

# **Der Staat im Islam**

## **Hintergrundinformation**

*Robert Hunt*

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### ***I. Introduction***

The state as experienced by contemporary persons is in many respects a modern phenomena; the evolution of which is closely related to the history of Europe and the development of European nation-states. Even today the concept of "state" is in the midst of evolution. Western European nations are in the midst of forming a trans-national entity which takes on many of the roles associated with the state. In Eastern Europe nations have only recently freed from hegemonic states and are now seeking to define what it means to be a nation state. Against this fissiparous movement the old hegemonies struggle to maintain states which are larger than the nations which have traditionally dominated them, whether in Russia, China, or Indonesia. These contemporary struggles of human beings to organize themselves politically through the conflicting demands of various social solidarities (ethnic, political, economic) and personal desires should make us sympathetic with that portion of humankind which seeks to find through Islam the guiding principles of human political organization. Muslims, no less than other modern political theorists, are concerned both for the welfare of the societies from which they come, and to discover the basic principles which will lead to a society which fulfills the deepest needs and aspirations of all humans. Where Muslims differ from many modern theorists is that they believe that the truths which must guide political institutions are found in God's revelation to and through Muhammed. Social science has an honored place in Islamic scholarship, but only as a compliment to, and not a replacement for, the study of Divine Law. For this reason an understanding of modern concepts of an Islamic state must begin with the classical tradition of Islamic reflection on governance and the state.

### ***II. The Concept of "State" in Islam***

#### **Islamic Theories about Governance**

In Islam humankind constitutes one supra-national community, bound by one law and governed by one ruler. This universal divine nomocracy cannot recognize the existence of a second universal state. It is, by definition, exclusive. Islamic understandings of both the ideal state and international relations were based on this understanding. Within the human family Islam distinguishes between the Ummah, or community of Muslims, those who follow the law of God as revealed through another of God's prophets, and those who live in ignorance of or rebellion against God's law. Politically traditional Islamic teaching distinguished between three entities, the dar al-Islam, or the part of the world governed in accordance with Islam, the dar al-Harb, or the part of the world not governed by Islam and therefore in opposition to it, and the Dar al-'Ahd, or lands which are not governed by Islam, but which recognize through treaty the sovereignty of an Islamic regime. In Islam the divine law (Sharia), revealed in the Quran and Hadith and interpreted by the jurists, is the defining principle of Islamic governance.

Thus in Islamic legal theory there is a correspondence between the successor to Muhammed (Khalif) who governs according to the Sharia, the Ummah which by definition submits to the Sharia, and the dar al-Islam.

The earliest model of Islamic governance Muhammed, and succeeding Muhammed the four Caliphs who were (in theory) select properly and given absolute allegiance by the Muslim community. As successors to Muhammed these rulers help political, military, and religious leadership of the community. This established a model of Islamic society under a single ruler who would be in every respect other than prophet-hood a true successor to Muhammed. Much of Islamic law of governance is finally a description of the ideal Caliph.

Islamic theories of governance and state were developed in circumstances in which the modern concept of state (as a geopolitical entity with a fixed citizenry) existed neither politically nor theologically. The state was primarily viewed in terms of the role of the Caliph and his relation to the ummah, the implementation of the sharia at every level of society, and the relationship of the ummah to non-ummah.

### **III. The Leader (Caliph) of the Muslim Community (dar al-Islam)**

Sovereignty in Islamic legal reasoning always belongs to God, and is expressed through the revelation whose most complete and final form is the Quran. Muhammed and his successors are regarded as "vice-regents" (Khalifa) who both represented and were subject to this revelation. Reasoning from the Quran and Hadith, the experience of the first Muslim community, jurists identified several essential characteristics of a legitimate leader of the Muslim community. He had to be a adult male from the same tribe as Muhammed. He had to be free of mental or physical defects, skilled in law and administration, and energetic in the defense and expansion of Islam. The Caliph was the chief military commander of the Muslim armies, was responsible for ordering Muslim society according to the sharia, was responsible for implementing justice under the sharia, and was the leader of the people in prayer, and had the final say over matters of theological and legal interpretation of the Quran. All these were the roles which Muhammed had possessed and passed on to his successors. Of course the actual power of the Caliphs in these different spheres varied throughout Muslim history. Despite the fact that the Caliphate became a hereditary office during the Umayyad dynasty, the jurists insisted that the model established in the period immediately after Muhammed's death was normative. The Caliph had to be chosen by shura (consultation) of the representatives of the community, and accepted by the community (or its representatives) through a ba'ya (oath of allegiance). Once chosen the Caliph was owed absolute obedience by the Muslim community. He was responsible only to God and the sharia which embodied God's will for humankind. Rebellion against his authority was accepted by only a minority of jurists, and only in the most extreme of circumstances. Eventually, in circumstances where anarchy threatened, a school of legal reasoning grew up which recognized the legitimate Caliph as any ruler who possessed the military strength to rule, regardless of how he took power. All jurists agreed that even a wicked Caliph was better than no Caliph. There was no body of law to cover the contingency of a large number of equally powerful political and military rulers in the Islamic world, and the idea of a Caliph as the single comprehensive ruler of all Muslims has remained important into the present era.

### **IV. The Law of the State**

The Muslim community inherited from the Arabs, and through conquest, numerous social and political institutions. Others were formed by Muslim leaders as necessary. All, however, were in theory unified in their theoretical consistency with sharia. The system of government which emerged was called by the Siyasa Sharia, or government according to sharia. The actual workings of such governments varied widely down through history. Crucial for the structure of Islamic governance which developed during and after the Abbasid period was the idea that the interpretation and application of sharia was primarily the responsibility of the qadi courts whose sole allegiance was to God's law. These courts never in fact attained the status or independence of a supreme judicial authority. They were dependent on the Caliph and his officials to enforce their judgements, and were thus often thwarted when dealing with persons of high status or political power. Moreover their rules of evidence and their self-imposed limits of competence left many important decisions to the Caliph and his agents. And finally, of course, the qadis served at the pleasure of the Caliph, and disputes involving them were decided by the Caliph himself. Thus supreme judicial authority belonged ultimately to the sovereign. In modern Islamic theory one of the most important issues is defining the relationship between executive power and judicial power.

A second contemporary problem stems from the fact that sharia law is in principle revealed and interpreted, not formulated by a legislative body. Moreover, as Coulson notes (*A History of Islamic Law*, p. 124), sharia law, focused as it was on the human relationship with the divine, did not touch on many areas of need in governing a state. Criminal law as a set of defined offenses against the public order, and the punishments for them did not exist. Homicide, for example, was regarded as a private matter, with both prosecution and punishment the responsibility of the victim's family, not the state. Similarly the sharia did not treat the problems of fiscal responsibility for the state; regulating only the giving of alms, the payment of compensatory taxes by those who didn't participate in war, and the division of booty in war. Given these lacunae classical legal theory allowed the right to make necessary laws to the Caliph; so long as it was consistent with the existing provisions of the sharia. The Caliph would in turn seek advice from experts in sharia, just as in theory he would subject himself to the judgements of the qadi courts. In reality Caliphs were often driven almost entirely by pragmatic concerns, and legal experts who thwarted the Caliph did so at their peril. Determining how legislative functions should be carried out in accordance with sharia remains one of the great challenges of modern Islamic political theory.

### **V. Siyar: Rules of War, Treaties, and International Relations**

The branch of Islamic law dealing with relations between non-Muslims and Muslim is siyar. Its roots are found in the treaties which Muhammed made with various non-Muslim groups before the Muslim community was

strong enough to act with complete independence. It was embellished in theory and practice as the expanding Islamic empire came to terms with governing large groups of non-Muslims, as well as warring against non-Muslim states. However, because in Islamic legal theory there is both a single human community uniformly obliged to live under God's law, and a single legitimate human government, *siyar* remained a set of rules for relations between persons of different religions, rather than a full body of law regulating international relations among states with different forms of government.

## **A. Islamic lands in relation to their non-Islamic neighbors**

Thinking about international relations was formulated on the basis of both Quran and Hadith, which in turn reflect the situation of Muhammed as head of a religious community at first under threat and then expanding its influence militarily. *Siyar* thus had two distinct characteristics.

1. It often reflected the immediate needs of the Muslims at the time it was formulated, and thus reflects the Muslim/non-Muslim animosities of particular periods rather than actual policies throughout Muslim history.
2. The Quran and Hadith reflected the varying fortunes of Muhammed and his followers historically, and thus gave varying pictures of Muslim relations with non-Muslims. *Siyar* varied greatly in its conclusions because more than in any other branch of law its interpreters had to choose which portions of the Quran and Hadith were relevant to the situation or reflected the Muslim ideal for that situation. Abrogation is thus a key issue in the formulation of *siyar*. (See the Verse of the Sword, 9:1-7 as an example of a verse which some regard as abrogated, but others regard as still in force.) The terminology of Islamic international relations reflects the fact that Islamic society was not seen as a state, but a manifestation of God's universal will. The jurists could be highly realistic in guiding a state of affairs where in fact equal states existed, some under Muslim law and some under non-Muslim law. Still, the paramount demand of Islam upon Muslims was that they implement God's universal reign. Key terms reflect this orientation.

### **1. Jihad**

All jurists agree that jihad, or struggle for the faith, is obligatory on all Muslims in the spiritual sense, and on all men in the military sense. It is a collective obligation and will end only when Islam is established. However, while some (ash-Shafi) insist that it is a permanent obligation so long as there are idolaters, others regard it as only a defensive requirement when the Dar al-Islam is threatened. (al-Thawri following Abu-Hanifa) Jihad was carried out in different realms. Among Muslims jihad could be seen as an internal struggle to actualize their faith. Within the Muslim community jihad could be carried out against apostates, dissenters, secessionists, and to safeguard the frontiers of the Muslim territory. As important in both theory and history was jihad against non-believers, particularly polytheists. While modern Muslim scholars often emphasize the priority of personal jihad and the struggle for purity within the Muslim community, its role as a basis for wars of conquest is firmly established in classical Islamic legal theory.

### **2. Dar al-Islam**

Territories in which Muslims are free and secure. Among jurists this was defined in different ways. For some it meant territories in which Islamic law is paramount (under the Caliph or his representative with an appointed qadi) while for others it was anyplace where Muslims could live in peace and follow most of the sharia, even if they are a non-ruling minority. The legal divisions of the Dar al-Islam in classical Islamic law don't relate to politics, but to sacredness of the land and its relation to the state's demands for taxes.

The Dar al-Islam consists of: 1. The Haram (Mekka and suburbs, sometimes even Medina. 2. The Hijaz (non-Muslims can only pass through these territories). 3. Everywhere else, where both Muslims and non-Muslims can reside. These last territories are defined (primarily for tax purposes) as: a. *ushr* (territories whose owners become Muslims and pay a tithe) b. occupied territory divided among Muslims to become *ushr*. 4. Occupied territory left to non-Muslims who pay *kharaj*. 5. Waste land revived by Muslims to become *ushr*.

### **3. Dar al-'Ahd (Dar al-Sulh)**

These are lands which have local autonomy under a treaty which gives sovereignty to the Muslim state through payment of tribute (*kharaj*). This amount coincides with the *jizaya* of the *dhimma* (see below).

#### **a) The understanding of a treaty**

A treaty is an "agreement on a certain act which has the object of creating legal consequences. It is broader than the western idea of a contract" (Khadduri) It is created through one party making a proposal and the other accepting it. This alone makes it binding. There is no need for mutuality or equality of partners. In other words a valid treaty can be forced upon one party.

#### **b) Validity of a treaty**

All jurists say the Muslims must honor their treaties, even if the treaty isn't in accord with Islamic law. However, if the other party violates the treaty then it is void. The duration of treaties depends on the parties. Jurists usually limited treaties with Dar al-Harb to 10 years, and disagreed about whether they were renewable if peace was in the Muslim interest. Treaties with the dhimma were permanent and could not be revoked by either party.

### **4. Dar al-Harb**

The Dar al-Harb was that part of the world not under Muslim rule. Relations with the Dar al-Harb could be divided into rules governing:

#### **a) War**

These included rules for initiating war such as the formal declaration and invitation to negotiation and embrace of Islam; rules of land warfare including prohibited acts, treatment of enemies, treatment of spies, and treatment of the dead; rules of sea warfare which defined who can be attacked and how spoils could be gathered; extensive rules governing division of the spoils of war; the end of war. Wars could end permanently only with Muslim victory, but disengagement was allowed in the face of overwhelming forces or with a temporary treaty.

#### **b) Muslims living or traveling in Dar al-Harb**

The Muslim who was a legal visitor or resident had to respect the rights of non-Muslims as prescribed by Muslim law, could not undermine the authority of the territorial government unless under the orders of the Muslim head of government in his own land, had to honor all contracts, regardless of final residence. But in cases of conflict between laws he or she must follow Muslim law and cannot work against the interests of Islam. A Muslim traveling without legal protection from the non-Muslim government has no obligations except to Muslim law, but may fail to follow Muslim law to avoid punishment. Prisoners of war also had their primary obligation only to Muslim law. If they were released on the promise of a ransom payment they were obliged to see that it was paid, or to return to captivity.

### **B. Relations between Muslims and non-Muslims**

In Islamic legal thinking relationships between persons internationally revolves around religious status, not ethnicity, place of birth, role in society, or political activities and involvement. Persons are categorized as: Muslims, heretics, apostates, Ahl-Al-Kitab (people of the book), and Mushrikun (idolaters). There were extensive differences of opinion among jurists regarding which groups belonged in the category of "people of the book" and thus could live in peace within the Dar al-Islam. All agreed on Christians and Jews. Some included almost all other organized religions except Arab idolaters. Others excluded all others except Magians and Zoroastrians, which were religions which Muhammed seemed to have recognized in various Hadith. One issue considered by the jurists was whether a professed Jew or Christian should be regarded as a true Jew or Christian. An extreme view held that contemporary Christians were actually polytheists who had distorted the original prophetic message received by their ancestors.

More normally the Christian and Jewish communities already in existence when Islam arrived in a territory were accepted as genuine, but new non-Muslim religious communities were not. Treatment of non-Muslims was regulated in various ways. In classical juristic thinking polytheists had no choice but to convert to Islam if they were to live in the dar al-Islam, while "people of the book" were allowed their own religion under certain restrictions. Thus the primary discussion about the treatment of non-Muslims revolved around determining the category to which they belonged... "People of the book" who lived in Muslim territories lived under treaty terms supposedly defined in the time of Umar. Known as dhimma, they paid a tax (jizyah), and lived under the law of their own community when it didn't contradict Muslim law or offend or damage Muslim interests. Juristic opinion varied as to whether the jizyah was a tax for services rendered by the state in lieu of serving

in the military, or a form of humiliation. This hinged on the interpretation of Quran 9:29 in relation to other verses. Juristic opinion also varied on what restrictions the dhimmi should live under. The harshest views required the dhimma to live in closed communities, to be publicly debased, and to avoid contact with Muslims. Others allowed virtual equality with Muslims in all matters. In actual practice what was most important in relations with non-Muslims were the status of relations with the dar al-Harb, reactions against non-Muslim domination of commerce or the bureaucracy, and definitions of what constituted an attack on Muslim interests. In looking at Muslim law in relation to non-Muslims it is crucial to distinguish between: 1. juristic accounts of historical events, which are often strongly colored by their ideological slant 2. actual events 3. Non-Muslim accounts which emphasized grievances 4. idealized systems of relations which were never in fact implemented 5. modern accounts of past events which (whether from a Muslim or a Christian point of view) are distorted to serve the interests of gaining adherents to a point of view or course of action. In any case the issue of political equality never arose in the absolutist states of classical Islam. Neither Muslims nor non-Muslims had political rights.

## **VI. Conclusion**

This brief review of classical Islamic law regarding the state and international relations will have suggested a number of points at which Islamic legal theory is in tension with the realities of modern nation-states. Since the 18th century when colonialism and its aftermath imposed modern political organization on the Islamic world there have been numerous attempts, both theoretical and practical, to implement Islamic governance within a modern framework. The unifying characteristic of these theories is that they seek to preserve the values implicit in classical teaching, in particular its insistence on sharia as the basis of Islamic governance, in modern theories of an Islamic state.

Beyond this theories of an Islamic state can be roughly grouped into three categories. The first would be that of those who wish to establish (or re-establish) an idealized version of the classical system. For theorists in this group an authentic Islamic state consists of a concrete set of social and political structures which were realized and defined at some point in the past. There is disagreement over the point in the past at which the Islam ideal was most fully realized. A second broad approach is to identify the principles of Islamic governance and social relations found in classical thought and use them to create models for modern social institutions. Thus, for example, the concepts of consultation and allegiance can be used to develop democratic institutions for selecting a head of state answerable to God and God's revelation. Or the theoretical relation of the Caliph to his Islamic advisors and the qadi courts can be used to construct legislative and judicial institutions which compliment the executive power of the head of state and remain firmly bound to Islamic principles. Finally there is an approach which sees in the sharia not so much a set of structures, or even principles for governing an Islamic state, as a way of reasoning from Revelation to its concrete implementation in any given situation. Islamization in this sense means the creation of an Islamic mind which is formed out of God's revelation and apprehends and shapes the world in accordance with it. Muslim theorists using these approaches have, in the 20th century, developed many different models of a modern Islamic state. Most agree, however, that no existing state conforms to these models. The very variety of theories and models of Islamic state has made it difficult to inspire a consensus among Muslims toward concrete changes in existing social structures. Where Islamic political voices are free to act and speak, they generally present a divided, rather than united, voice. Moreover any change threatens established political and social systems, and thus faces opposition from Muslims whose interests are themselves entrenched in them. The concept of an Islamic state will no doubt continue to inspire Muslims to both intellectual endeavor and political action. Yet the actual formation of such states will continue to be as constrained by pragmatic considerations as were the great Islamic states of the past.

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