



# Divergent Statecrafts: Between Islamic Governance and Modern State Power

*Dr. Jaan Islam*





# **Divergent Statecrafts: Between Islamic Governance and Modern State Power**

*Jaan Islam*

## **Abstract**

This paper provides a theoretical basis for navigating an articulation of Islamic governance in contrast to the structures of the modern nation-state. Modern states, characterized by centralized power, vast surveillance, bureaucracy, and coercive control, fundamentally differ from Islamic governance models, which prioritize decentralized, community-based frameworks. Drawing on critiques of Islamic movements' reliance on state power, the paper contends that the modern state's secular, coercive nature precludes the organic development of an Islamic technology of the self, or a model of self-governance that fosters moral accountability. Three core features of the modern state—surveillance, law and punishment, and bureaucracy—are examined and contrasted with Islamic governance practices. Where surveillance in the modern state is panoptic and disciplines individuals through pervasive monitoring and psychological control, Islamic principles discourage spying and private intrusion, emphasizing moral guidance over authoritarian control. Similarly, modern punitive measures, which target individuals for reformation through imprisonment and psychological correction, diverge sharply from Islamic legal practices that are less invasive, focus on corporeal punishment, and encourage communal resolution rather than state intervention. The modern state's bureaucratic rationalization, which enforces standardization and centralizes authority, is also at odds with the decentralized, interpretive nature of Islamic governance, with its reliance on independent jurists and localized community institutions such as *waqfs* to maintain social and legal order. The paper argues that an Islamic approach to governance—grounded in the language and categories of jurisprudence (*fiqh*)—offers an ethically grounded alternative that deviates sharply from the coercive mechanisms of the modern state, and encourages, in turn, an epistemological shift in Muslim theorizing of governance and social order.

## **Introduction**

Since the fall of the Caliphate, Muslim political theorists and jurists have been debating the role of Islam in a system of nation-states. With modernity rupturing the Muslim world, society, life, and religion were forcefully reconstituted to make the state—backed by unprecedented coercive capabilities and capital—the ultimate object of reference. Inevitably, the fact and dominance of the modern, colonial state has posed an obstacle to the theorization of Islamic governance. Modern Islamic movements dedicated to “revival” have variously subsumed, resisted, and rejected secular power in the form of the nation-state. Muslims have been compelled, on the one hand, to admit the role of modernity and the nation-state in their lives and thinking and, on the other, to resist in various forms its secularizing influence. The stories of resistance are many, ranging from the heroic narratives of anticolonial freedom fighters to the more mundane abstention from interest-based banking and the establishment of traditional Islamic educational institutions.

Perhaps one of the most significant problems that Muslims face in bringing change within Muslim societies is an inability to balance between two conceptual extremes. As Wael Hallaq has

observed, many politically minded Muslims have caught themselves in a false start by supposing that the modern state is a neutral tool that can be used for normative Islamic change. This is problematic because the nation-state's self-enforcing coercive capabilities, totalitarian monopoly over power and knowledge, homogenization of identity, and total reconstitution of law categorically prevent the emergence of an Islamic technology of the self with individual, communal, and grassroots change as its defining characteristics. Confronted with this reality, those on one extreme have forsaken the modern state—and in some cases modern living altogether<sup>1</sup>—in the pursuit of purity, while others, the vast majority, have succumbed to the state's centralizing power.

This problematic remains contested among Muslim political theorists. This paper seeks to contribute to these discussions by identifying specific areas wherein the reconstitution of power in the modern state contradicts principles of Islamic ethics and governance. These areas are (1) government surveillance, (2) law and punishment, and (3) bureaucratization through rationalization. The paper will identify and explore substantive areas in which the distribution of power differs from classical Islamic theories of government—buttressing and refining Hallaq's critique of "Islamism's" attempt to harness state power to implement Islam. Secondly, and more importantly, I propose substantive Islamic theorizations of these areas, discussing their values and the power structures wherein these values are lived and implemented.

I propose a refinement to the critique of the modern state in the hope that this will pave the way for theorizations of Islamic governance grounded in classical Islamic ethics, as opposed to a desire, in Ibn Khaldūn's (d. 1406) rendition, to "imitate the victor."<sup>2</sup> We read the verse revealed to the Prophet ﷺ at his farewell sermon on the day of 'Arafa, "This day I have perfected for you your *dīn*, completed My favor upon you, and approved Islam as a *dīn* for you."<sup>3</sup> This paper takes for granted that a complete *dīn*—one that gave laws about sundry matters from marriage, commerce, and dietary matters to war—does not leave out guidance concerning the bedrock of all worldly power. It seeks to articulate some key details of this guidance and put them in contrast to dominant models of the prevailing historical moment.

In the context of significant developments in the field of Islamic political thought,<sup>4</sup> it is important to point out that the question has shifted from "is there such thing as 'Islamic' governance

---

<sup>1</sup> During my travels in Turkey, I was surprised to find that some Islamic scholars have forsaken even the most basic modern amenities, including electricity, choosing to live austere lives in the countryside. Aside from this, there are of course parts of the world that remain virtually unscathed by the modern state.

<sup>2</sup> 'Abd al-Raḥmān Ibn Khaldūn, *The Muqaddima* (London: Routledge, 1978), Ch. 2, Sect. 22.

<sup>3</sup> Qur'ān, *al-Mā'ida*, 5:3.

<sup>4</sup> This includes studies of Islamic sovereignty using both the Islamic tradition and revealed sources. For example, see Asim Ayub, "Early Ḥanafī Authorities on the Imamate," *Ummatics*, Aug 14, 2023, <https://ummaties.org/islamic-norms/early-hanafi-authorities-on-the-imamate/>; Yousef Wahb, "Shāfi'ī Jurists and Legal Theorists on the Imamate," *Ummatics*, Jun 27, 2023, <https://ummaties.org/islamic-norms/shafi-i-jurists-and-legal-theorists-on-the-imamate/>; Massoud Vahedi, "Ḥanbalī Authorities on the Imamate," *Ummatics*, Nov 7, 2023, <https://ummaties.org/islamic-governance-models/hanbali-authorities-on-the-imamate/>; Shadee Elmasry, "Mālikī Authorities on the Imamate," *Ummatics*, May 27, 2024, <https://ummaties.org/papers/maliki-authorities-on-the-imamate/>; and Jaan S. Islam and Adem Eryiğit, *Islam and the State in Ibn Taymiyya: Translation and Analysis* (London: Routledge, 2022), 233–249.

in classical Muslim thought?” to “*how* did the classical ‘*ulamā*’ conceive of the role of state power in implementing Islam?” This is the central question of this paper. I will address this question by first briefly critiquing certain features of the modern state in order to be able to contrast this with the Islamic model. I will then establish the necessity of Islamic governance and integrate a mature concept of statecraft in classical jurisprudence.<sup>5</sup> Finally, I will provide several case studies to lay out the principles of Islamic governance in terms of practical institutions and power relations, contrasting them with the modern, colonial state. I hope to demonstrate the myriad ways in which Islamic power dynamics differ and offer radically different conceptions to those of the modern state.

## Power and Sovereignty in the Modern State

The modern state is a product of power negotiations that took place in the last 500 years, taking its final and most recognizable shape in the aftermath of the Second World War. This is important to understanding the simplistic yet widespread narrative that the concept of a state—that is, a defined territory wherein the government is the sole possessor of coercive power—was first adopted in the Treaty of Westphalia, which brought an end to bloody territorial wars by recognizing the sanctity of territory and sovereignty.<sup>6</sup> Although deriving genealogically from Westphalia, the modern nation-state as we know it today is distinct from the early modern Westphalian state. Stephen Krasner points out that the modern state was in many ways a product of more recent developments, including British colonial rule, and that “even after the New Deal, more recent bursts of social legislation, and two world wars, there is still no effective, consistent, and coherent control of the national administrative apparatus.” The nation-state only “pushed aside all other forms of political organization” after the Second World War and the establishment of the European state model in former colonies.<sup>7</sup>

The modern state, both as developed in European countries and in their respective colonies, comprised several unique features that contrasted starkly with both indigenous government and, of course, the *Sharī‘a*. The first among these is the adoption of definite, permanent borders wherein governmental authorities have sovereign authority to govern their people. The UN Charter passed in 1945 affirmed and crystalized this nascent notion of statehood and equal sovereignty.<sup>8</sup> These

---

<sup>5</sup> Throughout this paper, the concept of “state” is used with reference both to modern and premodern political formations. The now well-rehearsed critique that the “state” is a uniquely modern phenomenon is valid on a minimalist conception of “state.” On a maximalist reading, “state”, “polity”, “governance” all refer broadly to any form of political organization, with qualifiers (“*modern state*”, “*nation state*”, “*Islamic state*”) distinguishing between different forms thereof. What is critical, and where I agree with the critique, is that unique aspects of different forms of “statehood” are not papered over to make them all seem essentially the same, or that any particular form, not least the modern state, be rendered natural or neutral.

<sup>6</sup> Andrew Hurrell, *On Global Order: Power, Values, and the Constitution of International Society* (Oxford and New York: Oxford University Press, 2007), 26–56.

<sup>7</sup> Stephen Krasner, “Approaches to the State: Alternative Conceptions and Historical Dynamics,” *Comparative Politics* 16, no. 2 (1984): 237–242.

<sup>8</sup> “The Organization is based on the principle of the sovereign equality of all its Members...All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political

concepts of sovereignty and legitimate coercive force establish a state's legal authority as sovereign, and thus authorized to issue legislation. This is the case regardless of whether this sovereignty is conceived to be in the hands of the people, institutional bodies "representing" the people, or an autocratic monarch.<sup>9</sup>

A second decisive feature of the modern state is the concept of national identity, often constructed in the establishment of the state and part of its origin story.<sup>10</sup> This national identity erases previous notions of identity and loyalty, including tribal affiliation, which are restructured around nationality, language, ethnicity, and religion—as seen in the forced homogenization and assimilation of minority identities. Consider how quickly, for instance, Muslims in the Subcontinent severed ties with each other, even opposing intermarriage, despite sharing language, culture, and religion.<sup>11</sup> The rise of a new national identity is often identified as a primary cause of the decline and politico-spiritual weakness of Islamic identity around the world. It is of course a more complex story, but it is crucial to understand that the concept of a state and its association with *both* a definite territory and a "national" identity is an undeniably European import and would not have been possible without the colonial division of the Muslim world in the 20<sup>th</sup> century.<sup>12</sup>

A third and somewhat harder-to-apprehend feature of the modern state is its rationalized bureaucracy. "Rationalization," as theorized by Max Weber in the post-industrial period, is a process whereby social and political life is comprehensively reconstituted on the basis of formal and standardized procedures—procedures that prioritize an instrumental rationality. Instead of allowing for social processes to take place organically and within the context of local communities, the development of concentrated populations led to a neutralization of diverse ways of doing things under a single, official, bureaucratic procedure. Instead of learning to ride a horse at an early age from an elder in the local community, for example, and riding it responsibly and competently throughout one's life, the modern person must graduate through a series of forms, applications, tests, and documents before officially receiving a government-issued "license" to drive. Instead of the premodern man solving his financial grievances by complaining to the local judge who quickly

---

independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." U.N. Charter art. 2, para. 1, 4, <https://legal.un.org/repertory/art2.shtml>.

<sup>9</sup> This conception of sovereignty is the same across constitutional monarchies (where sovereignty belongs to the monarch who delegates his or her powers), absolute monarchies, such as in Saudi Arabia and the UAE, or democratic regimes like Türkiye.

<sup>10</sup> As sociologist Saskia Sassen summarizes, "for most of Western history territory was subject to multiple systems of rule—the king, the local lord, and church—and so was membership. The nationalizing of territory and allegiance entailed encasing geographic territory into an elaborate institutional system: territory became state territoriality, and identity became nation-based citizenship." Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages* (Princeton: Princeton University Press, 2008), 146.

<sup>11</sup> These differences even carry themselves into the West where children are brought up in the same culture; see for example Kim Knott and Sajda Khokher, "Religious and Ethnic Identity among Young Muslim Women in Bradford," *New Community* 19, no. 4 (1993): 593–610.

<sup>12</sup> For a case study of the social and legal reconfiguration of Egyptian society as part of the colonial project, see Talal Asad, "Reconfigurations of Law and Ethics in Colonial Egypt," in *Formations of the Secular: Christianity, Islam, Modernity* (Stanford: Stanford University Press, 2003), 205–256.

adjudicates the dispute in a local mosque or parish, the modern plaintiff needs to lodge a formal complaint with legal representation, fill out forms, pay fees (often worth more than the value in dispute), and be dragged through official proceedings for months to receive his due.

This standardization, centralization, and bureaucratization of parliaments, courts, and government procedures is a product of the “way of life” instituted in the modern state and modern society. In the sphere of law, Talal Asad describes the transformation of Islamic law through the bureaucratic restructuring of rationalism in colonial Muslim states:

when the *sharī‘a* is structured essentially as a set of legal rules defining personal status, it is radically transformed...It is rendered into a subdivision of legal norms (*fiqh*) that are authorized and maintained by the centralizing state.<sup>13</sup>

Asad is not intimating that bureaucrats or “official procedures” did not exist in premodern Muslim society—even etiquettes like greeting and standing in the presence of a judge, which existed in the Prophet’s ﷺ time, are social procedures. Rather, it is that the modern state took this to an unprecedented extreme. The *Sharī‘a*—previously the domain of *fiqh* and hence of the collectivity of (independent) Muslim jurists—was thus transmuted through regulation under the auspices of the bureaucratic state. Among the effects of this change was the rise of a society where every aspect of life is regulated by centralized mechanisms that remove human emotions, characteristics, culture, and *īmān* from human praxis.

The change brought by the modern state to human life is also a matter of the scale on which living was reconstituted. In the Ottoman Caliphate, from the 16<sup>th</sup>-18<sup>th</sup> centuries, government revenue as a percentage of GDP was below 4%, compared to 8% in the 19<sup>th</sup> century, nearly 15% by 1900, and between 20-40% now in most states today.<sup>14</sup> More striking is the number of bureaucrats brought to commandeer the state’s centralized machinery. Considering the Ottoman Caliphate: in the 16<sup>th</sup> century, there were fewer than 100 bureaucrats at the Sultan’s central palace (Topkapı). In the late 18<sup>th</sup> century, this increased to 1,500, and then skyrocketed by “a twenty-fold increase in the number of those working in non-military governmental bureaus” to as many as 20,000.<sup>15</sup>

Further increasing the power of the modern state in the 20<sup>th</sup> century is its coterminous development with industrialization and technological advancement. In technologically developed economies, there often remains little semblance of a private sphere. The modern state intervenes in every aspect of a person’s life, from birth to death, including the food they eat, the water they drink, and the words they speak. Massive populations and geographical expanses are controlled through advanced policing and surveillance systems. The power and economic resources of modern states allow for the establishment of vast bureaucratic infrastructures. This includes public

---

<sup>13</sup> Asad, *Formations of the Secular*, 227, 235.

<sup>14</sup> Şevket Pamuk, “The Evolution of Fiscal Institutions in the Ottoman Empire, 1500–1914,” in *The Rise of Fiscal States: A Global History, 1500–1914*, ed. Batolomé Yun-Casalilla, et al. (Cambridge: Cambridge University Press, 2012), 304–331.

<sup>15</sup> Melis Hafez, *Inventing Laziness: The Culture of Productivity in Late Ottoman Society* (Cambridge: Cambridge University Press: 2021), 112.

education to produce a loyal citizenry invested in its national identity, universal taxation to fund the state and its ever-increasing tentacles, mass-media and censorship to regulate narratives, religious bodies to influence and control religious populations, and intricate surveillance structures and coercive powers (military, police, intelligence) to police thought by raising the specter of state action or even violence.<sup>16</sup> The state’s engineering of society then prevents the organic constitution of local communities, instead being regulated by and for the state with the preservation of its sovereignty and extension of its influence as the ultimate goal.

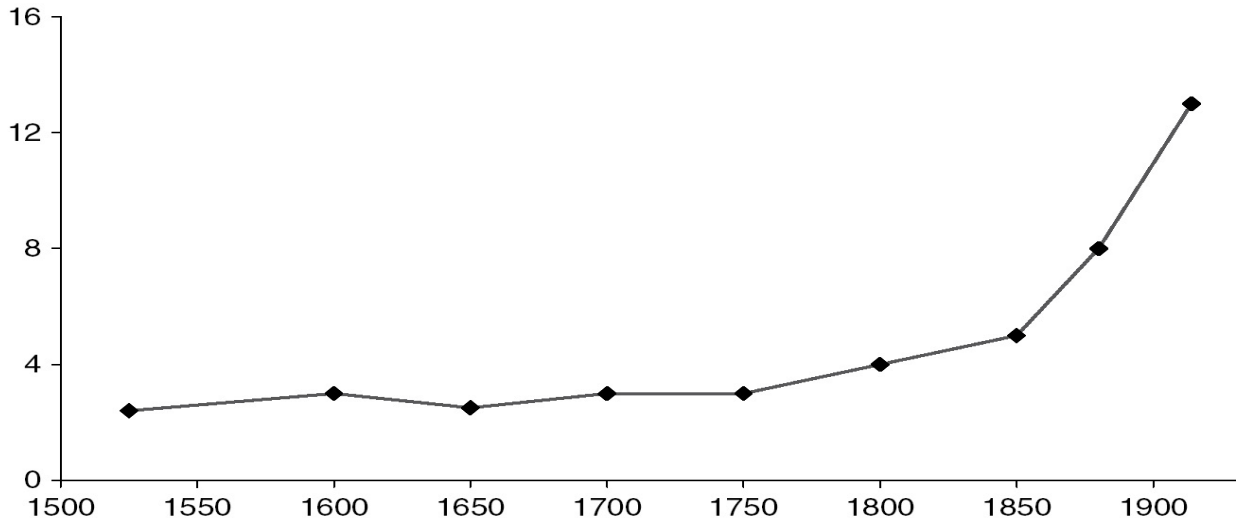


Figure 1. State revenue as a percentage of GDP in the Ottoman Caliphate.

This is not to claim that all forms of power are bad, or that centralized power is only the product of European colonialism. I make these observations, rather, to establish two points that are crucial for the remainder of this paper. First, the nature of state power makes the state itself a reference for human norms. It is not one’s local community or religion which tells them how to live their life and to whom they owe ultimate loyalty. While government teachings may draw from the Islamic tradition occasionally, the ultimate authority in determining “good” from “bad” (and thus knowledge and nonknowledge, legal and illegal) in the modern psyche is the state, even where its actions oppose the classical Islamic tradition. Second, the question remains as to how—and to what extent, if at all—the modern state comports with a normative Islamic theory of government. Some would argue that, though rationalization and bureaucratization came in tandem with the secularization of Muslim societies, government expansion and organization do not in their essence oppose Islam. Proponents of this view to historical precedents such as ‘Umar b. al-Khaṭṭāb’s ﷺ

<sup>16</sup> Ivan Manokha notes that in the age of digital surveillance, with revelations on its sheer extent in the last ten years, people have increased the “exercise of self-discipline and self-restraint” due to the “surveilled objects’ realization that they are universally and permanently visible.” Ivan Manokha, “Surveillance, Panopticism, and Self-discipline in the Digital Age,” *Surveillance and Society* 16, no. 2 (2018): 234.

incorporation of Roman and Persian bureaucratic practices, and the presence of formal committees and appointments in the early Islamic caliphate. They also draw comparisons between the Prophet's ﷺ Shura council and modern legislative assemblies.<sup>17</sup> The remainder of this paper dissects such historical comparisons by critically contrasting specific features of the modern state with those of the early Islamic caliphate.

On the other end of the spectrum, secularist arguments against notions of Islamic governance, which attempt to critique Islamic politics for engaging in religious “coercion,” are exposed to contradiction when faced with the coercive and repressive reality of the modern (secular) state. The most common form of this argument is that since, “there is no compulsion in religion” (Q2:256), imposing *Sharī‘a* in a state cannot be Islamic, as it constitutes forcing religious practice on those potentially unwilling to accept it. The meaning of the verse in its context is correct: nobody can be coerced to convert to Islam, or from one religion to another.<sup>18</sup> However, it is misleading to claim that Islamic law constitutes “coercion in religion” as stated in the verse. After accepting that Islam contains prescriptions on running a state, collecting *zakāt*, appointing judges, defending borders, and punishing criminals, for instance, it cannot be concluded that the implementation of those laws is optional or left to consent. Those living in a modern state—even if they do not vote or are not citizens—do not have the right to “opt out” of laws they disagree with, and secularists would not consider this to constitute “unlawful coercion.”

As the sections below demonstrate, the dynamics of power in the modern state make it far more coercive, authoritarian, and less tolerant of minority identities and ways of life than has been the case historically in Muslim societies. Consequently, many features of the modern state indeed prevent it from being “Islamic.” Looking at the historical adoption of modern state institutions—through colonial imposition, genocide, and the near-complete restructuring of society—we can further appreciate the repressive nature of modern state power by understanding the methods of its implementation. The brazenness of the contradiction becomes clearer still when, for example, examining rates of taxation. All residents within the borders of a nation-state, including religious minorities and non-citizens, must pay income and wealth taxes, even surpassing 50% in countries that implement progressive taxation. Compare this with the Islamic poll tax that gives a high level of autonomy to religious minorities to pay what had historically been comparatively negligible amounts. This tax rate amounted to nearly a fifth of what a Christian would have had to pay in 18<sup>th</sup>

---

<sup>17</sup> Different models of this are supported by scholars considered more radical or conservative, like Taqi al-Din al-Nabhani and Syed Abul A‘la Maududi, as well as those considered more moderate or reformist, like Abdelwahab El-Affendi and Yusuf al-Qaradawi. See Abdelwahab El-Affendi, “Democracy and Its (Muslim) Critics: An Islamic Alternative to Democracy?” in *Islamic Democratic Discourse*, ed. Muqtedar Khan (Oxford: Lexington Books, 2006): 227–256.

<sup>18</sup> Abū al-Ḥasan ‘Alī b. Aḥmad al-Wāḥidī, *Asbāb Nuzūl al-Qur‘ān* (Beirut: Dār al-Kutub al-‘Ilmiyya, 1991), 75–77. The context of revelation was regarding Medinan children who became Jewish before the coming of Islam, who then refused to become Muslim and were expelled from the city with the tribe of Banū al-Naḍīr. The reason for revelation was to establish that they could not be compelled into accepting Islam from Judaism.



century England.<sup>19</sup> Including other taxes such as *kharāj* (land tax) still amounted to much lower taxation rates than what has been commonplace in the modern state.<sup>20</sup>

These misconceptions cleared, let us return to the central question of this paper. Given that the nature of secular governance is highly invasive, is Islamic governance any different? Prior to the colonial period it was quite different—as will be discussed—but, I argue, it also differs substantively from prominent modern Muslim theorizations of an Islamic system, which, in fact, reify the structures of modern state power.

### ***Islamic Governance: Supported or Distorted by Modern State Structures?***

The question concerning whether Islamic government is coercive in the same way nation-states coerce, discipline, and control thought and praxis through the modern panopticon is a question of justice answerable to the all-encompassing purview of Islamic law and ethics. In this section, I will show how the distribution of power differs in Islamic and secular societies and demonstrate how Islamic governance—despite exhibiting a certain level of centralization and standardization—does not reflect, recreate, or preempt the function of power in the modern state. In this regard, I will first consider the conceptual problems faced when attempting to equate secular state power to Islamic state power.

The adoption of state power to socially engineer an Islamic identity and society is not “Islamic” in that it has no precedence in the classical Islamic tradition. In the premodern Islamic world, identity was largely constructed in and by local communities, which incorporated the values and practices of the Islamic tradition through independent institutions like endowments (*waqf*, pl. *awqāf*) and *madrasas*, which in turn lent support to state institutions, informing their norms and laws. As Miriam Hoexter observes:

The proliferation of endowments brought about a situation where not only public buildings but also a large proportion of the real estate in towns and in many cases in the rural areas as well, acquired *waqf* status. This means that the laws of the endowment institution determined major issues relevant to the urban economy...Moreover, important issues concerning the town’s development—for

---

<sup>19</sup> See Gregory Clark, *A Farewell to Alms: A Brief Economic History of the World* (Princeton: Princeton University Press, 2007), 154.

<sup>20</sup> It is true that several scholars permitted extra-*shar‘ī* taxes levelled against Muslims, and that they were employed throughout the majority of Islamic history. I am uneasy, however, with the suggestion that these precedents legitimate a model of an Islamic state that uses excessive taxes to centralize power and intervene in the lives of Muslims as do modern states today. The issue of extrajudicial taxes was highly disputed by several jurists in ‘Abbāsīd, Mamlūk and Ottoman contexts. Opposing jurists willing to justify such taxes, I quote the scholarly Prince Şehzade Korkut (d. 1513) (the grandson of Sultan Fatih Mehmet) who captures my sentiments, “[Some scholars of] our Ḥanafī lands...belittle studying these books [of *fiqh*], examining bits and pieces of...the *Hidāya*, and that too, only to justify forbidden taxes [*māl muḥarram marsūm*] charged by the judiciary”. Korkut, ed. Jaan Islam, *Dawat al-Nafs al-Tāliha ilā al-Amāl al-Sāliha* (Unpublished Manuscript), 223. Elsewhere in the book, Korkut dedicates significant space to refuting state officials who levy extrajudicial taxes and spend them on “righteous” causes (e.g., building schools), nearly accusing them of disbelief (*kufīr*) for declaring permissible what Allah had prohibited.

example, the need to recycle properties in order to provide the space necessary to accommodate new economic enterprises...often necessitated transactions in endowed properties, which were subject to the *waqf* rules. This implied that all these issues were determined independently of the rulers' wishes. They were handled by the '*ulama*', who alone were in charge of interpreting the law and determining how it would be implemented ... the *waqf* thus generated an ongoing discourse involving the local community, the '*ulama*', and the rulers.<sup>21</sup>

The Islamic financial ecosystem—with endowments as an example—is most easily contrasted to the modern nationalization of *awqāf*, wherein power in Muslim countries was uprooted from private individuals and local communities and centralized under a system that is, to varying degrees, totalitarian. In this system, the religiosity of now-state institutions (and religious officials-cum-state officers) is brought entirely under the purview secular state power. This includes disregard for the *awqāf*'s local governance bodies, redistribution of funds, appointment of government officials as executors, and dictating the content of sermons and curricula.<sup>22</sup>

In considering whether such an arrangement can be considered Islamic, the question that remains is whether Muslims' adoption of the nation-state as a *tool* for constructing an Islamic society is commensurate with the Qur'ān and Sunna. Those who hold this view see the state as a neutral instrument for managing a population. The difficulty of this assumption is that it does not consider the nature of the *process* by which the state creates certain norms by disciplining citizens in daily activities. As Hallaq mentions,

On an epistemic level, the institutions of coercive surveillance, education, and health (prisons, schools, and hospitals) were neither distinct from one another nor neutral in any sense...Schools, armies, hospitals, and prisons constituted systemic manifestations of an elaborate and highly specific way of doing and ordering things...They reflected the two major concerns of submission and utility, that is, submission to a regulating technique that engenders docility and, on the other hand, utility as a materially productive performance.<sup>23</sup>

It is no coincidence that modern technologies of the state came together with capitalist exploitation and colonialism. Maintaining a system of benefit for the rich—and, concomitantly, keeping exploited populations and the working class submissive—can only be achieved by restructuring identity to produce submissive citizens and restructuring the origin of legitimacy to that of the state and the production of material benefit.

---

<sup>21</sup> Miriam Hoexter, "The Waqf and the Public Sphere," in *The Public Sphere in Muslim Societies*, eds. Miriam Hoexter, Shmuel N. Eisenstadt, and Nehemia Levtzion (Albany: SUNY Press, 2002): 130–131.

<sup>22</sup> For examples of this see Andrew March "State Ideology and the Legitimation of Authoritarianism: The Case of Post-Soviet Uzbekistan," *Journal of Political Ideologies* 8, no. 2 (2003): 209–32; Murat Yaman, "Intellectual Hegemony of Justice and Development Party in Turkey: A Gramscian Perspective" (PhD dissertation, Middle Eastern Technical University); and Hakan Övünç Ongur, "Performing through Friday *Khutbas*: Re-Instrumentalization of Religion in the New Turkey," *Third World Quarterly* 41, no. 3 (2020): 434–52.

<sup>23</sup> Wael B. Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (New York: Columbia University Press, 2013), 101.

Consider an image widely shared on Arab social media in 2018: a fine that appears to be issued to citizen for shaving his beard by the early Kingdom of Saudi Arabia.<sup>24</sup> While for many Islamists, this document showcases the dominance of Islamic norms in society, for others, it was a telling sign reflecting the reason for the decline of Islamic civilization. The reason for the latter is that this fine illustrates the state’s increasing authority to regulate religion, as opposed to the *‘ulamā’* as was historically the case. Secondly, it represents the standardization of Islamic praxis under codified law, stripped from the context and meaning of rulings derived in classical *fiqh*.

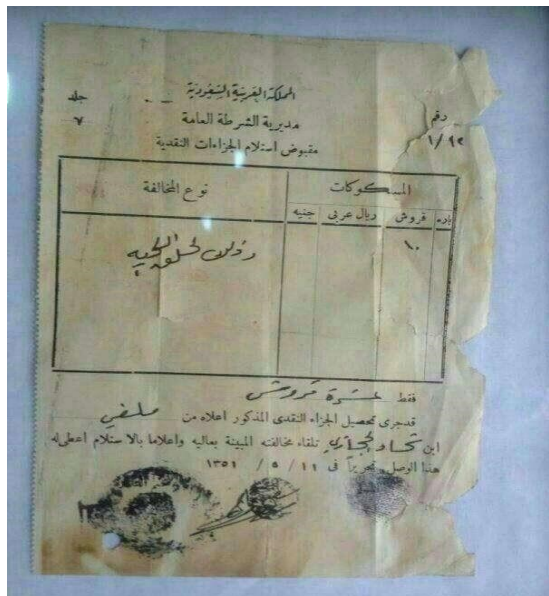


Figure 2. Picture circulated on social media of fine for “shaving beard”, March 2018.

In the 1850s, the Ottoman Sultan Abdulmecid II introduced a series of reforms aimed at reinvigorating economic and intellectual development in Ottoman lands. This included the adoption of western intellectual culture, norms, dress, architecture, and law. A part of the legal reforms—known as the Tanzimat—was to address increasing pressure from stronger western powers to adopt democratic reforms and grant more autonomous regions for religious minorities. In response, the Ottomans undertook a reformation of their legal structure under the guidance of Ahmed Cevdet Paşa (d. 1895), who published the *Mecelle-i Ahkâm-ı Adliye*, a legal code that included elements of *Ḥanafī fiqh* using the standardization of European codified law. The *Mecelle* was indicative of this shift from the source of Islamic power being in the hands of autonomous local communities to that of the state,

paving the way for prescribed and standardized punishments for minor religious infractions.<sup>25</sup>

The dynamics of power in Islamic governance were distorted by the reconstitution of all normativity under the legal authority and executive power of the state. This confused two essentially separate factors: (a) the Prophetic command—a command that carries divine sanction and conveys the divine will—and (b) the government’s mandate to coercively train the citizen to adhere to Islamic laws out of fear of state punishment. By laying claim to the mantle of sovereignty—historically understood to be the exclusive preserve of Allah—the modern state organized all activity around the will of the state under the implicit threat of coercive violence. Making itself the sole source of legitimacy, the state relegates to itself absolute authority over its subjects.<sup>26</sup> This in turn is used to ensure maximum compliance by ascribing to itself something


<sup>24</sup> Ramallah News, “*‘Uqūbat ḥalq al-liḥya fī al-Su‘ūdiyya 10 Qurūsh qabl 88 ‘āmā,*” March 17, 2018, <https://ramallah.news/post/101644/عقوبة-الحية-حلق-عقوبة-10-السعودية-في-اللحية-حلق-عقوبة-88-قبل-عاما-88>.

<sup>25</sup> Ahmet Cevdet Paşa, *Mecelle-i Ahkâm-i Adliye* (Istanbul: Matbâ‘i ‘Osmāniye, 1887).

<sup>26</sup> Talal Asad, *Genealogies of Religion* (Baltimore and London: John Hopkins University Press, 1993), 200–208.

analogous to divine omnipotence and omnipresence<sup>27</sup> by policing the people and even thought, through institutions like the nationalized *awqāf*.

This is in stark contrast to the Islamic model of political power. The source of legitimacy in Islamic society is not the state, nor even the societies or individuals within society (such as rulers or scholars). It is, rather, the Creator, the Legislator (*al-Shāriʿ*) Himself. Classical Islamic jurisprudence universally understood its project as one of interpreting the divine will. It thus made its arguments in relation to a person's relationship with the Creator.<sup>28</sup> Jurists discuss aspects of Islamic practice that have no relationship to state authority—such as the obligation of intention prior to fasting in Ramadan<sup>29</sup>—and, more significantly, aspects that expressly seek to hold state authorities to account, such as the permissibility of overthrowing the caliph when he falls short of rendering his trust (to govern by the *Sharīʿa*).<sup>30</sup>

Islamic religiosity makes Allah the Sovereign, thus making every position and institution conditional upon agreement to the divine law. It is in this context that we read the famous speech of the first caliph, Abu Bakr , in which he unequivocally declares, “If I do good, then help me, and if I do evil, then rectify me.”<sup>31</sup> The vast literature of Islamic *adab*—that is, ethical norms of behavior and etiquette—and the various *aḥādīth* detailing how we must speak, greet, conduct transactions, enter and exit buildings, use the bathroom, raise our families, and the like, are all injunctions from the Lawgiver and stay strictly between the Creator and the servant. The Islamic polity is built on an intimately powerful bond between Creator and creation that is in no way dependent on state authority. Furthermore, the virtues needed to live a virtuous life are cultivated by the community under the leadership of scholars. Even the rulers, despite possessing political authority, do not make the individual religiosity of the common population their personal project.<sup>32</sup> This is not to say that Islam is independent of, or indifferent towards, state institutions, which is a question that is beyond the scope of this paper. Rather, it is to emphasize that the existence of

---

<sup>27</sup> Thus the Schmittian dictum that, “all significant concepts of the modern theory of the state are secularized theological concepts.” See Carl Schmitt, *The Concept of the Political*, expanded edition (Chicago and London: University of Chicago Press, 2008), 42.

<sup>28</sup> Weiss writes, “Law, it seems, is integral to the monotheistic religion. The world's sole creator is necessarily by right its sole ultimate ruler, legislator, and judge. All law worthy of the name must therefore originate with him.” Commenting on this, Powers remarks, “So intent is a central concern of Islamic law, and law is a central concern of most Muslim societies.” Paul Powers, *Intent in Islamic Law: Motive and Meaning in Medieval Sunnī Fiqh* (Leiden: Brill, 2006), 2.

<sup>29</sup> Powers, *Intent in Islamic Law*, 48.

<sup>30</sup> “If the leader commits injustice or evil and departs from the right conduct of the imamate through his injustice, it is possible to remove him...even if he opposes it.” al-Juwaynī, *al-Irshād ilā Qawāṭiʿ al-Adilla fī Uṣūl al-ʿItiqād* (Cairo: Maktabat al-Khānjī, 1950), 425–426.

<sup>31</sup> Ismāʿīl b. ʿUmar Ibn Kathīr, *al-Bidāya wa al-Nihāya* (Damascus-Beirut: Dār Ibn Kathīr, 2010), 5:218.

<sup>32</sup> It is helpful in this sense to illustrate, for instance, the difference between an intervention like al-Maʿmūn's inquisition—directed towards *ʿulamāʿ* to accept the Muʿtazilī creed—and the multifaceted subject-forming methods of the modern state in regulating belief, praxis, and behaviour of the common citizen. While both cases are condemnable from an Islamic perspective, the sheer scale and complexity of the latter makes overcoming its oppression exponentially more difficult.



individual and interpersonal relationships centered on Allah—the necessary existent that transcends all worldly reality—sets the stage for an entirely unique configuration of power in society. In the remainder of this paper, I intend to give specific references to Islamic revelatory and legal texts to show cases where this contrast in power dynamics is demonstrated.

In doing so, I will also address some counter arguments. It can be claimed, for instance, that *ta'zīr* (discretionary punishment) for minor infractions constitutes a part of classical jurisprudence. Or that the Ottomans systematized their legal code as far back as the 16<sup>th</sup> century, prior to the rise of the modern state. Albeit valid these objections reflect an insufficient differentiation between the substance of Islamic governance and the mechanisms of the modern state. In the following sections, I will provide a very brief overview of these differences by covering three different domains of governance, namely, surveillance, law and punishment, and bureaucratization and centralization.

## **Power and Sovereignty in Islamic Governance**

### ***Government through Surveillance***

Surveillance is arguably one of the greatest tools of the modern state. Surveillance—in the form of video monitoring, identification checks, visual recognition, and online and telecommunications monitoring—allows for complete psychological control over a state's subjects resulting from what is known as the “panopticon effect.” First developed by utilitarian philosopher Jeremy Bentham, and further elaborated upon by Michel Foucault, the concept illustrates the idea of keeping a massive population subservient in a circular prison, where there is one watchtower and a single guard who can see all the prisoners. Due to his location, the resulting social effect is that people will not only feel watched—and thus control their behavior—but will even self-police their fellow inmates out of the fear they may be under surveillance in that moment (although the guard cannot actually focus on all prisoners at the same time). In the modern world, especially in the digital age of telecommunications surveillance and AI-based information filtering, the notion that “big brother is watching” is stronger than ever.<sup>33</sup>

Surveillance is not only a method of control but also enforces the self-disciplining or self-policing of a population. Fearing the effects of homogenization and weak civil societies in 19th century industrializing America, Alexis de Tocqueville famously said, with reference to premodern despotism that repressed the body but let the mind be, “Such is not the course adopted by tyranny in democratic republics; there the body is left free, and the soul is enslaved.”<sup>34</sup> Surveillance is not even a guaranteed way to prevent crime—criminals will find ways around it so long as the social structures

---

<sup>33</sup> See Manokha, “Surveillance, Panopticism, and Self-Discipline in the Digital Age.”

<sup>34</sup> Helen F. Thompson, “Gothic Numbers in the New Republic: The Federalist No. 10 and its Spectral Factions,” in *Spectral Readings: Towards a Gothic Geography* (London: Palgrave Macmillan UK, 1999): 140–160.

that create criminals stay in place.<sup>35</sup> The point of surveillance, rather, is enslavement of the human soul by monitoring the entirety of a person's life, including even their most intimate thoughts, desires, fashion choices, buying preferences, and, most importantly, their ideological views and networks.<sup>36</sup> This increases obedience to the state by creating an artificial omniscience that registers every decision and thought the subject has, thus rendering the questioning of state authority, let alone actively working to replace it with a more just system, entirely out of the question.

As modern states comprise the Muslim world as well, we can see these tactics entirely recreated in Muslim countries, even when enforcing “Islamic” laws. Consider Iran’s “*hijāb* cameras,” modelled on China’s AI facial recognition surveillance cameras, where women are monitored by cameras on the street and fined on their adherence to *hijāb* rules.<sup>37</sup> Consider also how the Saudi state implements excessive travel restrictions on both citizens and non-citizens in order to maintain patterns of behavior, like impositions of travels bans for merely visiting certain countries or not paying traffic fines, or the UAE’s invasive and expansive surveillance system imported from the US and Israel.<sup>38</sup> Then there are the countless cases of people being tried in courts for *ḥadd* punishments that do not directly involve the rights of others (e.g., adultery, drinking alcohol), whereupon the state took upon itself the responsibility of punishing citizens for breaching the social contract.<sup>39</sup> In this model, one is not punished for disobeying Allah, but for opposing salient social values and undermining the state.<sup>40</sup>

---

<sup>35</sup> Some major studies do show a decrease in crime, but these apply only to certain types of crime and not the most serious. The lack of a decrease in the latter suggests the need for a reassessment of theories of crime motivation and the effectiveness of external fear as an effective means of prevention. See Brian Chen, “Security Cameras make us Feel Safe, but are they Worth the Invasion?,” *New York Times*, November 2, 2022, <https://www.nytimes.com/2022/11/02/technology/personaltech/security-cameras-surveillance-privacy.html>.

<sup>36</sup> One study looking at American Muslims found “chilling effects on Muslim political activities, including expected disclosures of their religious identities,” noting that, “[a]lthough surveillance did not freeze their expression altogether, like general internet users, it did suppress individuals’ intended participation.” See Elizabeth Stoycheff, Juan Liu, Kai Xu, and Kunto Wibowo, “Privacy and the Panopticon: Online Mass Surveillance’s Deterrence and Chilling Effects,” *New Media & Society* 21, no. 3 (2019): 602–619.

<sup>37</sup> “Iran Installs Cameras in Public Places to Identify, Penalise Unveiled Women,” *Reuters*, April 11, 2023, <https://www.reuters.com/world/middle-east/iran-installs-cameras-public-places-identify-penalise-unveiled-women-police-2023-04-08/>; Benoit Faucon and Liza Lin, “U.S. Weighs Sanctions for Chinese Companies Over Iran Surveillance Buildup,” *Wall Street Journal*, February 4, 2023, <https://www.wsj.com/articles/u-s-weighs-sanctions-for-chinese-companies-over-iran-surveillance-buildup-11675503914>.

<sup>38</sup> “Saudi Arabia Threatens 3-yr Travel Ban for Citizens Who Visit ‘Red List’ States,” *Reuters*, Jul 27, 2021, <https://www.reuters.com/world/middle-east/saudi-arabia-threatens-3-year-travel-ban-citizens-who-visit-red-list-states-2021-07-27/>; Eva Thiébaud, “UAE’s High-Tech Toolkit for Mass Surveillance and Repression,” *Le Monde Diplomatique*, Jan 2023, [mondediplo.com/2023/01/05uae](https://mondediplo.com/2023/01/05uae); Kristian Ulrichsen, “Pegasus as a Case Study of Evolving Ties Between the UAE and Israel,” *Gulf State Analytics*, Jun 9, 2022, <https://gulfstateanalytics.com/pegasus-as-a-case-study-of-evolving-ties-between-the-united-arab-emirates-and-israel/>.

<sup>39</sup> See, for example, the Saudi government raiding the homes of non-Muslims and punishing them for such offences—all actions far beyond the *Sharī‘a*-mandated *ḥudūd*, which do not comprise any punishment for acts such as non-Muslims consuming alcohol in a private environment. See Mario Cacciottolo, “Saudi Arabia Drinking: The Risks Expats Take for a Tipple,” *BBC*, October 13, 2015, <https://bbc.com/news/uk-34516143>.

<sup>40</sup> This is why prosecutions are dubbed “State v the Defendant,” following the European model in which the crime is not a crime against God, or even against other persons, but against the state itself.

A valid question pushing against the critique proffered here arises: why should the monitoring and prosecution of those who disobey Allah *not* be a priority of an Islamic state, especially where these laws are designed to protect the society itself? The Islamic tradition is rich with responses. Beginning with the Qur’ān, we read the verse, “O you who have attained faith, avoid making too many assumptions—indeed, some assumptions are sinful. And do not spy on one another, nor backbite one another.”<sup>41</sup> In a similar vein, the Prophet ﷺ is reported to have said: “If you seek out the faults of people, you will corrupt them, or nearly corrupt them,”<sup>42</sup> implying that excessive surveillance creates a reverse effect on people. Finally, we may recall the famous narration of the ‘Umar b. al-Khaṭṭāb ؓ who—as caliph—was once patrolling the streets of Madina with ‘Abd al-Raḥmān b. ‘Awf ؓ when they heard a rowdy party taking place in the house of Rabī‘a b. Umayya. Upon investigating, ‘Umar told ‘Abd al-Raḥmān, “they’re drinking [alcohol] right now, what do you think [we ought to do]?” ‘Abd al-Raḥmān responded: “I think we have fallen into what Allah prohibited—Allah prohibited [us], saying, ‘and do not spy [on one another]’—for we have indeed spied.”<sup>43</sup>

The Prophet ﷺ instructs us that spying, or the act of seeking out (secretly or openly) the faults of people, is itself a cause of moral corruption. This applies to those in authority as well, including the highest office of the caliph. This is a clear indication that the government itself should not be in the business of policing morality through surveillance—that is, through the secret tracking of people’s behaviors—especially when done within spaces recognized as private in the *Sharī‘a*. Surveilling people in terms of their private actions is thus outlawed. More importantly, we learn that the locus of state’s facilitation of morality is not in the immediate removal or punishment of every immoral action per se, but rather a regulation of the public sphere and pursuing only those cases brought to state. Furthermore, a strong case may be made that even surveillance in public areas falls under the purview of the abovementioned *aḥādīth*, as “following the ‘awrāt [faults] of people” and “*tajassus*” [spying] do not take place only in the private sphere.<sup>44</sup>

Classical jurists echo the same sentiments. For instance, the 14<sup>th</sup> century Shāfi‘ī jurist Tāj al-Dīn al-Subkī says about the rights of the ruler:

It is the governor’s right to investigate and address public wrongdoings, such as the consumption of alcohol or *hashish*, and to block the means leading to such actions. However, it is also his duty to cover what Allah has concealed regarding the sins of individuals. The governor has no right to spy on people or seek out their hidden wrongdoings, nor to raid their homes based on mere rumors or hearsay. Allah Most High says: “And do not spy.” It is also authentically reported in *Sahih Muslim* that the Prophet ﷺ said: “Beware of suspicion, for suspicion is the most false of speech. Do not spy on one another, nor pursue one another’s faults.” ...Additionally, Mu’awiya ؓ said: “I heard the

---

<sup>41</sup> Qur’ān, *al-Hujurat*, 49:12.

<sup>42</sup> *Abū Dāwūd*, #4888.

<sup>43</sup> *Mustadrak al-Hākim*, #8136. Judged as authentic [*ṣaḥīḥ*] by Ḥākim and Dhahabī.

<sup>44</sup> The notions of “public” and “private” mentioned here are not the same as those central to modern liberal theory; there are significant difference between the twain. For a preliminary comparative discussion, see Talal Asad, “Boundaries and Rights in Islamic Law: Introduction,” *Social Research* 70, no. 3 (2003): 683-686.

Messenger of Allah ﷺ say: “If you pursue the faults of Muslims, you will corrupt them or come close to corrupting them.” ... Thus, the ignorant person may think that by pursuing people’s faults, he is reforming them. Yet the Messenger of Allah ﷺ, the most truthful of people, clearly stated that doing so will corrupt them or almost corrupt them. In fact, it is the duty of the governor—when he is certain of wrongdoing—to send a trustworthy person secretly to forbid the wrong, but only to the extent that Allah has ordained, without exceeding it. What some rulers do [today], such as dragging people out of their homes, terrifying them, disturbing them, and exposing their faults, is all a transgression of the limits set by Allah Most High and a grievous form of oppression.<sup>45</sup>

### ***Law and Punishment***

Let us take this discussion of surveillance into the field of law and punishment more generally. In studying the Islamic framework of law and punishment, a stark contrast can be identified in comparing its legal system with that of the secular state. In some instances, for example, the Islamic system teaches that even those deliberately flaunting their disobedience of the law—or convicts who attempt to escape punishment—should not be punished. Two incidents in the life of the Prophet ﷺ come to mind.

The first is the Prophet’s ﷺ judgement regarding the companion Mā’iz b. Mālik ﷺ, who testified against himself and insisted that he be punished for adultery.<sup>46</sup> Not only did the Prophet ﷺ repeatedly turn his head so as not to hear the testimony, and clarify that he had no excuse for it, but when the punishment was eventually being carried out, Mā’iz tried to escape due to the pain, but was followed and killed by the executioners. Upon hearing this, the Prophet ﷺ asked the companions in charge of punishing him, “Why didn’t you leave him? Perhaps Allah would have forgiven him.”

A second prophetic instruction is the prohibition on men and women who impersonated the opposite gender: “The Prophet ﷺ cursed men who imitate women and women who imitate men. He said, ‘Turn them out from your homes.’ He thus turned such-and-such person out, and ‘Umar also turned out such-and-such person.”<sup>47</sup> An implication of this prohibition is the existence of individuals who challenged Islamic gender dichotomies in premodern Muslim societies.<sup>48</sup> The

---

<sup>45</sup> Şehzâde Korkut, *Da‘wat al-Nafs al-Ṭāliḥa ilā al-A‘māl al-Şāliḥa* (Sulemaniye Library, Haghia Sophia, 1763), 147–148; Tāj al-Dīn al-Subkī, *Mu‘īd al-Ni‘am wa-Mubīd al-Niqam* (Beirut: Mu‘assasat al-Kutub al-Thaqāfiyya, 1986), 40.

<sup>46</sup> *Abū Dāwūd*, #4419.

<sup>47</sup> *Bukhārī*, #6834.

<sup>48</sup> Poetry, history books, and transcripts from the daily life of Islamicate societies attest that homosexual practices and people who crossed the gender binary certainly existed. Although Islamic jurists viewed this as extremely reprehensible, there is a strong likelihood they continued to exist. There is also evidence that these practices were partly tolerated by political authorities (e.g., with eunuchs and non-gender dancers being employed by decadent ruling elites). The classical position seems not to be policing and eradicating deviant practices but isolating and containing them, insofar as a crime deserving a punishment has not been observed. For a review of these gender roles in Islamicate history, see Sabine Schmidtke, “Homoeroticism and Homosexuality in Islam: A Review Article,” *Bulletin of the School of Oriental and African Studies* 62, no. 2 (1999): 260–266. I recommend readers to treat generalizing conclusions with suspicion and confirm only those proven by primary sources.



absence of government intervention towards these people—through policing, education, and punishment centered around “fixing sexual deviance” as understood in western medicine—simply was not a concern in the Prophet’s time. State intervention was limited to preventing public acceptance of certain social practices (i.e., by turning them out of their homes) and punishing the action of sodomy regardless of its association with “sexual identity.” The point here is that criminal punishments of homosexual acts and minor punishments applied to people imitating the other gender illustrate the state’s limited role in policing social practices.<sup>49</sup>

In both above cases, it is important to understand the difference in the culture of governance between secular and Islamic legal systems. In the former, the supposed omniscience and omnipotence of the state is inculcated in subjects through surveillance and the constant *threat* of violence. As the goal of surveillance is to discipline and train people to be submissive subjects, institutions are created to forcefully reform outcasts who refuse to adhere to these standards. This doctrine was most powerfully instituted with the creation of the prison system and insane asylums, as Foucault has famously shown. The goal of prison is not to make the subject “realize what he did was wrong.” It is, rather, to subject the criminal to complete subordination outside the gaze of society, to legitimize the state in his eyes by showing him that every part of his life is controlled and surveilled down to the smallest detail, to reform his soul and personality and force him to be “good” and “law-abiding.” Anoma Pieris summarizes Foucault’s argument, highlighting the strong association between criminal reform in western nation-states and the “civilizing mission” embedded in the colonial psyche:

Reform through isolation and under surveillance objectified prisoners, disciplining them into governable/docile subjects, and punishment was directed at the soul rather than the physical body of the prisoner...The colonial prison was instead an unwieldy hybrid of two opposing movements toward centralized and capillary manifestations of power. Centralization retained through its urban location, punitive regime, and labour coercion, while the dissemination of penal authority was achieved by interpreting these very attributes as instruments of reform and self-governance.<sup>50</sup>

This is precisely the mentality of colonialism: classical liberal theorists did not merely justify subordinating criminals, they encouraged the subjugation of entire populations under totalitarian colonial rule. In so doing, they relied precisely on this notion in criminal law that the purpose of government is to *civilize*, to reform “undeveloped,” “unrefined,” inferior souls by making them learn European methods of thinking and political organization.

The goal of Islamic government, on the other hand, could not be further from a project that attempts forced reformation of human souls. Islam constitutes a complete and universal reformation and transformation of human souls upon the will of their Creator, which entails the

---

<sup>49</sup> On postclassical jurists’ classifications of sexual behaviour, including effeminate men, pederasts, and “*lūṭīs* (sodomites)” and associated punishments, see Khaled El-Rouayheb, *Before Homosexuality in the Arab-Islamic World, 1500-1800* (Chicago: University of Chicago Press, 2009), 13–52.

<sup>50</sup> Anoma Pieris, *Hidden Hands and Divided Landscapes: A Penal History of Singapore’s Plural Society* (Honolulu: University of Hawai’i Press, 2009), 14–15.

attainment of success in both this world and the hereafter. Crucially, purification of the soul is key to its reformation, and this can only be grasped through the concept of *ihsān*—as described by the Prophet ﷺ, “to worship Allah as if you can see Him, though you cannot see Him, but He can see you.”<sup>51</sup> The essential feature of Islamic subject formation is that it is completely in line with human nature (*fiṭra*), where moral conduct is inculcated with a fear of Allah alone. The major difference between European and Islamic systems of government, in turn, is that the former uses *human force* as a means for the reformation of citizens, while the latter thrives on *human flourishing* for the maintenance of a strong self, family, society and state.

	<b>Islamic <i>Fiṭra</i> Model</b>	<b>Western Colonial Model</b>
<b>Source of volition</b>	Fear of Allah: internal acceptance of the heart followed by genuine action ( <i>ikhhlāṣ al-niyya; īmān</i> )	Fear of the State: surveillance and implicit power that disciplines the soul into behaviors and opinions
<b>Source of knowledge</b>	The Creator through divine revelation, through hope and fear in the reward and punishment of an eternal and all-powerful God	State culturing informing subjects to be rewarded by “positive” actions and punished by “negative” actions
<b>Method of enforcement</b>	<i>Da’wa</i> , Islamic education, grassroots movements, seeking Islamic knowledge, sermons and classes	Surveillance, public education, mass media, social media controls, national symbolism

Table 1 - Comparing Islamic and Western models of governance

The Islamic conception of government rests solely on the individual’s and community’s socio-spiritual connection to their creator. Morality is cultivated by true, genuine believers willing to sacrifice their lives and wealth for their brethren, a fear of crime and evil not due to fear of punishment, but out of hope and fear of divine reckoning that transcends all of humanity, including even the gaze of the state. This is not to suggest that government authorities have no deterrence role—they certainly do. However, their role in facilitating moral conduct is only effective within a culture of communal accountability. By structuring life such that Allah ﷻ is the locus of all power,<sup>52</sup> divine accountability transcends all forms of human law and punishment, and the state’s power is made equal, in principle to every other institution and individual in the polity, who then collectively work together to hold each other accountable.

While the Islamic conception of government can only be fully articulated through thousands of references to Qur’ān and Ḥadīth over several volumes (as has been done throughout Muslim

<sup>51</sup> *Bukhārī*, #50.

<sup>52</sup> “Rule is for none but Allah” (Qur’ān, 6:57; 12:40; 12:67); “and Allah is over all things capable” (variants of this occur in 35 verses of the Qur’ān).

history),<sup>53</sup> what I am concerned with in this paper is contrasting this conception in broad terms with the modern state. The process of self- and communal transformation in Islamic society is commensurate with the *fiṭra*, and thus functions in the absence of massive state apparatuses. Modern states, on the other hand, deploy invasive mechanistic systems of enforcement, which often lead to resentment and instability, the opposite of that for which they were intended.

For this reason, any truly Islamic governance must allow for society to establish systems of discipline, law enforcement, and punishment that agree with the Islamic technology of the self. The prevailing norms of society and the culture of piety and accountability to Allah that comprise an Islamic polity itself serve as correctives for individual souls on their journey to spiritual perfection. This is also why the Islamic polity affords significant powers to people—the state-subject division is not as clear as we would think. Consider how parents have a degree of authority over children, husbands over their wives, scholars/teachers over their students, and how entire tribes and communities were effectively self-governed in the early Islamic caliphate.<sup>54</sup> Islam recognizes the importance of strong familial and tribal capacities in fostering piety and moral conduct. Furthermore, to tie this with the subject of discipline, it is essential that leadership figures do not impose themselves as the sole arbiters of morality, or the sole administrators of individual discipline.

All this needs to be taken with two important qualifications. The first is the lack of surveillance, in addition to the authorities not proactively investigating crimes that do not directly harm others. In other words, cheating in the marketplace, causing someone physical harm, or apostatizing from Islam thereby betraying the political community do not fall under the general prohibition of state proactive involvement. This is in contrast with crimes that relate solely to one's piety, including involvement with intoxicating substances and fornication. In fact, premodern Islamic governments played a limited role even in cases in which involvement was justified—murder cases, for instance were solved by families of victims and not government officials (e.g., police detectives).<sup>55</sup>

The second qualification is that, when a case is reported and evidence established, relevant punishments must be implemented even where the state would normally not have jurisdiction had the case not been reported. This is understood from a Prophetic command, whereupon the Prophet ﷺ implemented *hudūd* even where the suspect in question was forgiven by the affected party. In a specific case, the Prophet ﷺ implemented the *ḥadd* on a thief even though the owner of the property had forgiven him after he was caught. The Prophet then instructed that the correct

---

<sup>53</sup> This field is known as “political jurisprudence” (*fiqh al-siyāsa*) and has been developed by major scholars for over a thousand years. Major works include al-Juwaynī's *Ghiyāth al-Umam fī Iltiyāth al-Zulam*, al-Māwardī and Abū Ya'la's *al-Aḥkām al-Sulṭāniyya*, and Ibn Taymiyya's *al-Siyāsa al-Shar'iyya*.

<sup>54</sup> Not in a way that opposes *Shari'a*, but it remains the case that the native population was permitted to maintain command structures.

<sup>55</sup> This is not to say that Islamic law encourages the absolute limitation of government authority. However, this was the norm in premodern Islamic society, wherein social organization was based around tribes and clans (and still is to a certain extent). In classical Islamic jurisprudence, these discussions manifested themselves in cases such as “*qasāma*” (mutual swearing of oaths), and discussions of what happens if the family of a victim exacts *qiṣāṣ* (retaliatory punishment) without the permission of the ruler; both assume a major role of the tribe in investigating the murder. For a summary of some *qasāma* rulings, see Ibn Qudāma al-Maqdisī, *al-Mughnī* (Cairo: Maktabat al-Qāhira, 1969), 8:487–490.

procedure was for the case to have been handled outside the judicial system entirely.<sup>56</sup> Because the authorities had been made to become involved, and because the crime constituted one of the few *ḥudūd* outlined in the Qur’ān, the punishment had to be carried out. No one can stand in on behalf of Allah to forgo the transgression of His boundaries in this *dunyā*, even if Allah may forgive the offender in the *ākhirā*.

This brings us to a different question, which concerns the nature of the *ḥudūd* and other Islamic modes of punishment. While the *ḥudūd* are known to be set according to Qur’ānic and Prophetic injunctions,<sup>57</sup> there also existed a system of punishment instituted by judges and rulers called *ta’zīr*, which most often ranged from verbal condemnation to a beating or lashing of up to 10 lashes.<sup>58</sup> Importantly, while “prison” certainly did not exist as a system with similar aims or scale to that of the modern state, imprisonment did exist to as a mode of holding people captive in limited instances, such as a debtor who refuses to pay his loan despite being solvent, or a criminal deemed to be a flight risk.<sup>59</sup>

On the whole, the logic of Islamic legal punishments is very different from that of the modern state. The *ḥudūd* entirely consist of corporeal punishments while *ta’zīr* in most *madhhabs* consisted of less significant beatings and fines when the transgression involved the financial rights of others (e.g., confiscating fraudulent material and donating it to charity).<sup>60</sup> The western notion of punishment, on the other hand, focuses its disciplinary efforts in the form of physical, psychological, and medical procedures to tame the soul and reverse human inclination from within.<sup>61</sup> This includes the prison system, revocation of selective rights (e.g., mobility), psychological medication, and constant monitoring (from ankle monitors to videos of traffic infractions). The greatest tragedy of this type of punishment is its complete ineffectiveness—the

---

<sup>56</sup> *Abū Dāwūd*, #4419. The difference between this case and Mā’iz’s is that the latter case was based solely on his own testimony and did not infringe on the rights of others, unlike the case of a thief.

<sup>57</sup> These are adultery, theft, false accusations of adultery, drinking alcohol, highway robbery, and apostasy. Intentional murder is considered *qiṣāṣ* and, uniquely, may be forgiven by the family of the victim. ‘Abd al-Raḥmān al-Jazīrī, *al-Fiqh ‘alā al-Madhāhib al-Arba’a* (Beirut: Dār al-Kutub al-‘Ilmiyya, 2003), 5:12–13.

<sup>58</sup> According to the *Zāhirīs*, the maximum discretionary punishment is 10 lashes due to authentic traditions narrated limiting this number, “unless in the case of a *ḥadd* among Allah’s *ḥudūd*,” as the tradition states. See ‘Alī Ibn Ḥazm, *al-Muḥallā bi al-Āthār* (Beirut: Dār al-Fikr, 1988), 11:226; *Ṣaḥīḥ Muslim*, #1708.

<sup>59</sup> See Aḥmad al-Zūmān’s study of early primary sources (*aḥādīth* and *āthār*) describing such limited cases of imprisonment. These precedents served as evidence for the legal schools permitting imprisonment in the cases mentioned above. Al-Zūmān, “al-Ḥabs fī ‘Aṣr al-Khilāfa al-Rāshida,” *al-Alūka*, February 9, 2014, <https://www.alukah.net/culture/0/66342/>.

<sup>60</sup> Ibn Taymiyya summarizes the opinions of the *madhhabs* regarding discretionary punishments and differences on the permissibility of monetary fines. See Islam and Eryiḡit, *Islam and the State in Ibn Taymiyya*, 73–81.

<sup>61</sup> This conception of punishment relies on the conception of a “full” archetypal citizen of the nation-state to which it applies. Minorities, foreign and colonized populations, and women exist on a sliding scale in the extent to which they are considered worthy of claiming human rights—dependent upon their physical, social, or conceptual proximity from the archetypal ideal—and are thus subject to vengeful collective punishment, irrational violence, and physical and sexual exploitation. This is best demonstrated in the ongoing horrific genocide in Gaza.



creation of these alternative forms of punishment has resulted in horrible humanitarian and financial abuses that negatively affect society in general.<sup>62</sup>

Most importantly, on a sociological level, there has been a major shift in the regulation of human behavior. Organic forms of social regulation—where norms of local communities, religious teachings, and public shame prevented deviance and crime—have largely been done away with. In their place, an artificial form of individual social control has taken hold, where fear of punishment, and of being labelled as part of an “out group” of criminals, is the means of deterrence and compliance with the law. In the long term, it is hard to see why a disciplinary system based solely on extrinsic motivation should instill a self-sustainable or communal desire to act morally. Again, such an approach makes sense if we view law as both a function and cause of capitalist exploitation.<sup>63</sup>

The *Sharī‘a*, by contrast, is built upon four central principles that make punishments both just and effective in regulating crime due to their agreement with human nature (*fiṭra*). Punishment is intimately tied to the Allah-consciousness (*taqwā*) of the individual; the piety and autonomy of the family and Islamic community; the threat and deterrence of corporeal punishment; and penalizing crimes legislated by the Creator and not resorting to policing thoughts and morality.

These principles create several effects on society, such as how the threat of punishment (even where a prohibitively high level of evidence is required) deters most would-be criminals. However, for the purposes of this paper, I am less concerned with these effects than I am with analyzing the constitution of power in society where punishments can truly be considered Islamic. Importantly, the effectiveness of punishment does not lie in the state’s ability to monitor and punish every instance of crime. As mentioned earlier, the companions deliberately refrained from spying and the Prophet ﷺ did not initiate investigations of those with whom confessed adulterers committed the crime, even though the prime facie case of *zinā* against them is apparent. The purpose of these laws is to instill Allah-consciousness in individuals, both through education of the laws and the *tarbiya* of families and local communities, and to encourage every member of the Umma to develop an individual relationship with their Creator. It is the individual, internal initiative of the Muslim that allows for him or her to flourish and reform. The role of the state is not to enforce but to serve as a conduit for encouraging the implementation of justice on the familial, communal, and governmental levels.

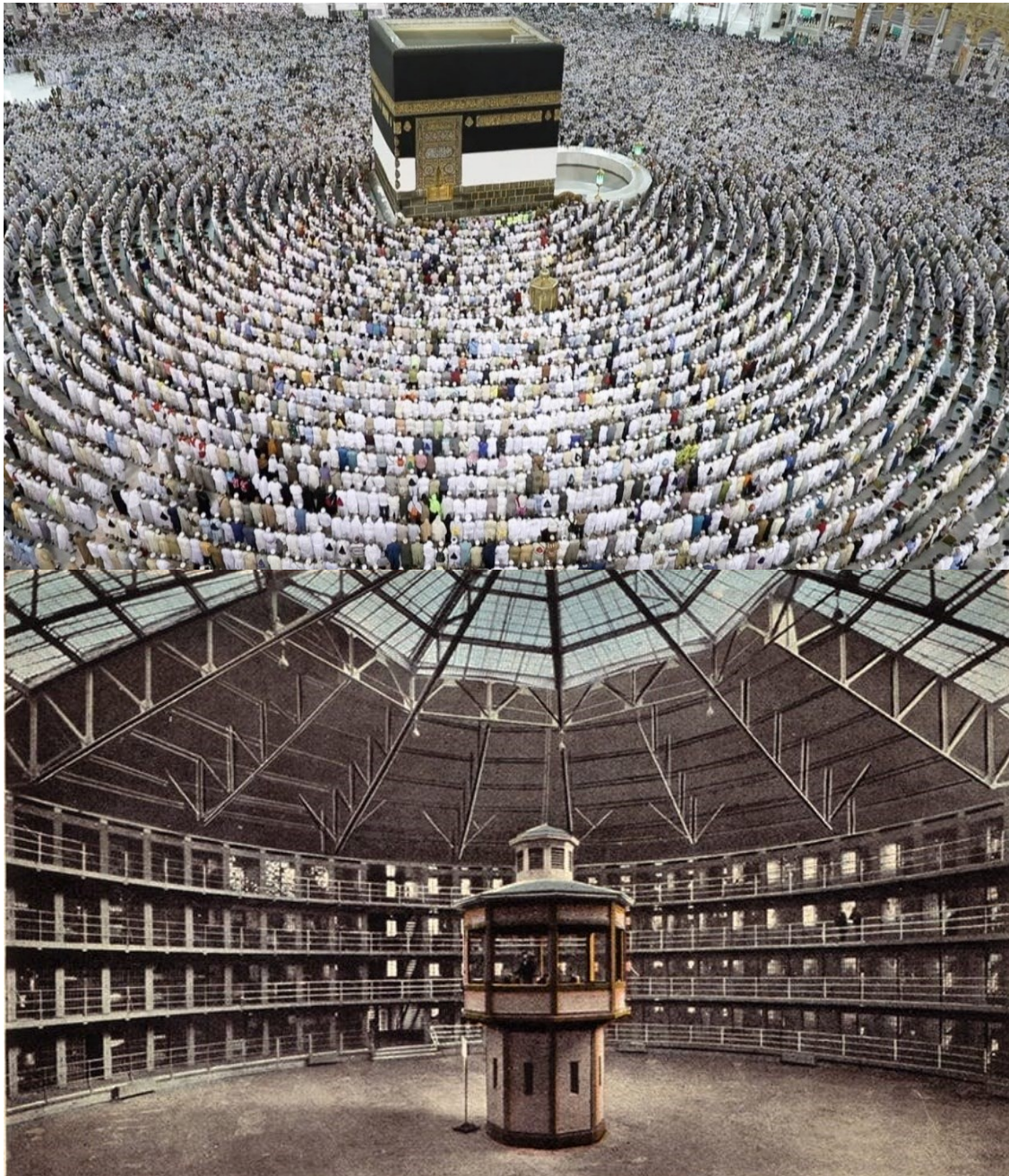
Thus, it is the concept of *purpose* that makes members of an Islamic polity strive towards self-perfection. It is the eternity of Allah, His omnipotent power, and unlimited “surveillance” capability—and our cognizance of this reality—which allows for Islamic society to thrive. The

---

<sup>62</sup> Negative impacts include prison torture and beatings, the psychological torture of solitary confinement, the effect of criminal records in precluding the possibility of fully rejoining society, the immense financial strain of prisons, etc. For more on this, see Peter Moskos, *In Defense of Flogging* (New York: Basic Books, 2011).

<sup>63</sup> Consider the fact that the exploitation of labor and colonial extraction of resources is entirely “legal,” and punishments are only exacted on those who disrupt the system. The relationship between capitalist exploitation and the modern prison brings together several interrelated phenomena, including the racialization of crime, exploitation of colored people (especially the descendants of enslaved people) both in prisons and within the broader capitalist system, and the continued otherization of its victims, all of which enable modern forms of slavery, human trafficking, and maintaining a permanent working and criminal class.

catch is that this cognizance of the Creator cannot be increased by increasing punishments, surveillance, or government control over people's lives.<sup>64</sup>



*Figure 3 - Comparison between the Ka'ba and Bentham's Panopticon. Credit to Mücahit Bilici.*

---

<sup>64</sup> A similar illustration to the one below appears in Mücahit Bilici, *Finding Mecca in America: How Islam Is Becoming an American Religion* (Chicago: University of Chicago Press, 2012), 51.

## ***Bureaucratization, Rationalization and Centralization***

Following the urbanization of societies and the establishment of the modern state as an organizing principle of power, the method of government control greatly expanded to shape every aspect of human life. The modern state's project of restructuring religious authority around submission to state power and the economic system replicated the medieval Church and monarchical systems in external standardization, discipline, and ritualization of legal and bureaucratic procedures.

[T]he Church, of course, sought to hierarchize and centralize legal authorities and institutions (as the successful monarchies also did) in the face of opposition from localized, custom-based, feudal interests—both ecclesiastical and secular...[in the High Middle Ages] [t]he growing commercial classes required a rational, standardized, universal form of law, a need that was compatible with the political ambitions of popes and monarchs.<sup>65</sup>

Asad touches on an important point here: although systematization of bureaucratic procedures is portrayed as required on rational and objective principles of organization, it serves functionally to maintain totalized control over the population under the pretense of neutrality and equality. As Hallaq further observes, this became a feature of modern capitalist society to enable the effective management and control of subjects.

Thus, bureaucracy is the tool and instrument of administration, and administration, in the modern state, is the organization of control, governing, governmentality, and violence...State bureaucracy in fact regulates such sub-bureaucratic structures, orders them, and renders them subordinate to its rational imperatives. It also goes further to regulate civil society, from registration of birth to the certification of death—and almost everything in between: schooling, higher education, health, environment, welfare, travel, labor, safety at work, taxes, public hygiene, parks and entertainment, etc. In other words, bureaucracy not only intrudes on the private sphere and civil society, but it also—and importantly for us—orders and sets the standards for the community...Bureaucracy therefore breeds its own community, the community of the state.<sup>66</sup>

Considering the extensive subordinating power of the state, Hallaq is right to observe that a premodern jurist would be horrified by the modern notion of bureaucracy, as they would be with surveillance and punishments that oppose the *Sharī'a*. In any case, control in the secular state can and does have more than one purpose, including the preservation of capital, and of the state itself. In contrasting this with Islamic legal and governmental standards, it is interesting to note that it was none other than Max Weber—the first sociologist of the modern state—who used the term “Kadijustiz”<sup>67</sup> to describe a system of law grounded in “informal judgements rendered in terms of

---

<sup>65</sup> Asad, *Genealogies of Religion*, 96.

<sup>66</sup> Hallaq, *The Impossible State*, 32.

<sup>67</sup> That is, *qāḍī*-justice from the Arabic *qāḍī*, meaning judge trained in the *Sharī'a*.

concrete or other practical valuations.”<sup>68</sup> Although Weber was unfounded in associating “Kadijustiz” with the Islamic tradition<sup>69</sup>—the Islamic legal process was always based on an entirely foundational rule of (*Shari‘a*) law—he was concerned with differentiating between rational/centralized and traditional/localized styles of legal adjudication.

Nevertheless, the question remains: since the Islamic legal tradition was not completely bereft of some degree of standardization and bureaucratization, in what ways does the modern state’s proliferation of these rationalizing systems differ from that of early Islamic polities? Notably, this relationship between bureaucratization and power was reflected in the attitudes of the early Muslims. One of these events worth noting is a debate that took place between the companions regarding the compilation of the Qur’ān, with ‘Umar رضي الله عنه and Zayd b. Thābit رضي الله عنه objecting to Abu Bakr رضي الله عنه that the compilation of the Qur’ānic text was never done by the Prophet ﷺ and doing so could be considered an innovation.<sup>70</sup> Later, in the process of ‘Uthmān’s رضي الله عنه codification of the Qur’ān, the great companion exegete-jurisconsult ‘Abd Allāh b. Mas‘ūd رضي الله عنه was infuriated that his manuscript was confiscated by authorities.<sup>71</sup>

Now, even later jurists who were skeptical of government overreach did not question the necessity of gathering and codifying the Qur’ān—similarly, caliphs or *amīrs* often sponsored the compilation of ḥadīth, as these interventions were necessary for preserving Prophetic revelation. Nevertheless, the fact that the companions would even question this out of fear of acting contrary to the Prophetic example shows their level of adherence to Sunna-based government. I argue this is what defined the Companions’ fear of government overreach on people’s rights. It was this understanding of limited government authority that led ‘Umar to reverse several policies enacted in the favor of public interest, on the basis of Islam’s strict guarding of Muslims’ personal rights.<sup>72</sup>

It is significant that the companions, especially the caliphs, were fearful about the impact of official government procedures and of isolating government officials from the remainder of society. ‘Umar b. al-Khaṭṭāb رضي الله عنه, despite expanding the size of the government following massive expansion of the caliphate, refused to separate government officials from the rest of society. He took several bold measures to ensure that these strict standards were upheld, including sending Muslims to check in on the state of his governors, ordering that the house of Sa‘d b. Abī Waqqāṣ

---

<sup>68</sup> Max Weber, *From Max Weber: Essays in Sociology*, ed. H. H. Gerth and C. Wright Mills (New York: Oxford University Press, 1946), 216. Weber states, “The single case that cannot be unambiguously decided by tradition is either settled by concrete ‘revelation’ (oracle, prophetic dicta, or ordeal—that is, by ‘charismatic’ justice) or—and only these cases interest us here—by informal judgments rendered in terms of concrete ethical or other practical valuations. This is ‘Kadi-justice’...Kadi-justice knows no reasoned judgement whatever.”

<sup>69</sup> For a summary, see Intisar A. Rabb, “Against Kadijustiz: On the Negative Citation of Foreign Law,” *Suffolk University Law Review* 48, no. 343 (2015): 354–357.

<sup>70</sup> See *Bukhārī*, #7191.

<sup>71</sup> For Ibn Mas‘ūd’s reaction to the standardization, see *Tirmidhī*, #3104.

<sup>72</sup> Two examples are when ‘Umar رضي الله عنه reversed a decision to cap the value of wedding dowry, and when he reversed a policy of price-fixing in the marketplace. See respectively Jalāl al-Dīn al-Suyūfī, *Al-Durr al-Manthūr* (Cairo: Markaz Hajar, 2003) 4:293; Ibn ‘Abd al-Barr, *al-Istidhār al-Jāmi‘ li-Madhāhib Fuqahā al-Amṣār* (Damascus: Dār Qutayba, 1993), 20:69.



ﷺ be burned down for building a mansion isolated from the people, and requiring that all governors literally have their doors open to receive complaints from constituents.<sup>73</sup> Similarly, ‘Umar ﷺ was shocked by Mu‘āwiya ﷺ, his governor in Syria, for displaying symbols of kingship, such as an entourage and decorated mounts, giving the excuse that this was necessary to deter the Romans from thinking the Muslims were weak. Skeptical of his reason, ‘Umar exclaimed, “I do not approve of you, nor do I prohibit you”.<sup>74</sup> It is also significant that the concept of “*mulk*” (kingship) in early Islamic linguistic usage refers not only to the transfer of authority from father to son but includes the officialization of ceremonial procedures only made possible by the isolation of government power from the people.

The “separation” of objective and rational actions lies at the core of modern state rationalization, allowing it to maintain an aura of neutrality and objectivity. The physical separation of government buildings and the exclusive residences of society’s elites and “officials” enacts this separation. It effectively monopolizes power by organizing a complete set of social possibilities to a choreographed script of potential requests and remedies, practiced in various government departments, ranging from hospitals to motor vehicle divisions. A necessary social division for this method of control is a separation between public and private duties:

Whereas Marx had emphasized the separation of the worker from the ownership of the means of production, Weber extended this by noting that the soldier was separated from ownership of the means of warfare...And the official, in a bureaucratic organization, is separated from the ownership of the means of administration.<sup>75</sup>

This applies not only to official government workers, whose jobs as “agents” of the government lend the latter an air of neutral objectivity and protection from accountability. Rather, it extends to the entire superstructure of the state, which includes the CEOs of multinational corporations, stock market “wolves”, and much else besides:

These are the organic intellectuals, the bureaucrats and policy-makers in the state, and the technicians in modern corporations who play a key role in the organization of “social hegemony,” which is “exercised throughout society by the dominant group and in the ‘domination’ over society that is embodied by the state”...This purposive and possessive “new type of worker,” with the attendant work culture of discipline, good morals and corresponding material success and upward social mobility, is, thus, a carrier of the deepest and most abysmal void sutured by hegemony.”<sup>76</sup>

---

<sup>73</sup> Muhammad Yusuf al-Kāndhlawī, *Hayāt al-Ṣaḥāba* (Beirut: Dār al-Kutub al-‘Ilmiyya, 2008), 117–123.

<sup>74</sup> Islam and Eryiğit, *Islam and the State in Ibn Taymiyya*, 147; Ibn Kathīr, *al-Bidāya wa-l-Nihāya* (Cairo: Hajr li al-Ṭibā‘a wa al-Nashr wa al-Tawzī‘ wa al-I‘lān, 1997), 11: 416.

<sup>75</sup> John Eldridge, “Work and Authority: Some Weberian Perspectives,” in *Organizing Modernity: New Weberian Perspectives on Work, Organization and Society*, ed. Larry Ray and Michael Reed (London: Routledge, 2002), 90.

<sup>76</sup> Marco Fonseca, *Gramsci’s Critique of Civil Society: Towards a New Concept of Hegemony* (London: Routledge, 2016), 87.

This differentiation between private and public<sup>77</sup>—through the state’s monopolization of the public sphere—lies at the heart of secular power. In sharp contrast, the radically egalitarian nature of Islamic governance in the prophetic era and the early caliphate strove to always equalize and bind the “ruler” and “ruled.” Both are conceived of as one body and united, exchangeable, and bound together by the sacred duty to organize their lives according to divine command. The differentiation between ruler and ruled is not one of kind but only of function. Indeed, the ruler governs in the capacity as agent (*wakīl*) of the ruled. The people, that is, the Umma, is the primary agent of enacting the divine command, and the rulers, cut of the same cloth, are agents acting on its behalf, accountable to it, and requiring its consent of appointment—through the *bay‘a* given by its representatives (*ahl al-halli wa al-aqd*)—for their very legitimacy as rulers. It is primarily within this theoretical framework that we can contextualize the bold measures that the Prophet ﷺ and early caliphs had taken to ensure this equality of ruler and ruled. This included the caliphs’ physical accessibility and lack of any distinctive features, whether in their homes, salaries, means of living, clothing, or physical proximity to others.<sup>78</sup>

These entrenched and impactful practices were not just a few formalities meant to keep the community together. They were, in every sense of the word, a *way of life* that encompassed the totality of early Islamic social living. They were further practiced by the companions and caliphs who were famed for their remarkable asceticism and accountability to those under them. There are countless well-known stories regarding the extent to which they went to ensure this accountability.<sup>79</sup> Beyond the sentimental or romantic value of these stories, they inform us of a much higher and greater objective of governance, while incorporating a hidden critique of inferior forms of governance described in this section.

We can derive from the Rāshidūn caliphs’ model of governance two primary characteristics of Islamic statecraft.<sup>80</sup> The first quality is a lack of differentiation between public and private, and consequentially between ruler and ruled. The Rāshidūn caliphs entirely subsumed their identity with that of their public position. This was not in the sense that Islamically private (e.g., family)

---

<sup>77</sup> Immanuel Kant articulated a separation between a person’s public capacity and their private sphere, reasoning that as long as the latter (i.e., private views, conscience, reasoning) is protected, authoritarian restriction of public government functions can be justified. See Kant, *An Answer to the Question: What is Enlightenment?* (Indianapolis: Hackett Publishing, 1992).

<sup>78</sup> For example, Abū Dharr narrates that, “The Messenger of Allah ﷺ used to sit among his companions. A stranger would come and not recognize him until he asked [about him].” *Abū Dāwūd*, #4698.

<sup>79</sup> Examples include ‘Umar’s ﷺ unwillingness to turn on a lamp provided by public funds for his private visitors; the caliphs’ replacement of governors even on mere suspicion of malpractice; ‘Umar’s disciplining of his governor in Egypt and his son on various occasions; and his famously reversing his decree on limiting the marriage dower (*mahr*) at the objection of an elderly woman in the *masjid*. See al-Kāndhlawī, *Hayāt al-Ṣaḥāba*, 117–123; al-Shammarī, *Saḥīḥ Akhbār Ṣiffīn wa-l-Nahrawān wa-‘Ām al-Jamā‘a* (Dār al-Kutub al-‘Ilmiyya, 2019), 2: 728–729; and Ibn Kathīr, *Musnad al-Fārūq*, (Mansoura: Dār al-Wafā’, 1991), 1: 573.

<sup>80</sup> The focus on the Rāshidūn is because it is only their model that carries *sharī‘ah* value. It is true that many of the attributes of Islamic governance being identified here were not maintained by later caliphates. This ought not be used as an excuse to lower Islamic standards. Rather, when theorizing Islamic governance, prophetic and Rāshidī governance should be taken as the normative model, without discounting the empirical value to be gleaned from the historical experience of later models.

matters were within state jurisdiction or not subject to privacy, but rather in the sense that the individual person would be held personally accountable over every injustice under their purview. The absence of identifying marks, designated times or places to lodge complaints (which was the house of the official), and even the frequent replacement of officials kept the caliphate thoroughly grassroots- and community oriented. It provided direct accountability driven by the internal desire of those given responsibility to erase every instance of evil or oppression from their scale on the Day of Judgement. This is in sharp contrast to the modern state conception as an impersonal, disembodied entity and government officials as its (personal) agents, who, because of the former, have a limited liability, and in some extreme cases, immunity.

The Rāshidūn model of government certainly had a command structure established in the form of a legal contract—this is not in dispute. What I identify, rather, is that the caliphate was governed without official social differentiations between ruling and ruled, or between “agents” of the government—who can, in practice, act with impunity under the field of undertaking official procedures—and common people expected to adhere to a code of life. Perhaps one of the most important qualities of this system of rule is the near totalitarian accountability exercised over the *rulers* and government officials, but not in the least over the population, because crimes of the government are by default committed against other people.<sup>81</sup>

The second notable quality of the Rāshidūn caliphate is the removal of officialization, ceremony, or scripted encounters. As mentioned above, these serve the purpose of establishing a permanent ruling class, instilling awe and fear of the ruler, and socially controlling the population by engineering submissive behavior and limiting priorities and the range of possible and acceptable solutions to problems. This is not only a feature of modern statecraft but has been adopted in various Islamic caliphates after the Rāshidūn. The fact that the Islamic bureaucrat is also associated with his private identity, and that he is not trained according to impersonal, standardized, robotic standards, does not detract in the slightest from the seriousness or consequentiality of caliph-appointed roles.

Weber theorized that bureaucratic procedures were significantly superior to local or traditional methods of human organization due to their ability to manage large amounts of people according to *objective* standards—regardless of the moral consequences of such a project. Much like his treatment of “Kadijustiz,” Weber did not understand that there could exist a method of upholding impeccably high standards in procedural effectiveness without the need to implement cold, impersonal “rational” methods through social standardization. He was a product of his time, and he certainly knew little to nothing of Islam. In Islamic governance, we observe a complete shift in the paradigm of concepts of

---

<sup>81</sup> Ibn Taymiyya points out that even the individual religiosity of government officials is of concern to the ruler, and his appointment of unrighteous people when others exist is a sin in itself: “For each of the actions of the Muslims, the Leader of Affairs must appoint the one who is the most qualified to undertake the task. The Prophet, peace and blessings be upon him, said, “whoever appoints someone in governance of the Muslims, entrusts a man while finding someone better for Muslims than him—[such a person] has betrayed Allah, His messenger, and the believers,” narrated by al-Ḥākim in his *Ṣaḥīḥ*. In another narration, he said, “whoever appoints a man over a detachment despite there being someone more desirable for the role has betrayed Allah, His messenger and the believers.”... This is required of him.” *Islam and Eryiḡit, Islam and the State in Ibn Taymiyya*, 166.

personal motivation, discipline, and social responsibility: the source of these is the Creator and the individual's consciousness of the divine presence which pervades all of existence and cannot be hidden in any way.<sup>82</sup>

This Allah-consciousness is coupled with a stringent set of rules that accord with the *fiṭra*. In addition to this, there is the normative social disposition—through what we may classify as *habitus* in anthropological terms<sup>83</sup>—which encompasses every aspect of a person's life, social or personal. This includes actions (how to sit, stand, shake hands), speech (greeting, listening, asking questions), and, most importantly, principles observed in interacting with others. For instance, Islam places a very high emphasis on honesty and adherence to one's word, while lying or treachery are looked down upon societally and individually. In premodern Islamic society, a person's testimony could be rejected for lying in daily affairs (for lacking *murū'a*), and a ḥadīth-narrator known to make many mistakes in transmission would be rejected even if he was never known to lie in transmitting ḥadīth.<sup>84</sup>

Similarly, looking after others' needs as if they were one's own is an established principle. There are countless Qur'ānic verses and *aḥādīth* that emphasize the importance of sacrificing for one's brothers,<sup>85</sup> responding to the needs and calls of others,<sup>86</sup> and generally putting a brother's or neighbor's needs at the level of one's own.<sup>87</sup> This is not the place to explain these ethical values, let alone their implementation and operationalization in early Muslim institutions. However, I hope to highlight that it was the early Muslims' adherence to and implementation of these values that constituted the highly stringent set of standards by which the Muslim conducted his or her affairs. For representative purposes, one may recall how the caliphs were so concerned with their responsibility that they would take care of their citizens' needs on an individual basis. Consider the extent to which 'Umar b. al-Khaṭṭāb ﷺ went in his famous inauguration speech: "If a lost sheep under my care were to die on the banks of the Euphrates, I expect Allah the Exalted to question me about it on the Day of Resurrection."<sup>88</sup>

---

<sup>82</sup> Qur'ān: "And He is with you wherever you are" (al-Ḥadīd, 57:4), "We are nearer to you than your jugular vein" (Qāf, 50:16), "there is no hidden gathering of two or three, except that He is with them" (al-Mujādila, 58:7).

<sup>83</sup> Saba Mahmood describes this as a social process "concerned with ethical formation and presupposes a specific pedagogical process by which a moral character is secured." This is comparable to what Ibn Khaldun identified as *malaka*, "a firmly rooted quality acquired by doing a certain action and repeating it time after time, until the form of that action is firmly fixed." See Mahmood, *Politics of Piety: Islamic Revival and the Feminist Subject* (Princeton: Princeton University Press, 2005), 137.

<sup>84</sup> See Muḥammad al-Khayr'ābādī, *Mu'jam Muṣṭalahāt al-Ḥadīth wa-'Ulūmih* (Amman: Dār al-Nafā'is, 2009), 127.

<sup>85</sup> Allah said in praise of the Ansār, "they prefer others over themselves even when they are in dire need" (*al-Ḥashr*, 59:9).

<sup>86</sup> Allah said, "as for the one for asks, do not rebuke" (*al-Duḥā*, 93:10). In a beautiful ḥadīth, the Prophet ﷺ said, "Religion is sincerity." The companions asked: To whom? He said: "To Allah, to His Book, to His Messenger, and to the leaders of the Muslims and their common folk." *Muslim*, #55.

<sup>87</sup> The Prophet ﷺ said, "None amongst you truly believes until he loves for his brother that which he loves for himself," *Muslim*, #45; and "The believer is not one who fills his stomach while his neighbor to his side goes hungry." Bayhaqī, *al-Sunan al-Kubrā*, #19668.

<sup>88</sup> Abū Bakr al-Khallāl, *Al-Sunna* (Riyadh: Dār al-Rāya, 1989), 2:317.

The point being made in this section is the following: the idea that only dry, impersonal rules of behavior transmitted onto government workers serves as an effective—let alone *the most* effective—method of looking after citizens needs has not been demonstrated. To the contrary, there are countless reasons that the Islamic model—grounded in a system of spiritual training, strong ethics and manners, strong group-feeling (*‘aṣabiyya*, to use Ibn Khaldūn’s term), and action—is a far superior model of effectively caring for people. It manages to do this without the need for invasive assertion and displays of state power.

## **Towards an Islamic Spirit of Governance**

Islamic governance is not about copying and pasting “Islamic” or “Qur’ān-complaint” laws unto any given political or legal system. In theorizing the nature of the Islamic polity, there is a major difference between the way early Muslims thought of Islamic governance and the way that modern Muslims do. The assumption that simply recreating a modern state with an affixed “Islam” gives us Islamic governance does a great disservice to the Islamic tradition. It devalues the lived value of Islamic life, of the minutiae of *adab* and *akhlāq*, the cultivation of Islamic values and virtues, and the principle of human organization revolving around a singular aim: fear and cognizance of the Creator, Allah ﷻ. Islamic governance is a comprehensive system of life far from the materialistic and control-obsessed modern systems of power and organization. Such systems have led to a depersonalization of both ruler and subject, effectively robbing humans of their ultimate purpose and reducing them to action only in relation to immediate material benefit.

In understanding this, the reader will note that I push back against claimants to Islamic governance who have mimicked their enemies by clumsily enforcing the same totalitarian and rationalistic tendencies. Consider how ISIS, which for over a decade has claimed to be a legitimate Islamic caliphate, essentially adopted the Iraqi bureaucratic system<sup>89</sup> and recreated a secret police force common in Arab countries to the extent that its citizens felt they were living in a police state.<sup>90</sup> On the other extreme, many neo-traditionalist, “quietist” types, who criticize Islamic political movements for this very reason—albeit without the knowledge or details of classical Islamic governance—take legitimate criticism as a license to belittle all attempts to revive Islamic governance. Such critics, to varying degrees, show a willful ignorance of the *Sharī‘a* and the history of its implementation, and even greater ignorance of the complete dominion of the modern state in organizing, controlling and eliminating human bodies to serve its purpose.

---

<sup>89</sup> “We do know that ISIS kept meticulous records and furnished all manner of official certification for procedures, including manumission.” Omar Anchassi, “The Logic of the Conquest Society: ISIS, Apocalyptic Violence and the ‘Reinstatement’ of Slave-Concubinage,” in *Violence in Islamic Thought: from European Imperialism to the Post-Colonial Era*, ed. Mustafa Baig and Robert Gleave (Edinburgh: Edinburgh University Press, 2020): 236–237.

<sup>90</sup> Bilal Abdul Kareem, “Bilal Abdul Kareem Interviews Abu Qatada on ISIS, Takfir and Islamic Mediation,” *5Pillars UK*, March 17, 2015, <https://5pillarsuk.com/video/bilal-abdul-kareem-interviews-abu-qatada-on-isis-takfir-and-islamic-mediation/>.

In this study, I hope to have made it clear that the technologies of coercion and societal organization in Islamic governance do not at all resemble those of the modern nation-state. It is thus problematic to claim that a version of the modern state—with its strong surveillance capacities, overreaching bureaucracy, over-taxation resulting from bloated government bureaucracies, and centralization—can be made Islamic merely by recreating these systems under an “Islamic” brand. The fact that such a system would enforce the technicalities of the *Sharī‘a* does not mean that the *method* of its enforcement or cultivation in society is at all compatible with the *Sharī‘a*. The entire structure of the modern state, its legislative processes, criminal punishments, institutions, and regulations essentially replicate the colonial state on a legal and practical level.

The ummatic intellectual project of the present is a major undertaking, requiring many specialists in both Islamic and worldly sciences. Part of its aims is the rejuvenation of Islamic political thought by theorizing the nature of Islamic governance in both the content of the law and the orientation of the *processes* of social and legal transformation. With reference to this goal—to which the present study is a small contribution that seeks to initiate critical discussion, not proffer a preformed and complete theory—I would like to end my suggesting the following guidelines to arrive at a truly Islamic method of statecraft and communal living that replicates governance “on the Prophetic way.”<sup>91</sup>

- a) The source of all legal guidelines and spiritual development must be situated in the Qur’ān and the practice of the Prophet ﷺ and Companions رضى الله عنهم. These are the sole sources of Islamic legislation, and thus the same way we derive rulings from the Qur’ān and Ḥadīth on how to pray, we derive guidelines, morals, and systems of political organization from the same sources.<sup>92</sup>
- b) Knowledge of modern statecraft and sociology is essential to understand its Islamic application: as discussed in this article, it is not possible to speak about implementing Islamic rules without knowing the context of their implementation. Here, the classical jurists have mentioned how knowledge of the sociopolitical context is necessary for drafting *fatāwā* (juristic responsa).<sup>93</sup>

---

<sup>91</sup> “Prophethood will be among you as long as Allah wills, then Allah will take it away when He so wills. Then there will be a caliphate on the Prophetic way; it will be among you as long as Allah wills, and then He will take it away when He so wills. Then there will be a mordacious rule; it will remain among you as long as Allah wills, and then He will take it away if He so wills. Then there will be a tyrannical rule; it will remain among you as long as Allah wills, and then He will take it away when He so wills. Then there will be a caliphate on the Prophetic way.” *Musnad Ahmad*, #18406; graded as *ṣaḥīḥ* by al-Albānī and *ḥasan* by al-Arna‘ūt.

<sup>92</sup> “You must follow my Sunna, and the Sunna of the rightly guided caliphs after me, cling to them with your molars.” *Abū Dāwūd*, #4607.

<sup>93</sup> “This is the essence of *fiqh*, and whoever gives fatwa to the people on the mere basis of the transmission in the book—as opposed to their traditions...has deviated and is deviating [others].” Ibn al-Qayyim, *I‘lām al-Muwaqqi‘īn ‘an Rabb al-‘Ālamīn* (Dammam: Dār Ibn al-Jawzī, 2001/2) 4:470.



- c) Islamic principles of government should be commensurate to their practice and implementation in Muslim society. Thus the theory of Islamic governance must be possible to implement in practice. There is no room for utopias, and practicalities will always be a central principle of theorization. We must understand here, however, that the current impracticality of proper Islamic governance is not an excuse to retheorize or “reform” it under the guise of necessity or “moving with the times.” However, it could mean that the process to achieve the prophetic ideal will be a long and arduous journey that requires a considered reconstitution of society.
  
- d) The *method* of organizing Islamic society and implementing governance itself must be in accordance with the *Shari‘a*. Ends do not justify the means, and the project of reviving Islamic civilization can only be virtuous and blessed when divinely legislated means are followed. The *Shari‘a* is a road; a path—the journey to reaching the goal is as important as the goal itself.<sup>94</sup> Prohibited means to the end of Islamic governance include unlawful violence, lying or pretending to be non-Muslim to get to power, or joining systems of disbelief and committing oppression against others while in office with the hope of cementing one’s political power.

We ask Allah ﷻ to grant the Umma success in creating the epistemological shift necessary to attain these goals. This is no easy task, and confusion and perplexity will undoubtedly impede the theorist from his or her job, as has been the case in the past. This paper has addressed only a very small fraction of the combination of concerns that must be considered. These range from questions of scriptural authenticity to means by which governance is to be implemented in the modern world.

Dr Jaan Islam is a political theorist who specializes in decolonial theory and Islamic jurisprudence. He completed his PhD on premodern conceptions of Divine sovereignty at the University of Edinburgh and worked as a postdoctoral fellow at the University of Oxford. Dr Islam’s recent works include *Islam and the State in Ibn Taymiyya: Translation and Analysis* (Routledge, 2022) and “A Jihadi Critique of the Modern State” published in *Political Theory*. He will soon commence as an Assistant Professor of Political Science at Boğaziçi University, Istanbul, *inshā’Allah*.

Suggested citation: Jaan Islam, “Divergent Statecrafts: Between Islamic Governance and Modern State Power, *Ummatics*,” Nov 28, 2024, <http://ummatcs.org/divergent-statecrafts>.

---

<sup>94</sup> See Ibn Manẓūr, *Lisān al-‘Arab*, entry “sh-r-‘,” “The path that people take to drink and quench their thirst,” “the places that descend towards water.”