

# The Modern state in the Muslim world

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## Abstract:

The goal of man has always been to enhance his social, economic, and political circumstances. He was able to discover better means of living in terms of food, shelter, and education through his tireless efforts. In diverse places of the world, the groundwork for a new set of culture and civilisation was gradually laid. Some of the greatest men who transformed social conventions and developed significant ethical, political, and philosophical ideals of life came from Babylonia, Assyria, Greece, India, and China. Plato and Aristotle stood out among them. Plato's Republic and Aristotle's Politics hold sway among the political treatises. The Greek intellectuals left behind their heritage of political organisation in a scientific form and imagined citizen rights as well as the moral and just ideals with felicity of expression. Among contemporary political theorists, Rousseau stands out for having beautifully articulated his thesis of the "social contract." The assumptions that are made when Islamic law and international human rights law are mentioned in the same sentence or title can differ. Some people can interpret that juxtaposition as an attempt to oppose current Islamic law norms in the human rights agendas' interest. Others might detect an implied message in the juxtaposition aim to maintain Muslim colonial subjugation to the global North portions of the South. Others, however, might perceive a qualification of any assertion of truth or desire for a universally understood language.

**Keywords:** Modern state, Islamic law, Islamic culture, government, Islamic state.

## Introduction:

Since the very beginning of human history, there has been the state as a social entity with a political structure. Pohtcia, which refers to the state and citizenship, Polites, which means citizen, and Polis, which refers to the city, which regulates morals, safety, cleanliness, public order, and law enforcement. It was known by the Roman names Civitas and Status rei. Publicao. The word "status" from Latin became "State" in English, "Estât" in French, and Stato in Italian. <sup>1</sup> However it was referred to, the idea of "sovereignty" in mediaeval times was always associated with a state. ght. In fact, the Hindus dubbed it Danda, and even in the first century AD, Hobbes imagined it to be a Leviathan. <sup>(1)</sup>

However, the idea began to change in the West over the 19th and 20th centuries. Rousseau's "social compact" idea, the sovereignty of the people, government as a trust, and government as an organisation for the good of the people started to acquire traction as political intellectuals in the West started to examine politics more closely.

These political intellectuals have not acknowledged Islam's enormous debt to the West. As the Quran was translated into Latin as early as 1143 and afterwards into other languages

(Italian, German, Dutch, English, and French), they appear to be greatly affected by its teachings. The Quran was originally translated into French by Adu Ryer in 1647. 2

The Quran, not Rousseau, Bodin, Hobbes, Kant, or Heg, was the first text to list the characteristics of sovereign power. The Prophet of Arabia established a state on the firm pillars of unity by agreement, equality through law, and freedom through faith in the idea of tauhid centuries ago, with divine guidance (monotheism) <sup>(2)</sup>

When the Prophet Mohammad (S.A.W.) relocated to Madina in 622 A.D., he founded the first Islamic state. The Prophet was acknowledged by the inhabitants of Madina as their spiritual and political leader.

The Prophet "played the functions of prophet, law giver, chief judge, commander of the troops, and civil head of State," <sup>(3)</sup>

according to Professor Hitti, reflecting on the Prophet's involvement in politics and administration. In the sense that the word is used in the modern world, there was no constitution. The Quran, which lays down fundamental truth and justice principles for the guiding of humans in all facets of human endeavor and throughout time, served as the people's guide.

Several fundamental ideas include the following.

1-Submission to Allah alone, which is practically only possible through the supremacy of the shariah, which entails making the shariah the basis of state law and the constitution.

2-the honour due to man as Allah's Khalifa (earthly viceroy) <sup>(4)</sup>

3-the equality of all people, with no room for chauvinism, racism, or other forms of tribalism.

4- strict adherence to the Islamic code of human rights, which are inalienable since they derive from a divine source and cannot be infringed in any form by a ruler, government, or authority, and which no one has the right to violate

5-Justice, or adi, upholds man's duties and rights, it encourages compassion as the foundation of my relationships when tempered with mercy. <sup>(5)</sup>

6-As a form of government, shura (consultation) is used to make decisions, formulate policies, and exercise authority.

7-The accomplishment of ukhuwat (the universal brotherhood of man), which is a step towards the unity of the Muslim Ummah, based on shared belief and creed.

Al-Brotherhood). Men's

"The commandments of thy Lord are fulfilled in truth and justice," the Quran expressly states. Nothing has the power to alter His justice. Because He is the only one who hears and knows everything. <sup>(6)</sup>

### **Sovereignty:**

Islam's political theory utterly rejects the idea of human sovereignty. As the Quran states, only God has the authority to command. Say, "O Allah, I am the possessor of sovereignty. You grant sovereignty to those you choose and take it away from those you choose. When you want to, you can elevate or degrade someone. The good is in Your hands. I swear, You are capable of anything. <sup>(7)</sup>

"The sovereignty of the heavens, the earth, and everything in them belongs to Allah"

"Allah makes what He pleases. if He deems it necessary. He just said the words "Be," and it was Lo! Allah is your Lord; He established the earth and the sky in six days before ascending

to the throne. He quickly followed the night with the day that now covers it, and He has subordinated the sun, moon, and stars at His command"

"He truly is the one who commands all of creation. Allah, the Creator of the worlds, be praised. He possesses the heavenly and terrestrial sovereignties. And after that, He will bring you back." <sup>(8)</sup>

Islam, which does not grant humans in the modern meaning of the word all power, is indisputable as standing for Allah's supremacy. The people or the society only have the authority given to them; they are powerless to alter the divine rule. However, it is logical to believe that the Lawgiver never meant for the Shariah to in-depth address all imaginable living necessities. He only meant to outline, in a sense, the legal parameters within which the community should grow, leaving the large number of "possible" legal circumstances to be chosen on an individual basis in accordance with the demands of the time and shifting social conditions. The Quran rightly instructs: "We have appointed a Divine Law and a "open-road" for each" (Minhaj ). In order to accommodate our new requirements, The Law-Giver has given us a "open road" for temporal legislation. <sup>(9)</sup>

### **Government:**

Let's now examine the concept of government in Islam. The establishment of "Din," or the Islamic way of life, which encompasses all aspect of man's existence, is the end goal of the government in Islam. The state is never an end in and of itself; it is simply a means to an end. The government exists for the benefit of all people, not to elevate any one race, nation, or segment of mankind at the expense of any other class, segment, or individual. This ideal had been demonstrated to be attainable by the Prophet Mohammad (S.A.W.) and the first four caliphs. <sup>(10)</sup>

The Quran continually warns against the negative effects of injustice and corruption, and it provides instances of how these vices led to the fall of powerful empires and rich societies. Because Allah is the Hearer and the Knower, it is written in the Book of Allah that "Allah never changes the mercy He has bestowed upon any people until they first modify that which is in their hearts." Every Muslim has a duty to encourage what is right and discourage what is evil (believer). <sup>(11)</sup>

This is something that has been emphasized time and time again: "Keep to forgiving (Mohammad), and enjoin Kindness, and turn away from the ignore "And the believers' men and women protect one another as friends; they uphold worship; they give to the needy; and they obey Allah and His messenger. They also encourage correct behavior and forbid evil behavior. These will receive mercy from Allah: Lo! Allah is Strong and Wise" <sup>(12)</sup>

The individual and collective righteousness of man is the basic goal of Islamic law. The Society must work together to uphold the envisioned Islamic pattern. The state endowed with the authority to (Amr) command and (Nahy) forbid may abdicate this duty. A state that is run in the name of God, as every state that calls itself Islamic should, is obligated to protect the rights of everyone, including the wealthy and the poor, minorities, and the majority community. The only way to achieve this is to encourage moral behavior while combating injustice and corruption. During the time of the Prophet and the first four caliphs, this served as the administration's guiding concept. <sup>(13)</sup>

It must be acknowledged that democracy and the parliamentary form of governance were

born after the Industrial Revolution.

The basis for a government run by the people and for the people was built when the social compact ideas took the place of a monarchy's divine prerogative. But during all these ages, Western civilization continued to be a stronghold for the separatist tendency of the church and the state. Islam views God and the cosmos, spirit and matter, and the church and the state as complements to one another. In every form of administration, according to Allama Iqbal, ethics and politics must coexist in perfect harmony. Without a question, the state is a human organization designed to serve humankind. As a result, morality and state go hand in hand.

(14)

### **The State Head:**

The nation's citizens or their representatives must choose the leader of the Islamic state. He must be in good physical and mental health to lead the nation. In accordance with what the Quran says: "Lo! the noblest of you, in the sight of Allah, is the best in conduct," he must be a man of character, integrity, understanding, and insight. 15 He must be a real Muslim or believer who is completely conversant with the nusus<sup>16</sup> of the Quran and sunnah and generally aware of the sociological necessities of the community because he blends the temporal and spiritual authority in himself. (15)

First Caliph Abu Bakr had provided the greatest explanation of the responsibilities and powers of the head of the Islamic polity. "I have been given control over you, yet I am not the best of you, he said, addressing the crowd. Help me if I'm doing well, and fix me if I'm not. Truth is loyalty, whereas lie is betrayal. If God wills, I will regard the weak among you as strong until I gain his right, and I will regard the powerful among you as weak until I take the right from him. God will strike a people with shame if they choose not to battle for him. grace. God sends disaster upon a people even though wickedness is not widely prevalent among them. If I ignore God and His Prophet, you owe me no obedience, but as long as I do, you must obey me. Rise and offer prayers for mercy from God" (16)

Subordinating the rank of Amirul Momineen to shar'i law was another contribution of enormous significance made by Abu Bakr. The Amir was expected to be treated on par with other members of society. That lofty status came without any privileges. as an example. Amir was merely the public treasury's keeper, not its master. He was given a set salary above which he was not permitted to withdraw any money for personal use. He served the ummah in this way. (17)

As stated by Mohammad Asad, "To make the law of Islam the law of the land in order that equity may prevail; to arrange social and economic relations in such a manner that each individual shall live in freedom and dignity, and shall find as few obstacles and as much encouragement in the development of his personality as possible; to enable all muslim men and women to realise the ethical goals of Islam not only in the beliefs but also in the practice. These principles and these alone are where the idea of an Islamic state finds its meaning and legitimacy. They include the defence of the nation against external and internal aggression as well as the spread of Islamic teachings throughout the world. If it recognises them, the head of state can be correctly referred to as "God's vicegerent on earth" at least in that portion of the earth that is within his actual sphere of influence" (18)

**Consultative Assembly:**

As stated in the Quran: "And confer with them regarding the administration of affairs," the government is merely a "trust" that must be operated with cooperation. 1» Hazrat Abu Bakr invented the democratic system of seeking advice (shura) and making choices based on the votes of the majority. First and foremost, the Quran was consulted for clarity and direction on all current issues. <sup>(19)</sup>

Reference was then made to what the Prophet had said or done in the event that there was not an explicit ruling on that topic there. Finally, recourse was taken after that source's lack of a clear decision. All the illustrious associates were invited to the council (shura). After extensive discussion, the consensus course of action (Ijma) on the issue was ultimately chosen.

It is essential for the MajliseShura (consultative assembly) to develop pertinent legislation through Ijtehad (exercise of independent reasoning) of the elected body in accordance with the Quranic principles and sunnah to meet the expanding needs of the time because the shariah has not anticipated details in regard to various problems of administration, international trade, banking, etc. <sup>(20)</sup>

To address the escalating requirements of the moment, principles and sunnah.

They must be founded on consensus and in the best interests of the entire community (Ijma). The community representative who has been elected should have these powers. The Assembly's members should be chosen using the broadest possible suffrage. All business dealings must adhere to Quranic guidelines. The Majlis must consist of men of understanding (ulul a/bab), who are thoroughly conversant in the divine law and sunnah as well as the present socio-economic and political issues facing the ummah and the wider globe. <sup>(21)</sup>

**Salient Features of the State:**

**Tolerance:** After successfully forming a social government out of the Muslims, the Prophet of Islam turned his attention to the pressing matter of protecting the newly established community from the Quraish, who had not given up on the objective of eliminating the Muslims. As a result, it became crucial to strengthen the community's status within Madina, which at the time was also home to a sizable Jewish population. <sup>(22)</sup>

In exchange for their acknowledgement of the Prophet Muhammad (S.A.W.) as the supreme executive, military, and judicial power, treaties of mutual security and defence were signed, promising them equal civil rights, religious freedom, and mutual protection against external assault. As a result, the compact between the city-state of Madina and the Jews, recognised as the first charter of tolerance ever made in human history, gave rise to the city-existence state's as a political entity, The following are some of its clauses: <sup>(23)</sup>

1-Whoever among the Jews follows us will receive support and assistance; they won't suffer harm, and no opponent will be given assistance against them.

2-The Jews who affix themselves to our commonwealth shall be safeguarded from all vexations and insults, and they shall have an equal right to our help and good offices with our people.

3-Together with the Muslims, the Jews will contribute to and protect Madina from a common foe.

4-Jews of all branches, as well as everyone else residing in Madina, should constitute one composite nation, or one people, with Muslims. <sup>(24)</sup>

5-Jews will freely practise their religion, just as Muslims do. Thus, for the first time in human history, Muslims, non-believers, and Jews were united into a commonwealth, and the first charter establishing worldwide freedom of conscience, belief, and religious worship was published. Additionally, a free church in a free state was given the right to exist on its own. And this was accomplished by a Prophet who, along with his followers, had endured thirteen hard years of persecution because of their religious beliefs. The Prophet also provided the following assurance to the Najrani Christians. <sup>(25)</sup>

There shall be no interference with the practise of their faith or their observances; there shall be no modification of their rights or privileges. The security of God and the pledge of His Prophet are extended to the Christians of Najran and the neighbouring territories for their lives, their religion, and their property - to the present as well as the absent and other besides, They shall not oppress or be oppressed; they shall not practise the right of blood-vengeance as in the Days of Ignorance; no tithes shall be levied from them; they shall not be required to provide provisions for troops. No bishop shall be removed from his bishopric; no monk from his monastery; no priest from his priesthood; and no image or cross shall be destroyed.

The Prophet's successors continued this commitment and adhered to it, particularly Caliph Omar, whose assurance to the Christians of Aelia has become a proverb. In 15 A.H., he granted the Charter of Jerusalem, which guaranteed the protection of their lives, property, churches, and crosses as well as the guarantee that their churches wouldn't be destroyed or otherwise harmed. He declared that there wouldn't be any religious coercion and that Christians would have complete freedom of conscience. These charters explicitly reflect the Quran's tolerance-promoting principles: <sup>(26)</sup>

1-Every faith serves Allah. It is not to be accepted through coercion or force.

2-If discrimination based on a person's religion or belief is practised, it must be challenged.

3-The wisest course of action is to follow the maxim "If one goes one way, the other should take his own way." "To your religion, and to mine, I submit." <sup>(27)</sup>

4-Men from various religious backgrounds might also endeavour to come to an equal solution so that harmony can continue.

5-The mosques, synagogues, and churches are not to be destroyed since they are revered locations where Allah's name is frequently honoured.

It is now clear that Islam does not distinguish between church and state; rather, life is portrayed as a harmonious unity. Islam does not tolerate racism, therefore. Therefore, it is essential for the government to uphold virtue and forbid evil. Liberty. David de Santillana claims that the Quranic revelation "styles itself a law of liberty." We can agree with Muslim jurists when they assert that liberty is the fundamental principle of law by taking into account the spirit of Islamic law, which tends to provide human conduct the broadest possible boundaries. But the freedom (Ibahah) cannot be unbounded. If God had permitted every person's cravings, as well as every person's injustice and violence, to run wild, neither human society nor the individual would have been able to survive. <sup>(28)</sup>

God has therefore established a limit on human activity, and this limit (hadd) is precisely what we refer to as law (hukm), which restricts human action within certain bounds, forbidding some acts and enjoining others, and thereby restrains men's natural freedom to

make it as advantageous to the individual or to society as possible. He continues, "Starting with liberty as the essential foundation of law." Islamic jurists have come at the following two conclusions: <sup>(29)</sup>

1-Since an endless amount of freedom would lead to destruction, liberty has inherent restrictions, and these limits or boundaries form the basis of the law.

2- No restriction is arbitrary because it is based on its usefulness or the greater good of the person or society. Utility, the cornerstone of law, also defines and limits its scope.

There can be no liberty if the legislative and executive branches are combined in one person or one body of judges. If the court is not kept apart from the legislative and executive branches, there is likewise no liberty. <sup>(30)</sup>

Equality: The Prophet of Islam not only emphasised human equality, but also saw to it that it was upheld in all facets of daily life. There was no distinction of race or colour made in front of the Almighty Creator when people of all ranks lined up in the mosques five times a day. Before the ideal of just and noble deeds, as prescribed by the divine law, all distinctions between slave and master, or rich and poor, were erased. As a result, the believers' goals were service and sacrifice in accordance with the law of the magnificent Quran. <sup>(31)</sup>

According to Margo Liouth, who makes a valid point, "The equality of all Muslims, we have reason to believe, was a fundamental doctrine with the Prophet, and the earliest interpreters of his ideas were probably right in thinking that he intended the rule to be absolute without exception, even his own family enjoying no privileges. He appears to have valued the Islamic ideal brotherhood as being more intimate than all other family relationships. He did not create a hierarchy of officials; at most, some of his adherents were given titles of honour that belonged only to them. He didn't make any long-term appointments; the officials he created were just there for the time being, and when that was finished, they lost their positions as soon as the appointment ended" It was a difficult effort for the Prophet of Islam to eradicate all these ills and barbarism and establish a shared brotherhood in a world that was fully tainted by blood feuds, retaliation, and a warring spirit. Blood ties disappeared and were replaced by the powerful ties of Islam (din). Every person became a brother to every other person. The greatest declaration of human rights was made by the Prophet Mohammad (S.A.W.) in his well-known lecture at Arafat on the occasion of his final pilgrimage, on the ninth of Zilhij.

"You people, please pay attention to what I have to say. I don't know whether I'll have another year after this one to be here with you as this day and this month are holy to everyone, your lives and possessions are precious and untouchable until you come before the Lord. Also, keep in mind that you will have to make an appearance before your Lord. who will ask you to account for all your acts? Your wives have rights over you, and you have rights over them. Always be loyal to the faith placed in you, and refrain from sin. <sup>(32)</sup>

Usury is not permitted. From this point forward, all blood feuds are outlawed, and the blood revenge that was practiced during the pagan eras (Jahiliya or state of nature) is forbidden.

Make sure you provide your slaves the same food you eat and dress them in clothing you wear. All Muslims are brothers to one another; you all share a same brotherhood and are treated equally. Nothing that belongs to someone else may be freely handed to your brother unless it is done so with good intention. Avoid doing wrong by using caution. The Prophet addressed God and said, "O Lord: I have completed my work. Please tell those who are present

to tell those who are absent of this message." <sup>(33)</sup>

In comparison to later Declarations of the Rights of Men from France and America, as well as the Human Rights of the United Nations of the current day, this Declaration of Human Rights of the Prophet is significantly more important and superior. It is abundantly obvious that the Prophet Mohammad's (S.A.W.) proclamation was made after everything had been established in practise and was already operating with complete success in the community and society, whereas the declarations of modern times were merely pious desires for the future, Justice is the ability to distinguish between right and wrong and to uphold impartiality. This stage of human life is highlighted in several passages of the Quran; <sup>(34)</sup>

1- O ye who believe I Be faithful witnesses for Allah in justice, and do not allow enmity of any group to influence you to act unjustly. Deal fairly; that is closer to what is required of you. Keep to your obligation to Allah.

2- You who believe, O! Be steadfast in justice, witnesses for Allah, whether the case involves a rich or poor man because Allah is closer to both. This is true regardless of whether it is against you, your parents, or other members of your family (than ye are). Therefore, avoid following your desire lest you stray from the truth; if you do stray or fall away, then see, Allah is always aware of everything you do. <sup>(35)</sup>

Justice is a topic that the Prophet himself emphasised a lot. The customs that follow will powerfully attest to it. The Prophet reportedly said: "Verily the nearest of them before Allah for companionship and the dearest of mankind near Him on the Resurrection Day will be a just ruler."

According to Imam Ghazali, the Prophet reportedly remarked: "One day of righteous government." <sup>(36)</sup>

is more meritorious than sixty years of continuous worship by an equitable Sultan.

In Islam, justice refers to a sense of balance in managing governmental and community affairs. According to the Quran, "He raised the heavens and He established the Balance." The same concept is stated in another verse as follows: "Allah it is who sent down the book with truth and the Balance." <sup>(37)</sup>

According to Sarah Maida (The Table Spread), verse 8, justice is valued alongside piety: "Next to piety, be just, and have fear of God.

Because God is aware of all you do ". God is the source of justice, and upholding the law is a moral obligation. Making sure that no one violates or infringes upon the rights of others is the collective responsibility of the community. No one is above the law because justice must be carried out in God's name and in accordance with His laws. There is no such thing as legal immunity. The Prophet most likely never asserted any immunity. Everyone had equal rights and opportunities under the law. <sup>(38)</sup>

Accountability: In the Islamic notion, the right to rule is bestowed in the society as a trust (amanat), not as a natural right of any individual. According to the Quran, "Lo I Allah commands you that you restore deposits (trusts) to their owners and that you arbitrate between men justly." This faith is also expressed in Surah Hajj (Pilgrimage), which states: "Those who, if We give them power in the country, establish worship and pay the poor-due and enjoin compassion and forbid inequity." Because a trustee nominated by the public is required to answer to those who appointed him, the idea of trust naturally incorporates the idea of accountability. <sup>(39)</sup>



No European author who traces the evolution of constitutional or parliamentary government from the Magna Carta (1215 AD) and the Petition of Rights (1621 AD) has ever claimed that the legislature and the executive branch exercise their authority as a trust from the people, and as a result, the holders of power are accountable to both the people and God. The Quran's instruction to the Prophet to "and confer with them regarding the conduct of things" was the first time this notion was stated in unambiguous terms. <sup>(40)</sup>

### **Conclusion:**

More than just a brief history of Islamic law is intended to be covered in this introduction to Islamic law. The objective of this essay is to help the reader comprehend and accept the analytical paradigm that the authors of this volume use, namely the paradigm of "clearing ground," which was mentioned in the editors' introduction to this volume. This essay should be read in conjunction with Kathleen Cavanaugh's introduction to international human rights law and the other chapters in Part I of this book. Before we can start clearing the ground, we must first determine where the "ground" is and what is built on top of it.

Sections A and B provided an outline of Islamic law's formation, origins, and history in order to achieve this Section B continued the story of Islamic law into the nineteenth, twentieth, and twenty-first centuries, eras of colonialism, anti-colonial resistance, and, finally, the independence of Muslim-majority states, many of which still adhere to some aspects of Islamic law while heavily relying on European legal paradigms in the majority, if not all, of their legal and regulatory systems. <sup>(41)</sup>

This does not imply that Islam and Islamic law are not significant in these nations. Instead, when seen through the prism of rule of law, the modern story of Islamic law in Muslim governments is a story of broad legal diversity, where different legal traditions generate and define the claim space that grants legitimacy to arguments of justice. A certain irony emerges from the historical perspective given in Sections A and B. A specific type of legal plurality—a pluralism within Islamic law—defines premodern Islamic law. A different type of legal pluralism has resulted from contemporary reformers' attempt to bring some order to such premodern diversity: the pluralism of legal traditions (Islamic, European, international)

In order to achieve the objectives of this volume, namely to "clear the ground," it is critical to concentrate on the legitimating role of Shari'a discourses. These actions will reposition and refocus the questions we might have about Shari'a as a historical tradition that is still very much in the forefront of global contemporary discourse. Islamic legal justifications are now used by both state and non-state actors to further their own objectives. Some of those goals have to do with political legitimacy. Shari'a provides a vocabulary of legitimacy that transcends the boundaries of law, politics, and religion. Sharia provides various groups with a framework and vocabulary through which to assert their authority, challenge the validity of individuals in positions of power, and even create a sense of community in response to a threat, whether it be physical or psychological. <sup>(42)</sup>

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