

## Government

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The term commonly used to refer to “government” in Arabic is *ḥukūma*; the term in Turkish is *hükümet*; and the term in Persian is *ḥukūmat*. They all refer to the holders of authority, the members of the cabinet, and more generally to the authoritative structures of the state. These specific meanings were acquired only in the 19th century. Traditionally, Muslim jurists used a variety of terms, sometimes interchangeably, to refer to the acts of government in Islam, including *amr*, *imāra*, *wilāya*, *khilāfa*, *imāma*, *dawla*, *mulk*, *ḥukm*, *tadbīr*, *siyāsa*, and *sulṭān*. The historian Ibn Khaldun (1332–1406) considered *al-khilāfa*, *al-imāma*, *al-riāsa*, and *al-sulṭān* to mean the same thing: the succession to the political authority of the Prophet. Following the same tradition, a prominent 20th-century Muslim scholar, Muhammad Rashid Rida (1865–1935), used *al-khilāfa*, *al-imāma al-‘uzmā*, and *imārat al-mu‘minīn* as synonymous terms that refer to the leadership of the Islamic government in religious and worldly matters. The Egyptian constitutional jurist ‘Abd al-Razzaq al-Sanhuri (1895–1971) used *al-khilāfa* and “Islamic government” interchangeably.

The traditional usage of the term *ḥukūma* refers to the act of arbitration between disputing parties and of deterring others from transgression. The word *ḥukūma* derives from the root *ḥ-k-m*, which in classical Arabic generally means “judgment, knowledge, and wisdom.” *Ḥukm* is an ancient Arabic word and is mentioned in the Qur’an, as a root or its derivatives, 192 times with a wide range of meanings, including wisdom, judgment, perfection, deterrence, knowledge, and arbitration. Traditionally associated with the acts of adjudication and arbitration, the word gradually acquired broader meanings and entered into a variety of fields such as jurisprudence, logic, philosophy, linguistics, literature, and politics. In politics, *ḥukūma* denotes a binding authority that dispenses justice, deters people from wrongdoing, and directs them to fulfilling their welfare (*maṣlaḥa*).

In Islamic history, the word *ḥukm* has had a critical association with authority and justice. The Qur’an 4:59 commands believers to “obey Allah and obey the Messenger and those in authority (*ulū al-amr*) from among you; then if you quarrel about anything, refer it to Allah and the Messenger.” The term *ulū al-amr* was interpreted in various ways and covered different groups that include political authority.

‘Abdallah b. ‘Abbas (619–87), a prominent interpreter of the Qur’an, explained “those in authority” as referring to the learned scholars. It also denotes “those who unbind and bind” in society. The term was then commonly used to refer to the “rulers.” Ghazali (ca. 1058–1111) used the term for those with military authority (*aṣḥāb al-shawka*). The Egyptian reformer Muhammad ‘Abduh (1849–1905) expanded the meaning of the term to include the rulers, the scholars, the army commanders, and all the heads and leaders to whom the people refer for their needs and public interests.

The question of who rules, or the qualities of the head of the Islamic government, has been critical in Islamic history. The first political conflict between the members of the early Muslim community took place immediately after the death of the Prophet (632) over the issue of *ḥukm*, or rule. The disagreement was not over the necessity of the establishment and continuation of political authority after the death of the Prophet but instead over who should succeed the Prophet as ruler of the Muslim community. Early Muslims also believed in the necessity of establishing one government under a single leader. This was indeed the source of the second conflict that took place between the fourth caliph, ‘Ali b. Abi Talib, and Mu‘awiya b. Abi Sufyan, the governor of Damascus, over who had the right to select the caliph and the source of the political legitimacy of the head of state.

### Constitutional Theory of Government

Classical Muslim writings on government were drawn from the fundamental sources of Islam: the Qur’an and the sunna of the Prophet and the practices and consensus of the members of the early Muslim community, particularly of the Companions of the Prophet and the Rightly Guided Caliphate. The early views on government and rule were often dispersed along the various sections of the classical jurisprudential sources. The classical manuals of Islamic jurisprudence included discussions of government and administration as separate sections of *imāra* or *wilāya* or under sections dealing with zakat (alms giving), jihad, *khārāj* (revenues), and obedience. In the Muslim worldview, politics was viewed primarily in terms of welfare (*salāḥ*), justice, avoiding corruption, and leading people to fulfill their religious obligations. Several prominent jurists discussed issues of government and administration, such as Ibn al-Muqaffā‘ (ca. 720–56), Abu Yusuf (ca. 731–98), Ibn Abi al-Rabi‘ (d. 864), Jahiz (d. 868), Baqillani (d. 1013), and Baghdadi (d. 1037). However, it was not before the 11th century that a comprehensive and systematic juridical theory of government and administration developed. This was marked by the writing of Mawardi’s (974–1058) influential book *al-Aḥkam al-Sultaniyya* (The ordinances of government), which laid down many of the tenets of the classical political theory of government and became an influential reference for later generations of political theorists.

The classical constitutional theory of government revolved around six essential principles: (1) the establishment of authority is a religious and rational necessity;

(2) the leader of the community is selected by *ahl al-hall wa-l-'aqd* (those who unbind and bind, i.e., the influential elites in the community) or by testamentary designation; (3) the leader combines political and religious functions and has jurisdiction over the legislature (in cases where there is no ruling from the Qur'an or the traditions of the Prophet [sunna] or preexisting consensus) and the judiciary; (4) the leader is a successor to the Prophet and is obliged to implement the rules of Islam; (5) the leader has authority over the entire Muslim territories; and (6) as long as the ruler performs his functions, he is entitled to the obedience and support of the *umma*.

### The Principles of Government

Muslim jurists, classical and modern, agree that the Qur'an does not stipulate a specific form or system of government. The Prophet died without designating a successor or delineating certain structures of government. Shi'is differ on this issue and believe that 'Ali was designated as a successor. Juwayni (1028–1105) asserts that there is no point trying to find a text in the Qur'an that addresses the details of the imamate. The Prophet's act has been interpreted to mean that as a primarily worldly issue he wanted the Muslims to devise the form of government they found suitable for the needs of the time and circumstances. The jurists concur, however, that the Qur'an sets forth several guiding principles for government. These principles are open to a variety of interpretations. Modern Muslim thinkers expand the scope of these principles to include up to 12 social and political values that guide the government of Islam, of which the most common in classical and modern writings on government are justice, equality, and *shūrā* (consultation).

#### Justice

The value of justice is a central principle in Islam and an essential source for legitimizing the government. The Qur'an contains about 300 verses that directly relate to justice and a similar number dealing with injustice, attesting to the centrality of this concept. The injunctions to adhere to justice take a variety of forms ranging from establishing justice—in the best of ways—to pursuing this value with those one disagrees with or even hates. The Qur'an sets a universal rule: "God enjoins justice, doing good, and giving to kinsfolk, whilst He forbids indecent conduct, disreputable deeds, and insolence. He admonishes you so that you may be reminded" (Q. 16:90). According to Fakhr al-Din al-Razi (1149–1209), a prominent commentator on the Qur'an, the entire Qur'an is an elucidation of this principle. With those that may hold different, even hostile positions, the Qur'an urges Muslims, "O you who believe, be steadfast for God, bearing witness with equity. Let not the hatred of any people induce you to act unjustly. Act justly—that is nearer to fear of God—and fear God" (Q. 5:8). The impartial delivery of justice is a fundamental value for government in Islam.

The traditions of the Prophet list the "just" imam among those whom God protects in His shade on the Day of Judgment. It is part of the Islamic tradition that justice is the basis of rule and government and that God supports the just state even if it is not Muslim. The jurists have considered justice as one of the qualities of the imam and a requisite for his selection. According to Ghazali, the true sultan was he who acted with justice and refrained from tyranny and corruption. This condition is also required for the appointment of judges, the people (*ahl al-ikhtiyār*) who have the right to select the ruler, and government officials. Justice as a value is central in defining the relationship among the members of the community as well as between them and other communities.

#### Equality

The concept of equality rests on the belief in One Creator and in the equal nature of all human beings: men and women, Muslims and non-Muslims. Human beings have rights and responsibilities regardless of their color, religion, or social status. Of course, Islam considers the inevitability of distinctions between people based on knowledge, reason, faith, and functions. However, the Qur'an asserts the principle of the equal nature of humanity, "O people, fear your Lord, who created you from a single soul and who created from it its fellow and who spread many men and women from the two of them; and fear God, through whom you seek rights from one another and from the ties of relationship. God is a watcher over you" (Q. 4:1). No one could lay claim to superiority over others, for all people are equal in origin and in creation or nature. In his farewell address, the Prophet emphasized the equality of all people and the criteria for distinction: "O people, your Lord is One, and your father is one: all of you are from Adam, and Adam was from the ground. The noblest of you in Allah's sight is the most god-fearing; Arab has no merit over non-Arab other than god-fearingness." The concept of equality was perhaps one of the reasons for the appeal of Islam among the poor and slaves, as it stressed the human equality of everyone, regardless of wealth or status.

The confirmation of the principle of equality has clear and direct implications for government. The equal membership of the community necessitates equality of rights and duties and the supremacy of the shari'a over everyone. As equals, Muslims have the same political rights in assuming public positions, running for an office, and voting. Muslim political theorists often refer to the incidents of Muslim rulers, particularly some of the Rightly Guided Caliphate, who were subject to the rule of law and obligated to carry out judgments made against them.

#### Shūrā

Muslim political theorists agree on the principle of *shūrā* (consultation) as an essential component of government in Islam. Modern thinkers consider the *shūrā* the most important constitutional principle of the Islamic system of government.

The Qur'an refers to this principle of *shūrā* twice. In verses 3:159 and 42:38, *shūrā* is associated with two important pillars of Islam, ritual praying and almsgiving, or salat and zakat, attesting to the fundamental significance of the concept. The sunna of the Prophet stresses the value of *shūrā*. It is reported that the Prophet frequently consulted with his Companions on various important issues that pertained to the affairs of the community. The Maliki scholar Abu 'Abdallah al-Qurtubi (1214–73) asserts, "When [a ruler] does not consult with the learned scholars, then it becomes necessary to depose him. There is no disagreement among the scholars on this [issue]." 'Abduh argues for the necessity of the *shūrā* on the basis of a third verse that states, "Let there be [one] community from you, summoning [people] to good and enjoining what is reputable and forbidding what is disreputable. Those will be the ones who prosper" (Q. 3:104). He relates this verse to the need for a group of people with the authority to encourage the rulers to do good and forbid them from wrongdoing. 'Abduh equates good with justice and wrongdoing with tyranny.

While acknowledging the importance of *shūrā* as a fundamental concept of government, scholars debated its nature and implementation. They differed on whether the *shūrā* was of an obligatory or advisory nature, whether or not it was binding, its scope, and which people (*abl al-shūrā*) the ruler ought to consult. Classical scholars did not devise a structure or an institution for regulating the practice of the *shūrā*; such developments arose only many centuries later. The conventional views and practice established that while the rulers needed to consult with advisors and experts, the *shūrā* was neither compulsory nor binding. Highlighting the importance of *shūrā*, some jurists reduced the whole issue of government to an imam and his council of advisors (*imām wa-abl mashūrātīhi*).

The Islamic views of government are anchored in the premise that God has revealed the necessary principles, laws, and rules and has obligated Muslims to follow them in their relations with Him, among themselves, and with others. These principles, laws, and rules are contained explicitly or implicitly in the shari'a, which should be the guiding frame of reference and the source of legitimacy for an Islamic government. It is exactly this point that captures the essence of an Islamic government and distinguishes it from other types of government. The Islamic government draws its principles, laws, and practices from the shari'a. Classical jurists realized fully the implications of this orientation and placed the shari'a and God as the sovereign supermen, not the government, the state, or the people. Many attribute the development of this concept to the contemporary Muslim thinkers Mawdudi and Sayyid Qutb, but, in fact, classical jurists underscored this principle as well. Ghazali stated, "*Hukm* (rule, judgment, or sovereignty) belongs only to Allah; there is no sovereignty for the Messenger, or for a master over his slave, or a creature over another. All of that falls under God's jurisdiction and his stipulations; there is no ruler except him." Sayf al-Din al-Amidi (d. 1233) made a similar argument: "Know that there is no ruler except Allah and that there is no law except what he has revealed." Based on this concept, the classical scholars understood, first, that the shari'a preceded the government and the state. Second, God and the shari'a have legislative

sovereignty in the Islamic government. Third, the shari'a, or the legislature, is independent of the authority of the government. Fourth, the government and the ruler are not above the law, but their main function is to uphold the shari'a and implement the law.

The classical theory of government has had a formative and lasting impact on the formulations of political theory in Islam. The early writings on government concentrated on several fundamental issues: the necessity of establishing a government, the qualities and source of the authority of the right imam (i.e., the qualifications of the head of the state), those who have the right to select the imam (*abl al-ikhtiyār*), the qualifications of the people who unbind and bind (*abl al-hall wa-l-aqd*), the transfer of rule or succession, obedience and rebellion, the unity of the authority, and usurpation of power. The jurists tried to devise the legal frameworks that would preserve the general order and unity of the Muslims. In many cases, they had to extend the juridical principles to accommodate the changes in the forms and practices of government. In these early formulations, the caliphate was central to the discussion of the ordinances of government among Sunni theorists, and the imamate was central to the Shi'i jurists. A major concern was to provide juridical arguments for accepting the existing institutions and the continuation of the religious and social life of the community as preferable to anarchy or civil disorder.

### The Necessity of Government

Muslim political theorists considered government or the caliphate or imamate a necessary institution for fulfilling certain religious and temporal functions. They differed, however, on the justification for this principle and whether it was provided by divine law (*shar'*), reason (*'aql*), or both. Sunni theorists base the necessity of an authoritative entity on the concept of *ijmā'*, the consensus of the Prophet's Companions, who realized the need for political authority to continue managing the affairs of the Muslims after the death of the Prophet. The consensus of the early community of learned scholars is one of the fundamental sources of legislation, and, accordingly, the establishment of government becomes obligatory. Ayatollah Murtada al-'Askari (d. 2007) explains that the *amr* has always been understood as the issue of the imamate and government for the Muslims, Shi'i and Sunni alike. The Qur'an refers to the necessity of obeying those with authority. It also mentions that the Prophet stressed the need for the establishment of a ruling authority: "People are bound to have a just or unjust authority (*imāra*). They also need a ruler (imam)." According to another hadith, "The imam is a shield behind which people fight and defend themselves." The law therefore requires the establishment of an authority.

The Mu'tazilis and the philosophers justify the necessity of government based primarily on reason. Government is necessary for the welfare of the community, which consists of individuals who need to interact in an orderly fashion to ensure their welfare and prosperity. Government therefore is a natural form of social

association, because individuals are incapable of living alone and tend to transgress against each other. An authority is necessary to keep order and promote the well-being of the members of the community.

Shi'is consider the imamate, the leadership of the Muslim community, a fundamental pillar of religion that should not be left to the discretion of the *umma* but instead must be designated by God and the Prophet. According to the Shi'i jurist Nasir al-Din al-Tusi (1201–74), the imam is *lutf* (divine bounty) and therefore should be designated by God. In Shi'i political theory, the Prophet has designated an imam, 'Ali b. Abi Talib, who in turn has designated a successor. Therefore, government for Shi'is is necessary because of the *naṣṣ* (or designation) and is a *fard 'ayn* (an obligation on every Muslim).

The Kharijis, particularly the Najadat sect, and some Mu'tazilis do not consider government to be necessary. For them, the main purpose of government is to establish justice and implement the rules of the shari'a. If the people can achieve these objectives on their own, then an established authority or government becomes unnecessary. A few contemporary thinkers like 'Ali 'Abd al-Raziq (1887–1966) and other secular Muslim intellectuals hold similar views and do not consider the government a fundamental part of Islam.

### The Prophet's Model

Muslim political theorists believe that Islam, unlike Christianity, was born to develop a state and a government. They concur that the Prophet established a form of political authority that reflected the basic components of a government. The state of Medina included a territory, a community, and a form of authority and sovereignty entrusted with managing the affairs of that community. The Prophet maintained dual functions and exercised both religious and temporal authority. He performed many of the functions of a government. He acted as a ruler, judge, and military commander and appointed *'ummāl* (officials) to represent him to the far regions under his control. This model represented a clear intertwining of religious and political authorities.

### The Rightly Guided Caliphate (632–61)

Following the footsteps of the Prophet, the government of the Rightly Guided Caliphate continued, in the eyes of many Muslims, to merge the ideals with the practices. This government, however, was viewed as civic and not divine. The caliphs had religious functions, but they did not rule by divine authority or assume the religious nature of the Prophet. The members of the community were the main source for the selection of the caliph, the leadership of the community was based on a contract and consensus, the supremacy of the shari'a was closely observed, and the members

of the community had the right to depose the rulers if they violated the essential principles of Islam. This "ideal" or idealized form of government lasted for about 30 years and was followed by a dynastic or imperial model that shaped the forms and functions of government in Islam for centuries to come.

### The Dynastic or Imperial Model

Government in the imperial or dynastic model during the reigns of the Umayyad caliphate (661–750) and Abbasid caliphate (750–1258) rested on different principles and practices. This model reflected a clear separation between the Islamic ideals of government and the actual practices. It witnessed significant political developments such as the rise of the political sects or parties, increasing political rivalries and disputes, the formulations of systematic and comprehensive writings on political jurisprudence, and the establishment of elaborate administrative and legal institutions. The classical political writings tended to perceive the government as a functional post. The most important of its functions were to protect and defend religion, to establish an organized authority, and to maintain order to enable people to fulfill their religious and social life. As long as the government was able to achieve these objectives, it was considered legitimate, or at least acceptable. To consolidate power and prevent the disintegration of political authority, the dynastic model instituted the practice of the designation of a successor who presumably possessed the qualities of leadership. As usurpers and less-deserving rulers took over power, however, these qualities were overlooked and the theory allowed for the rule of the less competent (*imāmat al-maḥdūl*) as long as they possessed the requirements of leadership (i.e., controlling and maintaining order). The prominent jurist Shafi'i (767–820) was the first to sanction the leadership of the less competent. This became known historically as the "imamate of necessity."

The imamate of necessity became an accepted form, though viewed as irregular, and eventually replaced the rightful government. It was sanctioned by the jurists who were concerned for the continuation of the religious and social life of the community. In the 11th to 12th centuries Ghazali admits to this development and necessity: "There are those who hold the imamate is dead, lacking as it does the required qualifications. But no substitute can be found for it. What then? Are we to give up obeying the law? Shall we dismiss the qadis, declare all authority to be valueless, cease marrying and pronounce the acts of those in high places to be invalid at all points, leaving the population to live in sinfulness? Or shall we continue as we are, recognizing that the imamate really exists and that all acts of the administration are valid, given the circumstances of the case and the necessities of the actual moment? The concessions made by us are not spontaneous, but necessity makes lawful what is forbidden." The imperial model disintegrated in the tenth century and was replaced with empire states, the last of which was the Ottoman caliphate that was abolished in 1924.

## Institutions and Structures of Government

The traditional theories of government centered on the institution of the caliphate and on the caliph. The issue of the caliphate of the Prophet is critical in Islamic history. It was a main cause for the emergence of political parties. Shi'is and Kharijis had different views on who should rule and on the authorities of the leader of the Muslim community. They often questioned the legitimacy of the existing authority. Sunni jurists formulated their theories on government largely in response to these views and in an attempt to accommodate the growing disparity between the Islamic ideals of government and the actual practices. They were concerned about maintaining the unity of government and the existing political institutions. Their discussions of the sources of legitimacy and political authority focused on the qualities of the ruler, the qualities of those who select him, and the main functions of government.

### The Caliphate and the Caliph

Muslim jurists have provided various definitions for the caliphate, all focused on the nature and functions of this institution or on the position and the caliph himself, his qualities, and jurisdictions. Mawardi refers to the caliphate as the succession of the Prophet in the protection of religion and the management of earthly affairs. Ibn Khaldun considers the caliphate to be associated not with kingship but with religion and prophethood, as the Islamic government is a vicegerent to the Prophet in protecting religion and managing worldly affairs on its basis (*ḥirāsāt al-dīn wa-siyāsāt al-dunyā bibi*). Ibn Khaldun's definition qualified Mawardi's by stressing the role of religion in government. Both, however, rejected the notion that the caliph was the successor of God on Earth, a title that was used during the later days of the Abbasid caliphate. Stressing the importance of this post, Ghazali contends that the "shari'a is the basis of rule and authority (*mulk*) is its guardian. Whatever has no basis is bound to collapse and whatever has no guard is bound to disappear."

Based on the example of the Prophet and the Rightly Guided Caliphate, political theorists drew an idealistic image of the caliph and required certain qualifications that gradually became difficult to uphold. Mawardi specified seven qualifications: justice or moral probity, knowledge and the ability to exercise independent legal reasoning (*ijtihād*), the soundness of the senses, physical soundness, prudence, bravery, and descent from the Prophet's tribe of Quraysh. As less-competent or even unqualified rulers assumed power, however, the conditions of knowledge and *ijtihād*, prudence, or even moral probity were overlooked under the argument that the ruler could use the *ijtihād* and the knowledge of expert advisors. Similarly, as non-Qurashi and even non-Arab usurpers assumed actual control of the caliphate, the condition of lineage was reinterpreted primarily as an issue of solidarity and the capacity to exercise influence and power. The Kharijis rejected the condition of descent and reasserted the right of every Muslim to assume the caliphate.

The issue of the election or selection of the caliph and those who exercised this privilege was problematic. The caliph could not be duly invested and his authority could not be legitimate until he secured an oath of allegiance (*bay'a*) from the *umma* through its representatives, *ahl al-ḥall wa-l-'aqd* (those who unbind and bind), or the elites who exercised influence over their constituencies and who also had to possess certain qualities, such as moral probity, knowledge, and prudence. With the changes in actual practices, the number of the people who could make the selection was reduced to less than five, thus depriving the *umma* from a true voice in the selection process. At some point, the actual seizure of power became a sufficient condition for the existence and acceptance of authority. Ibn Taymiya tried to redress this and considered the selection of *ahl al-ḥall wa-l-'aqd* an act of nomination that did not replace the general *bay'a* of the members of the community, the decisive process for the election of the caliph.

Another process for the investiture of the caliph was by testamentary designation, or *istikhlāf*. The jurists used the precedent of the first caliph, Abu Bakr, and his designation of 'Umar as his successor to sanction the later practice of hereditary rule as incumbent imams designated their heirs as successors. Shi'is acknowledged designation and not selection as the proper process for the selection of the imam. They bestowed on the imam innate and extraordinary qualities.

Jurists did not set limits for the term of the caliph. He could stay in power as long as he was capable of carrying out his functions and did not commit a violation that required his removal from power. Practically, however, the term of the caliph ended with his death, abdication, or an usurpation of his power. The classical political writings do not elaborate on the means by which the caliph could be removed peacefully from power, and in fact removals often involved armed takeovers (*istilā'* or *taghallub*), which were then sanctioned as de facto situations that ensured the continuation of authority and order. The seizure of power gave de facto authority to the government.

When the caliphs were strong, they exercised expansive powers. The early writings on the caliphate did not refer to any separation of powers and gave the head of the government expansive authorities. The caliph by definition was the successor of the Prophet in defending religion and managing the earthly affairs of Muslims. As the head of the Islamic state, the caliph was expected to perform religious and political functions. He had to defend religion, launch jihad, uphold the main pillars of Islam, collect and distribute the revenues, manage public affairs, defend the state, maintain public order, dispense justice, and appoint the governors and officials. The caliph was not expected to perform all of these functions personally. He could appoint whomever he wished to help him carry out these tasks. The caliph had the right to appoint (and dismiss) governors (*walīs*), officials (*'ummāl*), ministers, and judges. As long as the caliph performed his functions and did not commit clear infractions, he was entitled to the obedience and assistance of the members of the community. While enjoying broad executive powers, the head of the government was in theory subordinate to the shari'a and was not free to contravene its rules.

## The Legislative Functions of Government

Legislation in Islam is divided into two types: divine and human. The divine legislation is revealed in the Qur'an as general principles or explicit rulings and is stipulated in the sunna of the Prophet. The human legislation is driven from the understanding of the fundamental sources of Islam (the Qur'an and sunna) and through the independent reasoning (*ijtihad*) of the scholars and jurists to come up with rulings to address new issues. During the time of the Prophet and the Rightly Guided Caliphate, the Prophet, his Companions, and learned scholars performed the legislative functions. As a messenger and ruler, the Prophet combined the executive and legislative functions. The Rightly Guided Caliphate addressed worldly issues based on the Qur'an, the sunna, and their own judgment. As mentioned earlier, it is reported that the Prophet and the Rightly Guided Caliphate consulted regularly with learned Companions on developments for which the Qur'an had not provided a specific stipulation.

With the flourishing of the sciences of jurisprudence over the first three centuries of Islam, the functions of legislation were performed by the jurists (learned scholars) who were not elected or appointed by rulers but recognized in society for their knowledge of the fundamental sources of Islam, their integrity, and their capacity to deduce new rulings to address societal changes. The caliphs, governors, and political elites exercised legislative authorities for administrative and temporal matters. The gap between the two authorities, scholars and rulers, increasingly widened. Another significant development in the legislative process was the limited exercise of *ijtihad* by the tenth century and the stagnation of legislation in general. Scholars tended to follow the footsteps of preceding jurists, and the gap between legislation and reality grew. Most contemporary Muslim countries adopted modern, Western-inspired structures of government and established legislative institutions (elected or appointed parliaments, assemblies, or consultative councils) to carry out the legislative functions. With the adoption of foreign-inspired laws, many of these parliaments did not fully follow a system of codified shari'a laws and even contradicted the shari'a in their legislation, thus creating a state of tension and a problem of legitimacy.

## The Judicial Functions

Islam has required the establishment of justice, equity, and fair adjudication among people. The early Islamic system of government did not distinguish between the structures of authority. The rulers combined executive and judicial functions. The Prophet assumed the judicial functions and also appointed judges to the far regions under his jurisdiction. The early caliphs followed this practice. With the expansion of the Islamic state and the responsibilities of the rulers, the position of judge was created. The second caliph, 'Umar, appointed judges to the different provinces to represent him in his judicial authority. Later, governors delegated by the caliph had

the authority to appoint judges to look into legal and civic issues. The implementation of rulings and penalties (*hudud* and *qisas*), however, remained the responsibility of the executive authority (the caliphs and governors). During the Abbasid caliphate, the judicial system became more elaborate. The caliph Harun al-Rashid (r. 786–809) established the position of the head judge (*qadi al-qudat*), who was given the authority to appoint other judges. The first to assume this position was the famous jurist Abu Yusuf, the student of Abu Hanifa (699–767). The appointed judges assumed their judicial responsibilities in or outside the mosques or in specially designated places, like *dar al-qada'* (court). Though the jurists produced elaborate literature on the judiciary, the judges, their qualification, and best practices, the rulings and the judicial process at large were left up to the judge and often went unrecorded. In fact, the Islamic law was known as "the judges' law." The judges based their sentences on the shari'a, when applicable, and on customary laws. This created inconsistencies and contradictory rulings in many cases. The failure to delineate the judicial and the political establishment (rulers) created problems with regard to the jurisdictions of each and the implementation of sentences, which were left up to the authorities to carry out. The courts' structure was simple and did not allow for an appeal process.

Two institutions were associated with judicial functions: the *hisba* and the Court of Grievances. The system of *hisba* is directly drawn from the principle of enjoining good and forbidding wrongdoing. As a concept, the main purpose of the *hisba* was to safeguard the implementation of Islamic principles and protect society against their violations. The *hisba* official's, or *muhtasib*'s, main functions combined those of a qadi and a policeman. The *muhtasib* was expected to maintain public order and prevent public acts of immorality. In many cases, judges assumed this function, which focused on preserving public virtues and upright social standards; overseeing the marketplaces; inspecting the scales and commodities; making sure roads were open; forcing people to make house repairs; and protecting Muslims from fraud, extortion, and exploitation.

The Umayyad caliph 'Abd al-Malik b. Marwan (r. 685–705) established the Court of the Redress of Grievances as a separate institution. It resembled an administrative court and fell directly under the jurisdiction of the caliph, who appointed deputies or judges to address grievances against state officials (e.g., governors and tax collectors) and to arbitrate administrative disputes. In some cases, the caliph assumed this task himself. The jurisdictions of the Court of Grievances addressed the use of public funds, endowments, and complaints from public or state employees. This system continues to exist in several Muslim states.

## The Administrative System

With the expansion of the Islamic state and functions of government, rulers needed to expand their administrative machinery. They appointed governors and officials to help them in the administration of the provinces. The administrative unit in the

Islamic state was the *wilāya* or *iqlim*, which was governed by a *walī* or amir. 'Umar organized the territories under his control into 8 main provinces. These were expanded into 14 under the Umayyad caliphate and 24 under the Abbasid caliphate. The governor of the province performed administrative, judicial, military, and religious functions on behalf of the caliph. The Umayyad and Abbasid caliphates followed a centralized system of government, and as the caliphate began to weaken, some provinces became practically autonomous or pledged nominal allegiance to the caliph. The revenues that were collected from the provinces were spent first to meet the needs of the province, and then any surplus was sent over to the central authority.

The system of government adopted some Sasanid and Byzantine administrative structures. The *dīwan* system was among the first to be adopted. The *dīwāns* were administrative departments with specialized tasks for facilitating government business and transactions. Their functions covered the collection of revenues and taxes and the distribution of financial benefits. They evolved from a main *dīwān* for the revenues during the reign of 'Umar to many other *dīwāns* for the military, correspondences, records and archives, postal service, grievances, and the police during the Umayyad and Abbasid dynasties. To manage the vast Islamic state, the central *dīwāns* had branches in the various provinces of the empire.

The *wizāra*, or ministry, was the second most important structure after the caliphate. The term "vizier" (*wazīr*) was mentioned in the Qur'an to mean supporter or assistant. The Arabs considered Abu Bakr as Prophet Muhammad's *wazīr*. As an institution, however, the position of the minister became important during the Abbasid caliphate. Gradually, some *wazīrs* assumed extensive powers as they took charge of the administrative structures, the *dīwāns*, and even the army. In some cases, the position became hereditary and was monopolized by certain families. The early political writings focused on the *wizāra*, its different types, the qualities and functions of the *wazīr*, and efficient administration. To keep up with the actual developments of the position, Mawardi and others classified the ministry into execution and delegation. The functions of the former were mainly to carry out the directives of the caliph, while the minister of delegation exercised almost similar executive and administrative authorities as the caliph, except for designating a successor, resigning without the consent of the caliph, or deposing the caliph. The power and authority of the *wazīr* vis-à-vis the caliph fluctuated depending on the qualifications and skills of either. Some *wazīrs* became more influential than the caliphs and exercised full control over the government.

Additional institutions of significance for the management of the state affairs included the *ḥājib* (court chamberlain) and the *kātib* (scribe, secretary, or counselor). All of these institutions, including that of the caliphate, were historical and administrative institutions for government that had no stipulations in the fundamental texts. They were adopted out of the need for expediency in order to govern and administer the rapidly growing Muslim state. The caliphate, however, acquired a symbolic significance. It was the product of the consensus of the early Muslim community and was a uniquely Islamic institution. The caliphate represented for

centuries the symbolic unity of the vast Muslim *umma* and combined both religious and political functions, which made the position more in tune with the Islamic frameworks and set it apart from the modern positions and titles of heads of state.

### Modern Formulations of Government

The early jurists addressed the issues that concerned their time and circumstances. They concentrated on the functions of the government and on the fulfillment of specific functions that were necessary for considering a government legitimate, even if it committed injustice. These formulations preserved the continuation of the institutions of Islamic government for centuries. In retrospect, several elements were clearly absent in the classical formulations of government: the mechanism for exercising the principles of *shūrā* (consensus) or *ḥisba* (enjoining good and forbidding evil), the mechanisms necessary to rectify the government when it abuses its authority or deviates from the fundamental principles of Islam, and the practical role of the members of the *umma* in the political process. All of these issues became significant in the modern formulations of government.

Rida raised these concerns. He attributed the gradual disintegration of the system of government in Islam to the practice of hereditary rule, the failure of Muslims to devise a system of accountability to obligate the government to work for the welfare of the community and in accordance with the principles of Islam, and the ability of despots to undermine the control of *ahl al-ḥall wa-l-'aqd*. He also lamented the deterioration of the qualifications of the caliphs—namely, knowledge, moral probity, and *shūrā*—that led to the weakness of both the state and the Muslim *umma*.

The formulations of the modern theory of government were influenced to a large extent by classical theory, modern Western political theory, and developments in Muslim societies. The collapse of the Ottoman caliphate in 1924 caused vigorous debate among Muslim thinkers. Secularist intellectuals, like the Egyptian 'Ali 'Abd al-Raziq and the Kemalists in Turkey, denied that government and political authority were an integral part of Islam. Abd al-Raziq maintained that the essence of the Prophet's message was religious and spiritual and that Islam, understood properly, never intended to establish a state and a political authority. Therefore, the restoration of the caliphate or the establishment of an Islamic government was neither necessary nor a religious obligation. Abd al-Raziq's views stirred up heated debates. Scores of books on the caliphate and government in Islam were produced during the 1920s and 1930s to refute his ideas.

A few political writings on government followed the classical theory and continued to focus on the head of the state, his qualifications, and his functions. They discussed the requirement of the Qurashi descent as a condition for the imamate or gave the head of the state the same idealized status and extraordinary powers. Certain intellectuals and parties proposed modern Islamic constitutions that gave

the head of the Islamic state and the executive extraordinary powers at the expense of the *umma* and the modern principles of an accountable and representative government.

Several Muslim reformers, on the other hand, tried to reconstruct a modern theoretical basis for government in Islam. The modern reformulations often concentrated on the sovereignty of the people and the assertion that the people were the source of the government's authority. They also focused on restricting the power of the government either by the constitutional checks of the shari'a or by the people. They revisited the classical Islamic principles of government and early political theory through the prism of the modern Western structures of government (the executive, legislative, and judiciary) and deduced "Islamic stands" on the separation of powers and the system of checks and balances. Many modern thinkers stressed the civic nature of the government and authority (in response to Western criticisms and to a fresh reading of the principles) and advocated term limits for the ruler. In their view, the Islamic government rested on three main constitutional principles: *shūrā*, accountability of the rulers, and the general will of the people (expressed in the *bay'a*) as the source of authority. They reinterpreted the Qur'anic verse "Obey Allah, obey the Messenger, and those in authority from among you" as *ahl al-hall wa-l-'aqd*, who derive their authority from the *umma* and act as its representatives. They referred to the hadith "my community does not concur on error" and to the concept of consensus to reassert the authority—and, for some, the sovereignty—of the people. The reformist intellectuals expanded the principles of government to include, in addition to justice, equality, and *shūrā*, such principles as freedom, the accountability of the ruler, and the monitoring right of the *umma*. In most cases, they remained vague on the specifics and instruments of a modern Islamic government.

Rida attempted to synthesize the Islamic and modern principles of government. He described the Islamic government as the government of the caliphate and at the same time a civic government. In this government, the authority lies in the hands of the *umma*, the management of the state affairs is conducted by consultation, and the ruler assumes power through election or the *bay'a* of the representatives of the *umma*. Acknowledging the difficulty of restoring the traditional type of government, Rida accepted "the caliphate of necessity" as a temporary phase that, after serious preparations, would eventually lead to the establishment of a legitimate caliphate. In this temporary caliphate, the caliph would not assume actual responsibilities but would act as a symbolic figure and represent some sort of a religious legitimacy for an assembly of local Muslim governments.

Writing during the collapse of the caliphate and almost at the same time as Abd al-Raziq, the Egyptian legalist 'Abd al-Razzaq al-Sanhuri (1895–1971) considered the restoration of a proper Islamic government necessary to the unity of Muslims and the preservation of the law. He proposed a systematic and practical framework for a modern government in Islam. Sanhuri drew on the standard sources of Islam (Qur'an, sunna, and *ijmā'* of the members of the early community) to formulate a constitutional theory of government. He considered *ijmā'* as the basis

of a parliamentary and representative system in Islam. Sanhuri listed several fundamental principles for the Islamic government that included popular sovereignty, the necessity of the *shūrā*, and the accountability of the rulers. For him, the democratic republican system was the closest to the Islamic type of government. He considered the abuse of power as an act of *fisq* (transgression) that led to the removal of the ruler. He also viewed foreign domination and influence as signs that the leader must end his *wilāya* (authority) and remove himself from power. The true Islamic government for Sanhuri performed three main functions: it combined religious and temporal authorities, defended the unity of the Muslim people, and adhered to the shari'a. Sanhuri advocated the establishment of a league of Muslim governments to replace the abolished caliphate until the Muslims were able to establish a rightful and proper one.

The Algerian Muslim reformer 'Abd al-Hamid b. Badis (1889–1940) welcomed the collapse of the Ottoman caliphate, which for him had deviated from the true Islamic principles of government. He used the accession speech of Abu Bakr and reformulated a modernist perspective of government. Written in 1938, these principles emphasized the consensual nature of government, equality before the law, the shared responsibility of state and society, the accountability of the government, conditional obedience and loyalty, and public participation in policy making. While considering these principles as intrinsic to Islam, Ibn Badis recognized the West for enabling contemporary Muslims to reformulate these principles and read them along modern perspectives.

In his formulations of the government in Islam, the influential Pakistani Muslim thinker Mawdudi emphasized the concept of *hākimiyya* as the main criterion for the legitimacy of an Islamic government. For him, society and state should be subordinate to the authority of Islamic law as revealed in the Qur'an and the sunna of the Prophet. If a government discarded the revealed laws, it became illegitimate, and its authority ceased to be binding. He defined the proper Islamic government as a "theo-democracy" or a "democratic caliphate," which was based on the sovereignty of God and the vicegerency of men (i.e., man as God's caliph). This government conducts the affairs of its citizens on the basis of consultation. Many criticize Mawdudi for his adoption of contradictory terms inspired by a particular Western political experience—namely, theocracy and democracy. But his formulation demonstrates the reformers' struggle to synthesize modern and Islamic principles.

Ayatollah Khomeini (1902–89) is credited with infusing the doctrine of *wilāyat al-faqīh*, or the guardianship of the jurist, into modern Islamic government in Iran. In a series of lectures delivered in Najaf in 1969, under the title of "The Guardianship of the Jurists: The Islamic Government," Khomeini presented the main tenets of his thoughts on government. According to him, Islam necessitated the establishment of a government to uphold the principles and laws of the shari'a and implement its injunctions. In this government, the jurists should play a major role as the most knowledgeable about Islamic law and as representatives of the imam. Since the *faqīh* is the source of emulation and represents the imam in



religious matters, he can assume his “worldly authority” and preside over an Islamic government. Following the success of the revolution in Iran, the 1979 Constitution of the Islamic Republic carved a prominent role for the *faqih* and entrusted Khomeini with overseeing the general policies of the republic. The new constitution adopted the modern structures of government and the system of checks and balances, but it also ensured the control of religious authorities over political processes.

The contemporary Iranian Islamic scholar Abdolkarim Soroush (b. 1945) has written against this tendency to “ideologize” religion. Such views have put him in disfavor with the Iranian government. Soroush is critical of the monopoly of the clergy over the interpretation of religious texts and the institutions of government. He stands against an a priori right of rule and the imposition of the government’s will on the people. While the government may draw on religious values, it should be based on rational methods and the recognition of pluralism in society and the freedom of the individual.

The prominent Sudanese Islamic thinker and politician Hasan al-Turabi (b. 1932) bases his views on government on both the doctrine of *tawhīd* (monotheism) and the consent of the people. This makes the government accountable to the higher authority of the shari’a in the first place. However, the government for Turabi is not an absolute or sovereign entity because it is subjected to the constitutional checks of the shari’a and to popular consent. It is a form of a representative democracy. Though the Islamic government is a government of the shari’a, it is in a substantial sense a popular government since the shari’a represents the dominant value system of the people. Turabi advocates limited government. He considers the *umma* the primary institution in the state and claims that not every aspect of Islam is entrusted to the government to enforce.

In his book *Public Freedoms in the Islamic State*, Rachid al-Gannouchi (b. 1941) elaborates on the specific structures and the institutions of the Islamic government. He acknowledges that several political concepts in Islam, such as *shūrā* and political parties, have not been turned successfully into stable institutions for administering differences in society. The West, by contrast, established various mechanisms for popular representation and controlled government. This realization affects Gannouchi’s perception of the Islamic government as he attempts to devise a systematic and institutionalized design. Gannouchi underscores the centrality of the human being as the basis of government and highlights the concept of freedom. He considers political authority necessary to achieve justice and uphold religion. The nature of this authority is civic, however, not divine; its source of authority is not God but the people. The *shūrā*, which represents for Gannouchi the real empowerment of the members of society, can take place at various levels: a direct form (referendum and public elections), through parliamentary representation, and through councils of scholars and experts specialized in their fields.

With regard to the modern institutions, form, or specifics of government, modern Muslim intellectuals tend to adopt an instrumentalist approach that allows for the emulation of modern Western political institutions while preserving

the fundamental Islamic principles of government. They justify this position on the basis of necessity and historical precedent. In their view, the efficient running of government requires the adoption of modern institutions that the West had already developed, such as constitutions, parliaments, separate structures for government, political parties, and a free press. This requirement makes the adoption of these institutions an obligation (*mā lā yatimm al-wājib illā bihi fa-huwa wājib*). They also argue that historically the early Muslims did not shy away from adopting Sasanid and Byzantine institutions of government to manage the affairs of the Muslim state. Therefore, the adoption of modern political institutions is beneficial to Muslims as long as they do not infringe on the general principles of the shari’a. Hasan al-Banna, the founder of the Egyptian Muslim Brotherhood, accepted the parliamentary/constitutional form of government as the closest to an Islamic system, which stands on the accountability of the ruler, the unity of the *umma*, and the respect of its will.

Government as a concept, a set of principles, and a structure is an evolving notion within modern Islamic political thought. Contemporary Muslim intellectuals struggle to devise a coherent and systematic modern theory of Islamic government, a modern and at the same time indigenous framework of government that enjoys wide acceptance.

#### Further Reading

Charles Butterworth, “State and Authority in Arabic Political Thought,” in *The Foundations of the Arab State*, edited by Ghassan Salame, 1987; Patricia Crone, *God’s Rule: Government and Islam*, 2004; Rashid al-Ghannouchi, *Al-Huriyat al-Amma fi al-Dawala al-Islamiya*, 1993; Ruhollah Khomeini, *Islam and Revolution*, translated by Hamid Algar, 1981; Ann K. S. Lambton, *State and Government in Medieval Islam: An Introduction to the Study of Islamic Political Theory: The Jurists*, 1981; Bernard Lewis, *The Political Language of Islam*, 1988; Idem, *Political Words and Ideas in Islam*, 2008; Ali b. Muhammad al-Mawardi, *The Ordinances of Government*, translated by Wafaa H. Wahba, 2006; Muhammad Rashid Rida, *Al-Khilafa aw al-Imama al-Uzma*, 1922; Abd al-Razzaq al-Sanhuri, *Fiqh al-Khilafa wa-Tatawwuruha li-Tasbah ‘Usbat Umam Sharqiyya*, 1993; Hasan al-Turabi, *Al-Siyasa wa-l-Hukm: Al-Nuzum al-Sultaniyya Bayna al-Usul wa-Sunan al-Waqi’*, 2003.