

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

**Economic Justice
and *Shari'a* in
the Islamic State**

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Cover calligraphy by Ali Zara

The meaning of the calligraphy is:

Peace be upon you O Muhammad, may Allah bless him and grant him peace.

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Contents

Preface	vi
Foreword	vii
Introduction	1
Chapter 1 Governance in the Qur'an: Terms and Definitions	9
Chapter 2 Governance During the Madinan Period	46
Chapter 3 Institutions of Islamic Governance	76
Chapter 4 The Islamic State	124
Chapter 5 Saudi Arabia – A Case Study	149
Conclusion	187
Appendix	206
Bibliography	270

Preface

It is a privilege to preface this important work. Ironically, events that conspired to pave the way for the thinking of our author in a way renders introduction unnecessary. A few years ago finance or banking capitalism seemed part of nature, permanent if liable to seasonable turbulence. Anti-capitalist, post-marxist, critique was about its injustice to the poor and the evils of the over-rich.

Only recently has there been any facing up to the fact that the financial and banking system in itself was not only corrupt but simply did not work.

The leading legalist of the last century, Carl Schmitt taught that what was required was a new nomos. It is that nomos which now emerges from the ruins of Islam's under-class after it erupted in terror and desperation. As the dust clears the failure begins to open to the light of Islam. Riyad Asvat's book is the opening to a new thinking in a critique of our age and in appreciation of a rising Islam. Concepts already change. If the state is over as a political reality, the Islamic Dawlet becomes the future possibility and reality.

Shaykh Dr Abdalqadir as-Sufi

Foreword

I was awarded a Master of Arts degree for the thesis that is presented in this book. No changes have been made to the thesis and it remains the same as that which was handed in for examination to the University of Melbourne, Australia, in 2008.

The only abbreviation that I have used when acknowledging a textual source has been EI2 which stands for Encyclopaedia of Islam, Second Edition, Brill Online accessed at <http://www.brillonline.nl.ezp.lib.unimelb.edu.au/subscriber/uid=1353/> through the University of Melbourne library.

All translations of the Qur'an are taken from Aisha and Abdalhaqq Bewley's translation entitled *The Noble Qur'an – A New Rendering of its Meaning in English*, Bookwork, Norwich, 1999.

A reference appendix has been added to provide greater details for the references that have been made very briefly in the footnotes.

Firstly I would like to thank Shaykh Dr. Abdalqadir as-Sufi through whose teachings I developed the intellectual compass that is essential for navigating the complicated and increasingly confusing disciplines of politics and economics. My sincere thanks go to my supervisor Dr. Muhammad Kamal for his guidance and advice. I have also benefitted from comments made by Dr. Adrian Gully for which I am grateful. Last but not least I wish to thank my wonderful wife Fathima for her admirable patience and support, my sons Bilal and Muhammad and my daughter Sumaya for putting up with me during the course of my studies.

Introduction

This dissertation investigates whether the modern political Islamic state (*al-dawla al-Islamiyya*) is an acceptable form of governance for Muslims.

The aim of this thesis is to establish whether the Islamic state has legality in Islamic law (*shari'a*) and validating precedents in Islamic political history. Since governing, that is the exercise of political power, is primarily associated with the production, distribution and consumption of resources, the Islamic state must guarantee justice and equity in the financial affairs of its citizens. My hypothesis is that the central function of governance in the Islamic state is to facilitate for the movement of wealth to all sections of the community and this circulation of wealth is guaranteed by the *shari'a* (Islamic law) and is the main rationale for the existence of governance itself. The circulation of wealth must result in prosperity for society. Evidence of prosperity are high literacy rates; low mortality rates; long life expectancy; universal education; high percentages of access to clean water; good sanitation; availability of energy; clean environment; personal security; low crime rates; excellent economic performance; equality in income and consumption; and minimal poverty. If the Islamic state cannot guarantee its citizens justice and equity in their financial affairs, and consequently prosperity,

its political philosophy and methodologies are not Islamic. In economic terms, Islam demands equity, freedom and justice in trade and commerce. This is guaranteed by the *shari'a*. Islamic law promotes the circulation of wealth and inhibits its stagnation, that is, impedes the development of oligarchy. The application of the *shari'a* should therefore result in prosperity for society.

My data is collected from textual sources. For information on the *shari'a* I have relied on the Qur'an and the *sunna* (the normative practice of the Prophet Muhammad). The case study selected for the thesis is Saudi Arabia and since the government adheres to Sunni Islam, Qur'anic interpretations and *hadith* collections used will be from Sunni scholars. My secondary sources are the primary legal texts of the Hanafi, Maliki, Shafi'i, and Hanbali *madhahib* (schools of law). The influence of Wahhabism on the law of the country and cultural practices will be taken into consideration. Although Muhammad ibn 'abd al-Wahhab (1703-1792), the founder of Wahhabism, was educated in the Hanbali *madhhab* his teachings were rejected as dissenting from the *madhhab* by local Hanbali scholars. His views on the non-adherence to the *madhhab* proved to be even more problematic. As a consequence of this ambiguity the Saudi Arabian state is beleaguered by the problems created by Wahhabism. As far as the impact of the *shari'a* on Muslim societies is concerned I will study the historical records of those societies as they functioned under institutional *khilafa* (Islamic governance). I will also review the different theories of

political Islam as they were presented in the two distinct phases of Islamic history, that is, the classical and modern periods. I have chosen Saudi Arabia as the case study because the Saudi Arabian constitution states that all civil, penal, financial, economic, administrative, cultural, military, political, and other laws and regulations of that country are based on Islamic *shari'a*.

Chapter one will outline aspects relating to governance in the Qur'an, the first primary source of Islamic law. Islamic law relating to governance, as with all other aspects of life, is derived from the Qur'an. This chapter will deal with the Quran'ic verses that are germane to governance. The verses are grouped together in sections to facilitate for the emergence of a coherent narrative with relation to governance. The key features of Qur'anic teaching include caliphate, justice, circulation of wealth, internal and external defence of the polity and accountability. It is clear from the laws regulating the acquisition and dissemination of wealth that the government's most important function is to oversee the production, distribution and consumption of resources. It is also clear from the injunctions of the Qur'an that governing, that is the exercise of political power, must assure the equitable circulation of wealth in society. This just circulation of wealth is guaranteed by the *shari'a* and is the main rationale for the existence of governance itself.

Chapter two will outline governance and its parameters in the second primary source of Islamic law, the *sunna* (normative practice of the Prophet) of the Madinan period. Islamic political methodology is derived from the *sunna*. The Islamic state – *al-dawla al-Islamiyya* – established by the Prophet made the movement of wealth to all sections of the community the central function of that polity. Its historical opposite was oligarchy, political control by the wealthy merchants of Makka and the rest of Arabia. It was in Madina that the teachings of the Prophet were fully actualised. Madinan society was a law-governed society, a nomocracy, and Islamic governance was upheld by the Prophet who, in passing legal judgments, controlled the social nexus in all its aspects. In his activities trade was vital to the establishment of justice.

Chapter three will examine the institutions of governance as they were set up by (a) the *Khulafa al-Rashidun* (the Rightly-Guided Caliphs i.e. Abu Bakr, ‘Umar, ‘Uthman and Ali) (b) the Umayyads (c) the Abbasids and (d) the Ottomans. The model for the above caliphates was Madina al-Munawwara, as the Prophet renamed Yathrib after his migration to it. Madina was established as the primary model for the future generations of Muslims in particular and the future of mankind in general. It was a complete blueprint pattern for human societies and all subsequent caliphates were an approximation to that model. The institutions that developed from the Madinan model in subsequent Islamic history were the

caliphate, the wazirate (vizierate), the judiciary, the *bayt al-mal* (the treasury), *hisba* (administration of the city), the mint, the *suq* (market), the *awqaf* (charitable endowments), the *asnaf* (guilds), the *shurta* (police), and the army (*jaysh*). These institutions, regulated by Islamic law, provided the means by which Muslim societies functioned.

Chapter four will investigate firstly, the modern state and secondly the adoption of that model as the basis of the contemporary Islamic state. This state concept developed in relation to factors that included the Renaissance, the Reformation, the Enlightenment and the growth of capitalism. This chapter will consider claims: that the contemporary Islamic state is a modern concept, which represents a European phenomenon that developed between the sixteenth and twentieth centuries; secondly that Islamic thought articulated various issues with regards to the body politic but this concept of state did not exist prior to the modern era; thirdly that the “islamization” of the modern state is an Islamic modernist concept and in their goal to modernize the *umma* the reformers (Islamic modernists) attempted to introduce aspects of the *shari‘a* whilst at the same time adopting Western techniques and institutions. This chapter will also outline the ways in which the institutions of the Islamic state are at variance with Islamic law as outlined in the Qur’an (chapter one), the *sunna* (chapter two) and socio-political and economic institutions as they developed in Islamic history (chapter three).

Chapter five will examine Saudi Arabia as a case study. According to the ‘Royal Decree Embodying the Basic Law of Governance’ Saudi Arabia is an Islamic state whose constitution is the Qur’an and the *sunna*. Since Saudi Arabia was the birth place and cradle of Islam it was the natural choice for the case study. Other reasons for this choice were that the country is the location of Islam’s sacred places and the destination of millions of pilgrims every year. The two dominant characteristics of Saudi Arabian history are state formation and incorporation into the global capitalist economy, particularly through collaboration with Britain and then the United States of America. This chapter will cover the formation of the Saudi Arabian state from the time of the Saudi–Wahhabi alliance and the growth of capitalism and the social, economic and political outcomes for the population. In order to measure the performance of Saudi Arabia I have used the annual United Nations Human Development Index. The report focuses on three measurable dimensions of human existence, namely living a long and healthy life, being educated and having a decent standard of living. It presents outcomes that were achieved in 177 countries around the world. According to the Index 2009, Saudi Arabia is 59th on the list, in order of performance.

From the case study I will draw conclusions with regards to whether governance in Saudi Arabia is in accordance with the *shari‘a* and therefore an Islamic state. I will also look at the extent

to which the conclusions of the case study can be generalized in relation to other Islamic states.

The terms *shari'ia* and *fiqh* used in the thesis need clarification at the outset. In chapter one the Qur'an, the first primary source of Islamic law (*shari'a*), is used to provide the basis for the rules of governance. Here the discussion relates to the legal modalities set out in the Revelation. In chapter two which deals with governance in the Madinan period and chapter three, in the section on the judiciary, the emphasis is on legal history and legal theory. The literal meaning of *fiqh* is 'understanding', that is, understanding how to derive and apply Divine law from knowledge of the sources. The discussion of *fiqh*, the science of application of the *shari'a*, is taken up in chapter five on Saudi Arabia.

The thesis outlines the evolution of the concept of state through the various historical epochs. The state, I will argue, did exist in pre-Islamic Arabia. The Prophet abolished some institutions of state and introduced others when he established the prototypal Islamic state as a model for future generations of Muslims. After the death of the Prophet, the caliphal state ruled by the Rightly-Guided Caliphs, the Umayyads, the Abbasids and the Ottomans took Madina as the primary model. The institutions that developed during the caliphal period, such as the caliphate, the wazirate, the judiciary, the *bayt al-mal*, *hisba*, the mint, the *suq*, the *awqaf*, the *asnaf*, the *shurta* and the army provided the means by which

Muslim societies functioned. These institutions were designed to deliver justice because the legitimacy of a government is dependent on its execution of justice. After the decline and abolishment of the caliphate a new model of state, which originated in Europe, was introduced into the Muslim world. It had its own institutions which replaced those of the caliphal state. An attempt was made to “islamize” the newly formulated modern (contemporary) state by introducing aspects of the *shari‘a* whilst at the same time adopting Western techniques and institutions. When examining Saudi Arabia, the results of this phenomenon have been measured using both internal and external criteria.