. The account will (naturally) not be exhaustive – the point of the exercise is to garner appreciation for the road markers which have had to be passed in order for modernity to arrive.

## **2.2 – Confessionalism**

Below, we describe the beginnings of the various Reformation movements in some detail because these illustrate how the unity of medieval Europa fragmented, and how the stage was set for the radical transformation of European society. In order for people to choose alternative beliefs about the structure of society, such alternatives had to be made available. Martin Luther and the Protestant movement created such alternatives.

During the Middle Ages, the Catholic Church was one. Yes, there were battles and controversies between popes and emperors, popes and their bishops and between different orders within the church, but these happened within a larger whole. While individual actors within the church could misstep, the church as a whole could do no wrong. During the 16<sup>th</sup> century, this totality fragmented after the young professor of theology Martin Luther criticized the church in a series of academic writings between 1516 and 1519, the most famous of which were the 95 critical theses about indulgences published on October 31<sup>st</sup> 1517. Of equal importance were a series of theses he wrote in 1519 about the use of indulgences, which in his mind were not sanctioned by the Bible, but more radically about

the power of the pope and the church councils. His criticism did not soften in the following years: in 1520 and 1521 he wrote theses arguing that the pope was the Anti-Christ incarnate. Luther appealed to powers outside of the church for help, both nobility and lay-people were called on to protect the people from sanctimonious bishops and priests. Salvation was to be achieved through faith alone, according to Luther, and not by indulgence paid to the Church (Rasmussen & Thomassen 2002: 265, 270-274).

The above outline can seem to paint a picture of Luther as someone who rejects the very foundations of Middle Age belief, but this is not necessarily the case. In 1524, peasants in Southern Germany protested against their feudal masters and appealed to Luther for support. He was at first supportive. When, however, the protestations resulted in violence against these masters, Luther turned his back on them and called on the nobility to strike down the riots. Even though the Catholic Church had failed to be a true protector of the Christian world, that world still represented a divine order created by God. To go against it would be heretical. And indeed, Luther himself was treated as a heretic by the Catholic Church. First he was called to answer before the Church authorities in Rome, and when he refused, a high-ranking cardinal was sent to negotiate with him. The negotiations broke down, and Luther was excommunicated. He was supported and protected by a local prince, though, and so allowed to keep writing (Rasmussen & Thomassen 2002: 275-276).

Luther's theological project was one of simplification: He wanted fewer of the ceremonies and celebrations which did not serve the faith of the individual; to do away with the worship of saints; to bring Christianity out of the monasteries and elite orders; and a theology accessible to laypeople as well as priests. He also wanted to do away with the prevalent Catholic idea that the Bible could be read in four different ways; historical, allegorical, moral, anagogical/prophetic – his understanding was that the Bible was clear and univocal, and could be read literally and spiritually at the same time. Most importantly, he said that Scripture alone was to hold authority over Christians (Latin: *sola scriptura*) (Rasmussen & Thomassen 2002: 276-278).

One more element of Luther's theology has to be laid out – the doctrine of the two kingdoms. Central to his critique was the idea that the power of God could not be concentrated either in persons, be it the pope or saint, nor in locations, be it Rome or sites

of pilgrimage: All people have access to God if they are baptized, and all of the world is holy because created by God. He called for a distinction between worldly and spiritual powers. The pope had failed morally because he had acquired political and military power. Luther thought that the emperor, kings and princes should have the power of the sword – they were tasked by God to maintain order physically. The people of the church however had only the Word, and their responsibility was to ensure that people understood and lived by the Gospels (Rasmussen & Thomassen 2002: 284).

What happened in terms of our story is this: That ‘total discourse’ of a unitary Church which we described in the previous segment was torn asunder by Luther’s criticism. He looked at the things that had been taken by granted for so long by so many, and proposed an alternative. And so a door had been opened. For one, it followed from Luther’s thinking that the individual and its relation to God was to be the cornerstone of faith, Secondly; through a combination of Luther’s critique, his actions, and the support he received from outside the Catholic church, more power was given to princes. They could be called on to protect their subjects from Roman Church authority. This all served to undermine the identity between loyalty to Rome and loyalty to Christianity.

Another Protestant movement quickly sprang up, initially centered in Zürich. Its two primary architects, Ulrich Zwingli and Jean Calvin, formulated a theology based on *sola scriptura*, but their thinking differed from Luther’s in important ways. The reformed Protestants emphasized the importance of showing the work of God in this world, and His ultimate sovereignty over humans. Whereas some symbols were allowed in Lutheran churches as long as they were not the object of worship, (what became known as) Calvinist churches and their service were exceedingly simple. To have holy objects or to partake in divine ritual was not to be the essence of Christianity, rather the idea was for people to metaphorically bring Christ to the world by living as Christ (Rasmussen & Thomassen 2002: 289-290).

For Taylor, a central feature of the Protestant movement was the idea that society could be made over, that is, Reformed. The Catholic Church had throughout the Middle Ages increasingly seen Christians as ‘sinners in the hand of an angry God’, and this had resulted in a sense of unworthiness on the part of believers. Taylor’s argument is partly that an atmosphere of fear had opened the door for Protestantism. We described above the idea



that God, through human veneration of saints, sacraments and ritual could protect against dark magic. In a sense, then, to serve God is to ally yourself with ‘white magic.’ The Reformed churches underwent ‘disenchanting move’ reminiscent of that within post-Babylonian-exilic Judaism. God became simply power over and beyond any magic. “The flip comes when you take all that fear and transpose it into a fear of God, sole rightful object of fear, confident that it can arm you against all magic (Taylor 2007: 73-74)”<sup>6</sup>

The result of the Protestant movements was that Latin Christendom, which had been one, was divided into three. There was now the Catholic, the Lutheran and the Reformed or Calvinist Church. People had to ‘confess’ to one of these Churches, and so there arose also three different churchly ‘confessions’. Later, this split would be used politically, as local rulers declared sovereignty partly by appealing to the religious specificity of their subject peoples. During the late 15<sup>th</sup> and the 16<sup>th</sup> century, this blew up into the wars of religion (Rasmussen & Thomassen 2002: 265).

The Catholic Church underwent its own reformation during the 16<sup>th</sup> century. This was perhaps facilitated by the Protestant Reformation, but many of its structural changes were nonetheless independently conceived. A greater emphasis was put on religious life and personal devotion. Two features of the early Catholic Renewal is identified by Rasmussen and Thomassen, authors of *Christianity – a historical introduction*<sup>7</sup>. The first is characterized by such innovations as the Jesuit order of Ignatius of Loyola, whose primary concern was to facilitate piety in individual believers and to further the work of God by intense devotion, rational self-investigation and contemplation of, even attempts at identification with Christ. A central feature of this movement was its universalistic aspirations. The idea that the people of the world would reach salvation only by Christ became a motor for mission, which the Jesuits undertook effectively across the world (Rasmussen & Thomassen 2002: 307-313).

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<sup>6</sup> This is a simplification, but a narratively useful one. The later ‘puritan’ movements also played on notes of fear of damnation. Taylor concedes this, but emphasizes both the more radically individualistic dimension of these movements – that is, the individual responsibility to be righteous – and the idea that society as a whole can and should be made a vehicle and help to fulfill this responsibility. They can thus be seen as stepping stones on the way to our individual humanism.

<sup>7</sup> Author’s note: Translations by me. Originally in Norwegian; *Kristendommen – en historisk innføring*.

The second feature was more directly a result of the Protestant Reformation, which had put into question the role of tradition as against the Gospels, Church-authority and the function of the Church in salvation of people. Against Luther's *sola scriptura*, the council maintained that tradition which is guided by The Holy Spirit is equal in importance to the Gospels. It also maintained that the Catholic Church had a God-given authority through the apostolic succession, i.e. the Pope. Lastly, whereas the Protestant theology had stated that faith alone was the necessary condition for salvation, the council maintained the equal importance of good deeds. The Protestants had also called for a translation of the Bible into European vernacular, and this the council vehemently denied by declaring the Latin *Vulgata* the authoritative Bible. In addition, the council addressed a feature of the institutional church which had served to make it unpopular; bishops, who, by 'divine right' had previously been given manors which put them at a distance from their religious subjects. This became a 'human right' which the Pope could exempt from. More importantly, it was made a requirement for bishops to actively engage with the people of their assigned areas. These changes paralleled the new ideas of the role of priest and bishop in Protestant areas (Rasmussen & Thomassen 2002: 320-324).

What we can see is a two-fold movement. Firstly, there is the increased focus on the ordering of society. This is aptly described by Taylor. The atmosphere of and pressure to reform played an important role in facilitating the new notions brought about in the following centuries. We see the emergence of the 'police state' which sees as its responsibility to educate and discipline its subjects. Charles Taylor identifies four features of these reform movements:

- 1) "[They] are activist; they seek effective measures to re-order society; they are highly interventionist;
- 2) [They] are uniformizing; they aim to apply a single model or schema to everything and everybody; they attempt to eliminate anomalies, exceptions, marginal populations, and all kinds of non-conformists;
- 3) [They] are homogenizing; although they still operate in societies based on differences of rank, their general tendency is to reduce differences, to educate the masses, and to make them conform more and more to the standards governing their betters. This is very clear in the church reformations; but it is also true of the attempts to order people's lives by the 'police states';
- 4) They are 'rationalizing' in Weber's double sense: that is, they not only involve an increased use of instrumental reason, in the very process of activist reform, as well as in designing some of the ends of

reform (e.g. in the economic sphere); but they also try to order society by a coherent set of rules (Weber's second dimension of rationality, *Wertrationalität*) (Taylor 2007: 86)"

The second is tied to the first. Let us call it the individualization of religious belief. Luther and the Protestant Reformation heralded a kind of Christianity which puts the individual's relationship to God on center stage. This is not to say that the community ceased to be important – the community is included in the individualism of Protestant theology. The individualization can be thought of as in a dialectical relationship with the first movement described above, because in order for the personalization of belief to become paradigm, it had to be propagated socially.

One of Luther's goals was as we have seen to make available to ordinary people the kind of devotion to which monks, priests and bishops had earlier enjoyed privileged access. Taylor argues that there exists a kind of tension in Christianity<sup>8</sup> which was especially prevalent during the Middle Ages; one between religious 'self-transcendence' on the one hand and ordinary life or 'human flourishing' on the other. One of the motors of the early monastic movements had been the wish to turn away from the latter in order to privilege the former, which was seen as 'higher'. They were seen to do this on behalf of society, hence the medieval idea that "the clergy pray for all, the lord defends all, the peasants labour for all" (Taylor 2007: 44-45). A greater premium was put on individuals in their relationship to God, giving them more of a responsibility for their own salvation. This led to a greater focus on human flourishing *as religious practice*. In Luther's thinking, humans are *simul iustus et peccator*, that is, they are simultaneously 'just' and 'sinful'. They are justified internally by faith in the heavenly Christ and so partake in His power and freedom, but externally they are tarnished by a sinful world and so have to be humble – if need be, slave and labor unto death like the earthly Christ (Rasmussen & Thomassen 2002: 285).

Let us briefly return to the idea that meaning resides in objects in the world. Thomas Aquinas, the great medieval interpreter of Aristotle, had created a synthesis of Aristotelian logic and Christianity. During the Middle Ages there had been a debate going on between what are called the *realists* and the *nominalists* within this Thomist tradition. The debate is now well-known, if only in an abstract way and simplified form. Commonly, it takes this

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<sup>8</sup> He also argues that the following is the case for "many (perhaps most) civilizations dominated by a 'higher religion' (Taylor: 43)

form: «Is the good good because God willed it so, or did God will it so because it is good?» Aristotle had argued against Plato's idea that essences, e.g. the 'natureness' of nature had separate, non-physical existence in a higher realm. Aristotle combated this by saying that the essences of things reside within their being. His position was one of *realism* as against Plato's *idealism*.<sup>9</sup> It follows from this logic that for each thing in nature there is a proper good, that of *telos* – that is, *purpose or essence*. Since God is the creator of nature, one can encounter God by looking *at* nature. By this logic, one can argue that looking at nature is an attempt to reach God and to behold the divine order of His creation. And since those doing the arguing during much of the Middle Ages were theologians, this is what they argued. But this way of arguing had unintended consequences – it autonomized nature. And so against this Aristotelian-Christian realism rose a group of thinkers who argued that this account of nature seemed to subordinate God to it. If all things have their proper essence, then God will have no choice but to create them according to that essence. The nominalists wanted to say that God, who is the supreme actor of the universe, willed not only nature, but its essence as well. He is thus *above nature*. This means however that when we as humans look at nature, we cannot assume that its essence is readily available to us. We, who are created in the image of God and trying to understand his will for the world, must look at nature “not in terms of the normative patterns they reveal, but in terms of the autonomous super-purposes of our creator. The purposes things serve are extrinsic to them. The stance is fundamentally one of instrumental reason (Taylor 2007: 97)”

Here is a major turning-point of European thought. If one can point to a moment (metaphorically speaking, since this was actually a gradual movement) when the spirit of God began to extricate from the world of objects, this would be it. The order of nature and its divine providence ceased to be immediately obvious – one had to look deeper. The world was still seen as created by God. But He did reveal himself by signs or 'normative patterns' in nature.

European societies had not, even after the Reformation, reached a point where the idea of a divinely ordered society had fallen away – that would take time. But this new optimism on the part of Church-men and rulers, the idea that society could be made over by use of

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<sup>9</sup> Author's note: Here I refuse to refer. If anything can be considered common knowledge within academia, this would be the text-book example.

human reason and programs of reform, quickly began to yield changes in the structure of kingdoms and empires alike. All over Europe, populations were increasing, especially in the cities, and greater emphasis was put on achieving domestic order through effective governance. Along with this came expanded notions of 'civility', which through its Latin root *civitas* is a translation of the Greek *polis*. The distinction between life in the 'forest' and the city was accentuated. Naturally, the more people gathered in cities, the more power was accrued by the governing powers. Together with that drive to reform which we qualified above, this meant new laws and a greater focus on the education of the populace – including the lower orders. Taylor argues why this was the case: First, the lower orders, especially those who left the agricultural and artisanal life of the outskirts in favor of the cities, were growing in numbers at such a rate as to seem threatening - violence and disease followed in their wake. Second, to discipline one's population came to be seen as an effective way of increasing power. This was the case for production and economic growth, which in turn allowed governments to increase tax yields:

"[W]ith the seventeenth century, as military technology advanced, and as some states began obviously to win great advantage from their higher population (e.g., Holland, England), there was pressure to intervene on the supply side. Governments became concerned with productivity; and in fact with a whole host of measures to do with the size, health, prosperity, and even mores of populations, all of which had a powerful, direct or indirect effect on military might (Taylor 2007: 99-103)."

And so, it became increasingly important for governments to maintain internal order and external military and trade power. These went hand-in-hand.

The above gives a glimpse into the many structural changes European societies underwent between, say, the 15<sup>th</sup> and the 18<sup>th</sup> centuries. The tendencies here outlined continued to gain in importance throughout this period, and are important factors in explaining the rise of civil society. We will now briefly look at the emerging distinction between public and private in Europe, beginning (roughly) in the 17<sup>th</sup> century.

### **2.3 – The Public Sphere**

In Habermas' *The Structural Transformations of the Public Sphere*, we see that that the public as modernly conceived began to emerge with the early capitalism of northern Italy, and that it spread from there to Paris and London. There, and subsequently across Europe, 'the public' underwent a gradual change of meaning. During this time in Europe, what we

now call the 'public' and 'private' spheres were not clearly separated. Manorial and noble authority were understood to be 'public authorities' – public was synonymous with 'lordly' in medieval documents. To be public did not mean to inhabit a different sphere from the private, rather "it was something like a status attribute." The publicness of the lords stemmed from the medieval belief relative to that 'great chain of being' wherein a lord "presented himself as an embodiment of some sort of 'higher' power." Publicness ceased to be simply a 'status attribute' connected to feudal power. It gradually became a matter of representation – something attainable through learning and discipline, and something too that revolved around worldly power represented by the court of princes and kings. "Under the influence of the *Cortegiano* the humanistically cultivated courtier replaces the Christian Knight." Out of this emerged a new kind of aristocratic 'society.' Habermas argues that this happened only after the onset of commercial capitalism as focal point of state power, because this was what broke down the power of feudal lords:

"Only after national and territorial power states had arisen on the basis of the early capitalist commercial economy and shattered the feudal foundations of power could this court nobility develop the framework of a sociability – highly individuated, in spite of its comprehensive etiquette – into that peculiarly free-floating but clearly demarcated sphere of 'good society' in the eighteenth century. The final form of the representative publicness, reduced to the monarch's court and at the same time receiving greater emphasis, was already an enclave within a society separating itself from the state. Now for the first time private and public spheres became separate in a specifically modern sense (Habermas 1989: 7-11)."

As long as the early capitalist economy still revolved around the "feudal organization of agricultural production," it could be integrated into the old power structure. Indeed, it served for a while to stabilize the economy of feudal estates, although as we've seen, the lords of estate had begun losing their 'representative aura'. They were in fact becoming 'private citizens' as against those who by virtue of connection to the court represented 'public authority,' i.e. the proto-states. The towns, which had always had local markets connecting country to polis, became bases of operations for long-distance trade. The vertical power structure of feudal society – characterized by domination of the peasant laborers in a system of estates – made sense in a society where most of what is produced was also consumed 'locally.' But the seeds were sown for what would eventually transform that feudal society into the modern state. Habermas focuses on two novelties generated by early capitalism: *news* and *commodities*. The towns became bases of operation for ever

elongating trade routes, and so a 'network of horizontal economic dependencies emerged'. For those who did the trading, it became important to get information about the happenings in foreign countries and so merchants organized the spreading of 'newsletters'. Cities where trade was organized also became centers of information. In the beginning and up until the end of the 16<sup>th</sup> century, these letters were the exclusive privilege of merchants, who carried them along their trade routes.

Several aspects of this newly arrived model should be noted. Trade over sea or across borders carried greater risk and required capital. This resulted in early forms of the stock company – which allowed for both the risk and capital investments to be spread out. The trade routes however needed to be maintained and protected by political and military power in the form of standing armies. This in turn required more taxation and a larger bureaucracy. It also became necessary to separate between the private holdings of princes and a treasury of state. This has been called 'the nationalization of the town-based economy'. This nationalization was achieved by an ever-increasing number of local administrators who worked for the state. And so "[public] authority was consolidated into a palpable object confronting those who were merely subject to it and who at first were only negatively defined by it." The public here meant 'state-related.' Another central feature of the capitalization of Europe is the movement towards a state-sponsored production of goods from imported raw-materials and the steadily increasing need for productive labor: From the 17<sup>th</sup> century on, "[foreign] trade no longer counted per se as the source of wealth, but only insofar as it aided the employment of the country's population – employment created by trade." The above preliminaries should allow us to begin speaking about a 'civil society,' which for Habermas "came into existence as the corollary of a depersonalized state authority." Individual families or persons had individual wealth with which they engaged with that newly arrived 'public economy' regulated by the state. And with the arrival of this system, a two-fold dependency and mutual interest between public and private also emerged. Habermas quotes Hannah Arendt on this, and we can do no better: "Society is the form in which the fact of mutual dependence for the sake of life and nothing else assumes public significance, and where the activities connected with sheer survival are permitted to appear in public. (Habermas 1989: 16-19)"

This mutual dependence manifested itself in an ever-increasing variety of ways, and also beyond that having to do with survival. Having identified some of the ‘structural transformations’ of society, we now take a brief look at an example of how the public sphere emerged as a battleground of ideas.

### ***A fin de siècle***

Our example of this change can be found in France, near the end of the 17<sup>th</sup> century. There, the French Académie erupted into a scholarly battle which has subsequently been known as ‘The Quarrel of the Ancients and the Moderns.’ On January 22 1687, the academy read Charles Perrault’s poem *La siècle de Louis le Grand*<sup>10</sup>, in which the author argues that great literature is written in great nations and under great kings. He compares the age of Louis XIV to that of Augustus, citing his kings’ great military achievements. He then goes on to compare “representative figures from antiquity with individuals he presents as their modern counterparts to illustrate ways in which the moderns have the advantage over their precursors: Why, he concludes, should we be surprised at the inadequacies of Aristotle’s physics? We need only remember that he was working in an ‘obscure darkness,’ without the benefit of modern inventions such as the telescope.” Further, Perrault argues that even Homer suffered under that ‘darkness,’ “using too many digressions, creating heroes who are too brutal, and so forth”. The reason this is radical, according to Dejean, is that here, the individual interpretation of literature by people in Perrault’s time is given premium over millennia of uncritical veneration of the Ancients. The academy immediately, even before the reading was complete, broke out into ‘war’ (Dejean 1997: 42-44).

Even before that debacle, two camps had formed within the literary élite – ‘the Ancients’ and ‘the Moderns’. ‘The Ancients’ held that the grandest and best works of both philosophy and poetry had already been written by the likes of Aristotle and Homer and that all subsequent efforts were mere attempts to reach the perfection of those Ancient texts – furthermore – only scholars could really understand these great works. To be literary was to

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<sup>10</sup> Author’s note: We can roughly translate this as ‘The Age of Louis the Great’. I say roughly, because as Dejean points out, ‘siècle’ had earlier meant simply ‘an age’ loosely defined, such as for example ‘The Age of the Ancients’. During the time of this literary battle however, it acquired two new meanings, both used by Perrault: First, as seen in Perrault’s title, it took on a personalized meaning; the age of this or that king. The second meaning is one we can recognize as ‘modern’; a ‘siècle’ came to mean simply: *a century*. Importantly, the rule of individual kings became seen as happening *within* these depersonalized centuries (Dejean 1997: 19-20). Also, and interestingly, given Taylor’s investigation of that term, the Latin root of siècle is *saecula*, from which our modern ‘secular’ is derived. He is also speaking of a *fin de siècle* (end of an age).



partake in a great timeless 'we', where "good taste and correct literary values never vary". 'The Moderns' on the other hand, argued that Ancient Greece represented the childhood or early youth of human civilization, and their own time something akin to mature adulthood. The intellectual independence of authors and readers was held as their principal quality (Dejean 1997: 49). We will not here focus on the literary content of the quarrel. Instead, we will see how the battle leaked out of the élite academy into the public discourse.

In the lead-up to the quarrel, Modernists had argued not only that the literary élite should prioritize individual judgment over long-held traditions, but that *all those who could read* should do so as well. Whereas the Ancients routinely denounced more popular forms of literature such as the novel, Moderns embraced it. *Mercuré galant*, which in Dejean's account was the first real newspaper<sup>11</sup> in France played an important role in this respect. Its editor from 1672 to 1710, Jean Donneau de Visé, is identified by Dejean as one of the principal actors in making this new literary public, routinely engaged with his readers. In the wake of the tremendously popular novel *La Princesse de Clèves* (1678), de Visé invited the readers of *Mercuré* to engage with questions about marriage, love and society. Throughout his reign as editor, he received letters from all over France which were then quoted, at first partly, then wholesale, as part of the literary discussion.

"By far the most striking aspect of this process is the fact that each letter, as Donneau de Visé points out when he published the first selection, goes beyond reporting the views of a solitary reader and records literary debate and dissent among a group of readers, representing thereby the judgement 'of a society that had gathered together to debate such a delicate question (October 1678, 317) (Dejean 1997: 57-62)"

Out of this, we can see distinctly modern forms of publicness emerge. The public is both audience for and participant in intellectual matters. They are called on to discuss news and offer opinion. Also well worth mention is that the public emerges as a sphere somehow distinct from the state – even though perhaps seen as dependent on it. The reason this literary quarrel was included here is that it shows that the European society which emerges out of the Middle Ages is one which actively, and in ways not always having to do with war, trade and state politics, *participatory*. The public cannot be seen simply as a corollary to state – it is in very important ways independent of it. The old notions of a divinely ordained

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<sup>11</sup> Although at this time, there were already other periodicals, in France as elsewhere. These dealt primarily with military and courtly news. *La Mercuré* distinguished itself by also including news on the literary matters which had earlier been the privilege of the élite of court and académie (Dejean 1997: 58).

order died hard, but we can see in the 16<sup>th</sup> and 17<sup>th</sup> century the emergence of the factors by which that order was eventually exploded.

## **2.4 Globalization**

Peter Beyer argues in his book *Religion in Global Society* that modernization as globalization has its roots in late medieval Europe. Although there have been premodern thought systems that have in some form or another held universalistic notions, i.e. that have seen themselves as existing in a dialectic between the global and local (Beyer mentions Hellenism and Islamdom), the particular form it has taken in the modern world came into being along with the European nation-state.

“Western Europe in the late Middle Ages was not the most powerful society in the world at that time. Compared with Islamic civilization from northern Africa to the Indian subcontinent or with China of the Ming dynasty, it was a technological, economic, artistic and military backwater (Beyer 2006: 30).”

But something happened during early modernity to change all that. Beyer points to four features: The first is seen in the voyages of exploration, such as the ones done by Vasco da Gama and Christopher Columbus, which were initially undertaken to find alternate trade routes to bypass those controlled by Islamic civilization. The European states were not trying to institute a new system of trade, merely to connect to an existing one. But they had from the very beginning aspirations to extend their influence beyond Europe. This has to do with the structural changes Europe underwent. The second feature is the intellectual innovations by such figures as Copernicus, Galileo and Descartes thinking represented a break from religious world-views in favor of empirical observation. They had in common with the explorers “the symbolism of a positively valued discontinuity, of ‘discovery.’” Then there is the Reform movement described above, the protagonists of which having laid emphasis on individual conscience. In common for all these features is an optimistic view of human flourishing, a narrative representing discovery, enlightenment and freedom – and general thriftiness. The fourth feature is that of economic change – the technical achievements and the growing division of labor which resulted in industrialization.

Even though the above features represented different spheres of action, they were interdependent, and connected to a wider movement of modernization in Europe. That modernization can be seen to have consisted in “among other things, the acceleration in the

development of a set of ‘evolutionary universals’” such as “value generalization, inclusion, differentiation and adaptive upgrading.” The differentiation and technicalization of economy, production and political institutions allowed for a greater reach and political impact – these are geared towards “the fundamental value of progress.” The above, for Beyer, indicates the reasons for the success of European powers in early modernity. The drive for progress resulted in differentiated and adaptively upgraded spheres of action. And since the European powers existed in a state of competition with each other, their aspirations for trade and influence increasingly had to be supported by military might: “Their means were powerful and ever more powerful. They eventually had better guns than everyone else; but they also kept on producing ever better guns. To stand up to them, other civilizational centres couldn’t just produce European guns; they also had to adopt something like their restless attitude (Beyer 2006: 30-34).”

## **2.5 – Instrumental Reason**

We have been referring to the concept of ‘order’ and its importance to the Church and the emerging state and to rulers and subjects alike – hinting all the while at the ways in which that order was being transformed. Charles Taylor describes it as ultimately derived from Plato, although intellectually realized in Christian Europe through Aquinas’ appropriation of Aristotle. In that thinking, the order is manifested or expressed in a natural law, which emanates from and is explained in terms of the mind of God. Taylor argues that the idea of natural law was revamped or reconstructed by thinkers such as Hugo Grotius (1583-1645) and John Locke (1632-1704). These new conceptions of natural law went along with the wide-ranging reform movements which were underway – the thinkers were trying to establish a “firm underpinning for an agreed public order” which could be derived rationally.

The natural law proposed by Grotius does away with Aristotelian or Thomistic *telos* for human nature – instead it simply builds on the assumption that humans, who are rational, sociable beings, naturally generate laws and procedures that allow for co-existence. The theory is explained solely in terms of human rationality and sociability. Importantly, Grotius argued that this law can be grounded in reason alone. Taylor summarizes Grotius’ thinking thus:

“God made man rational, and he made him sociable, and with an instinct to his own conservation. It is plain from this what norms he held binding on his creatures. Plainly they must respect each other’s life, liberty and

estate. These laws are binding on us, because the maker can set up rules for his products. But we didn't need revelation to tell us what the rules are. They are plain given the nature of these products (Taylor 2007: 126-127)."

For Grotius, the rules and procedures thus derived should be common to all, irrespective of confession or state borders. This makes sense, in that the theory was formulated during a period when confessional differences had resulted in the continent-wide series of conflicts which became known as the Thirty-Years War (1618-1648). This conception of law could be squared with state absolutism and fixed hierarchies; it would establish a kind of social-contract wherein sovereign rule by kings and their command structure would guarantee order and social co-existence. With Locke's later version of this natural law, the focus changes from maintenance of 'hierarchy and command' to rather the creation of "a race of equal individuals designed to enter with each other into a society of mutual benefit (Taylor 2007: 129)." For the above thinkers, the natural law was ultimately God-given, even if He was, so to speak, taken out of the equation. But now the development of laws and procedures became the project of and for rational human cooperation.

It is no wonder that it was during this time that René Descartes (1596-1650) revolutionized European thought. We see the increased focus on rationality everywhere in Europe in the period we are describing. Descartes was known in his own time as the author of a new and comprehensive account of nature and of a new metaphysic, as well as for his work in mathematics and optics. Here, we will look at two of the revolutions spawned or at least greatly spurred along by Descartes – the mechanization of nature and the radical doubt of the self. Here also, we see that it became a matter of proposing alternatives to Platonic and Aristotelian models of thought, which were still paradigm.

### ***Mechanization of nature***

In the 16<sup>th</sup> century, textbooks taught Aristotelian doctrines about physics, which is divided into 'general' and 'special'. The general physics deals with the analysis of 'natural substances;' form, matter, cause, etc., while special physics has to do with existing objects. These are of two forms, animate and inanimate, the latter of which further divides into 'celestial' and 'terrestrial'. In this physics, the world is at rest at the center of the universe, and is a different kind of thing than the heavens. Terrestrial inanimate objects are composed of various combinations of the four elements; earth, air, fire and water, while

animate objects in addition has 'souls'. In simplified form, the soul is of three kinds, gaining in complexity from the soul of plants, which is 'vegetative' through animals which in addition are 'sensitive', to humans, who alone have souls that are rational. For things to exist, they have to consist of matter realized by form (or functions, or *telos*) (Hatfield: web-article). For living beings that form is the soul. Objects in the world are perishable and changeable, they can be broken down into the constitutive elements. Not so for celestial objects, which have as their form perfect circular motion – they are eternal and unchanged (Cohen & Curd (eds.) 2011: 777-779).

If the above is hard to understand, it is because this conception of physics has been near totally eclipsed by modern thought. One reason Descartes is often called 'the father of modern philosophy,' is that he explicitly set out to replace these Aristotelian notions. In his physics, there is only one matter and no forms. Matter has only one primary property, that of extension. This dissolves the difference between celestial and terrestrial and also that between objects and space as an otherwise empty container for them. *Telos* is done away with as an analytical category, matter has only size, shape, position and motion as properties. Matter moves by three laws of motion and one of 'impact'. For Descartes, God created these laws and sustains them with his being. Everything that happens in the universe can thus be explained by that one kind of matter and the laws governing motion and impact. There is still a difference between living and non-living entities in Descartes' thinking, but these are explained mechanically, not as a matter of different essences. Only humans have souls, plants and animals are purely mechanical – animals complexly so. He locates action in the brain, which secretes a 'subtle matter' that organizes the functions of the organs of the body. The functions and automatic responses to stimuli which humans have in common with animals are of the body and hence mechanical. What distinguished humans from every other kind of entity, is that humans have minds, or souls. We will see Descartes' reasoning for this below (Hatfield, web-article: 3.1).

### ***Radical Doubt / Two aspects of Descartes' dualism***

Descartes' method is as interesting as his findings. Central to Aristotelian and later Thomistic epistemology had been the idea that "all knowledge arises from the senses, in accordance with the slogan 'There is nothing in the intellect which was not previously in the senses'". Descartes wanted to overturn this doctrine too, so he argued the opposite: that we can see

the nature of reality only when we have “[withdrawn] the mind from the senses”. To do this, we must doubt everything which the senses tell us and try to reach the truths which are evident to us, in Descartes’ words: *clear and distinct ideas* (Hatfield, web-article: 3.1).

Notice what this does to the medieval idea that meaning resided externally, in the objects of the world. With Descartes’ method, meaning must first arise internally, in the mind of rational man. We anticipated this in an earlier section on the realist and nominalist schools of Thomist scholasticism. Here, the extrication of God from the world of objects is complete. Descartes argues that people only *assume* that truths emerge from sense experience as a result of childhood prejudice.<sup>12</sup> This radical doubt about the sensuous world allowed Descartes to suppose for himself “not a supremely good God, the source of truth, but rather an evil genius, supremely powerful and clever, who has directed his entire effort at deceiving me (Ariew, Watkins 2009: 42).” Descartes’ argument is that there is no way of knowing by sense information whether the world is as it seems if one holds that all truth is external to the mind. So he looked for truths that would be true even if there was an ‘evil genius’. The answer is the famous *cogito ergo sum*: “Thus, after everything has been most carefully weighed, it must finally be established that this pronouncement ‘I am, I exist’ is necessarily true every time I utter it or conceive it in my mind (Ariew, Watkins 2009: 43).”

Descartes did experimental science, most famously within optics, so he obviously did not believe that the world was not practically knowable. He did not claim that everything that can be known about the natural world must arise purely from the intellect – only that the essential nature or general principles of things are perceivable only by means of rational thought. For example, to provide the answer to the question: ‘What is the size of the sun?’ certain measurements have to be made. But prior to answering that question, one has to determine what kind of properties physical objects can have:

“Objects of natural science are known by a combination of pure intellect and sensory observation: the pure intellect tells us what properties bodies can have, and we use the senses to determine which particular instances of those properties bodies do have (Hatfield, web-article 3.2).”

A problem remains though. Could not God himself have made minds in such a way that they only thought they saw clear and distinct ideas? Descartes tried to deal with this deeper

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<sup>12</sup> An essentially psychological analysis.

question, and his argument involves a kind of proof of God. In simplified form, it goes something like this:

- 1) I can perceive clearly the idea of infinity, so it exists.
- 2) Any idea of infinity requires an infinite being as its cause; thus an infinite being must exist.
- 3) An infinite being must also be a perfect being, and deceitfulness involves imperfection.
- 4) God would not deceive me.

Of course, this argument has been charged with circularity: In order for me to know that God exists and is good, God must exist and be good, which I know because I have the idea that God exists and is good. The merits of Descartes' argument is not of immediate importance to us. We need only take note of the fact that, even for Descartes, there is something which is true even externally to the mind: the good. In order to assume that God would not deceive him, he had to assume that deceitfulness was in some way *naturally bad*, which of course it is only if Descartes moral instinct corresponds to some kind of natural and external good.

This line of argumentation leads to the famous Cartesian dualism of mind and body. After having established the above 'mark of truth' which makes certainty possible in the face of radical doubt, he uses it to argue that mind is distinct from matter. First, he argues that "from the fact that I know that I exist, and that at the same time I judge that obviously nothing else belongs to my nature or essence except that I am a thinking thing, I rightly conclude that my essence consists entirely in my being a thinking thing." The primary property of the mind then, is thought. He then contrasts thought with matter, the primary property of which is extension. All matter is the same, difference arises from composition. It is infinitely divisible. The mind however, is indivisible; it is the 'I' which wills, senses and understands, and it makes no sense for Descartes to say that these activities correspond to

'parts' of the mind<sup>13</sup> (Ariew, Watkins 2009: 64-67). Before we go on, we should note one more aspect of Descartes' dualism:

The mind can be relied on to correctly perceive the world because it was created by God. But if the mind is thus created, by a God who is good and would not deceive, whence cometh evil? The answer given by Descartes is that God gave humans His freedom of will. We saw above that since God is perfect, He does not will deceitfulness or other morally bad things. And so humans can understand the good through rational thought, and are drawn to it. The difference between God and man is that man is an imperfect being with a finite intellect:

"If human beings restricted their acts of will to cases of clear and distinct perception, they would never err. But the vicissitudes of life may require judgements in less than optimal circumstances, or we may decide to judge even though we lack a clear perception. In either case, we may go wrong (Hatfield, web-article: 3.5)."

The original dualism here results in another; that between the world of objects (what is) and the world of rationally guided moral action (what one ought to do). The separation of the 'is' from the 'ought' has been one of the central problems of modern moral philosophy<sup>14</sup>. We can say that Descartes' radical doubt of the natural self or self-in-nature becomes also a radical confidence in the purely rational self. That which distinguishes a more from a less moral person is the will to think rationally, not, crucially "an ethic grounded on an order which is at work in reality (Taylor 2007: 130)."

## 2.6 Segue

In this chapter, we have tried to show the substance of the arguments of various agents of change in the European Enlightenment, all the while keeping in mind that their various thought-schemes were wrought in a social context – without an understanding of which we would have a diminished understanding of their thinking. Let us summarize, and try to see the road from the definitely pre-modern to the definitely modern. We began in a world of porous selves existing in a 'great chain of being;' a culture where places and objects were enchanted, and the world was constituted morally and with real forces of good and evil.

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<sup>13</sup> The obvious question; 'If mind and body are thus *essentially* separate, how do they interact?' was posed to Descartes by among others princess Elisabeth, and the philosopher had to admit that he did not know. (Ariew, Watkins 2009: 3.4).

<sup>14</sup> When we later look at Hallaq's Islamic critique of modernity, we will see that he places this problem at the heart of modernity's moral predicament.'



Scholastic theology provided a cosmology of its constitution – a synthesis of Christianity and Aristotelianism. Luther’s protestations against papal decadence and Church indulgences resulted in a reformation of thought which placed a greater emphasis on individual conscience and denied both Rome, the Pope and the priesthood any higher ‘holiness’ than other places or people. Now, in Luther’s writings, it is thought that man, who is simultaneously just and sinful regardless of place in society, can attain salvation by working hard and virtuously. This became the motor for an ordering of society; governments grew in tandem with increasing trade and rising populations in cities. Feudal lords gradually lost their status as representatives of the divine order – they became private just as those who represented governance became public. Rivalry between Protestant and Catholic areas resulted in a series of wars which ended with the ‘Peace of Westphalia’ in 1648; there, state actors negotiated a peace in what was the first attempt to institute a European order which was secularly conceived (Bangstad 2009: 29), thereby legitimating the representativeness of local sovereigns. The European countries thus divided existed in a state of competition, and began establishing trade routes enforced by continually improved upon weapon- and soldiery. That same pursuit of discovery influenced the European thinkers of the time – they tried to theorize the world order so that it fit with the new circumstance. Hugo Grotius presented a theory of natural law which would be explainable even without God – Him having been the object of so much disagreement between Catholics and Protestants. Descartes tried to follow this new reasoning to its conclusion, and in doing so, invented both a new metaphysic and a new physic which mechanized nature. In doing so, he introduced the split between ‘Is’ and ‘Ought.’ The scholastic, Aristotelian notions of a natural moral order understandable primarily by their *telos* or natural good of their existence, was exploded.

The ‘porous self’ described by Charles Taylor gradually became ‘buffered’. In the secular age, nature and the cosmos have become neutral; weather is its own explanation; those who rule do it on behalf of the people, not God; increasingly, associations and institutions are secularly conceived. Where one might say that the thought-world of medieval people was deeply immersed in and vulnerable to the forces of a larger moral order which transcended the physical – in a word; enchanted, the thought-world of our own time is ‘mind-centered’.

“The buffered self is essentially the self which is aware of the possibility of disengagement (Taylor 2007: 43).”

All this is not to say that the world cannot hold meaning for us moderns, or that objects in the world do not affect us. If the weather is bad, we might be put in a bad mood, but we do not assume that the weather holds ill will against us, except perhaps metaphorically. It is not so that (for example) Descartes’ world-view made impossible the belief in God; indeed he needed God in order to justify morality. This can even be seen as in continuity with the Reformation impulse to bring God and believer closer to each other – Taylor takes this view (Taylor 2007: 144). The increased focus on the immediate world perhaps inexorably, but nonetheless only accidentally, led to Nietzsche’s death of God.

This first part of the thesis is meant to provide a context for our discussion of Hallaq, both in the next part (*On The Impossible State*) and the last (Discussion). His Islamic critique of modernity invites serious discussion, as we will see. The argument that there is a necessary incommensurability between ‘Islamic governance’ and the modern nation-state is a complex one. This first part, now concluded, will enable us to discuss Hallaq’s interrogation of modernity and its moral predicament. In the next, follow Hallaq’s analysis closely.

### 3.0 – The Impossible State

Wael B. Hallaq opens his book *The Impossible State* with the following:

“The argument of this book is fairly simple: The ‘Islamic state,’ judged by any standard definition of what the modern state represents, is both an impossibility and a contradiction in terms (Hallaq 2014: 1).”

He proceeds to explain that for twelve centuries, the Sharīʿa had successfully worked as an integrated and complete moral and legal system governing the lives of Muslims. It fit the bill of Rawls’ concept of a ‘well-ordered society.’ But this changed in the 19<sup>th</sup> century, when “at the hands of colonialist Europe, the socioeconomic and political system regulated by the Sharīʿa was structurally dismantled (Hallaq 2014: ix).” He obviously does not mean to say that it was rendered obsolete or that Muslims ceased to hold the Sharīʿa in regard as a source of moral law, nor is his argument that this system had been fixed and unchanging for twelve hundred years. But it is generally acknowledged that whereas in pre-modern times the Sharīʿa reigned supreme as a complete legal and moral system, after the rise of the nation-state it has become watered down and awkwardly separated from its tradition. He states the obvious: Most modern Muslims would like to bring back some form of Sharīʿa. To do this, he says, they will have to reconcile two facts, one ontological and one deontological. The first is that there is no way of avoiding modern statehood and the second is the ‘necessity to bring about a form of Sharīʿa governance.’ But as Hallaq says, if one is to take the recent past as a guide, there is little reason for optimism. He cites the battles of Islamists in Egypt and Pakistan, the failures of the Iranian Revolution and modern iterations of the Muslim Brotherhood as examples of wrong-headed attempts to reconcile the two facts. The latter even has a rather recent political program where they state that ‘There is no Contradiction between the Nation-State and Islamic Sharīʿa,’ to which Hallaq says: “But surely there is.” His argument is that there are inherent self-contradictions here, and that these contradictions arise from what he calls ‘*modernity’s moral predicament*.’ It is central that we understand what Hallaq perceives this predicament to consist of, because it is his argument about this that we will be discussing in our analysis. He does not mean to say that Islam or Muslims are not modern. To the contrary, Muslims, encompassing a fifth of the world population are very much part of the modern project (Hallaq 2014: x-xiv).

Before we begin unpacking Hallaq’s argument, we will look at what he means by that ‘Islamic governance’ which is incompatible with the modern nation-state. Below, we will

quote him in full, because his definition is at the heart of his argument, but before we do, we have to note one caveat: Hallaq compares the modern nation-state (with all its modern problems) with *premodern* Islamic governance. We are reminded that the nation-state which he will be describing was one which grew out of a complex history, and the institutions, laws, practices, and even ‘metaphysics’ which resulted should be seen as (culturally specific) responses to a world which was changing rapidly. In his chapter on the premises for the argument, he defends himself against charges of ‘nostalgia’. The idea is not that we should ‘roll back’ the project of modernity in order to recover ‘the real Islam’, but that we should try to recover ‘the overarching and encompassing values’ which defined Islam for over a millennium (Hallaq: 14). And so:

#### *Hallaq’s Definition of The Paradigm of Islamic Governance*

“Islamic governance (that which stands parallel to what we call “state” today) rests on moral, legal, political, social, and metaphysical foundations that are dramatically different from those sustaining the modern state. In Islam, it is the Community (Umma) that displaces the nation of the modern state. The Community is both abstract and concrete, but in either case it is governed by the same moral rules. In its abstract form, the Community is also a political formation delimited by moral-legal concepts. Generally, in whichever territory the Shari’a is applied as the paradigmatic law, the territory is deemed an Islamic domain, *Dar al-Islam*. Wherever the Shari’a does not operate, or in whichever territory it is relegated to a secondary, inferior status, that territory is deemed *Dar al-Harb*; potentially subject to conversion by peace or by war. The ultimate purpose of this conversion is to bring non-Muslims to accept Islam’s law, which is primarily a set of moral principles sustained by legal concepts. Thus the boundaries and defining concept of the Community is the Shari’a. Islam, unless eviscerated, stands or falls on the Shari’a. Whereas the nation-state is the end of all ends, knows only itself, and therefore is metaphysically the ultimate foundation of sovereign will, the Community and its individual members are a means to a greater end. This implies that the Community itself neither possesses sovereignty nor does it have – in the sense the modern state has – an autonomous political or legal will, since the sovereign is God and God alone. Of course, the Community as a whole, and as represented by its chief jurists, does have the power of decision, this being the crux of the doctrine of consensus. But this power is an interpretive one, bounded [...] by *general moral principles* that transcends the Community’s control. These principles may have been sociological at one point in history, but they soon emerged as a representation of divine moral will. Before being transcendental and theological, divine sovereignty was moral. An expression of this sovereign will, the Shari’a came to articulate the moral principles through a morally constructed law (Hallaq: 49).”

### 3.1 – The Modern State

What is the modern state? Hallaq initially desists from giving his own definition. Instead, he lists different thinkers and their ideas of what the state is: Hegel sees it as the result of an organic ethical impulse, Hobbes and Schmitt as the defeat of the natural state, Marx as economic subordination of one class by another, Kelsen as a legal entity, Gramsci as hegemony and Foucault as embodied in and embodying of culture. For Hallaq, the disagreements between these thinkers (the author excepts Hegel, but does not say why; conceivably it has to do with Hegel's teleological outlook) are a mere matter of perspective; the different explanatory models of state can be melded together and seen to complement each other. Hallaq distinguishes between the 'form' and the 'content' of the state. The form is immutable – "*consisting of fundamental structures or properties that the state has in reality possessed for at least a century and without which it could never be conceived of as a state, being that essential*"(italics in original). The content, on the other hand, is understood as variable. The following is essential to understand Hallaq's argument as a whole, and so will be considered closely. He lists five 'form-properties' of the state, "without which [the state] cannot, at this point in history, be properly conceived." To be explicit then, what follows are the *sine qua non* properties of the modern state as conceived by Hallaq. We should understand Hallaq in the best of ways, and to do so we must assume that he does not intend to give an exhaustive definition or complete taxonomy of the properties of state. We do well to remember that his intention is to compare the modern state to pre-modern Islamic governance. This may necessitate a boiling down and generalization of both his subjects. (Hallaq 2014: 20-21)

#### ***The State is a Specific Historical Product***

"Europe, defined in geographical and human terms, was the near exclusive<sup>15</sup> laboratory in which the state was first created and later developed, and Euro-America remains to this day the location of the paradigmatic state (Hallaq 2014: 23)."

Europe in the eighteenth and nineteenth centuries underwent huge transformations; of cities, technology, economy, political structures, etc., as well as of epistemology. Here, Hallaq cites the meshing of the political and the socio-cultural, as well as the gargantuan

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<sup>15</sup> The 'near-exclusivity' here refers to the colonial experience. Hallaq contends that the colonial experience came with important lessons in statecraft for the European powers.

leaps in thought and ideas which came with the Enlightenment. Our author notes the Enlightenment's debt to Islamic scholars like Ibn Rushd (Averroes) and Ibn Sina (Avicenna) but nevertheless places the movement itself squarely in Europe. He notes a trend in the political thought of this era: The state becomes abstracted as a universal subject, and the idea that humans can only be fully civil within the bounds of state gains widespread acceptance. Here, he notes that the Hegelians "went so far as nearly to mythologize the state and attribute to it a pervasive moral fiber," but that later political theorists rejected this notion. Rather, the state became closely associated with the idea of a scientific method that was supposedly 'value-free' and the repository of universal laws and truths, which in turn affirmed the idea of the state itself as universal and value-free. If we take a cue from our chapter on discourse analysis, we can understand this idea as becoming objective in the sense of being taken for granted by European thinkers and citizens. Hallaq has shown that this ideology or objectivity is a product of history, which leads to his concluding remark: "The history of the state *is* the state, for there is nothing in the state that can escape temporality (Hallaq 2014: 23-24)."

### ***Sovereignty and Its Metaphysics***

While the idea of a sovereign is not unique to Europe, its impersonal character is. This is represented in the story of Europe as a break from the personal tyrannies of ages hence, narratively exemplified and paradigmatically realized in the American and French revolutions. Rather than having at its head a character embodying the power of the nation, 'an abstract concept lies at the heart of its legitimacy.' This abstract concept is the idea that the nation somehow embodies the will of the people. Hallaq contends that this can only become conceivable if coupled with the idea of a "break from an enslaving agency, a tyranny, or some such dominating evil." He also calls it a fiction, and it is because of its fictional character that it attains such power. Here, he makes an important argument: The concept of a nation somehow representing or even embodying the popular will "loses none of its force even when nondemocratic powers come to rule." We might justifiably understand this 'fiction' as being synonymous with the 'myth' of Laclau: It is the idea of a total structure which is important, not whether this structure actually and definitely exists. Another important aspect of this conception of sovereignty is that it is realized and bolstered by the fact that other nations accept it as legitimate, even when it is widely

understood to be employed to the detriment of its constituent peoples. Hallaq connects, as others have done, the rise of this internationality with the end of the Thirty-Years War and the 'so-called Peace of Westphalia,' and shows that the international aspect is intimately bound with the domestic (Hallaq: 25-26). Here, we may be reminded of the concept of representation from our chapter on discourse analysis: The people of a given nation allow their will (or idea of one) to be represented as the abstract concept of the state, which has the power to act on the behalf of its citizens in matters both domestic and international. Hallaq, however, goes on, arguing that the result of this idea of representation is that the only ways for "a citizen or a group of citizens to challenge the law of their own state" is through self-contradiction (they would be challenging their own will) or acts of radical violence, wherein they displace one popular will or sovereignty with another (Hallaq: 26-27). This is strange argument. It would seem that there is ample space between these extremes. If, for example a group of citizens argue that their will is in fact *not* being represented, and their challenge gains political credence, there are several avenues within the state where a compromise could be made. It seems that Hallaq without qualification identifies the "will" of a nation with that of every one of its citizens<sup>16</sup>, such that there is no way for any citizen to propose changes without also ceasing to be part of that will. It may very well be that the will is a myth, but that does not mean that everyone has to subscribe to it in the same way or for the same reasons, nor does it mean that there cannot be internal struggles about how the people are best represented. Here, Hallaq seems to underestimate (or even undermine) the role of democratic argument and the dynamic nature of modern sovereignty.

Hallaq plays with the idea of the sovereign state as a replacement for monotheism and the somewhat paradoxical metaphor of the state as a local omnipotence. He quotes Paul Kahn, the author of this metaphor: The sovereign is like God because "all political forms are open to its choice,<sup>17</sup> it fills all of the space and time within its borders, and we know it only through what it has created – the state and its citizens. We infer the sovereign from the fact that we 'perceive the state as an expression of its will (Hallaq 2014: 26)." All of this leads Hallaq to say that "the law as reflecting sovereign will... is little more than a replacement

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<sup>16</sup> Indeed, on the very next page (Hallaq: 27) Hallaq speaks of 'the identification of the self with the sovereign,' an identification which is obviously contestable. There is after all an ocean of difference between someone saying 'I am a French citizen' and saying 'I am the state.' The difference is one between identification and representation.

<sup>17</sup> Certainly a somewhat diminished and circumscribed omnipotence, then.

and substitution for the Christian conception of will. The most serious consequence of this sovereign will and its subordination of that of its subjects is that the subjects can be, and are, sacrificed in order to serve the state. “To be a citizen therefore means to live under a sovereign will that has its own metaphysics. It is to live with and under yet another god, one who can claim the believers’ lives.” Hallaq contends that under traditional Islamic governance, no such sacrifice could be demanded (Hallaq: 28).

### ***Legislation, Law, and Violence***

Another ‘cognate essence’ to the state is its capacity to produce law. “As an expression of sovereign will, the state is the godlike Law-giver par excellence.” An important dimension of this capacity is that the state has to claim its law as its own – it cannot accept that its law has been provided by another country. Even when a state imports elements of its law from other states, it has to appropriate it such that it becomes bound to the sovereign will. By way of the legal philosopher Hans Kelsen, Hallaq speaks of three elements of the state: territory, people, and power. He focuses on and attempts to clarify what is meant by power. It has to be understood as “at least encompassing (1) law as political will and (2) the violence necessary to implement that law both internally and internationally.<sup>18</sup>” The claim then becomes that one cannot separate the law from the state any more than one can separate an apple-tree from its growing apples. He directly quotes Kelsen as saying that the “‘state’ is ‘its’ legal order and nothing less.” Under his heading about the historicity of the state, Hallaq said that “the history of the state *is* the state.” We can deduce from his employment of definitions that if the state is its legal order and nothing less, it can nonetheless be more.

Then there is the violence which must be employed in order to maintain sovereignty. The modern state is ‘constituted by sovereign will,’ which must realize itself through its enforcement of laws. This enforcement entails the use of violence, which has to be monopolized by the state. Even if, Hallaq says, a society should have at its disposal some kind of divinely ordained punishment, the dealing of that punishment is by the hands and choice of the sovereign will – the state. Here again, he compares the state to a God which

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<sup>18</sup> Contrast this with the wider conception of power laid out in our chapter on discourse analysis. Here, no direct reference is made to the social structures which inherently accept both the will and the violence, although it may be that Hallaq intends to imply this as well.



allows no other gods. He claims that there is a “unique relationship between violence and the metaphysics of sovereign will,” but does not clarify how this relationship differs between pre-modern and modern states (Hallaq: 29-30).

### ***The Rational Bureaucratic Machine***

In order to describe this aspect of the modern state, Hallaq turns to Weber and his description of the administrative order, which is an extension of the legislative and functions as a “characteristically rational type of domination.” Hallaq pays some heed to the fact that this rationality allows for reform, alteration or even creation and removal of any existing order, and that its impersonal character “implies equal treatment” of both citizens and statesmen. He then briefly compares Weber with Marx (“and others”), saying that the latter laid greater emphasis on the relationship between this rational machinery and the ruling classes. The view ascribed to Marx here is that as long as there is bureaucracy, it will be used by the ruling class to exploit and subjugate the workers. Hallaq seems to think that Marx’ view here is somehow more accurate than Weber’s, but does not argue his case.

Hallaq’s main points however, are these: Firstly; “bureaucracy and administration have not only become consistently paradigmatic components of the state but continue to experience progressive growth in both complexity and pervasiveness...” Secondly; even though the jurisdictions of the various branches of state bureaucracy and administration overlap and there can be competition between them “they are simultaneously bound up within a controlling paradigmatic structure, what is often euphemistically called centralization.” Putting these together, Hallaq then argues that as this centralization intensifies and the bureaucracy grows, the system becomes more hierarchical, “top-down, pyramidal.” He paints bleakly: “Thus, bureaucracy is the tool and instrument of administration, and administration, in the modern state, is the organization of control, governing, governmentality, and violence.” Every aspect of life from birth to death in the modern state is affected; the bureaucratic structure transcends the border between private and public, and orders its constituent subjects in “the community of state (Hallaq: 30-33).”

### ***Cultural Hegemony, or the Politicization of the Cultural***

Here, we reach the point where the ideas of discourse analysis come into alignment with Hallaq's position, although his focal point is the thought of Michel Foucault, whose project as described by Hallaq was to 1) "demythologize the discursive structure conducing to the ideological justification of the state itself," and 2) to understand how state and culture dialectically produce and reproduce each other. Hallaq agrees with the idea, explored in our chapter on discourse analysis, that the state has progressively expanded its hold and influence over culture, and so particular kinds of subjectivity have been produced which reinforce the idea of the state. He calls this the state/culture dialectic and says that

"[if] the Islamic state is to be treated as a state, properly so defined, then it must come to acquire the dynamics of this dialectic, for there is no stable and paradigmatic state (e.g. Euro-American states) that can be deemed sustainable without it (Hallaq: 34)."

As with the other form-properties Hallaq has described, the culture/state dialectic is integral to the functioning of the state. Throughout their histories, the Euro-American states have subsumed or destroyed other "autonomous authorities" to the extent that, within the modern state, there no longer are any entities which threaten the authority of the state. Hallaq exemplifies this by alluding to the third-world states which during the colonial period were made to import the framework of the European state.

"Created as legal fictions [...], they are states attempting to rule essentially segmental societies based on tribal or other local units that are the locus of political loyalty and that strive to function independently of the state (Hallaq: 34)"

For a state to become a modern nation-state as described by Hallaq, there must be a cultural penetration which "presupposes the destruction (and reconstitution) of traditional pre-state sociocultural units." He presents two simplified views of power: One defines power as being held *over* society (vertical), the other sees power as shared between citizens (horizontal). Some thinkers (Hallaq mentions Michael Mann) seems to think that the latter view excludes the former, i.e. that state power is essentially horizontal and non-vertical. Hallaq argues that this is "[thinking] the state through the state", because those who argue that power is shared also say that this sharing "increases state autonomy." He does not explicitly dismiss the 'vertical-power' view – recall that Hallaq above presented power as (at least) 1) political will and 2) implementation of this will through violence. The reasoning

behind a purely vertical power relation would be weak – it should remind us of the idea Marxist of a ‘false consciousness’, wherein people think that the state is there for their mutual benefit, whereas in fact it is only the superstructure that exists solely to legitimize the base. There is a reason we say that the nation-state is one based on popular sovereignty. Hallaq states that people cooperate with the state, and that this gives the state greater power. One would have to think that the people who do get something out of it, say for example education<sup>19</sup> for their children or protection against crime or a regulated economy – that they have a stake. If the state is to be the guarantor of these goods, it would have to use some of its power to produce and uphold the institutions of education, policing and trade in exchange for popular support of sovereignty. This seems awfully like a cooperative affair. The only way to argue that it is not is to say that all of this represents a ‘false consciousness;’ that the citizens of a state do not in fact get something out of their participation.

We are however, invited to see state autonomy as vertically impinging on the cultural, as something over and beyond it, as something too that cannot sanction its own destruction.

“If we accept that the state knows only itself, that it is its own end, that it knows no other end, and that therefore it is inherently incapable of sanctioning its own destruction, then the implication that the cultural domain sanctions its own destruction would make total nonsense of any claim for the autonomy of the cultural (Hallaq 2014: 35-36).”

But this is surely a tempest in a teapot. We can grant that the state cannot sanction its own destruction, but it can surely sanction its own reconstruction and reform. It would not do so on its own accord, but then again, could the state do anything by itself? To argue that it could, one would have to see state autonomy as completely separate from cultural or individual autonomy. Why then, would the state even need to co-opt its citizen or the cultural domain by being subject to political argument? Plainly it does, and so we are left with a view similar to the one we described under the ‘post-Marxism’ heading in our chapter on method, one which sees power as both vertical and horizontal.

Here too, Hallaq would perhaps argue that this is arguing ‘the state through the state’, and we should again be reminded that his aim is to show the ways in which the modern nation-

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<sup>19</sup> Although Hallaq will say that education is regulated by the state and that it “destroys earlier forms”, creating an elite which serves to perpetuate the penetration of the state into the social order (Hallaq: 35).

state is incompatible with essential features of what he calls 'Islamic governance'. The argument will involve the idea which we saw above, of a form of governance which perhaps is constituted and understood as a state/culture dialectic, and which is thereby 'relatively heterogeneous', but which nonetheless represents itself as a necessary totality.

### **3.2 – A Comparison of Two Models of Separation of Powers**

In the chapter 'Separation of Powers', Hallaq begins to show exactly why the nation-state is incompatible with the standards of Islamic governance. First, he has to show that the state, even though relatively heterogeneous, is a unit consisting of cultural, legal and social norms which is understood as self-contained. Earlier, we described this as one of the assumptions of social constructivist theories. There, we stated that "[certain] things become and are maintained as lawful or prohibited through the language which reflects the social realities of a given culture." Hallaq intends to "interrogate the relationship between this normative order and the institutions that embody it, especially those whose specialization is to adjudicate and execute its particular norms." And so, he turns to the feature of modern law which is seen as the backbone of the system – the separation of powers. His argument is that they are not at all as separated in practice as they are in theory. He quotes Article 16 of the Declaration of the Rights of Man and the Citizen (passed by the French National Assembly in 1789):

"A society in which the observance of the law is not assured, nor the separation of powers defined, has no constitution at all (Hallaq 2014: 39)."

Now, Hallaq states that if the theory embodied in that declaration can be realized, it would be 'compatible with premodern Islamic practices of government,' but that, alas, it cannot. Even, or especially, in the European tradition, it has been recognized that this ideal is not obtainable. To make his case Hallaq quotes a variety of critics, and attempts a summary of the many inherent problems: For one, the powers are not so much 'separated' as they are 'distributed', and further; they have been distributed beyond the three conceptual domains. The legislature, which in the theory is supposed to have the power of creating or institutionalizing general norms, does not hold a monopoly over legislating. Both the executive (for example in the United States by executive action) and the judicial (by virtue of precedent) spheres affect and even create law.

As he says, “[this] mutual independence dictates [...] that the legislative branch must not ipso facto only enjoy total independence, but that it also must not delegate its powers, especially to the executive.” We will see that when he later compares (for example) the American state of affairs to what is prescribed by the Shari’a, they will be seen by him to be incompatible (Hallaq 39-40).

The most glaring omission in the principle of separation though, is that the modern nation-state has a fourth ‘power’ – the administrative – seen by Hallaq as ‘virtually autonomous’ from the others. The American system is Hallaq’s case in point. The American constitution seems to grant the president the exclusive mandate to ‘execute and superintend all federal laws’, but in reality, much of the execution and supervision is done by the administrative branch. He states the problem clearly:

“However calculated, it must be the case either that the bifurcation in the executive into a headless fourth branch is right and the Constitution wrong or that the Constitution, in assigning executive power to none other than the president, is right and executive governance is a misapplication and deviation from the founders’ intent. It must be either, as it cannot be both” (Hallaq 2014: 41-42).

The above argument is well put, but seems to assume that in order for a system to be good, it has to be systematically and continually coherent. One could respond by saying that coherence is in fact not absolutely necessary – that the separation of powers is an idealistic attempt at formulating a system of checks and balances. Hallaq would perhaps agree, but contend that his critique as it pertains to the comparison with Islamic governance would still stand.

The sphere the judiciary has its own set of problems, intimately tied to those of the others. We mentioned the notion of precedent. But we have to also consider supreme courts both European and American. Their sphere encroaches on that of the legislative by their right to review legislation. Hallaq contends that the reason is historical; during the times of constitutional monarchies, the courts provided an independent check on the powers of kings and emperors, and when monarchs lost their power to legislate in favour of legislatures, this function of the court remained in place. This is one of the few places where the author explicitly connects a modern product of the nation-state to a historical circumstance (Hallaq: 45).

The above problems, offered here only in outline, are held by Hallaq to be universal to modern nation-states. Nowhere is the legislative the sole producer of ‘*general legal norms*,’ and nor are the executive and judicial branches explicitly barred from creating such norms. The administrative branch of government frequently impedes on the territory of all three, and administrative law is as coercive as that of civil and criminal law. Below, we go into Hallaq’s comparison proper, but for his argument to make sense, we have to see what he means by the Shari’a.

First he contends that, within the Community under the sovereignty of God, its members are undifferentiated by class or ethnicity. The only ‘preference’ allowed is grounded in ‘quality of belief’, but this quality is to be evaluated by God. The health of the Community comes before and is privileged over that of the Sultanic executive – and so governmental intervention in the affairs of society is exceptional rather than procedural. God “literally owns everything. Human ownership of any kind, including the absolutely unencumbered ownership of property, is merely metaphorical and ultimately unreal.” This, according to Hallaq, explains why “the care for the poor is legislated as ‘their right’ against the wealth of the well-to-do, since the wealth of the latter is God’s, and God’s compassion is *first and foremost* bestowed on the poor, the orphans and the wretched of the earth.” The Shari’a is a representation of God’s will, not that of the Community. It is a law-system which is supposed to be total, comprising a “hermeneutical, conceptual, theoretical, practical, educational, and institutional system.” Central to the main thesis of *The Impossible State* is what follows. Recall his contention that ‘Islam stands or falls on the Shari’a.’ For Islam to be Islam, it has to have a moral-legal system founded on a metaphysic. This metaphysic demands divine sovereignty. Hallaq has earlier contended that the modern nation-state has its own non-divine sovereignty, and if he is right on both counts, what we have is a necessary incommensurability between the Shari’a and the modern state. And so “the modern state can no more be Islamic than Islam can come to possess a modern state (unless, of course, the modern state is entirely reinvented, in which case we must, as we are entitled to, call it something else)(Hallaq 2014: 49-51)”

The resulting differences should be noted. In the modern state, religious institutions, are bound and subservient to its legal will. The Shari’a on the other hand has as an essential property that it not be bound by any other will – it cannot be regulated from without. There

can be 'secular' institutions within the latter system, but they have to meet the requirements of the 'overarching will that is the Shari'a'. And so the executive and judicial powers have to conform to the legislative, which is divine.

We stop to note something which will be central to the discussion which is focus of this present paper. For the Shari'a system Hallaq here evokes to make sense, the world itself has to be seen as having a moral character. It rests on the idea that God created the world and the human mind in such a way that humans could come to understand his divine will (which is essentially moral – the good is enjoined and the evil forbidden) through social co-existence. In the continuation of his argument, Hallaq will assume this. But as we saw in our chapter on the European history of modernity, the modern conception of nature as inherently morally neutral was not a mere construct of power hungry rulers. It came about as a change in the *naïve understanding* of the world. This was not only tied to mechanics of statecraft, but also the rise and public discussion of science, ethics and politics; the separation of the private from the public sphere; the rising need for an international language of law; and a self which is 'aware of the possibility of disengagement.' The issues here hinted at will be the focus of our discussion in the concluding chapter. In the next section, we look at how the Shari'a worked as a moral-legal system.

### ***Shari'a and the Central Domain of the Moral***

According to Hallaq, the Shari'a was a moral-legal system produced *organically* by the Community – and throughout the twelve centuries when it was paradigm, it was an all-inclusive and social endeavour whose primary function was to serve that Community. The jurists commonly hailed from the 'lower and middle strata' of society and worked on behalf of the non-elite, and so "frequently initiated action on behalf of the oppressed without any formal petition being made by these social groups or their individual members." Hallaq focuses on the central roles within Shari'a, that of the *mufti*, the *qadi* and the author-jurists. Together, these formed the *ulama* – the Learned. Muftis were private legal specialists who worked in and for their own social environment. Their main duty was to issue *fatwas*, legal opinions, and anyone could seek their counsel. The tradition goes all the way back to the genesis of the Shari'a as a legal system, as the first elaborations of Islamic law, the first law-books, were collections of these kinds of questions and answers. The fatwa of a mufti was non-binding but commonly authoritative by virtue of the learned nature of muftis. Hallaq

explains that this kept legislation out of the courts, and prevented these from setting technical or legal precedents. The qadis were judges who ruled in cases, either by finding relevant earlier fatwas, or, if the issue they had been asked to resolve was novel, sent questions to muftis and received a new fatwa. The rulings of courts were not recorded, but the fatwas of distinguished muftis were gathered and systematized by the so called author-jurists. These wrote short or long treatises on general subjects by referring to and discussing relevant fatwas. Hallaq explains that this ensured a dynamic legal system, as the specific problems and concerns that arose in new generations or regions where the law operated were continually addressed. The fatwas that “answered contemporary needs and that at once gained currency in practice” formed the basis for the work of the author-jurists, while those that had fallen out of use were designated as weak or even excluded. Those who studied for mufti- or qadiship read the treatises of the author-jurists, although qadis were not seen to require the same in-depth legal knowledge since they relied on the work of the muftis and legal scholars. In the courts, there was little ceremony, litigants spoke common informal language, and there were no lawyers. “This was possible because in the Islamic system of justice no gulf existed between the court as a legal institution and the consumers of the law, however economically impoverished or educationally disadvantaged the latter might have been” Hallaq further notes that the societies of which he is speaking “*lived* legal ethics and legal morality” because these were so closely tied to the religious beliefs and social codes of those societies (Hallaq 2014: 52-56).

Hallaq’s claim is that since the qadis had as their sole task to rule in accordance with fatwas, what we would call the judicial branch of this system did not affect legislation. Further, since the qadis, muftis and author-jurists worked within their social environments and generations, the ‘executive’ had no real say in the formulation of law:

“If [the Shari’a] cooperated with political powers, it did so as a mediator between these powers and the masses, while keeping its eyes fully open on the interests of the people (Hallaq 2014: 56).”

Islamic law required that those who studied for qadiship had to be trained by muftis in the legal traditions and “to be intimately familiar with the local customs and ways of life in the community in the community in which he served.” And by virtue of this training and the respect it garnered him in the eyes of the community, his roles in the community were multiple. In addition to holding (informal) court, he oversaw construction of public buildings



(mosques, hospitals, 'soup-kitchens') and managed charitable endowments<sup>20</sup>, which Hallaq states "constituted between 40 and 50 percent of all real property in the great majority of Muslim lands."<sup>21</sup> In addition, the court of the qadi was where the details of such things as trade contracts, sale of property and wills and testaments were worked out. Another central feature of this court which Hallaq points out is the inherently interested nature of the qadis. Because they were regulating their own communities, a premium was placed on conflict resolution, arbitration and the prevention of "the collapse of relationships so as to maintain a social reality on which the litigating parties, who often came from the same community, could continue to live together amicably." Its fees were low, so that it would be equally available to poor and rich (Hallaq 2014: 56-57).

### ***Usul al-Fiqh and Ijtihad***

The Qur'an and *ahadith* (prophetic traditions) are rarely unambiguous and clear cut, and so a way of interpreting and applying their general moral principles developed. The process by which the law continually reproduced itself in and for new context was formalized in a method. In order for the muftis and author-jurists to formulate effective and reasonable fatwas and treatises, they developed methods of thinking which brought together "logic, theology, language, linguistics, rational-textual hermeneutics, legal reasoning, and much else." The resulting body of methods is called *usul al-fiqh*, and the creative reasoning by which it is formed, *ijtihad*. It was understood that where the Qur'an and ahadith were ambiguous, meaning that they could be interpreted in more than one way, the conclusions of the *mujtahid* (those who conduct ihtihad) were probabilistic – that is, they were good insofar as they seemed to represent the most likely interpretation of the tradition in a given situation or moral conundrum.<sup>22</sup> These considerations leads Hallaq to conclude that the Shari'a was a system of legal pluralism. He identifies three 'fundamental features' of this pluralism. For one, it could take into account geographic and sociological differences and thus be made applicable in a variety of different societies, "from Morocco to the Malay Archipelago and from Transoxiana to Somalia." Second, it could maintain an inner structure while also changing with the times. Third, it served as a reflection of the wide variety of

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<sup>20</sup> Although these endowments were also to be superintended by a public servant appointed by the ruler (Hallaq: 61).

<sup>21</sup> He does not specify whether this was the case throughout the thousand years when Shari'a reigned supreme, but refers to several authors who have written about 'charity in Islamic societies'.

<sup>22</sup> Hallaq here quotes "the famous tenet that 'Every mujtahid is correct'"

different social and societal concerns in which it operated – at any given time there were muftis and author-jurists who were responding to and deliberating in accordance with what was happening ‘on the ground (Hallaq 2014: 58-49).’

### ***Shari’a and the Sultanic Executive***

No human was above the law, not even the ruler – although he had some prerogatives. Jurists were appointed by the ruler, who could also dismiss or limit the purview of their jurisdiction. But he had no say in the rulings, deliberations or interpretations these jurists made while in office. Historically, Hallaq says, the role of the ruler in appointing judges stems from the concept of delegation. During the first phase of Islamic rule, the *caliphs* were seen as deputies to the Prophet, by which virtue they had both secular and religious authority. In order to maintain order and ensure that society was governed by the law of Allah, the caliphs appointed qadis – these were seen as extensions of caliphal authority. After the ninth century, when the rule of the caliphate had ended and various dynasties fought for and took power, a different kind of ruler emerged: the sultan. These were political and military leaders, not having the religious authority of the caliphs, but the role of delegation – of appointing qadis – was transmitted from caliph to sultan.

Hallaq answers the obvious argument which results – if sultans could appoint, dismiss or diminish the jurisdiction of judges, how can the latter be said to be independent of them? Hallaq’s response is fourfold. Firstly, the sultans usually consulted the ulama in the appointment of qadis, but even when he did not, those he appointed had a greater responsibility to the Shari’a – that is, to the communities in which they were to serve – than to the sultan. Secondly, qadis were not ‘true,’ but ‘nominal’ delegates of the sultans. The ruler, in accordance with the Shari’a, is supposed to be a *representative* of the community and his role in appointment and dismissal of judges is no more than a function of that role. When rulers died, the qadis as well as the other public servants they had appointed, stayed on. In fact, all public servants were given legitimacy by virtue of the Shari’a, rather than by executive appointment – hence the norm that most rulers consulted with the ulama. Third, Hallaq argues that in the modern legal system, executive dismissal of judges would indeed constitute a breach of judicial independence. The reason given is that today, judges are economically dependent on having a job – and so the power to dismiss a judge really threatens their independence. Under Islamic governance, Hallaq contends, qadiship was

only one among several sources of income. “In the first centuries of Islam, qadis and their fellow legists had other ‘professions,’ mainly artisanal.” Later they were teachers, copyists, merchants, secretaries, etc. – the point being that they were economically independent. Dismissals also happened as a matter of course, and judges had limited tenures. According to Hallaq, dismissal threatened no one. Lastly, Hallaq cites the ‘paradigmatic moral force of the Shari’a,’ which compelled both rulers and subjects to uphold the independence of the judiciary. “Judicial independence was integral to culture.” (Hallaq 2014: 60-61).

If the point is a comparison with the modern legal system and to point out the superiority of the Shari’a with regard to judicial independence, and for Hallaq it explicitly is, most of the above reasoning is insufficient. For one, it can be argued that the first, second and fourth argument holds true for the legal system of the modern nation-state as well. In the modern legal system, judicial appointments are done by legislative authority (in the case of the American Supreme Court by executive, though it has to be approved by the legislature) in a process of consultation with the judicial branch. The second argument too holds true for modern legal systems as well, at least in the West. Neither legislators nor executors are above the law – they are elected as representatives of the people much in the way Hallaq describes for the Shari’a. In the third, Hallaq argues as if the independence of the judiciary is a mere matter of economy. Here he neglects to mention the social status which came with being a qadi – to threaten the loss of that status can surely have been a way for rulers to exert pressure on qadis in the cases where the rulings of the latter in some way impinged on the authority of the rulers. In addition, the separation of powers is supposed to be institutional and procedural – that is, it should be explained in functional rather than personal terms. As about the fourth argument – is the idea of an independent judiciary in the modern state any less of a ‘paradigmatic moral force’ than the Shari’a? If so, Hallaq would have to argue the case – he desists.

Hallaq proceeds to describe the role and function of the state in premodern Islamic society. Before the modern era, the term *dawla*, which now refers to ‘the totality of the modern state,’ simply meant ‘dynastic rule’. According to Hallaq, it is useful to look at the sultans as a ‘hired class’ that was allowed the right to rule and to tax as long as it was done in accordance with the moral law. The parameters of both rule and taxation were set and

maintained by the Shari'a, and if rulers demanded more than what was stipulated there, this could be challenged in the courts.

“The term dawla essentially connoted a dynastic rule that comes to power in one part of the world, Islamic or non-Islamic, and then passes away. This idea of rotation and of the successive change of dynasties is integral to the concept. Thus the Community remains fixed and cannot come to an end until the Day of Judgement, whereas the dawla that governs it is temporary and ephemeral, having no intrinsic, organic, or permanent ties to the Community and its Shari'a (Hallaq 2014: 63).”

According to Hallaq, this contrast is essential to the Islamic concept of separation of powers. The stability of the Community, the way the moral-legal system maintained its coherence and bottom-up quality while allowing various dynasties to govern during the twelve centuries that it was paradigm is for him a testament to the flexibility and common-sense nature of the Shari'a. That is, “until colonialism destroyed Islamic political, educational and social structures.” Having argued the above, Hallaq then attacks what he calls a “Western-Orientalist imagining of the concept of ‘Oriental despotism,’” wherein it is assumed by colonialist observers that people in Islamic communities were inherently submissive and so endured tyranny as a matter of course. Hallaq argues that this would be a natural way for would-be European colonizer to justify oppression and imposition. These latter projected their concept of the monarch – “who was absolutist and an arbitrary legislator and executor” – onto the sultanic executive. This has had disastrous consequences, as it led the ‘Orientalists’ to emphasize the concept of tyranny. They did not worry about “civil strife, where the all-important Community is split asunder.” His argument here is that the European powers, having fundamentally misunderstood the role of the executive in Islamic societies, assumed that the people they invaded would accept their colonial impositions without demurral, and so blindly started demolishing their ancient and still living system of governance. The worldly powers granted to the ruler by the Shari'a, formulated in the doctrine of *siyasa Shari'iyya*, were both privilege and responsibility. He was tasked with maintaining the interests of the Community, as his part of a bond or contract between ruler and the people. The duty of the rulers was generally to protect “life, limb and property,” and specifically to enforce the judgments of the Shari'a courts of his domain, execute the punishments for the Qur'anic *hudud* (forbidden acts), defend the land and safeguard cities and roads by maintaining an army, “divide booty after war,” enforce rules of taxation and redistribution, to appoint and dismiss qadis, market inspectors, secretaries of the treasury

and other public servants, as well as to “attend to the orphaned minors and those who have no legal guardians.” They had the power to create and administer regulations pertaining to governance as well as ‘some aspects of public morality’ and criminal law, including theft, bodily injury, homicide and adultery, as well as monetary matters such as usury, land tenure. These were of course covered by the Shari’a, but ‘enhanced’ by sultanic administration. Hallaq says that if the rulers went beyond his bounds, the jurists would ‘militate against them’ (Hallaq 2014: 63-68). If any reader of this paper has trouble seeing how this all is supposed to constitute a strict functional separation between judiciary and executive authority, they are not alone. Hallaq’s argument is nevertheless that they all were bound up under a common law and tradition, and that it would be near unthinkable to go beyond that tradition.

One last feature should be noted about the Shari’a and executive power as seen by Hallaq. He calls it ‘the political concept of moral accountability.’ For the rulers to be able to govern, even when they came from the outside, they had to fulfil the responsibilities of rule which was prescribed by the Shari’a – without it, they would have no legitimacy. Hallaq notes that this feature was noticed even by ‘highly unsympathetic European observers,’ who saw that at the very least, prudence dictated that they observe the traditions and customs of the land (Hallaq 2014: 68-69).

### ***Hallaq’s Conclusions Regarding Separation of Power***

The above considerations lead Hallaq to conclude that, “[obviously], there can be no Islam nor any specifically Islamic moral-legal culture outside of history, for it is history and its forces and circumstances that gave rise to this legal-moral identity. To be a Muslim individual today is to be, in fundamental ways, connected with that Shari’a-defined ethic, for it is this ethic that shaped what Islam is and has been [...] *There is no Muslim identity without this ethic* [italics in original].” He makes a comparison with the modern Euro-American citizen, and says that it is as impossible for Muslims to have an identity as such without Islam’s history as it would be for modern Westerners to have one if they were uprooted from their sociocultural and legal history and Enlightenment values. In the Muslim case, this identity is inextricable from an ethic which holds God as the only sovereign – a sovereignty which manifested itself as a ‘particular paradigm of separation of powers.’ It is a mistake for today’s Muslims to seek to adopt the separation of powers contained in

the modern nation-state, because it is inferior to the one which organically grew along with the religion of Islam. Whereas the modern nation-state is its own sovereign, exists for the sake of its own perpetuation, and comes with a claim to democratic legitimacy which it often fails in practice; the Shari'a has God as its sovereign, exists purely and completely for the people, and represents a truly humane and democratic society continually built from the bottom up. Hallaq quotes a famous passage by John Rawls, wherein the latter describes the well-ordered society. For such a society to obtain, it must be one where everyone accepts the same principles of justice, where it is known that the social and political institutions cooperate in the name of justice, and one where its citizens can rest assured that their idea of justice corresponds with and is protected by its institutions.

“Here, Rawls could easily have been a distinguished Muslim jurist describing the *reality* of his own legal culture, perceptively commenting on the inadequacies of modern constitutional democracies (Hallaq 2014: 72-73).”

We can perhaps begin to see the heart of Hallaq's critique of modernity. It is his view that the political and legal constitution of modern nation states has displaced the centrality of moral reasoning which is the *sine qua non* of the Shari'a. We will continue to unpack what he means by this below. Our focus is on his critique of modernity more than on Islam as realistic utopia.

### **3.3 – The Problem with Modernity is the State**

After having presented his vision of the Shari'a and 'paradigmatic Islamic governance,' and having repeated the claim that these are incompatible with the modern state, Hallaq proceeds to identify two central problems which in his view makes this incompatibility inescapable. The first is the separation of the *is* from the *ought*, the second he calls 'the rise of the political.' We will try to get at both, but focus mainly on the former of the two.

#### ***The Separation of Fact and Value***

Hallaq's story begins in the Enlightenment, with Kant's moral vision of autonomy, the idea of which being that moral reasoning begins in impulses of the self. The essential character of human moral thought is freedom from “the burdens of history, forms of authority, political oppression, material depredation, serfdom, corruption, and all those things we now know to have characterized European history for over a millennium prior to the Enlightenment.” The

road from this notion of freedom to a rationalization of control and domination is short, and according to Hallaq, this latter has been the defining feature of European civilization at least since the Renaissance. Hallaq here means to contrast the idea presented in the previous chapter of a moral system which places man under the sovereignty of God to one where man is individually and essentially *above* nature (as Descartes was by his relation to God). This seems apt: The autonomy of man can after all be defined as individual sovereignty. The project of knowledge then becomes a project of “power, discipline, domination, and transformation of the world.” Hallaq contends that this organic connection between a ‘thought structure of domination’ and moral philosophy formed in the Enlightenment. The crux of that connection had been the arrival of the so-called mechanistic philosophers, who dealt a final blow to the paradigmatic Aristotelian scholastic traditions. Beginning with the mechanistic philosophy, matter was rendered inert and “[all] spiritual agencies, or the *anima*, had been banished from the universe,” and the world lost its moral character (Hallaq 2014: 74-76).

In Hallaq’s presentation, the transformation is seen only as a product of intellectual history – we are made to think that the philosophers in question simply began to think like this. The crucial question of *why* this happened, that is; how it corresponded with the ‘facts on the ground,’ is left unaccounted for.

Hallaq’s main point however is that the arrival of the mechanistic world-view inaugurated the modern separation of facts from values. Matter, i.e. the physical world, is devoid of meaning and can be treated as object – it makes no moral demands of us.

“This separation allowed for the emergence of what has been called objective and detached science, which finds parallels in the academic fields of economics, business, law, history, etc. – all of which pretend to some sort of objectivity, always with the aspiration to be as detached and thus as ‘scientific’ as pure science (Hallaq 2014: 78).”

Hallaq introduces the thinking of Thomas Hobbes (1588-1679); for him, the authority of moral rules had to rest on human reason, not on tradition or revelation – and as such they had to be instantiated in state sovereignty. This for Hallaq, is the genesis for the modern conception of law-based morality ubiquitous to modern states. Human freedom became grounded in reason alone, and not in the part-taking of the omnipotence of God – the

dignity, duties and obligations of human life begins with the individual human being. The mechanistic world-view, as we saw when we looked at Descartes in an earlier section, removes the notion of *essential purposes* from man - thus making it impossible to understand morality simply by looking at how man functions. And so, as MacIntyre has argued, Kant and the other moral philosophers of the Enlightenment and beyond tried to find a non-local, rationally based (or in the case of Kierkegaard – irrationally based<sup>23</sup>) explanation for morality – and failed. Kant’s solution was to treat moral judgements not as “reports of what the law requires or commands, but as themselves imperatives. And imperatives are not susceptible of truth or falsity (MacIntyre 2007: 71).” The result is a view of descriptive reality which is fundamentally different from normative reality, and never the twain shall meet. The split gave rise to a fundamental question: If values cannot be grounded in fact, how can they be at all grounded? This question became what MacIntyre has called the ‘enlightenment project of justifying morality,’ a project which according to him was doomed to failure.

“If the split between Is and Ought was initially and rudimentarily occasioned by Hobbes and Descartes, philosophically problematized by Hume, and translated into legal positivism by Austin, it was Nietzsche who raised the positivist bar by effectively denying the validity of the split altogether [...] (Hallaq 2014: 81)”

Nietzsche did this, according to Hallaq, by sacrificing the Ought of God in favour of the pure will of man. This too is impossible to square with the “minimum moral definition of what Islam is or can be.” Hallaq goes on, citing MacIntyre: Even the word moral is a late European invention, it has no pure equivalent either in Greek, (pre-nineteenth century) Arabic or Classical Latin<sup>24</sup>. The term *akhlaq*, which many consider to be an Arabic equivalent to moral is a mere result of “projecting the present onto the past,” translating backwards in time. There was no distinction between moral and legal in premodern Islam, Hallaq says, and no separation between facts and values. In the Qur’anic cosmology, the laws of the universe are primarily and fundamentally moral – “[they] are set in motion for explicable, rational reasons, but these reasons are ultimately grounded in moral laws.” Hallaq concludes that the distinction between the legal and the moral and between ‘is’ and ‘ought’ could not arise under Islamic governance (Hallaq 2014: 82-84).

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<sup>23</sup> MacIntyre: 47-49

<sup>24</sup> The Latin word *moralis*, MacIntyre says, came into being only after Europeans translated it back into Latin (MacIntyre, 46).



### ***The Rise of the Political – Citizens and Institutions***

The political is for Hallaq (following Carl Schmitt), the foremost manifestation of the fact/value split: “The genealogy of the political, like that of the legal, lies at the moment when Is was divorced from Ought, when politics began to exist and strove for its own sake (Hallaq 2014: 89-90).” It is a sphere defined by adversarial notions of humanity. Its defining feature is the distinction between friend and enemy, its currency is power, not morality – and the primary tool at its disposal is that of violence. For those who live in the political state, it is also all-encompassing, it intrudes upon all other fields – one is either in or out. The concept of the citizen is so bound up to the state that it cannot be imagined without it – “the modern subject is by definition a nationalized entity.” Hallaq says too that the citizen *belongs* to the state and can be sacrificed for it – in fact this capacity for sacrifice is at the heart of the citizen as political subject<sup>25</sup>. This presents another problem for any attempt to reconcile Islam with the modern state, according to Hallaq, for “how can Muslims aspiring to build an Islamic state justify sacrifice for a state that could not and cannot subscribe to the moral, that could not and cannot commit except, at best, to an amoral way of being, to positivism, facticity, and IS-ness (Hallaq 2014, 90-93)?”

Sacrifice in such a way did not happen under paradigmatic Islamic governance, Hallaq says. The ‘military branch’ of the sultanate consisted of slave-soldiers, lived their whole life as such, most often apart from the civil population, whereas the “ordinary Muslim normally did not engage in war, and the only venue by which he was permitted by the Shari’a to do so was through *jihad*.” According to Hallaq, there were two types of *jihad*, mandatory and optional. Wars waged between Muslim sultans and kings were usually dynastic affairs waged apart from the populations at large, and so did not require the call to *jihad*. Offensive wars against non-Muslims was *jihad*, but “jurists insisted that participation in the *jihad* be optional.” Defensive *jihad*, on the other hand, as when non-Muslim armies threatened the *dar al-Islam*, was considered an individual duty. But private obligations, such as debt, were considered to render Muslims ineligible for *jihad*, and parents had the right to deny the participation of their children. Hallaq’s final point is that wars fought by nations are also fought *for* those nations by their citizens, and if the citizens refuse, they can be punished.

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<sup>25</sup> Not the obligations well-functioning states have for the care of its citizens, nor the guarantee of democratic participation; these aren’t even in the picture here.

Not so in Islam, for there is no “prescribed earthly punishment in the Shari’a for refusal to join the war effort, except for the threat of losing credit in the Hereafter.” There, even desertion is permitted in certain situations, such as when the *jihad*-waging army is outnumbered (Hallaq 2014, 93-95).

Hallaq restates the incommensurability between the Shari’a and the modern state:

“Whereas the discursive world of Islam and its forms of knowledge were pervaded by moral prescriptions and by Shari’a-prescribed ethical behaviour, it has now become permeated by positivism, politics, and the political, by concepts of citizenship and political sacrifice (Hallaq: 96).”

The central problem for Hallaq is that the purported value-neutrality which resulted from the Enlightenment project, represented by Nietzsche’s Death of God, is false or at least misguided. It has only replaced the all-encompassing and morally based sovereignty of God with the modern state which is politically based and unable to see itself as anything other than its own end.

The modern state is a European product, and so is its citizen. In Hallaq’s telling of the story, its genealogy is ‘inextricably tied’ to the machinations of power-hungry monarchs, whose “main concern had been to tighten their hold over their populations while enriching their coffers.” Later, their increasingly effective capitalist project allowed them to sponsor colonizing endeavours, the resulting wealth of which supported the Industrial Revolution, which further increased profits and capital. Populations were pulled toward the cities, where they were used as labour-force, impoverished and without rights. Violence and insurrection on the part of the proletariat required the state apparatus to invest in police forces. The rulers realized that police forces and prisons were not enough, the populations had to be educated – and so school became mandatory. “Discipline thus translated into a site in which the subject was corralled into a system of order and instrumental utility.” The above institutions – capitalist production, police and education – had all been firmly established by the end of the nineteenth century. Then the rulers, disquieted by the political movements that protested the squalor of the working population and “[vividly] remembering the French Revolution and its causes of discontent,” established state welfare systems. The state’s involvement in the life of the people became total, even the bodies of political subjects became ‘colonisable’ – they could be shaped according to an external will.

The discipline imposed upon and required from the citizen is another unique product of the modern state, and it is one which is radically different from the discipline of for example the religious ascetics of the premodern age in that for these latter, discipline stemmed from an internal rather than external will. The upshot of the above process is that in the modern state, once fully formed, the citizen exists to serve not a monarch or a moral community, but the machine constituted by these various institutions. Here again, Hallaq anticipates the counter-argument which states that the above also entails the sharing of power between citizens and that the machinery exists for the sake of mutual co-existence. He counters this by repeating that it is through these institutions that the modern citizen is rendered 'politically innocuous' – they can always be relied on to do the bidding of the state<sup>26</sup>. Hallaq cites the nature of academia as an argument for his charge. It is a field which – even as it prides itself on intellectual independence – habitually enforces the positivism of the state, takes the state for granted to the point that it “thinks the state – nay, the world – through the state,” and serves as a handmaiden to state governance. Through its appropriation of science “the modern government portrays itself as a problem-solving machine” but the problems it so solves are of its own creation. Premodern history serves to show that a state is not needed for socio-political organization. The state is when it is imposed “synonymous with the disruption, dismantling, and rearrangement of the social order.’ For Hallaq, this is why the ‘problems’ which the state purports to solve become ontologically possible only after the arrival of the state; it is why research which accommodate the positivism of governments and which takes for granted the good of its instrumental reason is prioritized in academia. The academic investigations having to do with the moral reasoning and the search for the good life are side-lined. The academic sphere has to stay useful for the state, and so it has to “develop expertise in the fields relevant to the interests of the state, although the porosity of state and society often clothes these interests in the garb of social and societal problems.” Hallaq’s charge is that the so-called independence of academia for the most part exists in name only. Education, from childhood and into professional adulthood, begins by teaching children to love their country and to be useful to it, proceeds incrementally to inculcate young adults of state interests, nationalism and the entire idea of the ‘problem-solving machine.’ The structure is total, no aspect of life is left untouched –

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<sup>26</sup> We leave aside the obvious question (*‘Can they?’*).

even the family has been 'redefined to serve the state' even though the state claims that it is the other way around. Children are borne into a world wherein instead of growing into a family which belongs in a community, they are shaped by "law, psychologists, psychiatrists, social workers and technicians," these latter having taken over for parents. The social world of people in the modern state is not formed by their family and its relation to other families, but in a social realm which is distinct from these (Hallaq 2014: 96-105). All of the above coincided with the advent of nationalism; to Hallaq's treatment of which we now turn.

### ***Nationalism***

The concept of the nation is not as new as that of the nation-state. Even in premodern times, patriotic speeches, festivals, "ethno-national literature" and other such things served to connect individuals to their ruling structures. What is new in the modern nation-state, according to Hallaq, is the way this relation has come to be seen as a kind of first principle—that is, the way existence comes to be seen as impossible outside its bounds. It explains both the individual 'I' and the collective 'We' before we even realize it – the result of which is that the implications of this belonging determine the way we see the world socially. Hallaq implies that this is so much the case that we effectively re-write history in order to explain the nation – it is its own metaphysic. Hallaq here evokes Weber's memorable concept, the *iron cage*, explaining it as "a set of cultural values and perceived opportunities that are constrained by material acquisitiveness and the particular outlook of rational choice." The rationality which was supposed by the Enlightenment thinkers to be free and liberating is regulated by the machinery of the nation-state and its metaphysics. The result of this is that the citizens of the modern nation state come to replace morality-in-self with morality-as-state-utility. Discipline, efficiency and work in the service of the nation became of central importance for its citizens – even to the point that it acquires a moral nature. "Work for the sake of work, just as capitalism's money is made for the sake of garnering wealth, just as the state exists for its own sake and perpetuates itself for the sake of perpetuating itself." The duality of nationalism stems from the subject's identification with it – 'I am the state and the state is me' – and in a state that is also a machine, individual reasons and meanings are subsumed and the individual self becomes fragmented, isolated and narcissistic. A central concern for Hallaq is that for all these problems, the only solution on offer in the modern nation state – is the modern nation state (Hallaq 2014: 106-110).

### ***Moral Technologies of the Self***

For Hallaq, there is no way to escape the fact that the modern nation-state, grown as it was in Euro-America, *belongs* in the West. Positively, this means that in for example Europe, the state can be lived in without it colliding with their moral precepts – it is no problem for Europeans to be loyal to state sovereignty. Negatively, it means that it will not sit well where these demands for loyalty *do* thus collide with moral precepts. Islamic culture, Hallaq, says, is completely the result of Islamdom and the world-view inherent in it<sup>27</sup>. It had no notion of a worldly state (be it represented by absolute monarch or parliamentary democracy) which could control legislation. The Islamic world as such knew nothing of the “political absolutism that Europe experienced, the merciless serfdom of feudalism, the abuses of the church, the inhumane realities of the Industrial Revolution.” Life under Islamic governance on the other hand, was relatively egalitarian and merciful – it knew of nothing like “the scale of surveillance generated by the modern state’s police and prison systems.” State powers did not and could not decide what was taught at schools nor at the *madrasas* they established. Education, which mostly happened outside of royal *madrasas*, concerned themselves with moral matters – and the skills taught there were to be utilized “within the social order”. This means for Hallaq, that the kind of nationalism which formed in Europe in concert with industrialization did not come into play. The state did not ‘produce subjects’ in the Islamic world, and nor did it serve to identify the subject with the nation. Islamic governance did however ‘produce subjectivities,’ but these were moral, Shari’a-based subjectivities. The separation of ‘Is’ from ‘Ought’ and the legal from the moral is a European invention, and inherently modern. These conceptual categories are ill suited to understand the Shari’a, Hallaq says<sup>28</sup>. One consequence of this has been that the modern academic subject ‘Islamic Law,’ which has its roots in colonial Europe, necessarily contorts its subject. Another is that the colonial powers mistakenly applied their home-grown understanding of law as disciplinary and uniformizing to the Islamic societies in which they came to rule. “For, in their legal weltanschauung, enforcement through morality counted for little, if at all.” The Shari’a looked, to the European powers, backwards and suffused with religious doctrine. They did not take account of the ‘pervasive moral fibre’ – the way the Shari’a had

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<sup>27</sup> He specifies that he does not mean to say that the Islamic world always constituted a de facto unity (‘Islamdom’); it nevertheless constituted a moral one.

<sup>28</sup> The question ‘Why be moral?’ did not arise in the Islamic tradition, says Hallaq. He suspects this to be the case for all premodern moral cultures (Hallaq: 112).

existed in continuity and harmony with Muslims for over a millennium. There, the moral was the legal was the social in a way fundamentally different to modern Europe (Hallaq 2014: 110-113).

### ***The Necessary Conditions for Islamic Governance – a Thought Experiment***

Hallaq invites us to conduct a thought experiment and suppose that Islamic governance proper has been re-established. He lists the minimum required form-properties of such an entity: 1) a divine sovereignty and a system for translating “God’s cosmic moral laws” into legal norms; 2) a true separation of powers, where especially the legislative enjoys total independence and is the source of all law; 3) the legislative and judicial powers stem from a society whose moral fibre is both fact and value, ‘Is’ and ‘Ought;’ 4) an executive power bound by an obligation to implement the legislative will and permitted, under oversight of the legal will, to administer and enforce temporary, “small-scale” regulations; 5) the practical norms as produced by the powers are bound by and exists in the service of the “community *qua* Community;” 6) educational institutions are at all levels constituted so as to serve the requirements of the above and operated “by a fully independent civil society;” 7) the educational system is as a whole is directed to put at the forefront questions of moral, continually trying to discover ‘the good life’<sup>29</sup> 8) the concept of citizenship is transformed so that its requirements are fundamentally moral, social and community-based; and 9) the individual is committed to a world-view that has the moral as central domain (Hallaq 2014: 139-140).

### ***Globalization***

How can a governance such as the one suggested above exist in an international community along with modern nation-states? First, it would have to be recognized and acknowledged by that international community that there can exist a kind of governmental paradigm that is not a nation-state. The international order is dominated by globalization, and so the local impinge on the global and vice versa in a way it could not before the modern age.

Transnational networks, political as well as economical (and frequently it is both), serve both to undermine and bolster borders and their enforcement. According to Hallaq, “[globalization] is clearly the project of the rich and powerful states and the colossal corporations ostensibly regulated by them, a project largely imposed on weaker states,” the

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<sup>29</sup> Hallaq: “Here reason is not instrumentalized (Hallaq: 140).”

goal of which is the creation of a world-wide market regulated by “common – even identical – legal norms.” But the relationship between the state and the international order is problematic – especially if it is the case that the state has itself as sovereign. Hallaq describes three ways of looking at this problem. The first view holds that the state is gradually losing sovereignty and control over the economic, social and cultural spheres. The second view is that the international order poses no such threat, that the state still enjoys sovereignty and a monopoly on ‘legitimate violence,’ and that the international order needs state actors in order to function properly. The arguments for the latter view, Hallaq contends, is an extension of the argument that the state is a problem-solving machine into the international realm. These two first views are boiled down: Either the state will be replaced by a globalized system of power, or it will persist as it is with the world forever divided into nation-states. As against these, Hallaq poses a third possibility – “a complex and continuous dialectic of both friction and cooperation between the two” – he holds this to be the most likely outcome. If Islamic governance is incompatible with the modern state, and according to Hallaq it is, it will be even less so with a globalized structure based as it is on the logic of human sovereignty, as well as with any synthesis between the two (Hallaq 2014: 139-143).

Globalization favours the Western states, according to Hallaq. The interconnected nature of globalization – having to do with new forms of telecommunication – has resulted in the spread of some cultural forms to new social environments. But more often than not, it has the Western cultural forms which has spread, often to the detriment of local traditional cultures, even in the cases where these are patronizingly “protected.” The cultural hegemony enjoyed by the West is built on their political and military apparatus, the forces of which in turn ultimately stand in the service of the economy. “Thus to say that globalization privileges, as does modern society at large, material wealth and economic prosperity is to state what is most evident.” The economic system of the world is built on the same liberal logic of the modern state, but it is at the same time “more intensely pursued and minimally regulated;” it is neither held to a standard of wealth redistribution (as with the taxes in states) nor social justice. Hallaq acknowledges that the states are perhaps the international actors that have done the most to regulate the international order, but they serve different masters. We are asked to consider corporations created or

regulated by states. The essential function of a corporation is to increase wealth – it needs to affirm no moral responsibility other than to stay within the bounds of the law. Even in the cases where corporations are involved with infrastructural development, or where it displays social responsibility, the ultimate goal is to increase profits. The states which create or regulate these corporations have vested interest in them. This undermines the idea that only the state can solve the problems created by corporate logic. The form-properties of the state which Hallaq argues are antithetical to Islamic governance are maintained in the globalized world. State sovereignty and cultural monopoly remain as they were, the reach of its legal and bureaucratic tools has even been extended into a global system. The global order has no real sovereignty, very little executive and legislative power over states and minimal power to enforce laws and exercise legitimate violence. Further, it has no cultural autonomy – “the educational and the larger cultural spheres – significant arenas of power formation – remain penetrated by and under the direct control of the nation-state.” Against the corporate logic of the globalized economy, Hallaq offers what he calls ‘Islam’s moral economy.’ This moral economy came into being along with Islam, and as long as the Shari’a was upheld, so was this form of economy. The material wealth and vibrant local and international trade of premodern empires is held as testament to its success. Hallaq argues that the success of this Islamic economy was an important reason for the colonial powers to undermine the Shari’a. It was incompatible both with their political and economic aspirations. Central to the moral economy built on the Shari’a were the five “protections” it offers: of property, life, religion, mind and community. These protections were interconnected and interdependent, and together they ensured that no such thing as an amoral corporate logic could develop. In the Shari’a system, commerce had to conform to the concept of *Rida*, which Hallaq describes as presupposing “fair dealing, good faith, and psychological ease by all contracting parties.” It was understood that greed and avarice, misappropriation of wealth and neglect of the poor and the community for the sake of one’s own financial well-being were sure ways of kindling the wrath of God and ending up in hell. The understanding was that all wealth ultimately comes from God, and so it was expected that it was spent in accordance with His moral requirements of humans. This is not to say that a Muslim could not pursue business ventures which made him rich, or that he could not build himself a palace if he did – but this was permissible only insofar as the Muslim in question operates in accordance with the virtues of honesty, modesty and fair dealings. The



“rights of God” and the rights of fellow human beings had to be paid their dues before palaces were built. The first set of rights enjoins the trader in question to pay alms-tax (*zakat*), give to charities and pay tax on land income, while the second set requires of him that he support his extended family, settle debts, etc. Hallaq identifies three principles at work: First, lawful earnings (*kasb*) must be seen as coming from and ultimately belonging to God. Second, no one should be completely devoted to the garnering of wealth, “no excessive effort should be expended” – Hallaq compares this to the ‘utmost effort’ of the jihad in matters moral. Thirdly, “no ‘creature of God may be harmed.’” The point of the above for Hallaq is to show that even in terms of economy, be it local or regional, the Shari’a has ‘moral as its central domain.’ He points out that the ethically laden terms and the practices which they represented are nowhere to be found in modern Islamic banking and finance, making them “Islamic only in name (Hallaq 2014: 144-152).”

Three challenges have to be faced by our imagined Islamic state – the military might of Western states, imposition from the outside of cultural mores, and the liberal world market. These are deeply interconnected, and the latter two are dependent upon the first. In the realm of the cultural, Hallaq calls for a perusal of ‘globalized cultural forms,’ such as forms of visual arts, sexualized and manipulative advertisement and culinary habits, to see if they can be made to fit with the moral requirements of the Shari’a. This kind of governance must also understand the sources of these globalized forms; the disenchantment engendered by and supporting of the hedonism, narcissism and materialism. Everything must be re-evaluated, and if something is “deemed unfit for the cultural landscape of Islamic governance,” it must be discarded. In the field of economics, Islamic governance must engage in trade and investment in an amoral world-economy dominated by corporations backed by liberal states. The reason something like a corporate mentality never arose under premodern Islamic governance is not that it was not possible, but that its consequences would be intolerable, Hallaq argues. The modern corporation represents for him the “epitome of anti-Shar’ism.” In a way, Islam’s central domain of the moral is presented as a fix to the moral problems of the modern globalized economy because of the premium it places on social justice. But Hallaq also thinks that, in a world dominated by corporate interest and a free-market economy, any governing structure which does not accept globalized capitalism would wither and be rendered unable to protect its citizens (Hallaq 2014: 153-154).

### ***A solution?***

Having offered such a detailed account of the problems which would face the re-establishment of Islamic governance, Hallaq proceeds to make it even harder. It is a problem for modern islamists that they assume the state to be a neutral tool – that it can be made Islamic just as it can be made a liberal democracy. But as he has argued, this is not the case. It comes with a metaphysic and assumptions about the role of politics, law, even epistemology. It is of European and American origin, and carry with it views of life that have their proper home there. This does not mean that it cannot change and adapt in the face of a new globalized consciousness, for it does. But the changes and adaptations before or now do not alter the fact that there is a necessary incompatibility between the modern state and Islamic governance – in fact the gap has widened and continues to do so.

“The totality of these inherent and fundamental oppositions poses a significant problem. If Muslims are to organize their lives in social, economic, and political terms, then they face a crucial choice. Either they must succumb to the modern state and the world that has produced it, or the modern state and the world that produced it must recognize the legitimacy of Islamic governance (Hallaq 2014: 155).”

The former option seems the most likely, even for Hallaq. But if there was to be a solution to this problem, it would have to attend to the absolutely fundamental separation between fact and value, Is and Ought. With the birth of this separation, the world *as* world stopped making moral demands on us, it became ‘brute’ and ‘inert’. The crucial point of departure from a world that had made moral demands of us was the Enlightenment. The Kantian idea that moral rules have to be autonomous and based entirely on rational agency has not held water, having been shown to be inconsistent by among others Alasdair MacIntyre, yet the assumptions underlying it have persisted. The idea of freedom at its base “is not merely our personal and private freedom – which of course it is – but the freedom of man to rule over nature and all that is found in it.” It rests on the notion that rational will is an agent, i.e. that it makes the same demands on all of us. It does not, because it is not an agent – merely a function or faculty of the human mind among others. For reason to attend to morality, it has to be actuated *in a moral setting* – reason must be supplied with *reasons*, and these it cannot find independently of context. As MacIntyre points out in his *After Virtue*, “Kant never doubted for a moment that the maxims which he had learnt from his own virtuous parents were those which had to be vindicated by a rational test (MacIntyre 2007, 52).” The

entire notion of making a science of morals, what MacIntyre has called 'the Enlightenment project of justifying morality,' has failed because it has tried to reduce moral action to maxims or principles, while entirely overlooking the actions and *reasons* which instantiated these principles.

The Islamic tradition can be seen as a synthesis between reason and practice, according to Hallaq. Islam was always seen as *al-Umma al-Wasat*, the Middle Community, and it became defined as such "precisely because it occupied a middle position between the 'Muslim Kantians' – so to speak – and the literalists, those who wished to reduce human reason to a marginal status," within which the role of reason was to discover reasons already existing in a world created morally. And despite the fact that the political and economic aspirations of the colonial powers necessitated the dismantling of Shari'a and with it the institutional aspect of the central domain of the moral, Muslims still hold the Shari'a to be essential for Islam. Hallaq offers a course of action for the Islamic community: It has to rearticulate governance in accordance with the moral demands of its tradition; and social units have to be conceived afresh as belonging to moral communities, which in turn need to be "reenchanted." "Historical moral resources would provide a blueprint for a definition of what it means to engage with economics, education, private and public spheres and, most of all, the environment and the natural order;" it would also refurbish the concepts of individual and communal rights. This could of course not happen in isolation from the world, but the morally self-contained communities would add up to a kind of 'anti-universalism' which challenges the universalism engendered by the modern nation state. A process of dialectic negotiation between these communities and the world-order would have to begin, and this in such a way as to present the world with an 'antidote' to universalism. It would have to be a slow process, but if one can avoid the 'antagonistic forces' which once destroyed the moral order of the Shari'a, it holds the promise of success, says Hallaq. It is of the utmost importance for the Muslim community that they, when they engage in debate and discussion with their Western counterparts "develop a vocabulary that these interlocutors can understand [and that] attends to the concept of rights within the context of the necessity to construct variants of the moral order befitting each society." Everyone, Muslims and non-Muslims alike, must be convinced of the folly of universalism. The

minimum requirement for this to obtain is that modernity has to experience a “moral awakening (Hallaq 2014: 155-170).”

So ends Hallaq’s *The Impossible State*.

Turn to Him, alone, all of you. Be mindful of Him; keep up the prayer; do not join those who ascribe partners to God, those who divide their religion into sects, with each party rejoicing in their own. When something bad happens to people, they cry to their Lord and turn to Him for help, but no sooner does He let them taste His blessing than – lo and behold! – some of them ascribe partners to their Lord, showing no gratitude for what We have given them. Take your pleasure! You will come to know. Did We send them down any authority that sanctions the partners they ascribe to God?

*Qu’ran 30:31-35*

I the Preacher was king over Israel in Jerusalem.

And I gave my heart to seek and search out by wisdom concerning all *things* that are done under heaven: this sore travail hath God given to the sons of man to be exercised therewith.

I have seen all the works that are done under the sun; and, behold, all *is* vanity and vexation of spirit.

*That which is crooked cannot be made straight: and that which is wanting cannot be numbered.*

I communed with mine own heart, saying, Lo, I am come to great estate, and have gotten more wisdom than all *they* that have been before me in Jerusalem: yea, my heart had great experience of wisdom and knowledge. And I gave my heart to know wisdom, and to know madness and folly: I perceived that this also is vexation of spirit.

For in much wisdom *is* much grief: and he that increaseth knowledge increaseth sorrow.

*Ecclesiastes 1:1-18*

#### 4.0 Discussion

“For Muslims today to adopt the positive law of the state and its sovereignty means in no uncertain terms the acceptance of a law emanating from political will, a law made by men who change their ethical and moral standards as modern conditions require. It is to accept that we live in a cold universe that is ours to do with as we like. It is to accept that the ethical principles of the Qur’an and of centuries-old morally based Shari’a be set aside in favour of changing manmade laws, laws that have sanctioned nothing less than the domination and destruction of the very nature that God has given humankind to enjoy with moral accountability. Whether to accept or not accept is a question that only Muslims can answer for themselves (Hallaq 2014: 83).”

The central argument in *The Impossible State* seems at the same time to be both inescapable and unacceptable. It bears repeating that, if Hallaq is right, there is an *essential and necessary incompatibility* between the modern nation-state and ‘paradigmatic Islamic governance.’ His presentation should be taken very seriously, both by Muslims aspiring to make the Shari’a great again, and by those who see that morality and pursuit of the good life all too often become relegated to secondary importance in the modern world. In the discussion to follow, we will try to attend both to its seeming inescapability and unacceptability. The central concern of this thesis is to explain and qualify an Islamic critique of modernity, and so we will look at how *The Impossible State* works as critique on the one hand, and on what makes it *Islamic*, on the other. This latter dimension is important, because it entails taking a close look at what it means to be a Muslim living, as most people do, in a modern nation-state. In this thesis, we have for the most part avoided the two-fold challenge implicit in Hallaq’s book. On the one hand, we are challenged to show that modernity is compatible with the central domain of the moral, and on the other to show that Islam and the Shari’a as a way of life is not devalued or made peripheral by attachment to the modern nation-state.

The central problem, in Hallaq’s telling of the story of modernity, is deeply connected to disenchantment. The moment the European thinkers of the Enlightenment began to see the world not as inherently moral, but as ‘brute,’ ‘inert,’ and subject to the rational domination of humankind was the moment they made their tradition incompatible with Islamic governance. Rationality itself is morally neutral – and so to allow it free reign is to invite amoral practices, according to Hallaq. The separation of the ‘Is’ from the ‘Ought,’ resulting as it did from the Enlightenment critique of *essences* and *telos* as represented above in Descartes’ dualism, allowed people to argue that any system of ethics must originate in man

– the world itself being mechanical. That the resulting instrumental reason allowed for the hegemony of these European powers does not mean that it is good – on the contrary. It has resulted in a narcissistic and materialistic individualism, whereby everything is argued in terms of utility, not morality. An impersonal machinery has been built in Europe and America which grinds away at traditions, reduces difference, demands loyalty and displaces the idea that humans and the world they live in is fundamentally moral in constitution – and the only reason it can offer for its existence is its own propagation. No wonder it sits uncomfortably in the Islamic world, which is still in fundamental ways connected to a thought-system which cannot abide by this machinery, nor any of its functions. No wonder either, that the so-called Islamic states, having allied themselves with such a machinery, cannot but fail in their attempt to maintain the central domain of the moral, the heart of the Shari’a. In order for a state to function, it has to take the form of a lesser god that cannot offer moral guidance nor resolve its internal conflicts, having instead to rely on discipline and the enforcement of its instrumental reason. It cannot but vest too much power in its impersonal, bureaucratic machinery to the detriment of communality and moral discussion – it is a machinery that continually produces problems<sup>30</sup> which by its very constitution it is the only thing equipped to solve. Because it creates these problems, it can also choose which of them are to be solved. Having allied itself with multinational corporations for the sake of growth and economic, military and political power, it is powerless to prevent these amoral entities from exploiting, disrupting or interfering in moral communities. The world-order that has been built on the same metaphysic has to abide by the sovereignty of states, rendering it weak and unable to prevent the most powerful states from acting unilaterally and egotistically. It also, by the same logic, cannot even conceive of the idea of a different metaphysic, especially one that would exalt morality and have the search of the good life as its *raison d’être*.

In the ‘Premises’ of *The Impossible State*, Hallaq states that his book has ‘thematic similarities’ with the work of Alasdair MacIntyre, and in his concluding paragraph he says that the “moral quest of modern Islam [...] finds its equivalent in the slim yet resounding

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<sup>30</sup> To call them problems is an uncomfortable euphemism, since some of these state-abetted problems are wars, famines, oppression, devastation of eco-systems, etc. etc.

voices of the MacIntyres, Taylors, and (even liberal) Larmores of the world.”<sup>31</sup> What these authors have in common is that they are writing about the moral issues at the very heart of secularization. It is one thing to try to figure out what secularization entails, be it privatization of belief, differentiation of religious authority or whatever, it is quite another to try to ask what secularization *means*. This is one of Hallaq’s points – if we see the world through disengaged reason, through the lens of ‘Is,’ then secularization will look like a neutral process which just happened. The question of whether it *should have happen* is left entirely unattended. Hallaq, as we have seen, thinks that it should not have happened and is willing to go quite far in his condemnation of modernity.

In an essay written for the anthology *After MacIntyre*, Charles Taylor argues that “the modern meta-ethics of the fact/value dichotomy does not stand as a timeless truth, at last discovered, like the inverse square law, or the circulation of the blood.” Although Aristotle’s cosmology, physics and biology have been refuted and displaced by modern science, this does not mean that *telos, reasons* for humans has to go away with it. In fact, MacIntyre’s argument shows that none of the Enlightenment thinkers managed to explain morality without appeal to some kind of external reason. Nietzsche’s position, the denial of value, is held to be the most coherent position. As summarized by MacIntyre, his stance entails that “if there is nothing to morality but expressions of will, my morality can only be what my will creates. There can be no place for such fictions as natural rights, utility, the greatest happiness of the greatest number (MacIntyre 2007: 132).”

He thus represents the conclusion of the Enlightenment project of justifying morality by saying that it cannot be justified. In one of the central chapters of *After Virtue*, MacIntyre pits Aristotle against Nietzsche, saying that:

“either one must follow through the aspirations and the collapse of the different versions of the Enlightenment project until there remains only the Nietzschean diagnosis and the Nietzschean problematic *or* one must hold that the Enlightenment project was not only mistaken, but should never have commenced in the first place (MacIntyre 2007: 137).”

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<sup>31</sup> He also asks whether the “Taylors [can] summon up enough intellectual courage to become MacIntyres,” indicating that Taylor does not go far enough in his condemnation of modern ethical discussion. Below, under the heading ‘*Modernity is an Islamic Tradition*,’ we see that Taylor’s stance may not be so much a matter of courage as it is a product of ethical outlook.

For MacIntyre as well as for Hallaq, the denial of inherent values in human nature, which is a central assumption of modernity, is incompatible with the moral reasoning of premodern societies, whether they be Christian-Aristotelian or Islamic. So, their critique of the ethics of modernity is total. The moment the 'Is' was separated from the 'Ought' in the European Enlightenment, its culture began its slide toward narcissistic individuality and away from living morally and as part of a tradition.

The modern malaise has inflicted Islam through the hegemony of the West, and so Hallaq calls for its purification. He has argued that Islam stands or falls on the Shari'a, its legal-moral system. This system in turn is grounded on a metaphysic of divine sovereignty. It cannot abide by the sovereignty of a nation which is not bound by the central domain of the moral. The idea that the state should have the power to regulate morality is absurd in a system of governance where the state exists to serve a God-given and bottom-up system such as the Shari'a, he contends. His question is troubling: "How can Muslims aspiring to build an Islamic state justify sacrifice for a state that could not and cannot ascribe to the moral, that could not and cannot commit except, at best, to an amoral way of being, to positivism, facticity and Is-ness?"

But can modernity be avoided? Isolation, Hallaq concedes, is no option for the Community, and he has himself expertly shown the utter pervasiveness of the modern nation-state and Western 'cultural forms.' He accepts that the form-properties of state have been imposed upon or otherwise applied by the rest of the world; that there is a working world order which has at its very foundation the idea of a state; and even that most Islamists think in terms of state. The Shari'a, once an organic whole, is now "institutionally defunct (including its hermeneutics, courts, discursive practices, educational systems, and the entire range of its sociology of knowledge (Hallaq 2014: 13)," although it continues to be important for individual Muslims. Here, it must be recognized that *The Impossible State* is a profound achievement, because it challenges the very assumption that Islam can meld with the nation-state. Hallaq practices what he preaches; trying throughout the book to show that there are Islamic alternatives to the modern state and its basic assumptions, and that these can work in concert to maintain the central domain of the moral. In this way, the book presents a challenge to those Muslims who want Shari'a to be realized. What kind of Shari'a do they want? Is it the entirety of the tradition which constituted it? If Hallaq is right, the



only way to re-attain that tradition is to purge the culture of the products of the fact/value split, i.e. the form-properties of the nation-state.

It is telling that Hallaq, instead of offering much in the way of practical measures for achieving 'paradigmatic Islamic governance' and the central domain of the moral, has to imagine it already in place. Perhaps it is as hard for Hallaq as it is for the reader to see how the Community would reconstitute itself, bound as that Community was to its historical circumstance. Hallaq can argue that there would have to be a perusal of Western cultural forms, but he cannot say who will do this, how they would agree or how it would be enforced. The mind boggles as to how the world could be 're-enchanted', especially seeing as the Muslim subject "has grown no less disenchanting by modernity than his or her Western counterpart (Hallaq 2014: 13)." In the form of governance he imagines, educational institutions have to always serve the moral community – reason is not instrumentalized, and engages "science and the humanities only insofar as the morally good life requires investigation (Hallaq 2014: 140)." He does not answer the question of whether the knowledge garnered by use of instrumental reason could be applied in these institutions. Consider the products of modern biology and chemistry such as vaccines and medicine. These products are seen as good, and support the notion that science 'ought' to be prioritized. One of the many questions that are left unanswered in Hallaq's critique is whether his Muslim Community can at all accept this kind of innovation. Modern biology requires a modern epistemology which rests on the mechanistic metaphysics of the Enlightenment and on the fact/value split. The moral 'ought' has no place in evolutionary biology, which makes due with the factual, mechanistic assumptions of survival and reproduction – when we make medicine, we instrumentalize nature.

One reason for the irreconcilability is, as Hallaq accedes in his 'Premises,' that Muslims are modern too. In his telling of history, modern reforms were always imposed from without, for example when he tells us that the Western states had to dismantle the Shari'a and make the traders of the Middle East and the Maghreb conform to their amoral corporate logic. It is told as if the Islamic world, if it had any say, would rather have not taken part in modernity – but it was forcibly dragged along by the might of Europe. To be sure, this is one way to write that history – and there is ample evidence for claims about condescending and orientalist European powers, as well as for reckless and misguided Western attempts at

state-building in the Middle East, the Maghreb and elsewhere in Africa. And since Hallaq is offering a critique of modernity, he is justified in singling out the evils of modern statecraft. But we have to notice once again how far he must go in his critique. Two features of his book are striking in this regard: For one, he must write as if the moral Community of Islam did not willingly appropriate modern reform. Again, it can be argued that the moral community which he describes can be exempt from ‘blame’ for Westernization, since it was usually the élite classes with European education who pushed for reform<sup>32</sup>. But instrumental reason and other products of the distinction between fact and value such as bureaucratic state-structures, modern courts, international law etc., were in fact gradually accepted by that community – or else we would not be here, and Hallaq could not offer his critique. The appropriation by Muslims of the machinery of state and modern epistemology is left unexplained by Hallaq except as a brute force attack by Western powers. For another, he cannot allow that modernity itself is or can ever have been a ‘paradigmatic moral force,’ or that it can be guided “by *general moral principles* that transcends the Community’s control (Hallaq 2014: 4).” Additionally, he has to write as if while ‘paradigmatic Islamic governance’ was *organic*, the modern nation-state is somehow *synthetic*. But surely, any way we look at modernity, Hallaq’s purview included, has to explain the social, cultural and political in terms of some moral principles. In a working national state-democracy, such moral principles as the right to vote, a hallowed tradition of civil disobedience as motor for change, the ideal of a separation of powers (however politicized it has become), gender equality, protection of religious and philosophical conscience and commitment to world-problems, should be seen as reflecting some kind of ‘paradigmatic moral force.’ The failure of academia to ground these in a purely rational system must not necessarily be taken as a sign of their failure. Or, to be precise, the failure of the Enlightenment project of justifying morality does not have to mean that people who accept modern epistemology cannot live morally anymore – it can simply mean that instrumental reason cannot alone account for human moral reasoning. Modernity constitutes a tradition just as much as any premodern society did.

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<sup>32</sup> In *A Concise History of The Modern Middle East*, Arthur Goldsmith jr. argues that during Europe’s ascent, “[most] Middle Eastern peoples went on living their lives as if Europe were on another planet. The changes affecting them were the westernizing reform policies of their own rulers.” And the reforms were seen as necessary measures; “Europe’s power rose so dramatically between the sixteenth and nineteenth centuries that every other part of the world had to adapt or go under (Goldsmith jr: 148-149).”

### ***Modernity is an Islamic Tradition***

Hallaq's critique is thoroughgoing, but we have to ask whether his method makes sense. He compares a *product* of modernity – the nation-state – with the *tradition* of 'paradigmatic Islamic governance.' He almost entirely avoids situating the Shari'a-tradition he is writing about in any given governing structure, be it that of the Abbasids or Ottomans. The state however, has as one of its form-properties cultural and historic specificity. If one sees modernity as *tradition, as paradigm*, it is not so clear that his comparison holds water. A tradition need not have a sovereign, nor cultural-historical specificity, nor is it constituted by a bureaucratic machinery. It is objective discourse; it is our naïve understanding and the conditions of belief.

In *After MacIntyre*, Taylor writes about two routes that can be taken for critics of modernity who focus their attention on the fact/value dichotomy:

"Part of what is meant in offering the moral phenomenology which issues in the 'Aristotelian' meta-ethic is that these forms of thinking are closely tied to central features of our moral life. If one thinks that people who embrace the modern package in fact escape these forms, then one sees them as doing away with these features. One takes them seriously, and one may judge that in consequence they are sacrificing essential parts of human life and departing from the human norm. If, on the other hand, one thinks that these forms of thought are not escapable, one will be ready to convict modern culture of muddle, but be much less sure that it actually departs as much from the norm as its theory would call for (Taylor 1994: 22)."

We can see Hallaq as belonging to the first of these two categories. Modernity, by being instantiated in the form-properties and world-view of the nation-state becomes 'false consciousness,' at least for Muslims. In trying to interrogate his position, we've entered the second category, following Taylor's argument that, even in modernity, "we are far more 'Aristotelian' than we allow (Taylor 1994: 22)." That is, we are far more dependent on traditions than most modern ethical theories indicate. Notice what happens if we allow for the idea that modernity is a tradition. In order for Hallaq to show the incommensurability of Islamic governance and the nation-state, he has to take instrumental reason and the Enlightenment exaltation of pure rationality at face value. But if this notion can be challenged, if we can show that we commonly appeal to 'general moral principles' that belong squarely to modernity; and that with modernity's moral predicament comes a vast array of new ways of living the good life – then the split is not so clearly cut and our culture

is not so completely atomized and instrumental. To admit that Muslims are modern, which one obviously has to, is to admit that they are active participants in this modern project of justifying morality. Hallaq, MacIntyre and Taylor have all done their part in showing us both that there really is a split between facts and values, and that it cannot be entirely accounted for by reference to facts alone. They have also argued convincingly that this does not mean that values should be denied admittance in moral discussion.

Hallaq's argument is both that the modern nation-state rests on assumptions which collide with the moral precepts of Islam, and that the Shari'a needs to be revived or in some way reconstructed in order for it to both survive modernity and to resist its moral predicament. But this is not the only way ahead. In the thinking of Abdolkarim Soroush, for example, we see a different approach entirely.<sup>33</sup> According to Soroush, "Islam is unchanging, and any attempt to reconstruct Islam is both futile and illusory." What *has* changed, are the conditions of belief, which means that contemporary Muslims must understand Islam in accordance with these new conditions.

"While religion itself does not change, human understanding and knowledge of it does. Religious knowledge is but one among many branches of human knowledge. It is not divine by virtue of its divine subject matter, and it should not be confused with religion itself (Esposito & Voll (eds.) 2001: 155)."

For Soroush, it is essential to remember that anyone reading a religious text is situated in a specific time and place, and this not only predetermines the way one reads the text, it also directs one's interpretation. He argues for the "total reconcilability between religious and scientific knowledge," and an understanding that these exist in a 'continuous dialogue.' We should pay close attention to what happens when religion becomes political program or ideology, says Soroush. Ideology is a "social and political instrument used to determine and direct public behavior," and in order for them to be understood by the public, they become simplified, 'reductionist' and are construed as standing in opposition to other ideologies. Through them, it becomes easy to see the world as divided. It is impossible to have a definite understanding of what Islam is or is supposed to be, but the various Islamic ideologies nevertheless have to make the claim that they represent true Islam.

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<sup>33</sup> The following section discusses Soroush's views as presented in the anthology *Makers of Contemporary Islam* (Esposito & Voll (eds.) 150-176).

“An ideological government must both develop and maintain an official ideological platform that at once legitimizes the government and acts as a unifying and mobilizing force. To accomplish this it requires an official class of government-allied ideologues, whose sole task is the formulation and defense of the ruling ideology (Esposito & Voll (eds.) 2001: 157).”

The pursuit of religious knowledge is threatened under a scheme such as the one presented by Islamic ideologues. These would have to suppress alternatives by curtailing individual freedom and rational inquiry. Both religious and scientific knowledge would be diminished, leading to a weaker society. Soroush distinguishes between an ideological and a religious society, saying that whereas in the former, there is an official interpretation of religion, in the latter “[there are] prevailing interpretations but no official interpretation (Esposito & Voll (eds.) 2001: 153-158).”

His rejection of religious ideology does not entail the clear separation of religion and politics, however. A society based on popular support and participation and which has a common tradition will necessarily embody that tradition politically. What is of importance is not the compatibility of state and religion, but how these interact. In an Islamic society, this interaction must be understood both in terms of jurisprudence (*fiqh*) and theology (*kalam*). The conception of justice in such a society must be in accordance with the legal requirements of Islam, these being the purview of jurisprudence, but it cannot rest on these alone. Rather, this society would have to engage in a “theological debate that makes use of, for example, the combined terms of philosophical, metaphysical, political and religious discourse.” Furthermore, it is Soroush’s view that the Islamic tradition does not contain a “blueprint for government,” having instead to rely on the requirements of time, place and context. There could be a religious leader in this society, but that person would have to be a public official like others, and the position could not exempt its holder from public scrutiny. Democracy is not particular to Western societies, nor should it be seen as a foreign imposition. A government which reduces its religion to an ideology might justify non-democratic rule, but it would then have to enforce its particular political version of Islam.

“For a government to be both religious and democratic, according to Soroush, it must protect the sanctity of religion and the rights of human beings. Yet in defending the sanctity of religion the government must not value a particular conception of religion over human rights (Esposito & Voll (eds.) 2001: 159-161).”

This sovereignty is derived not from religious ideology but from the fact that it represents the will of its constituent people, and its laws are made and remade in accord with the changing understanding of religion by use of both religious and non-religious tools.

“Democracy is, in effect, a method for ‘rationalizing’ politics.” Soroush does not fear that a democratic Islamic society would undermine religion – a government enforcing a strict understanding of *fiqh* is as powerless to make people religious as any other – but that the society should lose their interest in religion. Rather than trying to find the right form of government, Soroush focuses his attention on the importance of maintaining religious knowledge. For him, it is very important that students of Islam not be constrained in their study by state ideology. They should be free to pursue this knowledge by consulting natural science and modern philosophy – theology being but one branch among many. He has criticized clerical establishments and seminaries – most notably in his home country of Iran – by denying that religious knowledge is “divine by virtue of its subject matter.” The ulama should not have the status as ‘guardians of the truth’ – the worth of those who rule should be valued by their ability to govern, not because they have any special knowledge of Islam. When, as in Iran, the educational seminaries are so closely tied to the governing structure, their independence and freedom to pursue religious knowledge is diminished – they become “ideologue and apologist for power (Esposito & Voll (eds.) 2001: 162-167).”

Soroush, having placed emphasis on the necessity for students of Islam to embrace modern science, calls for a greater dialogue between ‘the West’ and the Islamic world. Scientific advances should not be contained within cultural spheres. After the 1979 revolution in Iran, many had argued that the higher educational system in Iran should be “purged of these [Western] influences and that the subject matter and methodology should be Islamicized.” This is impossible, says Soroush, for the study of Islam is something different from for example Western social sciences – these cannot simply replace each other. To borrow or cooperate with the West does not have to mean submission to its culture. Furthermore, the idea that the Western world constitutes a single culture, which is at the bottom of both the argument of Western imposition and the argument that Islam should be cleansed of its influence, is plainly wrong. It is true that Western cultural, political and economic ways of life have encroached on ‘Islamic territory,’ but this is just the way it goes – “just as Western culture has fully arrived and proven its hegemony, so too has Iranian culture fully developed

and proven its weakness.” Modernity should not be seen as synonymous with the West, and it should not be seen as a unitary phenomenon. Soroush acknowledges that it is hard to maintain a cultural identity in the face of the necessary changes brought about in developing nations, but says too that it is precisely for this reason that the people in them should “avoid general, nondescriptive, dogmatic labels and [interact] rationally, selectively, and consciously with foreign cultures and concepts (Esposito & Voll (eds.) 2001: 171-173).”

## Conclusion

“Let your spirit and your virtue be devoted to the sense of the earth, my brethren: let the value of everything be determined anew by you! Therefore shall ye be fighters! Therefore shall ye be creators! (Nietzsche 1891: 40)”

Friedrich Wilhelm Nietzsche – Thus Spake Zarathustra

Wael B. Hallaq provokes us to look closely at the situation we find ourselves in. That situation, which we euphemistically call ‘the modern condition,’ is one in which some feel fundamentally disconnected from the traditions, cultures and life-views of ages past. It can seem as though it has become harder to *live morally* – we cannot any longer see the world as necessarily corresponding to our habitual mode of thinking. The words we use to describe our condition – *differentiated, globalized, secularized, mechanized, disenchanted* – do not seem to quite get at how fragmented and confusing it has become to know one’s way in the world of cell-phones and air-travel. On one level, it is no wonder that Hallaq argues for the rejection of the entire project, no matter how impossible such a rejection is. Part of the reason why we have implicitly compared Taylor’s investigation of the modern moral predicament with that of Hallaq has been to show both that the fact/value-dichotomy is not so clear cut, and cannot justifiably be seen as a once-and-for-all kind of ethical shift. Hallaq argues as if a conscious choice was made to displace morality as the central domain of human living – and that the resulting world-view was then forced upon the rest of the world. He presents the Shari’a as a continual attempt by Muslims to discover the moral law of God – in short; as organic process. In stark contrast, the ethical outlook of Western modernity is not seen by him as an organic unfolding; not as human striving for knowledge or *the good*; nor can it ever achieve the kind of exalted status of tradition as Islam and the Shari’a – it is synthetic, unnatural, corrupted. In this way, if he intends for his critique to be taken at face-value, Hallaq must be seen as almost radically conservative – a reactionary.

But his book can also be seen as an exercise in *ijtihad* – critical reasoning in moral discussion by use of revealed sources. The title of his book indicates that the state which attempts to be both nation and *umma* cannot exist – but it can also point rather to a *state of affairs* – one in which members of the moral community of Islam must continually live in a contradictory world. It is a state in which anyone can believe in a divine, ultimate and sovereign arbiter of moral matters, but must all accept that not everyone believes this and so cannot claim ultimate and absolute moral knowledge. This state, however, only becomes impossible if one believes, as Taylor says, that modernity means that we do not think morally; if in other words modernity cannot be seen as a tradition with attendant moral beliefs.

The world we now find ourselves in is also one where more people can read and be educated than ever; where crises that arise on one side of the world result in calls for humanitarian aid on the other; where for the first time in history an attempt is made at trying to find a way for all humans to be treated equally – we are all connected and must answer similar questions. We must imagine the iron cage spacious.

No man is an *Iland*, intire of it selfe; every man is a peece of the *Continent*; a part of the *maine*; if a *Clod* bee washed away by the *Sea*, *Europe* is the lesse, as well as if a *Promontorie* were, as well as if a *Mannor* of thy *friends* or of *thine owne* were; any man's *death* diminishes *me*, because I am involved in *Mankinde*; And therefore never send to know for whom the *bell* tolls; It tolls for *thee*.

John Donne



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