THE NATURE OF GOVERNMENT

As seen in Chapter 1, early Muslims tacitly assumed humans to have originated in a politically organized society based on revealed law, and to have recreated such a society whenever God sent them a messenger with a new law. In the ninth century they began to enquire into their own presuppositions. Why do humans live social lives? Must their societies be based on religious law brought by a prophet or might man-made law and morality suffice? Could one manage without a monarch? Must government be monarchic, or indeed autocratic, or could alternative forms of political organization be envisaged? Their answers mostly, though not always, endorsed the assumptions with which they had started out, but they did so with a plethora of explicit argumentation which often raised new questions and which continued beyond the period considered in this book. The debate was dominated by philosophers, *mutakallim*s, and Shīʿite thinkers rather than by religious scholars from the Sunni camp, but the latter accepted many of the ideas it produced. Since the arguments are scattered in works of the most diverse genres and the study of them is still in its infancy, what follows is merely a preliminary survey.

Why do humans live in societies?

Most educated persons in the Near East before the rise of Islam knew the answer to this question, ultimately from Aristotle and other Greek philosophers. "Because of the arts and sciences and the useful things to which they lead, we have mutual need of one another, and because we need one another we come together in one place in large numbers," as Nemesius of Emesa (c. 400) explained in a widely read treatise on human nature (which was eventually

translated into Arabic too); "to this human assemblage . . . we give the name of city (*polis*), for man is a naturally sociable animal (*politikon zōon*). No single person is in all ways self-sufficient."[1] Most educated persons in the Near East gave the same answer after they had become Muslims. It is first encountered in al-Jāḥiẓ (d. 255/869), the first Muslim author known to have considered the question: it is in the nature of humans that they need one another and must cooperate to survive, he says, adding "God, exalted is He, has not created anyone who is able to fulfil his need on his own."[2] The Muslims could soon read the same in Arabic translations of Greek works, which they rapidly took to citing.[3] Humans must come together to cooperate, especially as they also need to associate in order to live virtuous lives, al-ʿĀmirī (d. 381/992) declared, paraphrasing Aristotle; exceptions would be in the nature of gods or beasts.[4] "For this reason it is said that man is sociable by nature (*al-insān madanī bi'l-ṭabʿ*)," Rāghib al-Iṣfahānī (c. 400/1010) observed.[5] The same argument was used in varying versions, now with and now without the Aristotelian tag that man is a social animal (*ḥayawān insī/madanī*), by the philosophers al-Rāzī (d. prob. 313/925),[6] al-Fārābī (d. 339/950),[7] Ibn Sīnā (d. 428/1037),[8] and Ibn Rushd (d. 595/1198),[9] the secretary Qudāma b. Jaʿfar (d. prob. 337/948),[10] the polymath al-Bīrūnī (d. 440/1048),[11] the religious scholar Fakhr al-Dīn al-Rāzī (d. 606/1209),[12] the Shīʿite Muʿtazilite Ibn Abī 'l-Ḥadīd (d. prob. 655/1257),[13] the Ismaili philosopher Naṣīr al-Dīn Ṭūsī (d. 672/1274)[14] and, after our period, by authors as diverse as Ibn Taymiyya (d. 728/1328)[15] and Ibn Khaldūn (d.

1. Nemesius, §52 = 243.

2. *Ḥayawān*, i, 42ff.

3. Plessner, *Bryson*, Arabic text, 146f.; Themistius, *Risāla*, 28f./90; cited in Ibn Abī 'l-Rabīʿ, *Sulūk*, 78f. Cf. also Plato, *Republic*, 369bf, and the Aristotelian passages in the next note.

4. ʿĀmirī, *Saʿāda*, 150 (cf. Aristotle, *Politics*, 1253a, 1278b). For the question whether ʿĀmirī is really the author of this work, see the bibliography s.v.

5. *Dharīʿa*, 374. Adam had to perform a thousand tasks to eat bread, as Naṣīr al-Dīn Ṭūsī says (*Ethics*, 189).

6. Rāzī, *al-Ṭibb al-rūḥānī*, 105f. = 88f. (ch. 17).

7. Fārābī, *MF*, ch. 15, §1; cf. *Taḥṣīl*, §16 = §18.

8. Ibn Sīnā, *SI*, x, 441 = 99.

9. Ibn Rushd, *Commentary*, 22 = 113.

10. Qudāma, *Kharāj*, 432f.; cf. also Māwardī, *Adab al-dunyā*, 135f. *Tashīl al-naẓar*, 97.

11. *Jawāhir*, 6f. = 6. His deathdate is placed later by some.

12. Rāzī, *al-Mabāḥith al-mashriqiyya*, ii, 523; cf. also Lambton, *State and Society*, 132f.; Fouchécour, *Moralia*, 426, on his *Jāmiʿ al-ʿulūm*, ch. 56.

13. IAH, *Sharḥ*, xvii, 49f.

14. *Ethics*, 189f.

15. *Al-Ḥisba fī 'l-islām*, 4 = 20.

808/1406).[16] It was also a popular argument in medieval Europe. It does not impress a modern observer, for occupational specialization comes late in the development of civilization: simple societies have little or no division of labour, except by age and sex. Producing a loaf of bread is indeed beyond the ability of a single person wholly on his own, as the literature often says, but it is not beyond the capacity of a household, and there the division of labour may stop. Even Ibn Khaldūn, who had a strong sense of the differences between simple (tribal) and complex (urban) societies in North Africa, overlooked this objection, however, and the traditional explanation had the merit of stressing the cooperative nature of society. Rāghib al-Iṣfahānī interspersed his account of the division of labour with Prophetic dicta on the solidarity of the believers.

Why must human societies have law?

Though the need for cooperation meant that humans had to live in societies, their nature was such that that they could not do so without some kind of restraint. God had imprinted a desire for good things on all humans, and indeed animals, an epistle credited to al-Jāḥiẓ says; He has implanted a desire for self-preservation in people, as al-Māturīdī (d. 333/944) put it.[17] Humans were competitive, brutish, swayed by strong desires, and avaricious too: unlike animals, they were for ever hoarding things they did not need. Left to their own devices they would ruthlessly pursue their own interests and diverse passions, engage in constant rivalry and strife without affection or altruism, ignorant of their true interests in this world and the next, and thus bring about their own ruin.[18] "There is nothing as social by nature and as anti-social by corruption as the human race," as St Augustine had put it.[19] This was the Muslim view entirely, except that they did not usually credit the anti-social streak to later corruption. But whether humans had been created deficient or were corrupted at some later stage (by Adam's fall,[20] Cain's murder of Abel,[21] or the like),

16. *Muqaddima*, 46f. = 89ff.

17. 'Al-Maʿāsh wa'l-maʿād' in his *Rasāʾil*, i, 102f.; Māturīdī, *Tawḥīd*, 177.

18. In addition to the references in the previous note, see the Zaydī view in Jāḥiẓ, 'Maqālat al-Zaydiyya wa'l-Rāfiḍa' (also known as 'Bayān madhāhib al-shīʿa') in his *Rasāʾil*, iv, 318f.; al-Qāsim b. Ibrāhīm in Madelung, *Qāsim*, 14; Abrahamov, 'Ḳāsim', 85; Abū Ḥātim al-Rāzī, *Aʿlām*, 110f.; Juwaynī, *Ghiyāth*, §19; Ghazālī, *Iqtiṣād*, 236; Ṭurṭūshī, *Sirāj*, 41f.

19. In Markus, *Saeculum*, 95.

20. *RIS*, iv, 166; cf. ii, 21; iv, 18.

21. Thus Bīrūnī, who also debits the envy and rivalry to the mixture of contradictory elements in human nature (*Jawāhir*, 6f., 24 = 6, 26).

practically all medieval Muslims envisaged life in what Westerners call the state of nature as nasty, brutish, and short.[22]

The idea of human life in its unmodified form as lacking in morality, co-operation, and social cohesion had long roots in the ancient world. It had however once been balanced by a countervailing belief to the effect that the original state of mankind was a golden age of freedom and innocence which had lasted until avarice caused coercion and inequality to appear. This view, promoted above all by the Stoics, fused with the biblical story of the Fall and went on to a long career in European political thought, where it placed a question mark over the necessity of states.[23] In the hugely popular *Roman de la Rose* (c. 1270), for example, Jean de Meun tells of how people had once lived in mutual amity, without agriculture, work, private property, rulers, marriage, or other restraints on free love until a host of vices, including covetousness, appeared: this was when human nature turned so nasty that a ruler had to be elected for the maintenance of order.[24] But though a strikingly similar concept of a golden age was current in India, it is not clear that there was an Iranian version as well,[25] and in its Greek form, the myth seems to have lost prominence in the eastern Mediterranean before the rise of Islam. Al-Bīrūnī, it is true, knew it from the astronomical poem of Aratus of Soli (d. 240 BC) and compared it with the Indian version of the myth; but he wrote as a scholar, not as somebody to whom the myth was alive.[26] As live tradition it may be reflected in the Brethren of Purity, who tell a story of how humans lived carefree lives in mutual love like a single family until they started hoarding; but this story is meant to illustrate the divine world from which we have fallen (thereby becoming human), not a primitive stage of human history that we have lost, that is, its import is Neoplatonist or Gnostic, not socio-political.[27] Elsewhere, too, there are suggestions

22. The parallel with Hobbes's Leviathan is drawn in Pines, 'La loi naturelle et la société', 167; implicitly, also in Al-Azmeh, *Muslim Kingship*, 115f. There is no Arabic term for 'the state of nature'. It is evoked with statements like 'if people were left on their own' (i.e. without divine intervention), or 'If God left them alone with their natures'.

23. For all this, see the references given in Crone, 'Ninth-Century Muslim Anarchists', 6–8.

24. Cf. Milan, 'The Golden Age and the Political Theory of Jean de Meun'; George, 'Jean de Meung and the Myth of the Golden Age'; also Cohn, *Pursuit of the Millenium*, 195f.

25. Cf. Crone, 'Zoroastrian Communism', 459.

26. Bīrūnī, *Hind*, 192.12 = 383 (ch. 43); cf. Sachau's comments *ad. loc.*, and Lovejoy and Boas, *Primitivism and Related Ideas in Antiquity*, 34ff. (Aratus), 433ff. (Indians).

27. *RIS*, iv, 37f.; cf. ii, 326 = Goodman, *Case*, 157, where the animals pick out human avarice and hoarding of superfluous things as one reason why humans need religious laws; Abū Ḥātim al-Rāzī, *Aʿlām*, 188, where the contrast between animals and humans in this

that the Brethren of Purity and other early Ismailis thought in terms of an aboriginal state of human innocence, especially when they speak of law and government as punishment,[28] but they never explicitly state that mankind had once been free of their many vices, and they do not focus on this question in what survives of their debate regarding the existence or otherwise of law in Adam's era.[29] If the concept was there, it certainly was not prominent. In short, the Muslim view of aboriginal life was overwhelmingly that of Hobbes, without any admixture of positive views of the state of nature.

Unlike Hobbes and other contract theorists, however, the Muslims usually saw the state of nature as having come to an end thanks to divine intervention rather than human action: God in His mercy sent a Prophet with a law, to found a polity. Differently put, the social contract was with God, not with a human being. Without God's law, there could be no civilization, indeed humans would not survive at all, as Shīʿites above all were prone to claiming.[30]

Why must the law be God-given?

Hobbes took it for granted that humans can devise moral and legal codes on their own. How then did the Muslims explain their conviction that God had to send a prophet with a law in order for social order to appear? There were two answers to that question.

No natural law

The first explanation was that no human had the right to impose obligations on other people. Nobody was authorized to tell anyone else what to do or what to believe, be he a ruler, parent, husband, schoolmaster, or even a prophet: God was the only source of legal/moral obligations; before revelation, humans had lived in a state of fundamental non-obligation (*barāʾa aṣliyya*).[31] Nobody had

respect is one reason why humans must have imams. Compare the role of *Āz*, covetousness, in Mazdak's vision of the abolition of private property and pair-bonding (Crone, 'Kavad's Heresy,' 28; add Firdawsī's presentation in Davis, *Epic and Sedition*, 30).

28. Cf. above, 200, 201; below, 356, on the animal fable.

29. Cf. Madelung, 'Imamat', 102–4, 106–8, where al-Nasafī does broach the question, but the argument does not make sense.

30. The reason why God had made humans dependent on prophets instead of implanting a religious instinct in them (contrary to Abū Bakr al-Rāzī's claims) is that self-sufficient humans would fight one another to death; "if it were not for religion and the laws of the Prophets . . . people would perish" (Abū Ḥātim, *Aʿlām*, 190). Similarly Jāḥiẓ, 'Maʿāsh wa'l-maʿād', 103f.

31. Thus Ghazālī in Laoust, *Politique de Ġazālī*, 153f. (citing the *Mustaṣfā*).

the right to inflict punishments on anyone else either; only God could do so.[32] For only God could determine what was right and wrong or, as medieval Muslims preferred to put it, what was permitted and forbidden. Without revelation, humans would not have any morality or law at all.

The expression 'before revelation' (*qabla wurūd al-sharʿ*) with which people examined the nature of obligations did not refer to a historical stage. Nor, strictly speaking, does the Western concept of 'the state of nature', though there has been a strong tendency to envisage it as such. Both expressions stand for thought experiments in which human nature is imagined in the raw, stripped of divine guidance in the one case, of civilization in the other. The Muslim thought experiment focused on the moral status of human acts whereas the Greek experiment focused on the moral nature of humans themselves, but the issue was the same: how far was morality natural, how far conventional? Like other Ashʿarites, al-Ghazālī subscribed to the view that it was entirely conventional, in the sense of established by God: no human act had any moral value in itself; all acts were good or bad only because God had defined them so to us. It followed that humans could not have an inner moral compass, or any "law written in their hearts" (Rom. 2:15), enabling them to live moral lives on the basis of their own unaided reason. All morality took the form of positive law enacted by God.[33] Humans might still be able to devise rules of their own (the possibility is not discussed in the context of this debate, which was not directly concerned with socio-political organization); but such rules would not be moral, nor would they lead to otherworldly salvation. According to this view of things, in short, it was only by divine intervention that humans could escape from their amoral state of nature. "For when the religion of God was taken away, they lost also the knowledge of good and evil," as the church father Lactantius (d. c. 320) says in his account of how the golden age (here envisaged as an age of perfect monotheism) came to an end. "Thus community-living perished among men, and the compact of human society was broken."[34] This was how the causal connection between God, morality/law and human society was envisaged in Islam as well.

Human abilities insufficient

The second explanation was a modified version of the first, reshaped as a direct answer to the question why societies had to be based on laws brought by prophets. It did not claim that human actions have no moral value in them-

32. ʿAbd al-Jabbār, *Mughnī*, xx/2, 152.13.
33. Cf. Reinhart, *Before Revelation*, 70ff., et passim.
34. Lactantius, *Divine Institutes*, v, 5.

selves: certain things were indeed intrinsically good or bad. But humans did not know what was best for them or how to achieve it, according to this argument. Only God could supply the wisdom, the authority, and the sanctions required for a community based on true morality.

As regards wisdom, people were not intelligent enough to know what was best for them in this world, let alone the next. They needed a superior intelligence to tell them. It was thanks to divine intervention that they had acquired their knowledge of right and wrong, and also of many other things: how would they have worked out the difference between edible and poisonous substances, for example, without perishing in the attempt? How could they have known about agriculture? Prophets were not just founders of polities, but also culture heroes.

As regards authority, people were too similar to submit to one another. They were always competing, for ever thinking that they had a better right to power and wealth than anyone else. They needed a superior authority to defer to. It was thanks to divine intervention that some were raised above others, boosted with divine authority, as everyone knew from the story of the rise of Islam: it was by divine intervention that government had been created for the egalitarian tribesmen of Muḥammad's Arabia.[35]

Finally, as regards sanctions, humans needed a strong incentive to submit, and again, the solution lay with God, who had instituted otherworldly rewards and punishments.[36] "We know that people cannot defend themselves against their own natures or act contrary to their desires except by a strong deterrent, the long-term threat of eternal punishment over and on top of punishment in the here and now," al-Jāḥiẓ has the Shīʿites say.[37] God had instituted Paradise and Hell as the carrot and the stick (*al-targhīb wa'l- al-tarhīb*), and without them society would go to rack and ruin, he (or somebody mistaken for him) says in another epistle.[38] Ibn Sīnā agreed, with implicit reference to the phases of Muḥammad's career: the lawgiver prophet should start by telling the masses that they had a maker who had prepared eternal rewards and punishments for them; this would make them obey. Next the lawgiver should institute acts of worship that would constantly remind them of this; and finally he should regulate the social and political aspects of his polity.[39] Religion diverted people

35. Cf. Bīrūnī, below, 285.
36. Cf. Jāḥiẓ, 'Maqālat al-Zaydiyya', 318ff. and 'al-Maʿāsh wa'l-maʿād', 102ff.; Māturīdī, *Tawḥīd*, 177ff.; Māwardī, *Aʿlām al-nubuwwa*, 49; Ibn Sīnā, *SI*, x, 441 = 91; Fakhr al-Dīn al-Rāzī, *Muḥaṣṣal*, 176.
37. 'Maqālat al-Zaydiyya', 320.
38. Jāḥiẓ, 'al-Maʿāsh wa'l-maʿād', 104.
39. *SI*, x, 442ff = 100ff.

from their desires and turned their hearts away from their selfish wishes "until it comes to dominate their innermost soul and exercise restraint on their conscience, supervising their soul in its inner solitude, and giving it sincere advice in its misfortunes", al-Māwardī said in a good description of internalization.[40] In short, religion enabled people to suppress selfish inclinations incompatible with communal existence, as Durkheim was to say centuries later in the West.

But whereas religion has formed part of all human societies, prophets have not, and medieval Muslims were well aware of this fact. How then had societies without prophets come to live by what the societies in question considered to be right and wrong? One might have expected the answer that they too owed them to belief in the supernatural, for people obviously did not need prophets in order to believe in gods, cosmic order, or an afterlife. But this would have implied that any religion, even paganism, could supply social and political organization, however misguided it might be. The philosophers did in fact hold this to be the case, and al-Bīrūnī seems to have thought so, too.[41] But it was not wise to air this opinion openly; and besides, many Muslims, like many Christians, had trouble seeing paganism as a religion at all. When they declared all kingdoms to be based on religion, the reference was to monotheist religion.[42] Insofar as pagans were perceived to have laws, they were assumed to have devised them of their own, by conscious legislation rather than imperceptible development. On the rare occasions on which the problem of non-prophetic laws was openly confronted, the alternative to revelation was human reason, whether in the form of common sense or philosophy, not religion of other types.

Human and divine wisdom compared

Thus al-Jāḥiẓ tells a story in which a commander of the Umayyad period meets with the Turkish *khāqān* to compare their respective laws, to find that they agree on some things and disagree on others. "You are a people who trace your laws to what reason permits and what seems to be a good idea," the commander concludes, "but we think that we are not fit to manage the servants (of

---

40. *Adab al-dunyā*, 136.

41. It is implied by al-Fārābī's theories (above, 173) and explicitly stated by the philosopher in Judah Halevi, *Radd*, 5 = 34 (I, §1), while Bīrūnī had no trouble seeing the religious basis of socio-political organization in India in his *Hind* (esp. chs 9–10); and he dispassionately notes the similarity between Muslim, Zoroastrian, and pagan Tibetan and Turkish ways of invoking religion to single out the ruler in his *Jawāhir* (24f. = 26, cf. below, note 128).

42. Thus *NM* (M), 67; cf. Abū Yaʿqūb al-Sijistānī, above, 13, note 20.

God)." Only God knew the true nature of things that was hidden to people.[43] Al-Jāḥiẓ' intention here is not to idealize the Turks as people who followed reason of their own accord, without the need for punishment, for the Turkish laws discussed include the penalties for theft, murder, and cutting off people's ears and noses. Nor is he trying the opposite, to depict them as amoral, for as a Muʿtazilite, he took it for granted that reason could provide moral guidance, and his commander speaks with respect of the Turkish laws. Al-Jāḥiẓ' position is simply that revealed law is better, not because otherworldly sanctions had a good effect on social order (which is not discussed) or even because revelation provided for otherworldly salvation (the discussion is only about this world), but rather because revealed law was rooted in supernatural wisdom: its institutions were intrinsically better in his view. But he evidently did not assume revelation to be the only option. Humans could devise their own rules on the basis of common sense.

Similarly, philosophically inclined Iranians held their ancestors to have instituted kingship by deducing its necessity from the anti-social nature of human beings and enthroning Gayomard (the first, or almost first, man on earth): government here owes its existence to a social contract of the Hobbesian type, and the result is a virtuous polity based on philosophy.[44] If people would follow rational laws, they would not need prophets to bring them law, as Aristotle's father was supposed to have said.[45] We do not know whether Ibn al-Rāwandī, al-Sarakhsī, al-Rāzī and others who rejected prophethood considered the socio-political implications of their own views; but if they did, they must similarly have held that society could be based on human reason, or indeed that it *was* so based.

Nonetheless, the assumption that only a prophet could bring a law suitable for the organization of a society was rarely challenged in our period. People only saw the cases which confirmed it. Thus it was noted that several African peoples lacked both religion and socio-political organization, whereas the Nubians and the Abyssinians had something in the nature of both, which fitted the theory in that they were Christians thanks to their former proximity to Byzantium.[46] It was not noted as a problem that India and China had complex societies of the most sophisticated kind, which did not fit the theory in that no

---

43. 'Manāqib al-turk' in his *Rasāʾil*, i, 80f.; tr. Walker, 692; cited in Pines, 'La loi naturelle et la société', 185n.

44. MM, ii, 106f (i, §531).

45. Pines, 'La loi naturalle et la société', 184n., citing ʿĀmirī, *Saʿāda*, 178.8.

46. Cf. Iṣṭakhrī, *Masālik*, 4, penult. (drawn to my attention by Adam Silverstein).

prophets had been sent to either them or their neighbours.[47] One has to go all the way to Ibn Taymiyya for a straightforward statement that polities did not have to be based on religion,[48] and all the way to Ibn Khaldūn for a refutation of the view that they did have to be thus based. Most people had acquired government without receiving either prophets or books, according to Ibn Khaldūn, which showed that laws suppressing selfish inclinations could be devised by reason and imposed by force. Such rational governance (*siyāsa ʿaqliyya*) could be either of the philosophical type which had been practised by the ancient Iranians (i.e. under Gayomard), but which was not otherwise encountered in history, or of the selfish type practised by all rulers nowadays whether they were Muslims or not. God had however made manmade law unnecessary for the Muslims by means of that which the Prophet had instituted and the caliphs had upheld, and this was preferable because a divine law served both this world and the next.[49] The type actually practised was simply a perversion. In short, Ibn Khaldūn agreed with al-Jāḥiẓ: revealed law was not indispensable, but it was certainly better.

Why does the law necessitate rulers?

Granted that human society owed its existence to the division of labour and that it had to be regulated by a revealed law, why did there have to be rulers? Could one not live by the law alone? One would have expected this to be a much debated question, given that the Muslims traced their spiritual ancestry to stateless Arabia. Ancient observers had commented on the political freedom of the northern Arabs, now in a negative and now in a positive vein; the Arabs had boasted about it in their poetry themselves; and the specialists in Arabian antiquities who collected their poetry along with their stories about tribal wars (*ayyām al-ʿarab*) were clearly impressed by it too: before the rise of Islam the northern Arabs (Muḍar, Nizār), and above all the Prophet's tribe Quraysh, had been *laqāḥ*, free people who did not obey any kings or pay any taxes, they tell us with pride.[50] But as seen already, neither the pre-Islamic Arabs nor the tribesmen who continued to inhabit the peninsula after the conquests were regarded as a model of inspiration or imitation for Muslims as far as political organization was concerned.[51] The scholars who did field work in the desert

were philologists eager to record the language of the bedouin, assumed to be the purest version of Arabic, not utopianists seeking inspiration in tribal organization. Pious people without an interest in pre-Islamic lore assumed the pre-Islamic Arabs to have lived in a state of ignorant barbarism (*jāhiliyya*), fighting each other and generally exemplifying the anti-social side of human beings, except insofar as the Qurashī guardians of God's house had preserved some monotheism among them; and the later bedouin were effectively living in the Jāhiliyya too, as people who crossed paths with them knew all too well. For political models one looked to Medina, where the Prophet had worked.[52]

This is not to say, of course, that the tribal tradition contributed nothing to Islamic political thought. On the contrary, as seen already, it dominated the thinking of the first two centuries and is discernible behind most libertarian and communitarian thinking in classical Islam. But it owes its overriding importance to the facts that it was islamized in Medina and that the conquerors were tribesmen whose values went into the foundations of Islamic culture, not to a memory of tribal organization as a model of admiration and imitation in its own right. A fourteenth-century work does preserve an undatable argument in favour of doing without rulers in which the bedouin are invoked as an example, but this is very unusual.[53] Since the Muslims did not have a notion of an aboriginal state of freedom and innocence, they were not inclined to credit members of simple societies with the preservation of virtues they had lost, after the fashion of the Greeks, whose fascination with Scythians and other tribal peoples (Arabs included) did not reach them; and the many tribal peoples they encountered in the course of their conquests did not strike them as any better than their own. Ibn Khaldūn did admire the Turks for their preservation of the martial values once possessed by the Arabs, but the Turks in question were Muslims serving as soldiers in the Middle East, not tribesmen back in their pagan arcadia. The Persian tradition did say that the earth had been devoid of kings, whether Persian or other, every now and again from the death of Gayomard onwards, but it did not say so in an anarchist vein.[54] Had one asked how people coped in the periods without kings, the answer would probably have been *amruhum shūrā*, that is, that they settled their affairs by consultation, a Qurʾānic expression which came to stand for anarchy in the sense of chaotic conditions.[55]

In short, there was no question mark over the need for rulers in the Islamic tradition, the Khārijite and Muʿtazilite anarchists notwithstanding. The

---

47. Cf. the striking example of Sijistānī above, 13, note 20.

48. *Al-Ḥisba fī 'l-islām*, 4 = 20: people without divine books or religion obey their kings in matters they think will serve their worldly interests.

49. *Muqaddima*, 48, 212f., 241f. = i, 93, 389f., 448f.; cf. above, note 44, and ch. 1, 13f.

50. Cf. the attestations in *Wörterbuch*, s.v. 'laqāḥ'.

51. Cf. above, 7, 68.

52. Cf. below, 318f.

53. Ījī, *Mawāqif*, viii, 347.

54. Ḥamza, *Taʾrīkh*, 14f. (G, 10).

55. E.g. Ghazālī, *Faḍāʾiḥ*, 106.ult.

normal answer to the question whether one could live without rulers was that one could not, and this seemed so obvious that many argued directly from the anti-social nature of humans to the need for rulers, without first explaining how social life generates a need for law. For those who wanted the full argument, however, the explanation was that bringing together the diverse natures and ambitions of humans in a single society created a need for rules, which in their turn created a need for somebody to uphold the rules. There had to be a ruler to apply the law, to judge, and to maintain order with the sword, which induced fear and deterred the wrongdoer, for people would not obey the law of their own accord: just as somebody had to teach them the law, so somebody had to reward and punish them for their obedience or disobedience to it, in this world as well as the next.[56]

One needed both religion and government for an orderly society, then: without religious injunctions to obey, the ruler's authority would be weak; and without a ruler to enforce the laws of the religion, people would abandon them; this was why Ardashīr said that religion and government were twins.[57] The ruler on his own was better placed to enforce the law than either religion or reason on their own because selfish desires tend to overwhelm moral intentions, al-Māwardī noted; "God restrains (people) more through the *sulṭān* than through the Qurʾān," as the Prophet had said.[58] Without a king, sultan, or imam, people became disorganized, power passed to whoever was in a position to take it, chaos prevailed, trust disappeared, and the community disintegrated, just as flocks perish without a shepherd.[59] "Civil strife results when there is no imam to take charge of people."[60] Moreover, political leadership was natural, as was clear from the subordination of the body to the soul, of women to men, of slaves to the free, and of children to adults, al-ʿĀmirī said, crediting his views to Aristotle.[61] Al-Jāḥiẓ also found it natural: even animals have leaders that they follow.[62] By contrast, the Ismaili Abū Yaʿqūb al-Sijistānī held political leadership to be unique to humans because he equated it with

religious leadership, which animals did not have: unlike humans, they were equal because they all had the same instinctive knowledge of the basic things that animals needed to know.[63]

How do we know rulers to be prescribed by the law?

All these rational considerations apart, one could of course settle the question by an appeal to authority: the law made it obligatory for Muslims to have an imam, as everyone except for the Najdiyya and the Muʿtazilite anarchists agreed. But appeals to authority merely took you back to reason, for how was the imamate known to be a legal duty?

Many Muʿtazilites said that it was known from reason (ʿaql), meaning from considerations of the kind just reviewed, or from both reason and supra-rational authority (sharʿ, samʿ, also translated 'revelation').[64] But according to the Traditionalists and the classical Sunnis, and many Muʿtazilites too, the obligation rested exclusively on supra-rational authority.[65] By this they did not usually mean that the obligation was grounded in the Qurʾān or Ḥadīth (though some found evidence for it there as well), but rather that it rested on *ijmāʿ*, the consensus of the community, starting with the agreement of the Companions to have the institution.[66] This may sound like a retreat from reason, and so it was, in the sense that there comes a point where particular ways of doing things can no longer be explained in terms of universal rationality: secularists will then shrug their shoulders and say that this is how we happen to do things, while believers will point to their books or sacred persons and say that this is how God happens to have instructed us. Revelation typically works to justify the particular, as Ismailis, philosophers, Sufis, and others who distinguished between organized religion and the universal truth above it all had occasion to note. Reason could demonstrate that humans needed government of some kind or another; it could not demonstrate that they needed it in the particular form of the imamate: it was only on the basis of supra-rational authority that the specific form of government enjoined on the Muslims was known to be

56. E.g. Qudāma, *Kharāj*, 436; ʿĀmirī, *Saʿāda*, 179, 185.2, 186f., citing Plato, Aristotle, and Ps.-Aristotle's *Fī siyāsat al-mudun*, §3.1; Ghazālī, *Iqtiṣād*, 236f.; Shahrastānī, *Nihāya*, 490 = 155; Abrahamov, 'al-Kāsim ibn Ibrāhīm', 86.

57. *ʿAhd Ardashīr*, §4 (p. 53); cited in countless works, e.g. Qudāma, *Kharāj*, 436; Ibn Wahb, *Burhān*, 401.

58. Māwardī, *Adab al-dunyā*, 137.6. The saying (not always attributed to the Prophet) is also adduced in Ibn ʿAbd Rabbih, *ʿIqd*, i, 7.6; Qudāma, *Kharāj*, 440.13; Juwaynī, *Ghiyāth*, §19; Ghazālī, *Qisṭās*, 90.-5; Naysābūrī, *Imāma*, 86, and no doubt elsewhere.

59. Jāḥiẓ, 'al-Nisāʾ' in his *Rasāʾil*, iii, 149–51.

60. Ibn Ḥanbal in Abū Yaʿlā, *Aḥkām*, 19.

61. *Saʿāda*, 187f.

62. 'Al-Nisāʾ', 150; cf. Dio Chrysostom, 'Peri basileias' (third oration), §50.

63. *Ithbāt*, 174; Abū Ḥātim, *Aʿlām*, 185. Cf. also below, 336f.

64. Cf. IAH, ii, 308, on Jāḥiẓ, the Baghdadis, and Abū 'l-Ḥusayn (reason); Madelung, *Qāsim*, 143; Ījī, *Mawāqif*, viii, 345 (reason and revelation).

65. Thus ʿAbd al-Jabbār, *Mughnī*, xx/1, 17ff., 41, and the Basrans in IAH, ii, 308. It is identified as the position of most Muʿtazilites in Rāzī, *Muḥaṣṣal*, 176.9 and *Arbaʿīn*, 426.

66. Cf. Juwaynī, *Ghiyāth*, §§17–18, and again §66 (in the context of election vs. designation), cf. Nagel, *Festung*, 298f.; Shahrastānī, *Nihāya*, 478ff. =150f. In Māwardī, *Aḥkām*, 4 (5) = 5, those who ground the obligation in revelation adduce Q. 4:59 and a quietist tradition.

indispensable for human welfare, as Ibn Khaldūn said, summarizing earlier arguments.[67]

On these arguments, humans could see government to be in their interest, but God could see further and added instructions that they could not have worked out on their own. This line of reasoning rested on the assumption that there was a basic congruence between human needs and the ultimate nature of reality. The Greek philosophers, firm believers in that congruence, had called it providence. But what basis could there possibly be for such wishful thinking? On purely rational grounds we might well infer that God wished to destroy His creatures, as al-Juwaynī said; there was no way in which we could second-guess His views. Since He allowed the world to be without prophets at times, it would have been reasonable to infer that He also permitted people to go without imams at times, but He did not. All this went to show that it was only on the basis of revelation that we knew the imamate to form part of God's law.[68] In Abū Ya'lā's formulation it *had* to be on the basis of revelation that one knew it, for one could not know whether anything was obligatory, indifferent, permitted, or forbidden on the basis of reason at all.[69]

Al-Juwaynī's outlook was in line with the worldview of ancient Mesopotamia, which confronted the moral arbitrariness of the universe with extraordinary openness.[70] But this was much too austere for the Rāfiḍīs. The Imamis accepted the providential nature of ultimate reality and claimed the imamate to be indispensable in terms of reason and revelation alike. This was also the Ismaili position, except that they put it in even more extravagant terms: the imamate was obligatory by nature, reason, considerations of governance (*siyāsa*), revelation and custom, in every religion and community.[71]

Why must government be monarchic?

Granted that we must have rulers, why could there only be one ruler at a time? Could one not have several, be it in the form of joint rulers forming a council,

or semi-autonomous rulers forming a federation, or even wholly independent rulers dividing the Islamic world between them? Some Mu'tazilites considered the first two options and endorsed them, as has been seen.[72] But the vast majority of scholars rejected all three options without much attempt to distinguish between them. There was nothing wrong with the idea of several rulers from a rational point of view, 'Abd al-Jabbār said, but authoritative instruction (*sam'*) was against it.[73] Some adduced the Qur'ānic statement that heaven and earth would go to ruin if there were several deities (21:22): it stood to reason that a plurality of human rulers would have a similarly dire effect.[74] Others marshaled Ḥadīth: the Prophet was on record as having said, "when allegiance is given to two commanders, kill the second";[75] and when the Prophet died, the Companions rejected the Anṣār's proposal that they and the Muhājirūn should have a leader each.[76] "Two amirs: the people have perished!" as Ibn 'Abbās reputedly exclaimed on hearing of the appointment of two leaders by the rebellious Medinese in 63/682f.[77] One leader would be able to disobey the other;[78] there would be rivalry and strife between them, even having several viziers was dangerous: too many cooks spoil the broth or, as the Arabic version of the proverb went, too many sailors caused the ship to sink.[79] For all that, there were some who disagreed.

Several imams

Al-Aṣamm's idea of a federation was never fielded again, but a plurality of caliphs, each fully autonomous in his own sphere, was occasionally deemed acceptable. In 929 the amir of al-Andalus, 'Abd al-Raḥmān III, declared himself the caliph. Absurd though it must have sounded to most Muslims in the east, many Ash'arites were ready to accept him as such, presumably as an antidote to the Fatimids, who also claimed the caliphate. They proposed that there could be several imams if their domains were separated by a barrier obstructing

---

67. Ibn Khaldūn, *Muqaddima*, 212 = i, 389f.; cf. above, note 49; Māwardī, *Adab al-dunyā*, 138 and *Aḥkām*, 3f./5 = 3, where reason does not even demonstrate the need for government, only for fairness and justice in mutual dealings.

68. Juwaynī, *Ghiyāth*, §§20–5; cf. Nagel, *Festung*, 297.

69. *Aḥkām*, 19. Cf. Reinhart, *Before Revelation*, 24 (where the same position is reported for his *Mu'tamad*), 33ff., on his ambivalent '*Udda*.

70. Cf. Beaulieu, 'Theodicy, Theology, Philosophy: Mesopotamia'. It was not only in Juwaynī that it lived on; cf. Cook on the bleak conception of the relationship between man and God in Islam (*Muhammad*, 83).

71. Naysābūrī, *Imāma*, 28f.

72. Cf. above, 68.

73. 'Abd al-Jabbār, *Mughnī*, xx/1, 243.

74. Thus Qudāma, *Kharāj*, 437; also cited in Abū 'l-Fawāris, *Imāma*, ch. 8.

75. Ibn Ḥazm, *Faṣl*, iv, 88.12; cf. Kāshif, *Siyar*, ii, 266.

76. Adduced in Jāḥiẓ, 'Jawābāt', in his *Rasā'il*, iv, 290f.; 'Abd al-Jabbār, *Mughnī*, xx/1, 244.

77. Khalīfa, *Ta'rīkh*, 290.5.

78. 'Abd al-Jabbār, *Mughnī*, xx/1, 244.8.

79. Jāḥiẓ, 'Jawābāt', 204f.; 'Nisā', iii, 149, 151 (nos. 10, 11); Ps.-Tha'ālibī, *Tuḥfat al-wuzarā'*, 53.

cooperation between them, such as for example the sea.[80] If there could be two prophets in the same community, as there was in the time of Moses and Aaron, or even three, as hinted in Q. 36:14, a fortiori there could be two or more imams, they said.[81] This view unsurprisingly proved popular with Spanish and Maghribī scholars,[82] though the Spanish Ibn Ḥazm affirmed the classical position,[83] and it gained sufficient currency for the Fatimid missionary Abū 'l-Fawāris (d. 411/1021) to find it necessary to explain why it was not allowed to have two or more imams when distances required it.[84] Most Sunnis rejected it, too.[85] Of those who accepted it, some were outraged when the Karrāmiyya accepted ʿAlī and Muʿāwiya as equally legitimate imams in their separate domains. ʿAlī had been imam in accordance with the *sunna* and Muʿāwiya imam in violation of it (*ʿalā khilāf al-sunna*), the Karrāmiyya said, and the followers of each had been obliged to obey. Al-Baghdādī marvels at an alleged duty to obey *fī khilāf al-sunna*, though the Sunnis operated with just such a duty themselves: even al-Maʾmūn had to be obeyed, as Ibn Ḥanbal had said. But al-Maʾmūn had just been a quasi-caliph whereas ʿAlī was a real imam, someone whose acts embodied God's law so that everyone had to follow him.[86] There could perhaps be two quasi-caliphs at the same time, but real caliphs could not coexist, be it with each other or with quasi-caliphs.[87]

A plurality of kings and sultans was a different matter. This was what the Muslims had come to have in actual fact, but it was the leadership of the religious community, the church, that preoccupied them. The issue was whether more than one leader of this community (more than one pope, in the terminology of medieval Europe) could be acknowledged under exceptional circumstances in which some believers were isolated from the rest – the question

80. Baghdādī, *Uṣūl*, 274 and *Farq*, 341; Ashʿarī and Isfarāʾinī in Juwaynī, *Ghiyāth*, §257; Juwaynī himself favoured this view in his *Irshād*, 425, but not in his *Ghiyāth*, 258ff. (summarized in Hallaq, 'Caliphs, Jurists and the Saljūqs,' 35).

81. Simnānī, *Rawḍa*, i, §§56f. (Isfarāʾinī and some Shāfiʿites); for Juwaynī's view that one cannot argue from prophets to imams, see above, note 68.

82. Ibn Khaldūn, *Muqaddima*, ed. Quatremère, i, 348 = i, 393. The section is missing in the Beirut edition.

83. *Muḥallā*, ix, 360 (§1771).

84. Abū 'l-Fawāris, *Imāma*, ch. 8. His reply was "one God, one imam".

85. Cf. Sanhoury, *Califat*, 120ff.; cf. also Bāqillānī, *Tamhīd*, 180; ʿAbd al-Jabbār, *Mughnī*, xx/1, 244f.; Simnānī, *Rawḍa*, i, 58, and the discussion in Māwardī, *Adab al-dunyā*, 138f.

86. For this distinction, see above, 139.

87. Baghdādī, *Uṣūl*, 274f.; Shahrastānī, *Milal*, 85; Ibn Ḥazm, *Faṣl*, iv, 88, where the same view is said to been held by Abū 'l-Ṣabbāḥ al-Samarqandī (on whom, see van Ess, *TG*, ii, 562f.). For Ibn Ḥanbal, see above, 137.

to which the Zaydīs and Ibāḍīs had already given a positive answer, and which some Sunnis now answered in the affirmative too.[88] The fact that secular rulers had divided the Muslim world between them was also problematic, as has been seen, but it did not affect the religious unity of believers as long as the upstart rulers were willing to cast themselves as servants of the caliph. There was no question of recognizing them as ultimate rulers of the believers' souls. One could perhaps elevate one of them to the position of caliph, along the lines suggested by al-Juwaynī. One could also think away the caliph altogether. This would leave a plurality of de facto sovereigns in the political sense, but they still would not be sovereigns of the particular fragment of the religious community that happened to be in their charge. The religious community would simply be acephalous. Perceptions changed when the caliph disappeared in actual fact, but the secular kingdoms (*regna* in the terminology of medieval Europe) never succeeded in breaking up the religious community so as to turn each kingdom into a sovereign church of its own.

Conciliar government

So much for independent rulers. The conciliar model also found occasional adherents after al-Aṣamm. Thus al-Fārābī acknowledged that it was difficult to find a man endowed with all the characteristics desired in a virtuous ruler. If two men possessed the characteristics between them, they should rule together; and if the characteristics were dispersed in many men, then they should jointly form the government. He took that to be what the Greeks had meant by 'aristocracy' (*riyāsat al-akhyār*), as has been seen.[89] ʿAbd al-Jabbār may be arguing against this proposal when he says that the Companions had insisted on a single imam even though they knew that every candidate lacked qualities present in others: for example, Abū Bakr was strong in religion, but not physically, whereas it was the other way round with ʿUmar.[90] Al-ʿĀmirī also argued against the conciliar idea, on the grounds that one or the other had to be the superior if the arrangement were to work.[91] But it was accepted by Ibn Sīnā and Ibn Rushd, who agreed with al-Fārābī that the common aim would cause the rulers to function as a single soul.[92] The Brethren of Purity similarly held that when

88. Cf. above, 61f., 106.

89. Fārābī, *Fuṣūl*, §54/58 (reproduced in Naṣīr al-Dīn Ṭūsī, *Ethics*, 216, and in Ibn Rushd, *Commentary*, 80 = 208) and *MF*, ch. 15, §§12–14 (pp. 247ff.); above, 179f.

90. ʿAbd al-Jabbār, *Mughnī*, xx/1, 243.14.

91. *Saʿāda*, 194f.; cf. Arberry, 'Arabic Treatise on Politics', 15f.

92. Ibn Sīnā, *Rīṭūrīqā*, 41 and *SM*, viii, 62f. (*siyāsat al-akhyār*); Ibn Rushd, *Metafísica*, §39 (*madīnat al-akhyār*).

the forty-six qualities required in a prophet were dispersed in the community rather than united in a single *khalīfa*, the members of the community could cooperate to preserve and implement the law;[93] but they were talking about the distribution of intellectual and moral perfection rather than power: the aristocratic regime (*dawlat ahl al-khayr*) that such a group of people represented was their own brotherhood.[94] There is a stronger sense of concern with real power in Ibn Sīnā's discussion of aristocracy, and even more so in Ibn Rushd's, but it was still highly theoretical, and none of their suggestions had any political effect. The Qarāmiṭa did set up government by a family council in eleventh-century Baḥrayn, but their institution was rooted in the local tradition rather than in the views of the philosophers.[95] The local notables who jointly ruled Seville in the 1020s and Cordoba in the 1030s seem to have done so by default, and they were soon replaced by monarchs.[96]

Why must the ruler have absolute power?

Most medieval Islamic political thought proceeded from the assumption that power could only be delegated, not shared. This was so whether the ruler was seen as designated by God or elected by humans, by however great or small an electorate. He received it in full or lost it in full, even according to the Ibāḍīs. There was no halfway house. Presumably, this conviction reflected the fact that political power was fragile, all the surface grandeur notwithstanding: government had to be absolutist merely to survive. At all events, the view was deeply entrenched. Obviously, the ruler had to delegate most of his power to others, and he was strongly encouraged to consult, both in order to obtain expert views and to learn about the wishes of his subjects (in the sense of the elite). It was well known that it was difficult for him to ascertain their needs, especially in distant provinces.[97] The early ʿAbbāsid caliphs had surrounded themselves

with formally appointed companions who served as spokesmen of their subjects (*alsinat raʿiyyatihi*), according to Ibn al-Muqaffaʿ,[98] and it was perhaps in an effort to secure better representation of local interests at the centre that some scholars argued that all potential electors in all provinces ought to participate in the election of the caliph.[99] But once elected, the caliph was free to ignore all the advice he received. The consensus was that he could not be made answerable to anyone apart from God.

God was assumed not to call the ruler to account until the Day of Judgement, or at least not until he was dead, but why should He wait so long? If He could be represented in the here and now by a ruler who executed the law, surely He could also be represented by monitors who would call the ruler to account for his performance. The modern argument (used by conservative Muslims against democracy) that Muslims are ruled by God, not by the people, was alien to medieval Muslims because it rests on a tacit assumption that God can only display His will through the state – an abhorrent idea to the religious scholars, who had gone out of their way to disprove it. As they saw it, Muslims were not ruled by God as opposed to the people, but rather by God in the sense of the people, or more precisely in that of the community. The ruler represented both God and the community because they were two sides of the same coin; and it was precisely because the imam was the "representative and agent of the community" (*wakīl li'l-umma wa-nāʾib ʿanhā*) or "the agent of the Muslims" (*nāʾib ʿan al-muslimīn*) that he had to be deposed when he was guilty of wrongdoing, according to those who held that an oppressive ruler must be removed.[100] It was the scholars who formulated the law that the imam was meant to execute; by their own account, it was also they who elected and deposed him on behalf of the community. One would have thought that there was only a short step from all this to the view that the scholars should also monitor his performance, for example by forming independent councils authorized to signal when the rules had been breached, to strike out illegal decisions, and to block their execution.

Small though the step may seem, however, there were few who took it. In Khurāsān on the eve of the ʿAbbāsid revolution a rebel by the name of al-Ḥārith b. Surayj forced the Umayyad governor to set up a commission charged with

93. *RIS*, iv, 125 (tr. in Netton, *Muslim Neoplatonists*, 102).

94. Ibid., iv, 125 (tr. in Netton, *Muslim Neoplatonists*, 102); cf. iv, 187.-4.

95. Cf. Nāṣir-i Khusraw, *Travels*, 87. Following Lewis, the translator takes the kinship of the six brothers to have been metaphorical, but it seems more likely that the number is symbolic (seven with the absent Mahdi). Two Julandā brothers were joint rulers of Oman in the time of the Prophet (Tab., i, 1686; Ibn Ḥazm, *Jamhara*, 384.14; Ibn Saʿd, i/2, 18 [B, i, 262], where one is singled out as the king); and two Julandā brothers are also said to have ruled Oman when al-Ḥajjāj sent an expedition to subdue it (Sālimī, *Tuḥfa*, i, 74; cf. Hamidullah, 'Règne conjoint', 101f., which aims to prove that it is lawful).

96. Stern, 'Islamic City', 33ff.; Wasserstein, *Party-Kings*, 139; Fierro, 'The *Qāḍī* as Ruler', 79, 106.

97. See, for example, the stress on equal favours to the near and the remote in Yazīd III's accession speech (Tab., ii, 1835.6), Ibn Abī Duʾād's insistence that distant subjects had the

same claim to al-Muʿtaṣim's attention as those close by (Tab., iii, 1326), and al-Aṣamm's explanation of the need for several imams (Crone, 'Ninth-Century Muslim Anarchists', 18).

98. Ibn al-Muqaffaʿ, *Ṣaḥāba*, 213 (P, §44); cf. Zaman, *Emergence*, 83n., showing that the institution survived at least until al-Muʿtaṣim.

99. Cf. above, 228.

100. Bāqillānī, *Tamhīd*, 184.-5; Simnānī, *Rawḍa*, i, §517. On the equation of God and the community, see further below, 393f.

the task of nominating sub-governors and drawing up the rules and norms (*siyar*, *sunan*) they were to follow. Some of the members were scholars, the others are unknown. Al-Ḥārith's aim was to reduce the governor's control of local appointments and procedures rather than to monitor his performance, but the key point is that he tried to place institutional limits on the governor's power. Whether the commission actually got to work is unclear, and the idea did not survive the ʿAbbāsid revolution.[101] Some forty years later, as we have seen, a participant in the election of the Ibāḍī imam ʿAbd al-Wahhāb (c. 164/780) in North Africa would only endorse ʿAbd al-Wahhāb's election on condition that the latter "would not take any decision except in the presence of a specified group (*dūna jamāʿa maʿlūma*)": ʿAbd al-Wahhāb would have to rule in concert with a council. This proposal struck the other members of the electoral committee as monstrous, and their negative view was endorsed by the Ibāḍī leadership in Basra: the election of ʿAbd al-Wahhāb was valid and the condition was void.[102] Al-Aṣamm considered replacing the ruler altogether with a council of scholars, as has been seen.[103] Who would have monitored them? Maybe he thought that there was safety in numbers. In any case, after him there is silence for a long time. Neither the Sunnis nor the philosophers who accepted the possibility of a plurality of rulers were motivated by dislike of absolutism, and though the merits of consultation continued to be praised, the idea of imposing control on the ruler seems to have been abandoned.

It was briefly resumed in Almoravid Andalus, however, when a certain Ibn ʿAbdūn, writing around 500/1100, proposed that the judge should supervise a number of government functions, including tax-collection and the vizier's administration. He also expected the judge to serve on a consultative body along with other jurists and worthy men with whom the ruler (*al-raʾīs*) would meet on a regular basis, and he required the judge to consult with other jurists in the performance of his own juridical functions too. His primary concern seems to have been with the local government of his own Sevilla. Like al-Ḥārith b. Surayj, he was interested in practical reform of the world on the ground, not in grand moral visions, and his ideas were remarkably concrete; they were presumably meant for replication in other cities, including the capital. But whatever notice the Almoravids may have taken of them, he was also like al-Ḥārith b. Surayj in that his ideas were swept away along with the political landscape he wanted to reform by a revolution, in his case the Almohad conquest.[104]

---

101. Crone and Hinds, *God's Caliph*, 108; Crone, 'Shūra as an Elective Institution', 24–6.

102. Above, 59f.

103. Above, 68.

104. Ibn ʿAbdūn, 'Risāla', 4.ult., 7, 9, 14f. = 7, 13, 18, 29ff.; Fierro, 'The Qāḍī as Ruler', 109f. (and cf. Marín, 'Šūrā et *ahl al-Šūrā* dans al-Andalus').

No libertarian Greek heritage

In this connection it may be noted that the Muslims did not inherit a republican or democratic tradition from the Greeks. How much difference it would have made if they had is difficult to say, but in any case, Plato was an authoritarian thinker, and what the Muslims knew of Aristotle's political views seemed to go the same way. They inferred that the virtuous polity could have either a single ruler (*malik*, *imām*, *raʾīs*) or several (the *akhyār*, *afāḍil*), the former being kingship and the latter aristocracy; either way the power of virtue was absolute. The Muslims did not know that the Greeks had lived in cities in which sovereignty was vested in popular or aristocratic assemblies rather than in kings, or that the Romans had begun by expelling their kings to be ruled by such assemblies down to the time of Augustus. Their Greek history reduced to Alexander the Great and his immediate successors, and their Roman history began with Augustus (because Jesus was born under him). Of Alexander they had interesting things to say: he was the greatest king on earth, indeed a prophet, who eventually renounced power altogether;[105] or alternatively, he was a mere hooligan who conquered for the sake of it, without bothering to devise any proper administration of his domains, in order to satisfy his own ambition rather than the demands of truth (unlike the Prophet).[106] Augustus, by contrast, was just a name to them. But whatever their views on these pivotal figures, they missed out on the republican city states which had preceded them. The word *polis*, arabized as *madīna*, they took to mean a politically organized society of any kind, or just a society, or even just a city in the normal sense of the word, not a self-governing city state. Had they known the concept, they might have applied it to pre-Islamic Mecca (as modern historians sometimes do), though it was actually stateless. Given that Muḥammad rejected Mecca for a theocracy in Medina, it would not necessarily have endeared the notion to them, but in any case the concept did not reach them.

They did learn about democracy, but they knew it as a regime of imperfection, since this was how Plato and Aristotle described it, and also how the Neoplatonists saw it.[107] In fact, of the three forms of constitution the worst

---

105. Cf. Bürgel, 'Krieg und Frieden im Alexanderepos Nizamis'.

106. Bayhaqī (finding the Ghaznavids superior) in Meisami, *Historiography*, 83f., cf. Abū Ḥātim al-Razī, *Aʿlām*, 89, where the ephemeral nature of Alexander's achievement is contrasted with the Prophet's.

107. Proclus, *Alcibiades*, 255; Iamblichus in O'Meara, 'Aspects', 71.

was democracy (*riyāsat al-ʿawāmm*), Aristotle says in the Arabic translation of his *Nichomachean Ethics*, though this is not what he says in the original.[108] The democratic city (*al-madīna al-jamāʿiyya*) was one in which "the aim of its people is to be free (*aḥrāran*), each one of them doing what he wishes without restraining his passions in the least", al-Fārābī observed, characteristically equating freedom with licentiousness rather than participation in political decision-making.[109] Nobody was subjected to any restraint, but rather each did whatever he wanted, within the limits of the law, Ibn Rushd observed.[110] It was a constitution under which people were equal: in the *siyāsat al-ḥurriyya* the chief would be slapped for every slap he gave. Nobody had any merit over anyone else, so that the virtuous and the vile had the same rights in respect of offices, honours, and punishments, and power was obtained by chance rather than by virtue. The leadership in *al-dīmūqrāṭiyya* went to whomever they happened to agree on.[111] It was an absurd idea to philosophers convinced that the distribution of political power ought to reflect gradations of virtue. On top of that, democracy was a regime without a common purpose, as Ibn Rushd observed; it allowed every household to pursue whatever it regarded as its highest goal, typically (then as now) material goods: on this ground he deemed most cities of his own time to be democratic.[112] As has been seen, this absence of a common purpose was its greatest demerit in Ibn Rushd's opinion, for the beauty of the ideal city lay precisely in its tight coordination of everyone for the pursuit of a single aim, ultimate happiness (as in the communist regimes of the twentieth century). But it was also where the escape from democracy lay, for the freedom with which everyone was left to pursue their own ideas meant that adherents of every conceivable regime could be found in democratic cities, including virtuous people. As Ibn Rushd saw it, they might eventually succeed in replacing democracy with a Virtuous City of the tightly coordinated kind.[113] Freedom always includes the option of putting an end to freedom (as we

---

108. *Akhlāq*, 293.ult.f. (translated in Rosenthal, *Classical Heritage*, 112), corresponding to 1160a of the original, where the worst of the three is timocracy. It seems to be a mere slip on the part of the translator.

109. Fārābī, *MF*, ch. 15, §17 (p. 256) and *SM*, 99 = 50; cf. Najjar, 'Democracy in Islamic Political Thought'.

110. Ibn Rushd, *Commentary*, 83f. = 212f.

111. Fārābī, *SM*, 99 = 50; Ibn Sīnā, *Rīṭūrīqā*, 37; Ibn Rushd, *Khaṭāba*, 136; ed. Aouad, 1, 8, 1; 1, 8, 3 (*ad* Aristotle, *Rhetoric*, 1365b; *Arabic Version*, i, 40.24, where it is described as a regime in which public offices were distributed by lot).

112. Above, 190.

113. Ibn Rushd, *Commentary*, 83 = 212f.; cf. Fārābī, *SM*, 100f. = 51 (where no transformation seems to be envisaged).

might say, though they never put it that way). The Virtuous Polity was both authoritarian and totalitarian.

The Sharīʿa as a constitution

The perfect polity of the scholars was a good deal more liberal than that of the philosophers in that the scholars regarded all rulers as subject to the law rather than sources of it. "Islamic government is neither tyrannical nor absolute, but constitutional . . . in the sense that rulers are subject to a certain set of conditions in governing and administering the country," as Khomeini put this point.[114] But he was a revolutionary. Pedantic scholars have to observe that although one could well characterize the Sharīʿa as a constitution, it does not follow that government based on it was constitutional.

The Sharīʿa was, or rather included, a constitution in the broadest sense of the word: a set of rules that allocated functions, powers, and duties among the various agencies and offices of government and defined the relationship between them and the public.[115] Al-Māwardī's *aḥkām sulṭāniyya* is a collection of such rules. But a constitution in this sense of the word is simply a frame of government or political order: a set of rules which organize, but do not restrain, the exercise of power. In order for the rules to yield constitutional government they have to include restraints, normally identified as a bill of rights and institutional devices for securing their observance.[116] The Sharīʿa does not include a bill of rights, let alone of rights perceived as common to all mankind, but it could still be said to guarantee personal freedoms for Muslims and people under their protection, and to seek to restrain arbitrary power.

Of course, words such as 'rights' and 'freedoms' are Western, but medieval Muslims certainly had a concept of both. They tended to view human relations in terms of duties, however, and they did not think that membership of the human species conferred any rights or duties in itself. Rather, rights and duties were conferred by God on His servants. It followed that there was no concept of human rights in the modern sense. Infidels had no legal existence except insofar as they were protected by Islamic law, as *dhimmī*s or *mustaʾmin*s (roughly permanent and temporary residents).[117] When the jurists spoke of human rights (*ḥuqūq al-ādamiyyīn/al-ʿibād*), they meant the claims that individuals had on each other, not rights vested in human beings by virtue of their human nature. The opposite of human rights were God's rights (*ḥuqūq*

---

114. E.g. Khomeini, *Islam and Revolution*, 55.

115. Cf. Finer, 'Notes Towards a History of Constitutions', 17.

116. Sartori, 'Constitutionalism', 856f.

117. Cf. below, 358.

allāh), meaning the claims that the Muslim community as represented by the ruler had on them. The distinction is close to that between civil and public (including criminal) law today. For example, certain penalties were owed to humans, meaning that they were carried out only if the aggrieved party demanded it.[118] The offenses were seen as private. Other penalties were duties owed to God, meaning that they had to be carried out whether anybody demanded it or not (thus the so-called *ḥudūd*). They were crimes against God, or in other words the Muslim community, not against individual Muslims. Penalties apart, God's claims included the canonical taxes, holy war, ritual worship such as prayer and fasting, and other things, such as the duty of giving advice to the ruler (or so at least according to an Ibāḍī scholar). There were also institutions which involved duties to humans and God alike.[119]

It was under the heading of 'human claims' that the lives, property, personal freedom, family relations, and commercial transactions of Muslims and *dhimmī*s were protected. One might call them 'civil rights' if this did not imply a consciousness of rights against the state which is not present in the sources. One could certainly call them 'civil claims'. The jurists discuss them from the point of view of dealings between private people, not between private people and the state, and no special attention is paid to them in works on constitutional law such as al-Māwardī's. For all that, the law was perfectly clear that the lives, property and internal relations of the subjects were sacrosanct as long as they observed the law themselves. The jurists paid less attention to public law, but they did cover subjects such as taxation, the conduct of holy war, the suppression of rebels, the punishment of criminals, and the appointment of judges. It certainly cannot be claimed that they gave no guidance on matters of government.[120] The law left much to the discretion of rulers, but its letter was often detailed and its spirit was unmistakably protective of the believers. It is for this reason that one can call the Sharī'a a constitution in the fuller sense of the word. Nobody could, or did, have any doubt that most of what rulers did was illegal.

But the constitution was not enforceable. Allied with scholars, the ruler could compel his subjects to live by the law in respect of ritual worship, family relations, commerce, and inheritance (insofar as compulsion was needed). But whether they were allied with scholars or not, the subjects could not com-

pel their ruler to observe the law in the exercise of government. The ruler had agents backed by force among his subjects, the subjects did not normally have any among the wielders of political power. There is a remarkable exception in eleventh-century Samarqand. In 488/1095 the inhabitants of this city, "both officers and subjects", agreed to kill Aḥmad Khān, a local dynast who ruled as a subordinate of the Seljuqs. They suspected him of heresy, seized him, and put him on trial in a court of jurists and judges, who condemned him to death on charges of Ismailism and apostasy; or, according to another version, the jurists and judges first met with leaders of the army and issued a *fatwā* declaring it licit (or obligatory) for anyone to kill Aḥmad, and next, when he was caught, put him on trial and condemned him to death again.[121]

The key to the subjects' power here is clearly their alliance with the leaders of the army. The result was a noteworthy attempt to handle power by lawful procedures. Military commanders did not usually stage trials or solicit *fatwā*s before killing a ruler; nor, for that matter, did rulers normally bother to stage trials in order to jail, kill, or seize the property of their commanders or civilian subjects. There is a famous exception in the caliph al-Muʿtaṣim (833–42), who found it prudent to have his powerful general, the Afshīn, convicted of apostasy before having him killed.[122] The generals in Samarqand now found it necessary similarly to dispose of Aḥmad Khān by lawful means (perhaps because he had an overlord who might have punished them). We do not know whether the charges they brought against him were seriously meant, let alone true, or merely a pretext, though the latter seems more likely: Aḥmad Khān was oppressive (*qabīḥ al-sīra*) and extortionate, and it was the second time that the Samarqandīs tried to rid themselves of him. The first time they wrote to the Seljuq sultan Malikshāh, inviting him to take control of Samarqand, which he duly did, but he reinstated Aḥmad Khān some years later, and this was when they brought charges against him; Aḥmad Khān flatly denied them.

But though the trial is unlikely to have been fair, it does give us a glimpse of what one might call constitutional government. It is typical, however, that the charges were of apostasy, not of illegal appropriation of other people's goods. No medieval Muslim ruler, or for that matter governor or general, is on record as having gone to trial for having killed, tortured, jailed, or robbed innocent Muslims, though a fair number of Sunni jurists held that the imam should be deposed for such crimes, as has been seen.[123] Violations of this kind were apparently too commonplace; many jurists denied that the ruler could be

---

118. Thus Māwardī, *Aḥkām*, 390/229 = 249, on *qadhf* (one of the *ḥudūd* that were human rather than divine claims in his view).

119. Milliot, *Introduction à l'étude de droit musulman*, §196; Johansen, 'Eigentum, Familie und Obrigkeit', 386f., 409ff. and 'Sacred and Religious Elements in Hanafite Law', 289f, 299ff; Muḥammad b. Maḥbūb in *Kāshif, Siyar*, ii, 249.13.

120. *Pace* Finer, 'Notes towards a History of Constitutions', 18.

121. Ibn al-Athīr, *Kāmil*, x, 243f. (year 488), cf. 171ff. (year 482) for the pre-history; Narshakhī, *Bukhārā*, 236f.; Barthold, *Turkestan*, 339.

122. Cf. *EI²*, s.v. 'Afshīn'.

123. Above, 228ff.

deposed for them; to secure the removal of extremely powerful people only the ultimate charge would do: loss of status as a Muslim. Remarkable though it is in retrospect, moreover, the episode did not attract much attention at the time. Only two historians report it, one dispassionately and the other outraged by the Samarqandīs' behaviour: how strange that people of Sunna and Jamāʿa who hold Q.4:59 ("Obey the messenger and those in authority among you") to refer to kings should nonetheless rebel against kings, as the latter exclaims.[124]

Aḥmad Khān had clearly managed to alienate most members of the elite, including his own army. Elsewhere, too, it happened that people agreed to remove a ruler by inviting another to take over. But most rulers managed to retain sufficient support to go on oppressing the powerless. When such rulers violated what we would call the civil rights of its subjects, all the subjects could do was to turn to the state itself, petitioning the ruler for justice in the special court for the redress of grievances (*radd al-maẓālim*). It was a poor substitute for the independent councils with which al-Ḥārith and the North African Ibāḍī had wanted to restrain government. Al-Māwardī tells an edifying story in which a woman in rags accuses the caliph's own son of usurping her land and wins the case.[125] This was how things ought to be; between them, the divine authority of the law and the personal virtue of the ruler would ensure that justice won out even when this flew in the face of the immediate interests of the ruler. One could not call this constitutional government even if virtue did occasionally win out, or always, as it is said to have done under the Rightly Guided Caliphs or ʿUmar II. Rather, it was government by appeal to the ruler's conscience. With no authoritative devices for signaling breach of the rules, and no official mechanisms for the imposition of sanctions either, attempts to enforce the rules inevitably led to mutual recriminations and civil war.[126] It was precisely because sustained attempts to enforce the rules always led to civil war that most people eventually decided to live with such government as they had.

Political illusion tricks

Once it was accepted that government had to be absolutist, and indeed that rulers needed more power than they actually had, there was some interest in how they went about creating the illusion of possessing it. Humans are competitive because they are similar, al-Bīrūnī observed; all descend from the same ancestors and have much the same size and shape, so there is no obvious rea-

son why any one of them should lord it over others; everybody thinks he has a better right to wealth and power than everyone else. The difference between one man and another "is not so considerable as that one man can thereupon claim to himself any benefit to which another may not pretend as well as he", as Hobbes was to put it six centuries later in unwitting agreement with al-Bīrūnī.[127] The trick, then, was to make one person seem quite unlike the rest. For a start, one could declare rulership to be the monopoly of a single tribe, al-Bīrūnī observed, or of a particular individual within it, with reference to some celestial genealogy or divine designation after the fashion of the Sāsānids with their Kisrās, the Muslims with their limitation of the imamate to Quraysh, the Tibetans with their belief that their *khāqān* descended from the sun, and the Turks with their myth about their king emerging from a cave. Next there were ways of magnifying the physical presence of the ruler: tall palaces, spacious courts, raised seats, thrones, crowns, other headgear, arm-extensions, and more, all symbolizing elevated ambition and extended power. It was also important to think of adornments conveying an impression of great wealth, and so beautiful as to sway the hearts of the beholders. For the rest, the ruler had to seem to know more than anyone else about what was going on, be it locally or far away, among the elite or among the masses, for which purpose he needed to devise clever means of communication.[128] Abū Yaʿqūb al-Sijistānī had a strong sense that coins and public prayers served to disseminate awareness of the ruler's power, though it was only the association of the ruler's name with the Prophet's on and in them that he singled out as significant.[129] Ibn Sīnā laid down that the lawgiver prophet must magnify the position of his successor by prescribing acts of worship that can only be performed in his presence, adding that the legislator must also see to it that the ruler is involved (via the judge) in fundamental social acts such as marriage.[130] Here as elsewhere, the philosophers were sophisticated sociologists of religion.

127. *Leviathan*, ch. 13, 1.
128. Bīrūnī, *Jawāhir*, 24ff. = 26ff. For another sociological explanation of the limitation of the imamate to Quraysh, see Ibn Khaldūn, *Muqaddima*, 115ff. = i, 399ff.
129. *Ithbāt*, 174.
130. Ibn Sīnā, *SI*, x, 452 = 108.

124. Narshakhī, *Bukhārā*, 237. For the verse and its interpretation, see above, 138, 155f.
125. *Aḥkām*, 144/85 = 95,
126. Cf. Finer, 'Notes Towards a History of Constitutions', 18f.

CHAPTER
18

THE FUNCTIONS OF GOVERNMENT

What services did medieval Muslims expect from the state? Religious scholars often answer the question in the form of lists of the ruler's *shar'ī* functions (i.e. those required by the Shar'īa), along the lines of "the Muslims must have an imam to execute their laws, apply their *ḥudūd*, despatch their armies, marry off their (female) orphans and distribute the booty (*fay'*) among them".[1] But such lists are too concise to be meaningful to a modern reader, and they do not mention any non-*shar'ī* functions, nor do they say what would happen to the *shar'ī* functions if the imam disappeared. What follows is an attempt at a fuller answer.

SHAR'Ī DUTIES

Validation of the community

A modern Westerner would answer the question of what government is for by starting with internal order and external defence, but medieval Muslim scholars never did, for government to them was first and foremost about the maintenance of a moral order, a law. It is with the moral order that we shall have to start as well, then.

The early Muslim community was constituted by allegiance to its imam (originally the Prophet, thereafter the caliphs). Without this leader, there was no saving vehicle in which to travel along the legal highways revealed by God: the law would not be in use; differently put, it would be suspended. If the imam was replaced with another type of ruler, the result would be the same, for whereas any kind of ruler would do for the avoidance of anarchy, only an imam would do for the avoidance of amorality. Without him, such community as existed would not be based on Islamic law. All the social and political arrangements of the Muslims would cease to be distinguishable, in legal as opposed to de facto terms, from those of infidels. The abode of Islam would merge with that of unbelief.

Initially, then, it would seem that the first and foremost role of the imam was to validate the law on which the Muslim community was based. The *umma* and the imamate thus went together: neither could exist without the other. But this is not how things remained. From the first civil war onwards an increasing number of Muslims deemed the head of state not to be an imam any more. They would rebel on behalf of real imams when they could, but this was not always possible, and all went through periods in which they had no imam at all. How then could they hope to be saved?

It is difficult to find an answer to this question. The early Khārijites and Shī'ites formed communities by affirming their loyalty (*walāya*) to imams of guidance in the past, dissociating from all imams of error and their supporters in the past and present, and accepting the obligation to establish a true imam as soon as circumstances would allow it. This seems to have sufficed, in the sense that it was only in terms of public law that the community merged with the abode of unbelief (*dār al-kufr*). In the absence of an imam the sectarians had no legitimate Friday service, courts, army, or other emblems of political organization, but for the rest the law remained valid, or so they seem to have assumed. They must in that case have operated with a distinction between the private and public aspects of the law, but they do not seem to have thought too deeply about it, for if one could live a morally upright life without political organization of one's own, what would be wrong about living in *dār al-kufr*?

The parallel between the Umayyad polity and *dār al-kufr* was brought into the open in the second civil war, when Khārijite extremists deemed life in this polity to be incompatible with Muslim status: if all non-Khārijites were infidels, they said (and all Khārijites agreed that this was so), then there was not and could not be a Muslim polity unless the Khārijites left to establish one themselves, and all Khārijites who refused to leave the abode of *kufr* were infidels. Their emphasis was on physical separation as a rightly guided community

---

1. Baghdādī, *Uṣūl*, 271. Or "there must be an imam to execute their laws, apply their *ḥudūd*, protect and guard their territory, despatch their armies, distribute their booty and alms, deal with their disputes and their marriages, supervise their communal prayers and feasts, do justice to the oppressed and exact vengeance from the oppressor, set up judges and governors in every area, and send Qur'ān-readers and missionaries to every area" (Shahrastānī, *Nihāya*, 478 = 151).

rather than the establishment of a rightly guided leader, but they clearly saw the two as going together: they made their *hijra* from the garrison cities to establish imamates of their own. This had the merit of consistency. Other Khārijites responded that Muḥammad had lived for ten years in Mecca, which was *dār al-kufr* at the time, or that in fact no imam was necessary for a valid community, since the imamate had never truly existed, or that other Muslims were only infidels in the sense of hypocrites.[2] But if hypocrites sufficed to validate the community, why did one have to rebel against them to establish another when one could? Again, it is hard to find an answer.

It was not just the Khārijites who preferred not to think too hard about the problem. The Andalusians never explained how they could claim to be Muslims, and indeed to live in a politically organized society with Friday prayer, courts, armies and so on, when their Umayyad governor stopped paying allegiance to the ʿAbbāsid caliph without adopting the status of imam himself.[3] By what avenues did the Zaydīs, who explicitly declared all precepts of the law to flow from the imamate,[4] reach the position that the law was valid whether there actually was an imam or not as long as people acknowledged the imamate to be prescribed by the law (so that it was for purely practical reasons that none existed)?[5] We do not know. As late as the tenth century, *jamāʿī* Muslims retained a feeling that there would be no Islamic community and no (public) law without the caliph, though they did not often say it.[6] The only imams, apart from the Prophet, whom they unanimously deemed indispensable for purposes of putting communal life on a moral basis were by then the first four. For the rest, the imamate was obligatory in the sense that one had to establish it when it was possible to do so, not in the sense that one would die as a pagan if circumstances forced one to live without it. They must have reached this position early, for nobody seems to have questioned that the Andalusians were Muslims, nor do the Muʿtazilite anarchists seem to have found it necessary to explain that one could remove the imam without suspending the law and dissolving the Muslim community thereby. But opinions seem to have developed stealthily, as if people were ashamed of them. The

same is true of opinions on the parallel question whether one could or could not live in the abode of unbelief (*dār al-kufr*).[7]

Only the Rāfiḍī Shīʿites opted for an explicit assertion that the validity of the law depended on the imam. When he disappeared, his continued existence in hiding ensured that the world was not totally drained of morality, so that the Muslim (i.e. Imami) community continued to exist even though public law was a dead letter in his absence. By then, the tight concatenation of the imam and the law characteristic of Shiʿism must have come across as an aberration rather than a strong formulation of what had once been a shared view.

Validation of public worship

Whether or not a saving vehicle existed without the imam, his presence (or that of his governor or other deputy) was required for the validation of the Friday and the festival prayers in Umayyad times.[8] This was also the view of the Zaydīs,[9] Imamis,[10] Ismailis,[11] Ḥanafīs,[12] and Ibāḍīs.[13] It was for that reason that the Baghdadis would smash pulpits and declare that "they had no prayers" (*lā ṣalawāt lahum*) when they found al-Muqtadir (d. 932) too useless to count as their caliph.[14] The Shāfiʿites held it more suitable for the Friday prayer to be validated by judges rather than governors, or so at least according to al-Māwardī.[15] Since judges were also delegates of the caliphs, this did not make much difference in juristic theory, but other Shāfiʿites freed the Friday prayer

7. Such views as survive from the first four centuries are notable for their ambivalence, as Abou El Fadl points out ('Islamic Law and Muslim Minorities,' 148f.). Cf. further below, 359ff.

8. Crone and Hinds, *God's Caliph*, 33, citing Jarīr.

9. Strothman, *Staatsrecht*, 5n., cf. 97 (a *muḥtasib* imam did not suffice).

10. Ṭūsī, *Nihāya*, 103.

11. When the Ismaili missionaries lost touch with their imam, they said that they had "no prayer, no fasting" (Ivanow, 'Istitār al-imām', 93 = 158).

12. Māwardī, *Aḥkām*, 65/33.8 = 35; Baghdādī, *Uṣūl*, i, 272.9 (the Iraqis); ʿAbd al-Jabbār, *Mughnī*, xx/1, 48.9; Calder, 'Friday Prayer and Juristic Theory', 37. Compare Ibn Ḥanbal, who counted ʿAlī's leadership of the prayer among the proofs that he had been caliph (Zaman, *Emergence*, 169f.), and Ibn Sīnā, according to whom the lawgiver must prescribe worship which can only be performed in the caliph's presence (*SI*, x, 452 = 108).

13. Imams were needed, among other things, "to hold our prayers", as the Ibāḍīs of North Africa said when they elected Abū 'l-Khaṭṭāb (Ibn Ṣaghīr, 'Chronique', 9); if you depose the rightful imam, the new imam's *jumʿa* will be invalid (Bisyānī in *Kāshif*, ii, 186). The Ibāḍīs of Jerba had no Friday prayer due to the absence of the just imam, al-Tijānī noted in 706/1306 (*Riḥla*, 127).

14. Ḥamza al-Isbahānī, 153, 154 (G, 202f., 204).

15. Māwardī, *Aḥkām*, 65/33.7 = 35.

2. Thus the Bayhasiyya, Najdiyya, and Ibāḍiyya respectively.

3. For their resolute silence on their ruler's (and thus also their own) status, see Fierro, 'Adopción des título califal', 36.

4. Strothmann, *Staatsrecht*, 5.

5. If there was an imam and one did not know him, one died as a pagan; if there was none, the imam was the Prophet, the Qurʾān and the Commander of the Faithful (i.e. ʿAlī), and one escaped a pagan death by knowing the doctrine of the imamate (al-Hādī ilā 'l-Ḥaqq, *Aḥkām*, i, 466f.; cf. also Strothman, *Staatsrecht*, 91).

6. Cf. Nagel, *Festung*, 35.

from its association with government altogether. It was customary, according to al-Juwaynī, for the imam to supervise events which served as an external emblem (*shiʿār*) of Islam, such as the Friday prayer and the pilgrimage, and he ought indeed to pay attention to anything involving large numbers, but in law, people were free to organize the rituals themselves.[16] According to the Ḥanafī Ibn al-Simnānī, all duties that fell on the believers as individuals, such as ritual prayer and alms, continued whether there was an imam or not. Whether he included the Friday prayer under this heading, not just the daily five, he does not say.[17]

Jamāʿī scholars who deemed the validity of the Friday prayer to depend on the presence of the ruler, in person or through his governor, held his presence to have the requisite effect whether he was morally upright or not;[18] but Shīʿites would not pray in the Friday mosques of illegitimate rulers,[19] and the Imāmīs ceased to have a public Friday service when their twelfth imam went into hiding.[20] This briefly changed under the Shīʿite Būyids, when al-Mufīd (d. 413/1022), followed by his pupil al-Ṭūsī (d. 459f/1066f), postulated that the imam had delegated his authority to the jurists: they were permitted to conduct the Friday and the Festival service on his behalf, provided that they could do so without getting into trouble.[21] But later scholars such as Ibn Idrīs al-Ḥillī (d. 598/1202) disagreed.[22] There was no Friday prayer in early Ṣafavid Iran; to conduct it was to identify oneself as a Sunni.[23]

In al-Juwaynī's opinion, no physical act of worship required validation by the imam.[24] That the pilgrimage remained valid regardless of the moral status of the ruler is explicitly affirmed by the Ḥanbalī Ibn Baṭṭa and the Zaydī

---

16. Juwaynī, *Ghiyāth*, §§289f., 553; cf. Shīrāzī in Calder, 'Friday Prayer and Juristic Theory', 41.

17. Simnānī, *Rawḍa*, i, §114; cf. §115.

18. Ibn Baṭṭa, *Profession de foi*, 67 = 127; cf. Lewis, *Political Language*, 101.

19. Already under the Umayyads we are told that the adherents of ʿAlī would stay away from Friday service and other public prayers (Ṭab. ii, 234); such absence counts as a sign of *rafḍ* in a Prophetic tradition cited in *SN*, ch. 41, §14.

20. There were no Friday prayers in Qumm in Būyid times until Rukn al-Dawla forced the Qummīs to rebuild and use the Friday mosque (Muqaddasī, *Aḥsan*, 395). Kulīnī (d. 329/940f.) has the imams make provisions for performance of the Friday prayer by oneself, or prayers in lieu of it (Newman, *Formative Period of Twelver Shīʿism*, 168, 170).

21. Mufīd, *Muqniʿa*, 811; Ṭūsī, *Nihāya*, 302, cf. 107. For Mufīd on the law during the *ghayba*, see also Arjomand, 'The Consolation of Theology', 562f.

22. Ibn Idrīs, *Sarāʾir*, i, 302ff.

23. *Enc. Iran.*, s.v. 'jumʿa.'

24. Juwaynī, *Ghiyāth*, §§289f. (cf. above, note 16).

Majmūʿ,[25] and everyone else seems to have taken it for granted. As regards fasting in Ramaḍān, only the Ismailis held it to be suspended in the absence of the imam, presumably because they relied on him to announce its beginning and end, calculated by astronomers.[26] Other Muslims simply relied on the appearance of the new moon, which did not require expert knowledge. (This did not prevent the Mālikī al-Wansharīsī from adducing the fast of Ramaḍān among the ritual obligations that Muslims would be unable to fulfil if they stayed on in al-Andalus after the fall of Granada in 1492: without imams and their deputies, the sighting could not be accomplished, he declared, urging them to leave.)[27]

Finally, obligatory alms (*zakāh*, *ṣadaqa*) remained payable to any ruler whatever his moral status according to some Sunnis, but here there were dissenting voices, above all (though not only) among the Shāfiʿites: obligatory alms on gold, silver, and easily hidden things kept at home could or should always be paid directly to the recipients, listed in Q. 9:60, the dissenters said, rather than to officials (who would violate the privacy of the home); and the same was true of obligatory alms in general when the collectors were unjust, or even when they were not, according to some.[28] In the absence of a ruler of any kind, everything to do with public money would have to be managed by the scholars, according to Juwaynī, who does not explicitly mention alms. According to Ibn al-Simnānī, *zakāh* would continue to be payable because it was a duty which fell on the believers as individuals, whereas the imposition of *jizya* would stop because the duty did not fall on them, but rather on the imam.[29]

The Ibāḍīs and some Imamis also held that people could disburse the alms directly to the recipients, at least if there was no legitimate imam or one could not rely on the money reaching him.[30] What happened if one gave one's alms to a wrongful ruler, voluntarily or under duress? The Ibāḍīs and some Imamis said that one would have to pay them again, assuming that there was someone to pay them to. But there were also Imamis who said that it was lawful to pay them to rulers such as the Umayyads, and that they were not in any case to be

---

25. *Profession de foi*, 67 = 128, cited in Lewis, *Political Language*, 101; Zayd (attrib.), *Majmūʿ*, 236, no. 853.

26. Above, note 11; cf. Walker, *al-Kirmānī*, 35.

27. Wansharīsī, *Miʿyār*, ii, 138f.

28. Ibn Baṭṭa, *Profession de foi*, 67 = 128; cited in Lewis, *Political Language*, 101; Aghnides, *Theories of Finance*, 296ff.; Māwardī, *Aḥkām*, 209/121 = 135. There were even some who held that one could kill unjust collectors, cf. below, note 93.

29. Juwaynī, *Ghiyāth*, §560; Simnānī, *Rawḍa*, §§114f.

30. Cf. Bisyānī, *Mukhtaṣar*, 93; Newman, *Formative Period of Twelver Shīʿism*, 166f.

paid twice.[31] The Zaydīs and Ismailis held that (the true) *zakāh* was suspended in the imam's absence,[32] and so apparently did some Imamis, on the grounds that ordinary believers lacked the knowledge to hand it directly to the rightful recipients, and that three of the categories of recipients listed in the Qur'ān presupposed political organization: the Imami al-Mufīd and his pupil al-Ṭūsī brushed aside these objections, arguing that *zakāh* was payable to the jurists, who did have the requisite knowledge, and that the three problematic categories were simply suspended.[33]

Execution of the law (tanfīdh al-aḥkām)

Executing the law was the essence of the imam's *shar'ī* functions. It was to implement the moral and legal rules (*sunna, ḥukm, ḥudūd, farā'iḍ, ḥuqūq*) brought by the prophets that God had raised up caliphs, as al-Walīd II said in 744.[34] All lists of the imam's functions mention this duty, and all the functions listed separately can be seen as subdivisions of it. In the early days the caliph would execute the law in person by adjudicating in person, and whether he did so or not, it was generally agreed that only the imam (or a delegate of his) could appoint judges.[35]

It followed that if there was no imam, people would have "no judgements (*aḥkām*)", as the Umayyad poet Jarīr put it.[36] One would have make do with *ṣulḥ*, private agreement or settlement out of court.[37] The Imamis had no courts capable of enforcing their decisions even back in the days when their imams were present, and their traditions sternly warn the believers not to use the courts of the opponents, telling them to submit their dispute to a traditionist or jurist and accept his judgement of their own accord.[38] When al-Mufīd,

followed by al-Ṭūsī, proposed the theory of delegation to the jurists (*tafwīḍ*), they affirmed that it was up to the jurists to take over the functions of *qāḍī*s.[39] Al-Ṭūsī added that a person appointed by the wrongful regime should try to use his position to apply Imami law; under duress he might even apply the law of the opponents, but only as long as it did not cause him to take lives: *taqiyya* (dissimulation under duress) could not legitimate unlawful killing.[40]

On the Sunni side al-Māwardī agreed that there could be no execution of the law (and also no collection of taxes) in a community without an imam, whereas an imam raised up by rebels would in his opinion validate its execution in the rebel community: he did not deem the (mostly Sunni) subjects of the Fatimid caliphs to be living in sin, one infers, though he does not mention any examples.[41] Here as elsewhere, the idea is that the public domain is created by God, the only power capable of overruling private interest, and that God has to be represented in the here and now by a single person, a deputy. But al-Juwaynī argued along the same lines as al-Mufīd and al-Ṭūsī that the scholars could take over the execution of the law in the absence of a such a deputy: they could marry off women without marriage guardians and administer the property of orphans, for example.[42] Al-Ghazālī, his star pupil, disagreed, as has been seen: all transactions dependent on judges would be invalid in his view, or alternatively validated by overriding necessity (*ḍarūra*) alone, for the sultans to whom most judges owed their appointments had no moral right to appoint them unless they were authorized to do so by the caliph. Later Sunnis solved the problem by tracing the authority of the sultan to the community, thus reversing the original relationship between the community and its head, and/or by seeing the sultans as imams themselves.[43]

Execution of the ḥudūd

The modern state is often held to be an agency for the maintenance of internal order and the conduct of external defence distinguished by its monopoly on the right to use violence, where violence means force of the type required for physical damage, imprisonment or death: people may still slap their

---

31. Muḥammad b. Maḥbūb to the North Africans in Kāshif, *Siyar*, ii, 230f. (where the wrongful officials are Ibāḍī, not Sunnī); Ṭūsī, *Nihāya*, 185; Newman, *Formative Period of Twelver Shī'ism*, 174, 177.

32. Cf. Qāsim b. Ibrāhīm in Strothmann, *Staatsrecht*, 5n; Abrahamov, 'al-Ķāsim', 86; not even a *muḥtasib* imam could collect them (Madelung in *EI²*, s.v. 'imāma'); Nu'mān, *Da'ā'im*, i, 263f.

33. Mufīd, *Muqni'a*, 252; Ṭūsī, *Nihāya*, 185; Calder, 'Zakāt in Imāmī Shī'ī Jurisprudence', 469.

34. Tab., ii, 1759ff.; tr. Crone and Hinds, *God's Caliph*, 121ff.

35. Ibn al-Muqaffa', *Ṣaḥāba*, 197f. (P, §17); Sanhoury, *Califat*, 168ff.; Ṭūsī, *Khilāf*, v, 343.6. Cf. above, 238ff., on Ghazālī.

36. Above, note 8.

37. Cf. 'Abd al-Jabbār, *Mughnī*, xx/1, 53f.

38. Kulīnī, *Kāfī*, vii, 410–12; Madelung, 'Authority in Twelver Shiism', 166, citing Ibn Bābawayh; Newman, *Formative Period of Twelver Shī'ism*, 180f.

39. Mufīd, *Muqni'a*, 811.5; Ṭūsī, *Nihāya*, 301. The view was affirmed again in the Ṣafavid period, cf. Calder, 'Judicial Authority in Imāmī Shī'ī Jurisprudence,' 105.

40. Ṭūsī, *Nihāya*, 302.

41. Māwardī, *Aḥkām*, 95/59 = 65; cf. Mikhail, *Politics and Revelation*, 23 (wrongly having Māwardī speak of the religious duties in general); Abou El Fadl, 'Islamic Law of Rebellion', ii, 205f.

42. Juwaynī, *Ghiyāth*, §557–8.

43. Above, 238ff.

children (if only just), but in most countries they may not bear arms (except by special licence), and nowhere may they physically injure, detain or kill other people, except in self-defence (narrowly defined). If the state were to lose this monopoly, it would not simply be sharing a function with, or ceding a function to, private citizens; rather it would cease to be a modern state. Contrary to what one might have expected, given the level of violence they had to tolerate, some medieval Muslim jurists operated with similar notions, or so at least al-Juwaynī. Private individuals (*āḥād al-nās*) were not allowed to unsheath weapons against each other or their rulers, or only in self-defence and the rescue of others, he said, adding that this did not apply if there was no government. (Using arms against infidels was also another matter.)[44] Many jurists disagreed, as will be seen. There was, however, complete unanimity that the imam had a monopoly on the right to use force in one key area.

The area in question was that of the *ḥudūd*, penalties prescribed in the Sharʿīa which resulted in physical damage (by lashing), mutilation (by amputation) or death (by stoning or decapitation).[45] That only the imam could apply or authorize the application of these penalties to free persons was affirmed by all Muslims with rare exceptions, such as the ninth-century anarchists, to whom they were a major problem.[46] Many jurists went further by crediting the imam with a monopoly on all punishments, including discrecionary flogging (*taʿzīr*), torture, imprisonment, and banishment, which are not prescribed in the Sharʿīa;[47] but only of the *ḥudūd* can it be emphatically said that if he ceded them to others, he would cease to be the imam, or alternatively the penalties would cease to be *ḥudūd*. They were penalties for fundamental transgressions of the moral code which held society together and had to be inflicted by a representative of God, that is to say a representative of collective interests, because there would not otherwise be anything to distinguish them from private vengeance. If everyone had the right to kill or maim other people, there would be no legal order to uphold: power would lose its moral

purpose, anarchy would prevail;[48] and one would be back in the proverbial *man ʿazza bazza* ('whoever has power takes the spoils') which had prevailed in the Jāhiliyya. The Imamis added a consideration likely to appeal to modern opponents of capital punishment: one needed infallibility to impose such penalties.[49] But with or without infallibility, the authority behind them had to be public.

Consequently, the imam's monopoly on the *ḥudūd* is frequently affirmed in the literature, whether Sunni,[50] Muʿtazilite,[51] Shīʿite,[52] or Ibāḍī.[53] Since the *ḥudūd* could not be applied by unauthorized people without ceasing to be *ḥudūd*, they could not be executed in the imam's absence. This was the problem that the ninth-century anarchists had struggled with. When the twelfth imam went into hiding, the Imamis duly declared the *ḥudūd* to be suspended, pending his return.[54] Not all held the suspension to be total, however. A tradition in al-Kulīnī allows self-help in the case of unlawful sexual relations, as long as the penalty was carried out in secret.[55] Several jurists of the Būyid period tried the alternative method of ruling that if an Imami official employed by a wrongful ruler was in a position to apply the *ḥudūd* in accordance with Imami law, then he was authorized (or even obliged) to do so, for he would in fact be acting on behalf of the true imam and should think of himself as doing so.[56] This ruling reflected the fact that the wrongful rulers at the time were Shīʿites; living under Sunnis, thirteenth-century jurists tended to disagree with it.[57] Al-Mufīd and al-Ṭūsī held that the jurists were allowed to apply the *ḥudūd* even without holding office, by delegation from the imams, when they were able to do so, as within their own households: they were authorized

---

44. *Ghiyāth*, §§163, 479f., 485f., 554 and *Irshād*, 370.1 (Cook, *Commanding Right*, 346).

45. The penalties are classically identified as those for unlawful sexual relations (*zinā*), false accusations of such relations (*qadhf*), highway robbery (*qaṭʿ al-ṭarīq*), theft (*sariqa*) and wine-drinking; but many others count as *ḥudūd* in medieval works, including those for apostasy, blasphemy, and homicide; and there are times when *ḥadd* seems to mean capital punishment.

46. Cf. above, 67f. ʿAbd al-Jabbār knew of Medinese jurists who would allow all individuals to perform them on behalf of an imam unable to do it himself (*Mughnī*, xx/2, 155). For the question whether slave owners could perform them on their slaves, see Johansen, 'Mise en scene du vol,' 46; Naysābūrī, *Imāma*, 67.

47. Cf. Cook, *Commanding Right*, 268, note 103 (Murtaḍā), 342, note 21 (Ḥalīmī); Naysābūrī, *Imāma*, 67.5.

48. Cf. Naysābūrī, *Imāma*, 67, explaining what is implicit elsewhere.

49. Cf. Ṭūsī, *Mabsūṭ*, vii, 41.6, cited in Sachedina, *Just Ruler*, 100f. It was also ʿAbd al-Jabbār's understanding of the Imami position (*Mughnī*, xx/1, 74).

50. Baghdādī, *Uṣūl*, 272.7. As he observes, some held that slave owners could impose them on their slaves (cf. above, note 46).

51. ʿAbd al-Jabbār, *Mughnī*, xx/1, 41, 74, noting that if there is no imam, the *ḥudūd* must be suspended (*lā budda min suqūṭ al-ḥudūd*); Mānkdīm in Cook, *Commanding Right*, 215.

52. Below (Imami); Strothmann, *Staatsrecht*, 5n, cf. 97 (Zaydī); Naysābūrī, *Imāma*, 67 (Ismaili: not even slave owners).

53. Bisyānī and Muḥammad b. Maḥbūb in Kāshif, *Siyar*, ii, 197f., 239.

54. Murtaḍā in Sachedina, 'Treatise on the Occultation', 124, and other Imamis in Madelung, 'Treatise', note 25; similarly ʿAbd al-Jabbār, *Mughnī*, xx/1, 74f., on the Shīʿites.

55. Newman, *Formative Period of Twelver Shīʿism*, 177f.

56. Murtaḍā in Madelung, 'Treatise', 23 = 26, with other Imamis in note 25; Mufīd, *Muqniʿa*, 810; Ṭūsī, *Nihāya*, 301, 302.

57. Thus Ibn Idrīs and Muḥaqqiq al-Ḥillī; cf. Calder, 'Legitimacy and Accommodation', 96f.; Madelung, 'Treatise,' note 25.

to apply the penalties to their own wives, children, and slaves.[58] Here their attempt to save public authority ended up as an endorsement of self-help, if only for jurists, and perhaps only in their capacity as domestic tyrants. It was in any case a far cry from the infallible public authority that had once been required for the task, and it was too much for Ibn Idrīs al-Ḥillī: it was only to his slaves that a man could apply the *ḥudūd* in his view.[59]

According to al-Mufīd, people who took it upon themselves to kill blasphemers and other apostates 'out of anger on God's behalf', would be free to do so, apparently whether the imam was present or not.[60] His Muʿtazilite contemporaries agreed, though only if there was no imam, or so ʿAbd al-Jabbār insists.[61] The people in question should probably be envisaged as applying verdicts formulated by the jurists rather than acting on their own accord; in other words, the reference is to laymen acting as the jurists' henchmen. This was a role which laymen were often encouraged to take, by *jamāʿī* and Shīʿite jurists alike (and which became infamous in the West when Khomeini used it to deal with Rushdie). "Anyone who meets him and kills him is acting on my order," as an early ʿAbbāsid judge declared with reference to an alleged crypto-Manichean (*zindīq*).[62] The occasions on which scholars acted as rabble-rousers against theologians and philosophers are legion. As long as the decision was reached in accordance with the law (as formulated by them), they did not mind appealing directly to the community for execution. It was how outlawing functioned in medieval Europe too.

Authors connected with the government, however, were well aware of the overriding importance of reserving the infliction of physical punishment to the state and its officials. A model letter of appointment instructs a military commander "not to apply a *ḥadd* or a rule concerned with retaliation, whether involving loss of life or limb, without asking the Commander of the Faithful for his opinion and awaiting his reply".[63] A military commander should always execute major physical punishments himself, or at the most delegate it to a close associate, according to a military treatise.[64] Anyone who beheaded, mutilated, castrated or otherwise punished anyone else without the king's permission, "even his own servant or slave", should be punished according to Niẓām al-Mulk, "so that others may take warning and know their places".[65] What then would happen if there were no imam? Al-Juwaynī avoids the issue, but Ibn al-Simnānī concedes that the *ḥudūd* would have to be abandoned.[66]

Jihād

Holy war was one of several types of warfare regulated by the jurists. Al-Māwardī called the other types 'wars of public welfare' (*ḥurūb al-maṣāliḥ*), by which he meant the suppression of apostates (*murtaddūn*), rebels (*bughāt*) and brigands (*muḥāribūn*).[67] Only *jihād* will be treated in detail in this book. The main account will come in Chapter 21; what follows is concerned only with the relationship between the imam and holy war.

If one could have a valid community while temporarily deprived of an imam, one was also entitled to defend it by force of arms: defensive warfare remained legitimate whether there was an imam or not according to all (though not all counted such warfare as *jihād*, except in the case of emergencies).[68] But the legitimacy of *jihād* in the sense of warfare for the spread of Islam was more problematic. The only reason why Muslims were entitled to invade the lands of other people to impose their own government on them was that they were doing God's will, and this was not self-evident if they were led by sinners. Companions are sometimes said to have had their names removed from the military roll after the death of ʿUmar or that of ʿUthmān, or whenever they took right guidance to have come to an end,[69] and the question how far it was lawful to participate in *jihād* under sinful rulers was hotly debated. A negative answer implied that the activity was suspended, not because it had ceased to be obligatory, but rather because circumstances made it impossible for the obligation to be discharged.

The *ahl al-sunna wa'l-jamāʿa* took the view that *jihād* could and should be waged behind the ruler of the time whatever his moral status; the activity

---

58. Mufīd, *Muqniʿa*, 810 (the imams *qad fawwaḍū al-naẓar fīhi ilā fuqahāʾ shīʿatihim maʿa 'l-imkān*); Ṭūsī, *Nihāya*, 300f., clearly on the basis of Mufīd.

59. Ibn Idrīs, *Sarāʾir*, ii, 24.

60. Mufīd, *Muqniʿa*, 743, with reference to blasphemers (*man sabba rasūl allāh aw aḥad min al-aʾimma*). They are deemed to be outlaws on the ground that they are apostates, so the rule presumably applied to other apostates as well.

61. ʿAbd al-Jabbār, *Mughnī*, xx/2, 156.1, 8.

62. Wakīʿ, iii, 265.4; cf. van Ess, *TG*, iii, 34, on Saʿīd b. ʿAbd al-Raḥmān al-Jumaḥī and his victim, Ḍirār.

63. Thus Qudāma, *Kharāj*, 45.

64. Harthamī, *Mukhtaṣar*, 17.

65. *SN*, 98 = 76 (ch. 11, §4).

66. *Rawḍa*, §115.

67. Māwardī, *Aḥkām*, ch. 5 (caption and introduction); cf. Sarakhsī, *Mabsūṭ*, x, 2, where the generic term for all types of licit war is *siyar*. On wars against rebels and brigands, see Abou El Fadl, 'Irregular Warfare and the Law of Rebellion', and 'Islamic Law of Rebellion'.

68. *Jihād* and border defence appear as different rubrics (nos. 5 and 6) in Māwardī, *Aḥkām*, 23/16 = 16; similarly Abū Yaʿlā, *Aḥkām*, 27; Juwaynī, *Ghiyāth*, §§308–10. The idea that *jihād* was primarily defensive is of apologetic origin and did enter juristic writings in medieval times (though one does encounter it elsewhere, cf. below, 382.).

69. Crone, 'Qays and Yemen', 40, note 223.

derived its validity from the law, which was validated in its turn by communal agreement, not by him, and whether he was sinful or upright was of no consequence to anyone except himself.[70] Nor would the duty be suspended in his absence, for it was imposed on the community, not on him. Holy war was a *fard kifāya*, a collective obligation, and such obligations could not be suspended.[71] If those who normally fulfilled them stopped doing so, they would devolve to others and eventually become individual obligations (sing. *fard ʿayn*) on everyone until somebody fulfilled them again.

A collective duty was not primarily a duty for the state. But given his role as the upholder of the law on the one hand and the vast resources at his disposal on the other, the ruler was naturally expected to take a leading role in the organization of holy war. He was in effect all Muslims in a single person, or the agent of their community (*nāʾib ʿan jamāʿatihim*), as eleventh-century jurists put it.[72] But did the imam, when there was one, have an actual monopoly on the conduct of war, in the sense that only he could authorize the inception and termination of campaigns? The answer may once have been yes. All the other items on the standard lists of the imam's duties are activities that only he could perform or authorize others to undertake, and Ibn al-Muqaffaʿ (d. c. 757) explicitly says that only the imam was entitled to obedience in matters of "starting campaigns and marching back (*al-ghazw waʾl-qufūl*), collecting and distributing (booty) . . . and fighting the enemy and making truces with him".[73] Sunnis often express themselves in similar terms.[74] For all that, the Sunnis held that laymen were free to initiate campaigns on their own.

Participation in *jihād* was highly meritorious for everyone, and civilians would often join the official campaigns as volunteers (*mutatawwiʿa*) or go to live on the frontier for extended periods, attaching themselves to fortified settlements of a private nature known as *ribāts*. The jurists make it clear that such volunteers would often set off in small raiding parties, now from the regular army and now "from a town in Syria or elsewhere",[75] to campaign in enemy territory on their own, without permission from the imam or his representative.

They do not condemn the practice. They do have their reservations about it with reference to the safety of the participants, the maintenance of military discipline, or the problematic status of the booty (could they keep it, or was the imam entitled to his fifth?).[76] The Mālikīs said that if the imam had prohibited fighting for the sake of general welfare, then nobody was allowed to fight unless attacked (in which case no permission was needed to fight back).[77] But no school prohibited unauthorized campaigns outright. "We allow volunteers in holy war to penetrate the land of obdurate infidels on their own, though it is better that they should do so at the initiative of the imam," as al-Juwaynī observed.[78] The question how the imam was supposed to enforce truces and otherwise manage relations with the enemy if the frontier population was out of control does not seem to attract attention, perhaps because unauthorized expeditions were usually too small to make much difference. When a religious scholar who campaigned with great success against the Turks in Ṭāhirid Khurasan was denounced by envious people, the ruler accused him of "going out and gathering this army around you and disobeying the assistants of the government". Perhaps he had overstepped the limit by gathering so large an army, or maybe his detractors had accused him of rebellious intentions (he was released when the ruler was convinced of his loyalty).[79] In any case, private warfare was lawful as long as it was *jihād*.

The Khārijites held *jihād* to be highly meritorious whether they had an imam or not, but how they explained its validity in his absence is unknown.[80] The Shīʿites, on the other hand, held that *jihād* in the sense of missionary warfare could only be waged under the imam's banner; nobody was to participate

70. ʿAbd al-Razzāq, *Musannaf*, v, nos. 9610–13; Ibn Batta, *Profession de foi*, 67 = 127; Ibn ʿUkāsha, and others, above, 136, 137; Mālik in Talbi, *Émirat aghlabide*, 417n. (also in Mottahedeh and Sayyid, 'Idea of Jihād', 26, who link it with the debate over the obligatory nature of *jihād*); Sarakhsī, *Siyar*, i, 160, no. 161. Similarly Zayd b. ʿAlī, *Majmūʿ*, 236, no. 853: the dominance of the wicked does not invalidate holy war.

71. Cf. Juwaynī, *Ghiyāth*, §553.

72. Ibid., §307; Sarakhsī, *Siyar*, i, 189.

73. *Sahāba*, 197f. (P, §17).

74. Hamidullah, *Conduct of State*, §312 (Abū Yūsuf, Māwardī); Baghdādī, *Usūl*, 272; cf. also the Muʿtazilite Mānkdīm (d. 425/1034) in Cook, *Commanding Right*, 215.

75. Abū Hanīfa in Tabarī, *Ikhtilāf*, 79.

76. Abū Zayd al-Qayrawānī (d. 386/996) in Bredow, *Heilige Krieg*, Arabic text, 18ff. (drawn to my attention by Christopher Melchert); Ṭabarī, *Ikhtilāf*, 78f; Qaffāl, *Hilya*, vii, 657: Abū Hanīfa prohibited unauthorized expeditions unless they were at least ten men strong; al-Awzāʿī allowed the commander to punish or forgive men who went off on their own as he wished; the Shāfiʿites disliked expeditions undertaken without the imam's permission because of the risk, but did not hold them to be forbidden whatever their strength; the Mālikīs said that troops were not allowed to undertake unauthorized expeditions whereas people along the frontiers could do so if a good opportunity arose and it would take too long to await the imam's permission.

77. Bredow, *Heilige Krieg*, Arabic text, 20.1.

78. *Ghiyāth*, §486.

79. Dhahabī, *Nubalāʾ*, xi, 34 (drawn to my attention by Christopher Melchert). The scholar was Ahmad b. Harb (d. 234/849). Compare Ibn al-Athīr, vi, 361, year 205, where an earlier volunteer is suspected of rebellious intentions because he has gathered a large army on his own initiative in order to fight Khārijites.

80. Cf. Crone and Zimmermann, *Epistle*, 281. Sālim tells people going out to holy war to appoint 'imams' for the duration.

unless he was summoned by him or his representatives: thus the Imamis, Ismailis, and Zaydīs alike.[81] The activity was suspended in his absence. "When no imam is manifest and nobody appointed by the imam is present, it is not allowed to fight holy war against the enemy, for *jihād* with imams of injustice or without an imam is an error for which the agent incurs sin," al-Ṭūsī said; there could be "no fighting to make them (namely the unbelievers) adopt Islam", only to protect the Muslims, and no sojourn in military settlements along the frontier unless the warfare was defensive, until the coming of the Mahdi.[82] It would have entailed mixing with and taking orders from the opponents. Al-Mufīd did think that Imamis holding office on behalf of illegitimate rulers could, indeed must, wage *jihād* against infidels and sinners alike, and that the community had to assist them.[83] But al-Ṭūsī omitted holy war from the functions delegated by the imam to the jurists, be it with or without appointment from the wrongful regime. Later scholars also held missionary *jihād* to be suspended, though here as so often the coming of the Ṣafavids caused them to rethink.[84]

Commanding right and forbidding wrong

Islamic law obliged its adherents to intervene when they saw other believers engage in sinful behaviour and to persuade them to stop, or even to force them to do so if they could. This was called 'commanding right and forbidding wrong' (*al-amr bi'l-maʿrūf wa'l-nahy ʿan al-munkar*), and it was often compared with holy war: like *jihād*, it was a call to Islam backed by force where necessary; fighting sinners and fighting infidels were much the same.[85] Some saw government in its entirety as a type of 'commanding right and prohibiting wrong',[86] presumably on the grounds that the ruler's function was in essence

to apply the law, but Sunni lists of the ruler's functions do not normally mention it.

The duty was usually (though not always) seen as collective, and the ruler for his part fulfilled it by appointing a *muḥtasib* (censor and market inspector) who would patrol the streets with armed assistants to ensure that people obeyed the law in public, for example, by attending Friday prayer, fasting in Ramaḍān, abstaining from wine, and observing the rules regarding relations between the sexes. What people did in the privacy of their own homes was their own business as long as their actions did not affect others, directly or indirectly (e.g. by their behaviour coming to be known). But the existence of a public censor notwithstanding, it was meritorious, or even obligatory, for private citizens to take the duty of enforcing public morality upon themselves when they were able to do so. As in the case of *jihād*, the question arose as to how far they had to act under the imam's control. Since performers of the duty normally took spontaneous action at the sight of what they deemed to be wrong, rather than responding to *fatwā*s issued by the learned, the jurists now had to consider the wisdom of allowing laymen to trespass on not only the imam's territory, but also their own.

The earliest material is dominated by the problem of the sinful behaviour of rulers rather than that of fellow-citizens, and the key issue is the legitimacy of revolt: may one use the sword against the wrongdoing of caliphs and governors?[87] The answers became increasingly negative with the passage of time, and by the ninth century only the Muʿtazilites, the Khārijites, and the Zaydīs said that one could.[88] There remained the question how far one should attempt to rebuke them (given that one might risk one's life thereby): most scholars said that it was not obligatory, and not necessarily even meritorious, especially in public.[89]

How far could private individuals go in their action against the wrongdoing of their fellow-citizens, then? Some scholars would prefer them not to do anything at all. Thus al-Ḥalīmī (d. 1012), a Shāfiʿite jurist, held the performance of the duty to be so closely related to the infliction of punishments that it would be better for the ruler, in his case the Sāmānid amir, to take it over by appointing an upright and learned man in every town and village to execute it. If the ruler did nothing, the duty devolved onto the scholars, he said, though he allowed upright laymen to intervene when the law involved was simple.[90]

---

81. For the Imamis, see the next note. For the Ismailis, see Nuʿmān, *Daʿāʾim*, i, 264.7; Naysābūrī, *Imāma*, 66 (no jihād except under his banner, no expedition unless sent by him or his representative); cf. also Abū 'l-Fawāris, *Imāma*, 7 = 25 (85v). For the Zaydīs, see Strothmann, *Staatsrecht*, 5n., 97, cf. 96n. (the *muḥtasib* imam can use the sword in the performance of *al-amr bi'l-maʿrūf*). Differently Zayd b. ʿAlī (attrib.), *Majmūʿ*, 236, no. 853, but this manual played no role in classical Zaydī law.

82. Ṭūsī, *Nihāya*, 290f; cf. Kohlberg, 'Imāmī Shīʿī Doctrine of *Jihād*', 79ff; Sachedina, *Just Ruler*, 110f. There is no reason to think that defensive warfare was ever regarded as suspended.

83. *Muqniʿa*, 810.

84. Kohlberg, 'Imāmī Shīʿī Doctrine of *Jihād*', 81f.

85. Cook, *Commanding Right*, 198, note 21 (Masʿūdī), 341 (Ḥalīmī).

86. *Al-salṭana hiya hādhā*, as Ḥalīmī says in Cook, *Commanding Right*, 342n.; cf. Juwaynī, *Ghiyāth*, §113.

87. Cf. Cook, *Commanding Right*, chs 2–3.

88. Cf. ibid., chs 9, 10, 15.

89. Cf. Cook's own summary in his *Forbidding Wrong*, ch. 7.

90. Cook, *Commanding Right*, 342f.; there is also a Prophetic tradition prohibiting lay performance (p. 43, note 56), and Maʾmūn is said to have done the same (p. 71).

Other scholars agreed that the common people should stick to simple cases, or they preferred them just to disapprove 'in their hearts', without taking any action; and many of them placed the use of violence, or at least armed violence, in the ruler's hand, forbidding it to laymen or requiring them to obtain the ruler's permission.[91] Even the Ḥanbalites came around to this view. In the early tenth century they were notorious for their street violence in Baghdad, led by the rabble-rouser al-Barbaharī: in a famous incident in 935 they raided private homes, poured away wine, broke musical instruments, beat up singing girls, thrashed men unable to convince them that the women or young boys with them were lawful companions, and organized assaults on Shāfiʿite scholars, causing first the chief of police and next the caliph himself to intervene. But thereafter their relationship with the government warmed, and by the time we reach ʿAbd al-Qādir al-Jīlī (d. 1166) and Ibn al-Jawzī (d. 1200), the ruler's permission had come to be required for the use of violence in performance of the duty.[92]

But there were some notable exceptions, especially in the Shāfiʿite school,[93] and above all in al-Ghazālī (d. 1111), who authorized private individuals to take up arms in fulfilment of the duty, to collect armed helpers (*aʿwān*), and even to form troops (*tajnīd al-junūd*). He insisted that unjust rulers had to be endured, but he saw their subjects as direct executors of Islamic law, bypassing government officials. This was too extreme for most. His discussion of *al-amr bi'l-maʿrūf* was enormously influential, but few later scholars shared his vision of every Muslim as his brother's keeper, equipped with permission to use force in the maintenance of the public morality that had once been, and in principle still was, a key concern of the state.[94]

Outside the Sunni ranks, the Zaydīs, the Khārijites (insofar as they wrote about it) and the Muʿtazilites held laymen to be free to use armed violence when it was needed, as one would expect, though one Muʿtazilite would only grant them this right in the absence of a legitimate imam (whose monopoly would otherwise be infringed).[95] The Imamis were closer to the Sunni position. They were often accused of declaring *al-amr bi'l-maʿrūf* to be suspended in the imam's absence, but the accusations were false; in fact, they affirmed its

---

91. Cf. Cook's summary in his *Forbidding Wrong*, ch. 3, §§91–6.

92. Cook, *Commanding Right*, 117f., 138, 140.

93. Thus Qaffāl (d. 976) and Kiyā al-Harrāsī (d. 1110) held it lawful to kill offenders; the latter (inspired by the Muʿtazilite al-Jaṣṣāṣ) singled out collectors of illegal taxes as legitimate targets. Māwardī permitted the recruitment of (armed?) assistance in one work, though he forbade it in another (Cook, *Commanding Right*, 341, 344f., 347).

94. Cook, *Commanding Right*, 431, 441, 456ff.

95. Cook, *Forbidding Wrong*, ch. 3, §§94, 96.

continuing validity. Indeed, they sometimes went so far as to affirm the right of private individuals to use force in the course of its performance; but the majority, including al-Mufīd and al-Ṭūsī, ruled it out by requiring the permission of the (absent) imam for killing, wounding, or for the use of violence of any kind.[96] This is in line with the quietist nature of the sect, but they must have been motivated by a concern for internal order as well, for like al-Ghazālī, they could have authorized laymen to use force against each other without thereby authorizing revolt against wrongful rulers. Empowering private individuals to use force on a spontaneous basis in everyday life was however to invite chaos, and particularly dangerous in a community living under alien authorities.

Preservation of the religion (ḥifẓ al-dīn)

It was the imam's duty to maintain orthodoxy (right belief) and orthopraxy (right behaviour) among his subjects. The *muḥtasib* played a key role in both. He secured observance of the law in public, as seen already. He also checked on beliefs propagated in public. "If an innovator appears or a holder of suspect views goes astray, the imam should explain and clarify the correct view to him, and make him undergo the penalties appropriate to him, so that the religion may be preserved from flaws and the community preserved from error."[97] The *muḥtasib* was to ensure that people performed their ritual duties. He was also authorized to test religious teachers and correct anyone engaging in false interpretation of the Qurʾān, the transmission of bad traditions, and the dissemination of doctrines contrary to the scholarly consensus. If the culprit repented, no further action was needed; if he persisted in his ways, the censor was to pass him on to the ruler.[98] It was the ruler's duty to examine him and either make him repent or execute him, according to jurists and mirror writers alike.[99] There is plenty of attestation of the procedure in practice, sometimes with the judge taking the *muḥtasib*'s role. Most culprits were probably denounced by their neighbours or colleagues, or brought to the attention of the *muḥtasib* or the *qāḍī* by an outraged mob. They included Muʿtazilites, dualists, materialists, philosophers, Sufis, Shīʿites, would-be prophets, deviant Qurʾān reciters, and blasphemers. Active hunts for heretics on the part of the government,

---

96. Cf. Cook, *Commanding Right*, 270, note 116, 266ff.

97. Māwardī, *Aḥkām*, 23/15 = 16. Similarly Abū Yaʿlā, *Aḥkām*, 27.

98. Māwardī, *Aḥkām*, 408ff., 415ff./243ff., 247ff. = 263ff., 268ff.; Abū Yaʿlā, *Aḥkām*, 287ff., 292f.

99. Shahrastānī, *Nihāya*, 478; Ps.-Ghazālī, *Naṣīḥa*, 59f., where the culprit may also be exiled.

though not unknown, were rare,[100] and there was little prying into people's homes.

Some authors recommend more active steps to secure orthodoxy: the ruler should send out missionaries and Qur'ān readers to every area under his control.[101] But though the government would eliminate heretics, it does not often seem to have engaged in internal missionary activity.

Fiscal services

The imam was expected to collect and distribute three taxes, the poll-tax (*jizya*), land-tax (*kharāj*), and tithe (*ʿushr*, often called *ṣadaqa*). If there was no imam, they could not be lawfully collected. Generally speaking, this was both the Sunni and (until the Safavid period) the Imami position, with the usual disagreement over who or what the imam was: one paid one's taxes to the ruler whether he was righteous or not, according to the Sunnis, but there could be no such thing as an unrighteous imam for the Shīʿites.[102] The imam was also entitled to a fifth of all moveable booty (*khums*), but he was not supposed to collect any other taxes. In practice he always did. Attempts to suppress uncanonical impositions (*mukūs*, sing. *maks*) are a constant feature of Islamic history.[103]

Two of the above-mentioned taxes, the poll-tax and land-tax, were classified as *fayʾ*, revenues from immobile booty. This had interesting implications for people's view of them. When the Arabs conquered the Middle East, we are told, they distributed moveable spoils (*ghanīma*) among themselves as they went along and considered doing the same with land taken by force (all such land having passed into the ownership of the conquerors), but decided to leave it in the hands of the original occupants in return for taxes. The government administered these immobile spoils on behalf of the conquerors who were their real owners and passed them their income in the form of stipends. Who then were the owners when the first generation of conquerors died? The children of the actual participants in the conquest of the lands involved, all Arab soldiers in the garrison city administering them, or all free Muslims there? By the ninth century it was agreed that the *fayʾ* was the common property of all Muslims regardless of whether they were descendants of the conquerors or of

later arrivals, and whether they were Arabs or non-Arabs, settled people or bedouin, male or female, slaves or free: all that counted was membership of the Muslim community. By then the debate was academic in the sense that only a tiny number of Muslims were registered for payment of stipends, but it established the fundamental principle that public revenues should be spent in the interests of all, not of rulers or privileged groups.[104] "There is no doubt that the treasury belongs to the Muslims while you spend much of it for yourself," as Hārūn al-Rashīd's wife tells her husband in a story told by Niẓām al-Mulk, "they are quite justified if they complain about you."[105] When al-Ghazālī renounced his chair in Baghdad and gave away most of his wealth, he justified his retention of enough to maintain himself and his children on the grounds that the revenues from Iraq (which had been conquered by force) were earmarked for good works, since they were a pious foundation (*waqf*) for the Muslims; such money was absolutely clean, he claimed (many, especially Sufis, will have disagreed).[106] Just as conquest had established a sense of common ownership of land in many early Greek communities, so it created a sense of common ownership of the proceeds of land in that of the Muslims.

The imam was also expected to strike coins, but this function did not achieve *sharʿī* status, though it was an unquestioned monopoly of his and of well-known symbolic significance too: the very first thing a rebel claiming sovereign status would do was to strike coinage of his own.[107]

NON-SHARʿĪ DUTIES

Internal security

Most lists of the imam's *sharʿī* functions mention that the ruler must defend the community against external enemies (whether or not they count it as *jihād*),[108] and some add that he must suppress evildoers, but this is mostly treated as self-evident, given his responsibility for the execution of the law. One has to turn to the non-legal literature to find internal safety spelt out as a fundamental desideratum in its own right, often with reference to the roads. Ensuring the safety of the roads was one of the three things that the common people really wanted government for according to al-Manṣūr, and one of the

---

100. The best known example is al-Mahdī's hunt for 'dualists' (cf. Chokr, *Zandaqa*).

101. Juwaynī, *Ghiyāth*, §282; Shahrastānī, *Aqdām*, 478. Compare Ḥalīmī's vision of official enforcement of orthopraxy, above, note 90.

102. Māwardī, *Aḥkām*, 55 /34 = 36; Simnānī, *Rawḍa*, i, §115; Ibn Baṭṭa, *Profession de foi*, 67 = 128; Madelung, 'Shiite Discussions of the Legality of the *Kharāj*'.

103. Cf. Aghnides, *Theories of Finance*, 376ff.

104. Madelung, 'Has the *Hijra* come to an End?', 236f.

105. *SN*, 192 = 145 (ch. 40, §5).

106. *Munqidh*, 38 = 61 (Watt's translation is not entirely right here); cf. below, 348.

107. *EI²*, s.v. 'sikka'.

108. Cf. above, note 68.

two tasks that rulers were appointed for according to Ibn al-Jawzī; both singled it out along with external defence.[109] It is also one of the duties mentioned in practically every mirror for princes.

Roads, bridges, inns, walls, mosques, and other infrastructure

The construction of roads, as opposed to their safety, rarely figures among the services expected of rulers,[110] but the building of bridges, mosques, *madrasas*, and fortified centres (*ribāṭs*), is often mentioned. The imam had to budget for such activities under the rubric of general welfare according to al-Ghazālī.[111] A proper king would build underground canals, bridges across great waters, inns along the highways, fortifications, and new towns, and would restore ruined villages and farms to cultivation, according to Niẓām al-Mulk.[112] Muslim kings and governors often did so, generating the question how far it was permissible to use their bridges and other amenities when they were oppressors.[113] Headmen and other notables often did so as well.[114] Insofar as there was a formal division of labour, the treasury was responsible for the upkeep of the water supply, mosques and defensive walls in a particular locality when funds were available, but the responsibility devolved to the local men of means when the treasury was empty, or so according to al-Māwardī. The local men would need the ruler's permission to destroy buildings of importance to all, such as the city walls or the Friday mosque, but ordinary mosques were private.[115]

Poor help, disability pensions, famine relief

Helping the poor was a *sharʿī* duty fulfilled partly by the government and partly by private individuals. It was the ruler's duty to distribute the obligatory alms, paid once a year by all adult Muslims, to the poor and the indigent, slaves buying their freedom, debtors, travellers, holy warriors, collectors of the alms, and 'those whose hearts have been conciliated' (i.e. enemies placated by financial largesse), these being the recipients mentioned in the Qurʾān, 9:6; and he also had to distribute the fifth (*khums*), which was collected from moveable spoils taken in warfare and similar windfalls (such as mines and treasure troves), and which the Qurʾān, 8:41, assigns to God and His Messenger (represented by the ruler), kinsmen (understood as the Messenger's), orphans, indigent people, and travellers.[116] But the ruler might, and frequently did, assign further funds to charity, for the imam had to help every needy Muslim he heard of. The same was true of private people: the wealthy were guilty of sin if they neglected the poor among them.[117]

In the early centuries there seems to have been a conception of a system of regular government support for the poor and the invalid. This conception was rooted, not in the institution of obligatory alms or the fifth, but rather in the stipend system of the Umayyad period. Registered soldiers disabled in service would receive an invalidity pension, and some sources claim that similar provisions were made for the disabled and poor in general in Umayyad times. Thus al-Walīd I allegedly assigned payments, in cash or kind (*arzāq*), to the poor, the blind and the crippled (or lepers), or he supplied the blind with guides, giving servants to cripples, and paying pensions to all disabled people with pensions so as to spare them the need to beg.[118] Others say that it was al-Walīd II who gave money and clothes to the blind and cripples, supplying the latter with servants.[119] Still others say that it was ʿUmar II who did so.[120] There were also some who held the ʿAbbāsid caliph al-Mahdī to have been the first to give stipends to the poor, the maimed (or leprous) and others,[121] though he defends the absence of funds for such people in another story: a Byzantine

---

109. Above, 158; Ibn al-Jawzī, *Talbīs*, 129 = IV, 172.

110. But "Greek rulers were always building level roads through difficult territory, filling hollows, cutting through high mountains and banishing fear of them," the eleventh-century Mubashshir b. Fātik said in an account in which the Greeks typify the good old days (Rosenthal, *Classical Heritage*, 35); and Transoxanian nobles were famous for their upkeep (Ibn Ḥawqal, *Ṣūrat al-arḍ*, ii, 466.20).

111. *Faḍāʾiḥ*, 118 (ch. 9, under the rubric of *waraʿ*).

112. *SN*, 12f. = 10 (ch. 1, §3). Compare the budget in *Tārīkh-i Sīstān*, 31f. = 21f.; the Greek kings who in the good old days "were always constructing various kinds of bridges, erecting strong walls, building aqueducts and diverting rivers" (Rosenthal, *Classical Heritage*, 35); and Māwardī, *Tashīl al-naẓar*, 214, 279 (bridges, water supply, safe roads).

113. Ghazālī, *Iḥyāʾ*, ii, 125.21 (mosques, *ribāṭs*, bridges, watering provisions). For the worries, see below, 348.

114. Thus notables of Transoxania (Ibn Ḥawqal, *Ṣūrat al-arḍ*, ii, 466.21), the headman in *SN*, 197 = 149 (ch. 40, §14).

115. *Aḥkām*, 411f./245f. = 266; discussed in Aghnides, *Theories of Finance*, 350ff.

116. Cf. Aghnides, *Theories of Finance*, 207ff., 407ff., 461ff. In Imāmī law the *khums* was an income tax payable to the imam, who was meant to distribute it to the Qurʾānic recipients.

117. Juwaynī, *Ghiyāth*, §338f.

118. YT, ii, 348; Tab., ii, 1196.3; *ʿIqd*, iv, 424.4 (in Syria only?). For the hospitals with which he is also credited by Yaʿqūbī and others, see Conrad, 'First Islamic Hospital?'.

119. Tab., ii, 1754.5 (in Syria only), 1799.14; Ibn Ḥamdūn, *Tadhkira*, i, no. 1102.

120. Tab., ii, 1367.12; Ibn al-Jawzī, *Sīrat ʿUmar b. ʿAbd al-ʿAzīz*, 154f.

121. Sadūsī, *Ḥadhf*, 12 (adds foundlings); Ibn al-Athīr, *Kāmil*, vi, 57, yr 162 (adds prisoners).

emissary who came to Baghdad saw cripples begging on a bridge on his way to al-Ruṣāfa and commented that the ruler (then al-Manṣūr) ought to do something about them; a secretary said that the revenues did not suffice for that, but al-Mahdī hotly denied this; according to him, the reason why the caliph did nothing was that he did not want to monopolize merit making: his subjects too should have a chance to gain rewards by giving to beggars. Needless to say, the Byzantine accepted his point.[122] This story takes us away from the Umayyad-stipend system, but all seem to envisage the funds as coming from the taxes in general, not just from the obligatory alms or the fifth, and those reflecting the stipend system rest on the conviction that the *fayʾ* was communal property. Precisely how much truth there is to them is debatable, but they do testify to a concept of what one might call a welfare state.

The idea persisted, too. "Give pensions from the treasury to the blind," Ṭāhir b. al-Ḥusayn, the governor of Khurasan, advised his son in 206/821f. when the latter was appointed to the governorship of Raqqa. The son was also advised to provide assistance to noble houses fallen on hard times,[123] to look after the poor and destitute in general, to be careful not to overlook victims of oppression unable to complain to him and wretches ignorant of how to claim their rights, and to assign pensions to victims of calamities and the orphans and widows they leave behind "in imitation of the Commander of the Faithful".[124] Similar advice is given in an Imami and an Ismaili testament.[125] Both al-Fārābī and Ibn Sīnā assigned funds to cripples in the ideal city.[126]

The ruler was also expected to provide help on a one-off basis, especially in times of famine. Pseudo-Aristotle told Alexander to examine the state of the weak ones in his realm, to assist them with funds from the treasury when they were starving, and to store up grain for distribution in years of drought.[127] The ruler should store up food supplies for a year in every region for emergencies

122. Zubayr b. Bakkār, *Muwaffaqiyyāt*, 68f.; Jahshiyārī, *Wuzarāʾ*, 133; Ibn Ḥamdūn, *Tadhkira*, ix, no. 637.

123. Cf. above, 158, note 58.

124. Tab., iii, 1058.14, 1059.2, 5. At 1054.14 he could be taken to say "Grant all Muslims a share and portion of your *fayʾ*", by emendation of the word *niyyatika* to *fayʾika* (thus the *Addenda et Emendanda*, followed by Bosworth in *The History of al-Ṭabarī*, xxxii, 119 [though differently in 'Arabic Mirror', 36]; also in Ibn Khaldūn, *Muqaddima*, 340.-5 = ii, 148). But it is not entirely convincing: the *fayʾ* was not "your *fayʾ*", nor were the normal words for a share in it *ḥazz* or *naṣīb*.

125. IAH, xvii, 85f.; tr. Chittick, *Anthology*, 77; Nuʿmān, *Daʿāʾim*, i, no. 1478; tr. Salinger, 'A Muslim Mirror for Princes', 37.

126. Fārābī, *Fuṣūl*, §62/66; Ibn Sīnā, *SI*, x, 447 = 104, condemning the suggestion that incurable people should be killed.

127. *Sirr al-asrār*, 81f.

and move grain to needy provinces, Ibn al-Dāya advised.[128] Pseudo-Ghazālī stresses that the ruler was obliged to help his subjects when they fell into poverty and distress, especially in times of drought, specifying that he had to supply food and financial help alike, and stop oppression, since they would otherwise leave and thereby deplete his treasury.[129] (Peasants were not legally tied to the land.) Al-Juwaynī advised rich people to store up grain for a year and give the rest to the needy, for it fell on them to look after poor people overlooked by the imam; if burying the dead was a collective duty, a fortiori the same was true of preserving the lives of the poor.[130] In practice, rulers did sometimes help communities stricken by disaster with measures such as the remission of taxes, importation of food, and charitable payments. Ensuring that everyone had enough to eat was after all a good way of keeping the subjects orderly.[131] Devastating famines are nonetheless reported from time to time, and generally speaking, private charity seems to have played a far greater role than government measures in the alleviation of poverty and misfortune.

Medical services

Ṭāhir's letter of advice to his son, which was published to immense acclaim, included the statement, "Set up establishments (*dūran*) for sick Muslims where they can find shelter, and appoint custodians who will be kind to them and physicians who will treat their illnesses. Comply with their desires as long as it does not lead to the treasury being squandered."[132] The lepers, cripples, and blind to whom al-Walīd I, ʿUmar II, al-Walīd II, or al-Mahdī were reputedly the first to assign stipends are not said to have received medical treatment, except in the claim, probably false, that al-Walīd I founded a hospital.[133] But from the late ninth century onwards hospitals were all the rage, and the money for them seems often to have come from the treasury. By the reign of al-Muʿtaḍid (d. 289/902) one had been founded at public expense in Baghdad.[134] By 304/916f. there may have been five. In 306/918 the pagan court physician Sinān b. Thābit added another two in the name of the caliph al-Muqtadir and his mother; in 311/923 the vizier Ibn al-Furāt founded one as well. So too did

128. Ibn al-Dāya, *ʿUhūd*, 34.-9, 35.-8.

129. *NM(G)*, 101.

130. *Ghiyāth*, §338–42.

131. Cf. *Sirr al-asrār*, 82.5, and the dialogue between a Byzantine and a Persian king cited in Kraemer, *Philosophy*, 19.

132. Tab., iii, 1059.

133. Conrad, 'First Islamic Hospital?'.

134. Cf. below, note 150.

the Būyid rulers Muʿizz al-Dawla in 355/965 and ʿAḍud al-Dawla in 371/987.[135] There were hospitals in tenth-century Basra,[136] Shīrāz, and Rayy; the inhabitants of tenth-century Nishapur asked for one, but were told by their governor that it was more than the treasury could bear, or maybe he did build one after all.[137] Hospitals had also been established in Mecca and Medina by the early tenth century, and a tenth- (or eleventh-) century Zaydī imam composed a manual for censors instructing them, in words similar to Ṭāhir's, that the hospital (*dār al-marḍā*) should have a skilled physician and that the expenses should be charged to the treasury, if it could bear it.[138] In the western Muslim world it seems to have taken longer for hospitals to appear.

All the hospitals of the tenth and eleventh centuries were founded by members of the ruling elite, and like the libraries and other public amenities to which Iraqis above all were treated in the tenth and eleventh centuries, they must have been a function of the competition for power in the politically fragmented and highly unstable world of the time. Why the competitors should have chosen to advertise their status in terms of hospitals, as opposed to some Muslim version of bread and circuses or, as in the Seljuq period, *madrasa*s is another question. But hospitals did have the advantage of giving the philosophers (who often made a living as doctors) a much-needed populist face.

There was more to the medical craze than hospitals. At a time of much sickness in Iraq, ʿAlī b. ʿĪsā, 'the good vizier' (d. 334/946), wrote to the pagan court physician Sinān b. Thābit suggesting that some doctors be assigned the task of treating the inmates of prisons, who were bound to be riddled with diseases "in view of their numbers and the harshness of their whereabouts". This done, ʿAlī b. ʿĪsā despatched another note, saying that there must also be sick people who went without treatment in the Sawād, the countryside of southern Iraq, so would Sinān send a mobile medical team to tour this area? Sinān complied. The team soon encountered the problem that not all the inhabitants of the Iraqi countryside were Muslims. Sinān inquired whether Jews were to be treated too, adding that in his own hospital treatment was given to Muslims and Christians alike. The answer was that it was certainly right to treat *dhimmī*s, and cattle too, but Muslims came first, *dhimmī*s second, and

animals last.[139] Whether these justly famous services continued beyond the tenure of the good vizier is unknown.

In 319/931, however, the death of a patient by medical misadventure caused al-Muqtadir to instruct his censor to prevent doctors in Baghdad from practising unless they had been authorized by the same Sinān b. Thābit, who was instructed to examine them. No fewer than 860-odd doctors are said to have shown up for the test.[140] A similar story is told of the caliph al-Mustaḍiʾ (566–75/1170–80) and his Christian court physician Ibn al-Tilmīdh.[141] In Fāṭimid Cairo the court physician Ibn Riḍwān (d. 453/1061) would have liked more state control of doctors along these lines. "I shall tell you some stories about these doctors, their deceit and ignorance, so that you will be wary of them," he told his reader. "The government (*al-sulṭān*) might look into their affairs and prevent anyone from making a living by this profession unless he is skilled, and single out the best of them for the rest to emulate."[142] This was also the view of the Aleppan doctor al-Shayzarī (d. 589/1193) and the peripatetic ʿAbd al-Laṭīf al-Baghdādī (d. 629/1231), who both had dealings with Saladin. According to al-Shayzarī, the ancient Greeks had set up a chief physician in every city for the examination of doctors and ongoing quality control; doctors were required to provide written accounts of the treatment they prescribed and to give copies to their patients' relatives so that if a patient died, the chief physician could decide whether the doctor was at fault and, if he was, order him to pay compensation.[143] According to al-Baghdādī, good practices still prevailed in Constantinople, where people took proper care that only competent physicians were allowed to practise by holding medical examinations and imposing the Hippocratic oath on the candidates, or so at least until the Franks conquered the city (in 1204), he said.[144] Back in the good old days, Greek rulers had also supported the development of new drugs, and tested them before releasing them, according to the eleventh-century al-Mubashshir b. Fātik; public funds were always available for that.[145] But nowadays was a different story. In the absence of a chief physician it was the *muḥtasib* who had to

139. Ibn al-Qifṭī, *Ḥukamāʾ*, 193f.

140. Ibid., 191f.

141. Ibn Abī Uṣaybiʿa, *ʿUyūn*, i, 261f.

142. Gamal and Dols, *Medieval Islamic Medicine*, 24 = 123. Goitein, *Mediterranean Society*, ii, 247, claims that there was a licensing system for doctors in Egypt, adducing Ibn Riḍwān (in Ibn Abī Uṣaybiʿa); perhaps it was ʿAbd al-Laṭīf al-Baghdādī he had in mind (cf. below, note 147).

143. Shayzarī, *Nihāyat al-rutba*, 97ff.

144. Stern, 'Collection of Treatises by ʿAbd al-Laṭīf', 60.

145. Rosenthal, *Classical Heritage*, 35.

135. Mez, *Renaissance*, 377; *EI²*, s.v. 'bīmāristān'.

136. Tanūkhī, *Nishwār*, viii, no. 102 = no. 81.

137. *EI²*, s.v. 'bīmāristān'; Muqaddasī, 300, 430; Ibn Bābawayh, *ʿUyūn*, ii, 286, no. 12. The governor was Ḥamawayh b. ʿAlī.

138. *EI²*, s.v. 'bīmāristān'; Serjeant, 'Zaidī Manual', 30.16, identifying the imam as al-Nāṣir li'l-Ḥaqq (d. Daylam, 304/917).

test the competence of doctors, armed with books by Galen, Paul of Aegina, Ḥunayn b. Isḥāq, and others, according to al-Shayzarī; he would administer the Hippocratic oath to them.[146] No such procedures are mentioned by al-Baghdādī. According to him, one needed a certificate signed by a leading man (or men) of the profession to practise as a physician in Cairo, Damascus, or Baghdad, but chaos prevailed in Aleppo, where he was writing.[147] All in all, rulers seem to have found it more attractive to found hospitals than to maintain control of doctors or their drugs.

Education, culture

Children learnt to read and write on the basis of the Qurʾān in elementary schools (sing. *kuttāb*) run by a single teacher. Higher education in subjects recognized as valid by the religious scholars took place in private homes or in mosques, where one would join a circle (*ḥalqa*) of pupils around a particular scholar; from the tenth and eleventh century onwards one could also study in *madrasa*s, residential colleges attached to mosques which specialized in law. For more rarified subjects such as philosophy (including science) one studied in private homes or on one's own, though one could also be attached to a hospital for the study of medicine. Most teachers charged a fee, and living expenses also had to be met. Schoolteachers were usually hired and paid by parents, and neither the Umayyad nor the ʿAbbāsid caliphs seem to have concerned themselves with education at so elementary a level, but later rulers sometimes did.[148] According to the Ḥanbalite Abū Yaʿlā (d. 1066), the imam was obliged to provide basic religious instruction for his subjects, women included, and to make public funding available to both teachers and pupils; this, he said, was more important than waging *jihād*.[149] Even so, it was more commonly to higher education that subsidies went. Mosques, *madrasa*s and hospitals were usually paid for by *waqf*s, charitable endowments established by the ruler and other members of the elite with funding from private sources or the treasury, though some were maintained directly by the treasury.[150] The

---

146. Shayzarī, *Nihāya t al-rutba*, 98ff.

147. Stern, 'Collection of Treatises by ʿAbd al-Laṭīf', 60; cf. Goitein, *Mediterranean Society*, ii, 247, for the certificate.

148. Nūr al-Dīn supplied elementary education for orphans (Elisséeff, 'Document contemporain,' 138; cf. Talmon-Heller, 'Religion in the Public Sphere', 54).

149. Abū Yaʿlā, *K. al-amr bi'l-maʿrūf*, fol. 114b (I owe this reference, along with a xerox of the passage, to Michael Cook).

150. Cf. *EI²*, s.v. 'waḳf'. The caliph al-Muʿtaḍid paid the running expenses of the Ṣāʿidī hospital directly out of the treasury, at 450 dinars a month (Busse, 'Hofbudget', 29), and the

great libraries in which the Muslim world abounded in the tenth and eleventh centuries were usually also financed by charitable endowments. They were public in the sense of open to all. Many served learning of a type that the religious scholars disliked (notably philosophy and various types of Shīʿism), but no teaching seems to have gone on in them.

What rulers and other magnates did above all, however, was to patronize poets, scholars, littérateurs, and philosophers and other men of learning once their education was completed. No list of the ruler's *sharʿī* duties mentions this function directly, but it was implicit in 'preservation of the religion': as the army guarded the religion with their swords, so the scholars guarded it with their arguments and proofs, and the imam had to ensure that both were adequately funded, as al-Ghazālī said.[151] Besides, rulers needed religious scholars, jurists, poets, littérateurs, and, when they were thus inclined, philosophers for their own advice, edification and entertainment; and they also liked to have some control of what was being said, not only in the sense that poets and chroniclers could have great propaganda value, but also in the sense that they needed to gauge, and where necessary to influence, intellectual trends in order to stay on top. As patrons of learned men, rulers had a greater say in the shaping of the cultural orientation of Islam than anyone quite realized, not only because the court conferred wealth and prestige on those who frequented it, but also because some branches of learning depended on patronage for their very survival. Religious scholars could always find some source of income or other, however lowly, because they served needs common to all Muslims; but poets might find it more difficult to make a living, and only the elite found at courts appreciated the services of philosophers and *mutakallim*s (who reacted to the competition for scarce resources by being at each others' throats).

Conclusion

All in all an amazing number of services were supplied by the ruling elite at various times. It was, however, rare for all of them to be supplied at the same time, for the costs were high and political stability was low. Of the Būyid ruler ʿAḍud al-Dawla (d. 372/983) we are told that he swept Baghdad clear of thieves, restored order in the troubled deserts of Arabia and Kerman, provided a quick news-service, dug wells on the pilgrim routes, constructed cisterns, and built a wall around Medina, renovated the half-ruined Baghdad, built mosques and

---

undated budget in *Tārīkh-i Sīstān*, 32 = 22, assigns 10,000 dirhams a year to hospitals. The upkeep of prisons is considerably more costly in both budgets.

151. *Faḍāʾiḥ*, 117 (ch. 9, on *waraʿ*).

bazaars, repaired the bridges over the great canals, put railings on the bridge over the Tigris and appointed guards to it, made the wealthy repair dilapidated weirs, redug canals that had silted up and built mills along them, repaired dams and transferred people to the land thus reclaimed, established a richly endowed bazaar in Fars and made arrangements for the cultivation of fruits there, and introduced the cultivation of indigo in Kerman. On top of that, we are told, he loved learning and gave stipends to theologians, jurists, philologists, physicians, mathematicians, and engineers, as well as to preachers and muezzins, and built a huge library in Shīrāz. He also founded a hospital in Baghdad, made provisions for the poor and the strangers who lived in mosques, and gave away much money in charity. His governors engaged in similar deeds.[152] Or so we are told. One certainly would not characterize this as minimal government, which was what rulers normally dispensed in the medieval Islamic world or indeed in pre-modern times in general.[153] But in return he is said to have extorted money in every conceivable way, and there may have been less to the result than advertised. People would complain, the vizier Ibn Saʿdān (373–5/983–5) was told, of interference with their lives and property, disturbance of their tranquillity, and confiscation of their homes and land; they would lament that money was counterfeit, taxes doubled, business slack, soldiers and police swaggering about, mosques in ruins, hospitals desolate, enemies rabid, and more besides, quite apart from all the things they did not dare to say for fear of the whip.[154] What people really wanted rulers to supply was more and better government at lower cost, without violence or oppression. It sounds familiar.

152. Summarized from Mez, *Renaissance*, 25–7.

153. Goitein, 'Minority Selfrule', 102; Crone, *Pre-industrial Societies*, 49f., 57.

154. Tawḥīdī, *Imtāʿ*, iii, 88, quoting his teacher (who was patronized by ʿAḍud al-Dawla), in Kraemer, *Philosophy*, 252.

VISIONS OF FREEDOM

In practice, government was more often than not both weak and oppressive: weak in the sense that it could not get much done, oppressive in the sense that rulers would freely sacrifice the lives and property of their subjects in order to stay in power and keep some semblance of order. It was normal for members of the elite, scholars included, to spend time in jail; most high-ranking governors and generals died violent deaths; and torture, assassination, poisoning, confiscation, and extortion were matters of routine. Yet the desire for freedom remained. Not that medieval Muslims used that term. They did speak of political oppression as enslavement,[1] but they did not call the opposite freedom, for the choice as they saw it was not between slavery and freedom, but rather between slavery to other human beings and slavery to God. No humans had the right to impose obligations on other humans, whether they were rulers, masters, fathers or husbands, or for that matter prophets; only God could do so.[2] To be governed in accordance with God's rules was to be protected from other people's arbitrary desires (*hawā*). In other words, it was to live as an autonomous person under the law, which is also how political freedom has traditionally been understood in the West. Living in accordance with God's rules was what most Muslims desired. In practice, however, this freedom only

1. Above, 45f., 52; for post-Umayyad examples, see Ps.-Nāshiʾ, §83 (of non-Muslim regimes); ʿĀmirī, *Iʿlām*, 175 (of the Persians); Marín-Guzman, 'ʿUmar ibn Ḥafṣūn', 194 (of al-Andalus).

2. Ghazālī in Laoust, *Politique de Ġazālī*, 153f. (citing the *Mustaṣfā*).