
Zakāt, Citizenship and the State: The Evolution of Islamic Religious and Political Authority

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Abstract

In this essay I will demonstrate the way in which the relationship between political authority and religious authority evolved throughout the history of Islam; and point out where religious rule gave way to the creation of nation states. I will map corresponding changes in Zakāt collections, among various nation states, to support my argument in favour of a continued separation of religious and political functions in contemporary nations with Muslim majority populations.

I

In 2009 a notable thing happened when Kuwait’s Council of Deputies adopted a law imposing *Zakāt* on the income of companies. At the time some Shiite groups expressed their opposition to that law, arguing that it increased the burden on that portion of the citizenry who were religiously obligated to pay ‘the Fifth’ *al-khums* to the heirs of ‘Alī’s household. This law increased their financial responsibilities.¹ Previously, six Muslim countries have legally enforced payment of the *Zakāt*: Saudi Arabia, Sudan, Yemen, Pakistan, Malaysia and Libya. Interestingly, the responsibility of the state for collecting *Zakāt* appears in the national constitutions of Yemen (art.21), Pakistan (art.31) and Sudan (art.10). In Saudi Arabia the collecting of *Zakāt* is governed by Royal decree no. 17/2/28/8634 dated 19 Jumada II 1370/7 April 1951. Moreover, *Zakāt* collection in Libya is governed by the (law 89 of 1971).²

The Shiite objection to Kuwait’s 2009 *Zakāt* law may have indeed raised legitimate questions regarding the legitimacy of the state to impose a Sunni interpretation of a religious tax on a Shiite minority. However, we must also question the objection based on another reason that arises in this context. Some legal schools insist that ‘the Fifth’ (*al-khums*) is still

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¹Norman Calder, “Zakāt in Imāmī Shī‘ī jurisprudence from the tenth to the sixteenth century A.D”, *BSOAS*, XLIV (1981), pp. 469–480; also Aron Zysow, “Khumas” ; *Encyclopedia of Islam*, 2nd edition henceforth (“E12”) (Leiden, 2012).

²“E12” in *Zakat*, (eds) A. Zysow; Anne E. Myer, “Islamization and taxation in Pakistan”, *Islamic Reassertion in Pakistan*, edited Anita. M. Weiss, (Syracuse, 1986), pp. 59–77; G. Clark, “Pakistan’s zakat and ‘ushr as welfare system”, in *Islamic Reassertion in Pakistan*, pp. 79–95; James. C. Scott, “Resistance without protest and without organization. Peasant opposition to Islamic zakat and the Christian tithe”, in *Comparative Studies in Society and History*, XXIX,3, (1987), pp. 417–452; Abdul Aziz bin Muhammad, *Zakat and rural development in Malaysia*, (Kuala Lumpur, 1993), pp. 105–130; Al-‘Azbāwī, *al-Mawārid al-māliyya al-Islāmiyya wa ‘l-ḍarā’ib al-mu‘aṣira ma‘a aḥkām wa-taḥbikāt al-zakat wa-‘lḍarā’ib bi ‘l-mamlaka ‘arbiyya al-su‘ūdiyya* (Cairo, 1976), pp. 81–140.

in force and does not absolve one from fulfilling the obligation of *zakāt*. *Zakāt* is a religious obligation, one of the Pillars of Islam like prayer (*Ṣalāh*), fasting (*Sawm*) and pilgrimage (*Hajj*). Throughout history no legal school or group has ever questioned its obligatory nature. The controversy about *Zakāt*³ has to do with how it is performed, what act is considered sufficient or what is the manner that will assure a Muslim that he has fulfilled this obligation that God Most High has placed upon him.

What caused this ambiguity with regard to *Zakāt*, and not with regard to prayer, fasting or pilgrimage, is that the Prophet and his first two successors used to send out ‘assessors’ (*musaddiqūn*) or agents to collect *Zakāt* from the Muslims both within Madīnah and beyond.⁴ It is well known that Abū Bakr (reign 632–634) the first Caliph fought against the ‘backsliders’ (*ahl al-riddah*) in an apostasy war because they refused to pay the *Zakāt* to his assessors.⁵ In this regard he is famously quoted as saying, “By God! if they withhold from me even a head rope that they used to give to God’s Apostle, I will fight them for It”.⁶ But then the third Caliph, ‘Uthmān b. ‘Affān (reign 644–656), added a new wrinkle in this affair. He stopped asking that *Zakāt* be paid to the ruler or his assessors on ‘internal funds’ that is on all things other than the *Zakāt* due on flocks, herds and probably also on commercial goods. Religious scholars have differed when explaining ‘Uthmān’s action.⁷ Some said that a decision of the Prophet supported by Abū Bakr and ‘Umar b. al-Khaṭṭāb (reign 634–644) cannot be overturned by another. Others said that ‘Uthmān did not outright cancel the *Zakāt* on things of value and commercial goods. What he did was “. . . make the wealthy his stewards, meaning that, for whatever reason, he refused the taking for himself”.⁸ The latter would come to mean that governing authorities after ‘Uthmān had the right to re-impose *Zakāt* on all forms of wealth. Historically we know that the fourth Caliph, ‘Alī b. Abī Ṭālib (reign 656–661), did not demand that people return to the practices of Abū Bakr and ‘Umar. The Umayyad and the early ‘Abbasids, for their part, legislated *Zakāt* on only two types of income: on animals and a tithe on commerce. However, an exception developed under Umayyad rule during the reign of Hishām b. ‘Abd al-Malik (723–743) whereby al-Malik established special government authority *dīwan al-sadqa* which supervised the collecting and distributing of *Zakāt*.⁹

Historically, we can observe a gradual evolution of state action with regard to *Zakāt*. The last ruler to demand *Zakāt* of the populace on ‘apparent income’ (*al-amwāl al-ẓāhirah*) such

³“*Elz*”, “*Zakat*”. A. Zysow; S. Bashear, “On the origins and meaning of zakat in early Islam”, in *Arabica*, XL, 1, (1993), pp. 84–113.

⁴Muḥammad Ibn Sa’d, *K. al-Ṭabqāt al-Kabīr*, (ed.) Eduard Sachau (Leiden, 1904–21), p. 115; M. Hamīd Allāh, *Majmū‘at al-wathā‘iq al-siyāsiyya li ‘l-‘ahd al-nabawī wa ‘l-khilāfa al-rāshida* (Beirut, 1969), pp.169–177; William Montgomery Watt, *Muhammad at Medina* (Oxford, 1956), p. 238.

⁵For more details on al-Ṭabarī’s accounts on the conquest of Arabia; see al-Ṭabarī, *The History of al-Ṭabarī*, translated by Ismail. K. Poonawala (New York, 1993), ix, p. 164; *The History of al-Ṭabarī*, translated by Fred M. Donner (New York, 1993), x, p. 18; also see; Aḥmad b. Yaḥyā al-Balādhurī, Futūḥ al-Buldān, (ed.) Michael Jan de Goeje, (Leiden, 1866), pp. 64–65; Elias S. Shoufani, *Al-Riddah and the Muslim Conquest Arabia* (Toronto, 1972), pp. 20–35; J. B. Simonsen, *Studies in the genesis and early development of the Caliphate taxation system* (Copenhagen, 1988), pp. 26–39; Fred M. Donner, *The Early Islamic Conquests* (Princeton, 1981), pp. 82–90.

⁶*Al-Ṭabarī*, x, p.16.

⁷Abd Allāh b. Aḥmad Ibn Qudāma, *al-Kāfi*, (ed.) Zuhīr āwīsh, (Beirut, 1988), i, p. 328.

⁸Josef Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford, 1950), pp. 199–201.

⁹Abī ‘Abd Allāh Muḥammad Ibn ‘Abdūs al-Jahshiyārī, *Kitāb al-wuzarā‘ wa al-kuttāb*, (ed.) Muṣṭafā al-Saqqā et al (Cairo, 1928), p. 60.

as herds and commercial products was the ‘Abbasid, Hārūn al-Rashīd (reign 786–809).¹⁰ So, let us review the developments and issues that eventually separated *Zakāt* from the control of the state.

First, from the Umayyad period, we have narratives and poems in which the Bedouin complain about the venality of the assessors and agents sent to collect *Zakāt* from them. From their perspective (and the religious scholars agree) the *Zakāt*-payer must be honoured as a believer (an honest man, *mu’min*) when reporting what he owes in *Zakāt*. The political authority or its agents have no right simply to impose the amount they want. The Bedouin complained that the assessors did not believe them, but took from their flocks and herds far more than they should have. Furthermore, they were maltreated. They were beaten and punished without cause or even resistance. Here is al-Rā’ī al-Numayrī (d. 715) poet for ‘Abd al-Malik b. Marwān (reign 685–705):

Take it slowly, Commander of the Faithful! We
 Are truth-speakers. We pray morning and night.
 We Arabs know that, on our worldly goods, God’s fee
 Is his right of *zakāt*. That is what has been revealed.
 The bearers of your rod, under your command, you see,
 Came, if you only knew, to scheme and extort.
 They took the teacher, undercutting his authority
 So that in the morning he arose in fetters grim.
 If you want our good, let your justice rise up and be
 On our behalf, and save our eaten body’s limb.¹¹

Such objections continued to be voiced right up to the time of Hārūn al-Rashīd.¹² At that time it appears that the authorities stopped sending assessors and agents to the Bedouin. Between the days of the Companions and the era of Harūn al-Rashīd we have no record of the amounts of *Zakāt* assessed by the state on domesticated animals in the cities and villages.¹³

Second, the authorities, to deal with *Zakāt* and tithe collections on commerce, set up posts on the trade routes where assessors could determine *Zakāt* due. From the days of the Companions, however, the worst stories circulated about these agents of the tithe. There are even statements of the Prophet that condemn the assessors of the tithe. No sooner had the public begun to distinguish between *Zakāt* and these assessors of the tithe than they were simply called ‘tax collectors’.¹⁴ The initial reason was that the agents of the tithe were not applying legal discipline in assessing *Zakāt* on commercial goods. They were obliged to

¹⁰ Abd al-‘Azīz al-Dūrī, *al-Nuẓum al-Islāmiyya* (Baghdad, Wizart al-Ma‘ārif, 1950), p. 182; also the more interesting details on the government function to poor help and relief; Patricia Crone, *God’s Rule* (New York, 2004), pp. 307–308; also, Patricia Crone, *Medieval Islamic Political Thought* (Edinburgh, 2004).

¹¹ Rā’ī al-Numayrī ‘Ubayd b. al-Ḥusayn, *Dīwān Rā’ī al-Numayrī*, (ed.) Reinhard Weipert (Beirut, 1980), pp. 213–243.

¹² Abū Yūsuf Yaḥyā b. Ādam al-Qarshī, *Kitāb Al-Kharāj*, (ed.) Aḥmad Huḥammad Shākir (Cairo, 1964), p. 95; also see Abū ‘Ubayda al-Qāsim b. Sallām, (ed.) Muḥammad Ḥāmid al-Fiḳī (Cairo, 1934). Both are Translated into English as *Taxation in Islam* and provided with an introduction and notes by A. Ben Shemesh (Leiden, 1958–1969).

¹³ Abd al-Azīz al-Dūrī, *al-‘Aṣr al-‘Abbāsī al-awwal: dirāsah fī al-tārīkh al-siyāsī wa-al-idārī wa-al-mālī*, Dār al-Ṭal’ah (Beirut, 1988) p.64; Patricia Crone, *God’s Rule*, pp. 304–305.

¹⁴ Al-Dūrī, *al-Nuẓum*, pp.137–170;

believe the word of the owner of the goods so far as their value was concerned. Furthermore, they did not have the right to search the merchant. They were also obliged to accept the word of the owner of the goods that he had paid the *Zakāt* to another assessor. The state tried to bring order to the matter by issuing ‘receipts’ to those who had paid *Zakāt* so as to forestall their having to pay more than once. But even this measure did not rescue the assessors of the tithe from a bad reputation, or from taking smaller or larger bribes. From the 3rd/9th century, so as to simplify matters, merchants paid the tithe but considered it an impost or a tax that had nothing to do with *Zakāt*.

Third, from the days of the Umayyad Caliph, ‘Umar b. ‘Abd al-‘Azīz (717–720), the *Kharāj* (the tax on agricultural land) was distinguished by the authorities and in the public mind from *Zakāt*.¹⁵ Outside the Arabian Peninsula, in conquered lands, the issue of tithe or half-tithe did not arise with regard to whether land was irrigated or not. The reason for this was that the owners of the land — outside the Arabian Peninsula — were not Muslims. The conquerors left the land in the hands of the Jewish, Christian or Zoroastrian peasants and farmers imposed a tax on produce that sometimes amounted to as much as half, either in cash or in kind. That was the practice of the Caliph ‘Umar b. al-Khaṭṭāb in Mesopotamia (but there is disagreement on how to interpret what the Prophet did regarding the Jews of Khaybar).¹⁶

The state banned Arabs and Muslims from ownership of fixed property in conquered lands. But in the Umayyad era peasants began converting to Islam, and through various stratagems the conquerors, their children and grandchildren came to own vast tracts of land and reclaimed desert or wilderness land. These people wanted to pay the tithe or half-tithe as did their contemporaries in the Arabian Peninsula. This posed a threat to the income of the state. During the Umayyad period state income was derived from the *Kharāj* land tax (70%), the tithe (*‘ushr*) on commerce (20%), and the *Zakāt* and *Jizyah* (the latter the head tax on ‘people of the covenant’ or *ahl al-dhimmah*) (10%). ‘Umar b. ‘Abd al-‘Azīz, therefore, saw the *Kharāj* as a tax on land and not on individuals.¹⁷ This made no distinction between Muslims and non-Muslims within the Household of Islam, which became an established practice from then until the promulgation of the Law on Land Ownership under the Ottomans in the mid nineteenth century.¹⁸ The state was always, with the exception of the Arabian Peninsula, considered the actual owner of agricultural land in all Muslim lands. All farmers were considered renters or lease-holders. The rent or lease was considered a contract between the state and those who worked the land, and the contract was the law between the contracting parties.¹⁹

Fourth, right or wrong, the state washed its hands of *Zakāt* funds. In addition to the fact that the amount of the *Zakāt* was small in comparison to those generated through the

¹⁵Abū Yūsuf Yaḥyā b. Ādam, *K. al-Kharāj*, p. 34; also more details in Hossein Modarressi Tabataba’ī, *Kharāj in Islam* (London, 1983); Wilferd Madelung, ‘Shiite Discussion of the Legality of the *kharāj*, in *Proceeding of the Ninth Congress of the Union Européenne des Arabisants et Islamisants*, (ed.) R. Peters (Leiden, 1981), pp.193–202.

¹⁶Abū Yūsuf Yaḥyā b. Ādam, *K. al-Kharāj*, p. 21.

¹⁷H. A. R. Gibb, “The fiscal rescript of ‘Umar II”, in *Arabic*, II (1955), pp. 1–16; P.G. Forand, “Notes on ‘Uṣr and Maks”, in *Arabica*, XIII (1966), pp. 137–141.

¹⁸See B. Johansen, *The Islamic Law on land Tax and Rent; The Peasants Loss of Property Rights As Interpreted in the Hanafite Literature of the Mamluk and Ottoman Period* (London, 1988).

¹⁹Abū Yūsuf Yaḥyā b. Ādam, *K. al-Kharāj*, p.29.

Kharāj land tax, the charges for leases, and the commercial tithe and other related levies, the religious scholars, ever since the days of al-Ḥajjāj b. Yūsuf (661–714) in Iraq, complained either about how the state dispersed *Zakāt* according to the eight causes designated in the *Qurʾān*, or about the legitimacy of the state itself and thus whether or not *zakāt* could be rightly given into its hands.

It is true that ever since the Umayyad era the state maintained a charity administration *diwān al-sadaqāt* whose funds came only from *Zakāt*. The poet, Jarīr b. ‘Abd-Allāh al-Khaṭafī (ca.650 – 728), for instance, says in a panegyric that Yazīd II b. ‘Abd al-Malik (reign 687 – 724) gave him a hundred she-camels along with eight flocks of sheep in reward for his praise of him:

He gave Hunaydah a full count of eight;
In giving there is no favour intemperate.²⁰

Was Jarīr a poor or impoverished man, or a vagrant commending him to *Zakāt* assistance in the amount of a hundred she-camels from the benevolent administration? Furthermore, was he needy, did he really merit being given one hundred she-camels? At the very most he might have been given one she camel or even two as ‘Umar b. ‘Abd al-‘Azīz might have done, emphasising that he gave out of his personal resources and not from the benevolent funds of all Muslims. This issue of extravagant giving quickly escalated casting doubt upon the legitimacy of political authority. It was nothing even comparable to the authority of the Prophet or of Abū Bakr or ‘Umar to whom Muslims paid their *Zakāt* with good will.

Quite a few scholars of religion (*‘ulamā’*) who had been watching observed this careless spending, among them Sa‘īd b. al-Musayyib, al-Ḥasan al-Baṣrī and Jābir b. Zayd.²¹ Some even said that a pious Muslim should hide his possessions so that the assessors could not find them. Others said that if a Muslim were forced to pay his *Zakāt* to an oppressive or illegitimate authority, or if he had no confidence that it would be spent in a legally acceptable manner, that he would not need to fulfill his obligation. Before God, he would have to pay *Zakāt* again to one fund or to all those that, to the best of his knowledge, he considered legitimate.

In the face of this new challenge, during the latter days of the Umayyad and the early ‘Abbasids, the authorities acted in one of two ways. The first way was to coerce or force payment. Even though the authorities did not really need the meager funds *Zakāt* generated, they understood that those who avoided paying *Zakāt* did not support the legitimacy of the reigning Caliph. This is supported by the fact that the authorities attacked the two sacred precincts, Mecca and Madīnah, frequently.²² It was not because they wanted their money or their *Zakāt* (especially from mercantile activities); the concern was for their loyalty. The second way was to simply ignore the whole thing as Hārūn al-Rashīd and his successors did. Al-Muhtadī (reign 869–870), the Abbasid caliph is quoted as saying that *Zakāt* is a religious obligation upon each Muslim. It is a matter of each person’s covenant commitment

²⁰ Muḥammad b. Ismā‘īl al-Ṣāwī, *Sharḥ Dīwān Jarīr* (Cairo, 1353), p. 389.

²¹ See also Patrice Crone, *God’s Rule*, pp. 291–292.

²² See also al-Balādhurī mentioned that during the military camping sent to Hijaz by Marwān b. al-Ḥakam (reign 623–685) against ‘Abd Allah b. Zubayr. al-Balādhurī, *Ansāb al-Ashraf*, v.5, (Jerusalem, 1936), p.151.

(*dhimmah*) like prayer, fasting and pilgrimage.²³ For this reason it is incumbent upon each faithful Muslim and expresses his commitment.

Thus the administration of benevolence *Diwān al-Sadaqāt* continued to exist, but it was the free choice of Muslims to give their *Zakāt*, or a portion of it, without any oversight or obligation. In a sense, when the political authority was in question, the *Zakāt* became a decentralised, private practice. As a result the state gradually became more responsible in the way it spent its money through its legitimate financial organs. It is worth noting, however, that this assurance that came into force in the days of the third Abbasid caliph did not end all interference by the state in the matter of *Zakāt*. Still it never was a matter of increasing the state's income base. From time to time it was used to constrain rebels to return to obedience and to recognise the governing authority. By way of illustration, when the Palestinian Bedouin tribes of Ṭay and Rabī'ah rebelled, the Mamlūk Sultan al-Nāsir Muḥammad b. Qalāwūn (1285–1341) retaliated by imposing *Zakāt* on their camel herds. That went on for three years. When he was satisfied that they had been pacified he discontinued collecting the *Zakāt*.²⁴

Muḥammad bin-Maḥbūb al-Ruḥaylī (d. 874), in his letter to the people of the Ibādī in North Africa, went so far as to advocate giving the *Zakāt* to the people in authority. If accepted, this obligated the authorities.²⁵ They had to protect and defend the populace from whom they had received *Zakāt*. In making this argument, Muḥammad b. Maḥbūb defined the framework and limits of the state and the ability of the governor to expand his authority in assessing the *Kharāj* land tax.²⁶ The borders of each state, as he saw it, were determined by where it could impose the *Kharaj* land tax. Certainly the *Kharaj* had become the main principle for recognising the authority of the state and its expanse and collapse during the classical period of Islam.²⁷ Hishām b. 'Abd al-Malik (reign 691–743) once said, "Fall rain, where you please, I will still receive your *Kharāj*".²⁸

But there remains another ambiguity in the ongoing problem of *Zakāt*, if only in the centralisation of the state versus local sovereignty. Be they local or regional, states that had religious pretensions emerged in the Arabian Peninsula and in the Muslim West. On the excuse of applying the *Sharī'ah* or religious mission and not always because of financial need, they insisted that *Zakāt* be paid to them. For them it was an indicator of their legitimacy. So far as they are concerned legitimacy was not endowed by the general populace but depended upon

²³ Abd al-Azīz al-Dūrī, *al-'Aṣr al-'Abbāsī al-awwal: dirāsah fī al-tārīkh al-siyāsī wa-al-idārī wa-al-mālī* (Beirut, 1988), p. 64.

²⁴ Shams al-Dīn al-Shujā'ī, *Tārīkh al-Malik al-Nāsir Muḥammad b. Qalāwūn al-Ṣāliḥ wa-awlādihī*, (ed.) Barbara Schafer (Wiesbaden, 1977), i, pp. 73–81.

²⁵ Abdulrahman S Al-Salimi, Identifying the (Ibādī/Omani) *Siyar*, in *Journal of Semitic Studies*, LV, (2010), pp. 115–162.

²⁶ Abdulrahman S Al-Salimi, Themes of Ibādī/Omani *Siyar*, in *Journal of Semitic Studies*, LIV, 2, (2009), pp. 475–514.

²⁷ Hamilton Gibb puts forward the thesis that Islam has no notion of 'state'. State structures that came into being under Islam bore the names of the families who ruled them — the Umayyads, the 'Abbasids, the Fatimid, the Ottomans, etc. Frontiers were not seen as defining sovereignty or nation; borders were used to define land tax (*kharāj*) and the alms tax (*zakāt*) that could be collected. The land area of the state and its sovereign control, therefore, did not define a legally recognised citizenry. H. A. R. Gibb, 'The Evolution of Government in Early Islam', in *Studia Islamica*, IV (1955), pp. 1–17.

²⁸ Muḥammad b. Yūsuf al-Ṣāliḥī, *Subal al-Hadī wa al-rashād fī sīrat khayr al-'ibād*, (ed.) 'Ādil Aḥmad 'Abd al-Mawjūd & 'Alī Muḥammad Mū'awd, V.3 (Beirut, 1993), p.128 .

applying the *Shari'ah* as it is defined by the acts of the Prophet and his Companions. Thus in modern times the payment of *Zakāt* was the main argument used by Saudi Arabia for reinforcing its international boundary and authority with its neighbours in Eastern Arabia claiming that it was the people of the land who are obliged to pay the *Zakāt* for Saudi authority.²⁹

2

For clarifying the state authority in medieval Islam into two perspectives; the difference between al-Māwardī (d. 450/1058) and Ibn-Khaldūn (d. 808 AH) depicts two opposing views during classical times on the matter of the relationship between religion and state.

Al-Māwardī, in his book, *Governmental Jurisdictions and Religious Curatorships (al-ahkām al-Sultāniyyah wa-l-wilāyāt al-dīniyyah)*,³⁰ defined the governing institution (*al-imāmah*) as having been established to protect religion and to govern the society. Religion's areas of jurisdiction in society are to govern established customs.³¹ The state's responsibility is to exercise 'pastoral' oversight (*ra'yyah*) over those areas of jurisdiction and those customs without actually interfering in them. Interference would mean aligning with one legal school against another, or one theological trend in preference to the others. This would breed divisions in society. Furthermore, the religious establishment composed of legal scholars, theologians, judges, readers/cantors, teachers . . . and mystics had been fully formed by al-Māwardī's day.³² Quite on its own, this complex establishment saw to the business of religion, constituted a legislative authority, and mediated between the people and the political hierarchy.³³

The distinction between the religious vocation and the political vocation had been established, but that did not imply that they were divided one against the other. Islam remained the supreme authority of the state, and the political powers represented that authority. The distinction was one of function between the various religious and political 'offices'. It was understood that each domain had defined limits. However, there did remain contention on some marginal and specific points to which both the 'men of the sword' and the 'men of the pen' laid claim.

Thus the state was the overall protector of the religious domain and the governor or constructor in the political realm. It had general oversight over the whole system. At the same time the state was incompetent to structure or legislate in the religious domain since its areas of jurisdiction and customs were fixed. There were scholars of the law (*fuqahā'*) who were engaging in religious legislation. The state's function and competence in the political realm were virtually absolute. The state's responsibility was to protect the general welfare,

²⁹See Saudi Memorial of 1955, Memorial of the government of Saudi Arabia: Arbitration for the Settlement of the Territorial Disputes between Muscat and Abu Dhabi on the One Side and Saudi on the other, (Cairo, 1955).

³⁰Abū 'l-Ḥasan 'Alī b. Muḥammad b. Ḥabīb al-Māwardī, *Kitāb al-Aḥkām al-Sultāniyya wa-l-wilāyāt al-dīniyyah*, (ed.) by Aḥmad Mubārak al-Baghdādī, (Kuwait, 1989), translated notably by Fagnan (Algiers, 1915) under the title of *Traité des Statuts gouvernementaux*.

³¹See also H. A. R. Gibb, Al-Mawardī's theory of the Khilafah, in *Studies on the civilization of Islam* (Boston, 1962), pp. 151–165; Some consideration on the Sunni theory of the Caliphate, in *Studies on the civilization of Islam* (Boston, 1962), pp. 191–194; Erwin. I. J. Rosenthal, *Political thought in medieval Islam* (Cambridge, 1958), pp. 27–37.

³²Gustave E. von Grunebaum, *Islam; essays in the nature and growth of the cultural tradition*, (2nd edition) (London, 1961), pp. 65–68.

³³See Chapters 12 and 13 in al-Māwardī's work; also Patrice Crone, *God's Rule*, pp. 303–304.

develop it and improve it. This was a political concern. As ancient legal scholars defined it, the state was to deal with public matters in a beneficial manner. This is how al-Māwardī understood the ruling institution and government and, in that context, the relationship between religion and politics.

As al-Māwardī understood it, the religious institution was curator of the legal process (*al-qadīā*) under which came authority over religious endowments, leadership of public prayers, the administration of *Zakāt* and benevolences, supervision of the pilgrimage, the business of issuing legal decisions, and oversight of education and schools. The jurisdiction of the political authorities, on the other hand, included public works, a ‘ministry’ (*dīwān*) of the army which some called the ministry of *jihād* or war, administration of the *Kharāj* land tax, other revenues, and the *Jizyah* (head tax on non-Muslims), a ministry of empowerment and implementation, and the command (*imārah*) of the country including its senior officials. Legal scholars differed with respect to the exchequer. Some thought it was the responsibility of the ‘men of the sword’ while others thought it should come under the jurisdiction of the courts.³⁴

Certainly this notion of the ‘separation of powers’ that emerged from distinctions made during al-Māwardī’s era (the 5th/11th century) and which dealt with disciplining relationships between the religious and political institutions within the ‘household of Islam’ was the dominant notion controlling the evolution of the *Sharī‘ah* and its legitimacy right down to modern times (notwithstanding exceptions we have noted). Under this system *Zakāt* was separated from state jurisdiction. However, along with other matters, it did remain the state’s obligation to oversee and protect it.

Ibn Khaldūn (1332–1406) however, had a very different view of the role of the Muslim state, its responsibilities and the areas within which it had competence.³⁵ In his famous ‘Prolegomenon’ (*al-muquddamah*) he shamelessly plagiarised al-Māwardī’s earlier work concerning political authority and religion, but he gave it a totally different ‘spin’. As he saw it, in contrast to the two systems dominant outside the household of Islam (the natural state and the political state), the task of the *Muslim* state was “to assert total control as a legal requirement”. In stating this, he added a sensitive item to al-Māwardī’s definition of the governing institution (*al-imāmah*) claiming that it was established to protect religion but also it was to use religion to dominate the world. This had serious and far-reaching repercussions both within the household of Islam and with regard to relations with the rest of the world.³⁶

Within the modern Muslim world, religion and state were to merge under the shadow of the head of state’s (*al-imām*) commands or prohibitions, thus under the auspices of an individual’s understanding of Islam. With respect to the outside world, it was the state’s task to promote Islam either gently or by war (*jihād*). Ibn Khaldūn recognises the changes attendant upon the collapse of the Caliphate: when it collapsed the Muslim system lost its

³⁴Patrice Crone, *God’s Rule*, pp. 286–315 (New York, 2004).

³⁵Nathaniel Schmidt, *Ibn Khaldun, historian, sociologist and philosopher* (New York, 1930), pp. 31–57; Muhsin Mahdi, *Ibn Khaldūn’s philosophy of history* (London, 1957); Muhammad Mahmoud, *The political theory of Ibn Khaldūn*, (Leiden, 1967).

³⁶See Chapter 3, *Muqaddimah* by ‘Abd al-Rahmān b. Muḥammad b. Muḥammad, *Tārīkh Ibn Khaldūn*, V,1, (Beirut, 1965); *The Muqaddimah: an introduction to history/Ibn Khaldūn*; translated Franz Rosenthal (Princeton, 1967).

distinguishing feature. In so doing the state did not thereby forego its responsibilities or functions. The Muslim kingdom had to shoulder a large portion of the responsibilities and institutions that were essentially religious and which previously belonged to the Caliphate office, at least as Ibn Khaldūn understood it.

The truth is that Ibn Khaldūn's understanding in this matter was more fantasy than reality. His was a formula for precipitating conflict between religion and state that, fortunately, never happened in classical times. As Ibn Khaldūn analyzes it, the obstacle of religion that dominated during the era of the Caliphate led to divisions, unrest and civil wars. These, Ibn Khaldūn explains, drove al-Māwardī, the constitutional scholar, to advocate the separation of religion from politics for the benefit of both, and in the public interest of both Islam and Muslims. How is it, then, once the Caliphate had yielded to kingdoms (with their characteristic of coercion, and with tribal solidarity as their linchpin), could these kingdoms be endowed with 'the message of Islam' as an instrument so as to oppress and dominate in the name of religion? What they had to do was bolster their claim to legitimacy by taking recourse to a so-called '*sharī'ah*' that was by nature partisan. The purpose was to undermine the kingdom's own tribalism.³⁷

It is worth noting, finally, that al-Māwardī places administration of *Zakāt* along with leadership in public prayers and the oversight of the pilgrimage exclusively under religious administration, effectively removing them from the state's executive competence although not from the state's protective responsibilities. Ibn Khaldūn, on the other hand, entirely ignores the oversight of the pilgrimage, the administration of benevolence and does not even mention them as belonging to the remit of the religious institutions or their authority. In real terms, however, we do know that the states of North Africa (where Ibn Khaldūn wrote his *Prolegomenon* and *History*) were very much concerned about both their contingent going on pilgrimage and its leadership. In that respect, political authorities were not overly concerned about controlling religion as such.³⁸ On the other hand, the existing 'tribal' states (*al-duwal al-'asabiyyah*) were more concerned about their pilgrimage contingent and its leadership in order to show that the political authority was concerned about religious matters in general.³⁹

Regarding benevolences or *Zakāt*, states governed by established tribal regimes, committed to a revivalist religious ideology, demanded *Zakāt* from the local populace loyal to them, or whose loyalty they wanted, so as to display or impose their legitimacy. Thus Ibn Khaldūn seems ignorant both of his own theory and of reality, though in a practical sense he agreed with al-Māwardī by assigning *Zakāt*, pilgrimage and fasting to the individual's private life seeing them to be purely personal religious obligations having nothing to do with the nature and power of the kingdom. Thus al-Māwardī saw the state as having no religious role, while Ibn Khaldūn saw the specifically *Muslim* state as having religious responsibilities. Responsibilities it lost when characteristically tribal kingship gained control throughout the Muslim World.

³⁷ Abd al-Azīz al-Dūrī, *al-Niẓum al-Islāmiyya*, pp. 190–198.

³⁸ Ibn Khaldūn, *al-Muqqadimah*, p. 227.

³⁹ Ibn Khaldūn, *al-Muqqadimah*, p. 227.

Al-Māwardī's view dominated the historical experience of the Muslim state. He distinguished the two areas of religion and politics because they were simply by nature different. The first dealt with religious doctrine; the second promoted the public good. The Muslim state was the supreme authority of Islam when it came to values, public morals and overall goals. But at a basic level there was a separation of function. The religious scholars dealt with religious matters; the *amīrs* and leaders dealt with the affairs of politics. There are areas which both religion and politics share and those became points of contention. But the position of command and the disciplining grasp fell to the lot of the *imām*, the *amīr*, the *sultān* or the king for the purpose of maintaining unity and preventing the domination of a partisan doctrine or school of law.

Generally speaking peaceful relations predominated between religion and state during Islam's post-Abbasid period. Specifically, in the view of scholars of the law the main moral direction belonged to religion and was represented in protecting the interests of worshippers or promoting the basic five necessities: the right to life, the right to think, the right to religion, the right to have children, and the right to own property.⁴⁰ And it was clear that the political system was to see that these interests were realised.

The business of religion composed of the pillars of Islam, religious duties, obligations, interdictions and absolute prohibitions has most to do with matters otherworldly. According to both al-Māwardī and Ibn Khaldūn these have to do with salvation after death. Among the duties that have otherworldly implications *Zakāt* is one on the same level as prayer, pilgrimage and fasting. But the problem that soon became apparent in this regard is that *Zakāt* involved money and thus quickly became contentious. The Prophet, it is true, requested that money be given to him or to his agents. But that could have been to do with the fact that he was a prophet, or he may have simply wanted to get people into the habit of giving *Zakāt* and benevolence. But, after his death, the practice of the Companions was quite different. Abū Bakr and 'Umar required it. 'Uthmān and 'Alī stopped requiring that *Zakāt* be paid to the state. There followed two centuries of more or less vigorous debate until, finally, *Zakāt* was removed from the remit of the state almost completely.

3

Over the last four decades we have witnessed an emotionally charged popular movement to establish a Muslim state that implements the *Shari'ah*. What that seems to imply is that we re-endow the state with the religious duties that society stripped from it ages ago. This popular desire may take one of two directions. As happened recently in Kuwait with the passage of the law on *Zakāt*, it might oblige the existing regime to implement religious obligations. The second option is to change the existing regime because it is not committed to the regulations of the *Shari'ah*, and to set up in its place a regime that pools both religious and political authority, or alternatively establish a framework which actually gives precedence to the religious agenda as defined by the Islamists. As I see it, this aberration has three causes: the transformation of the role and functions of the state in modern times, the evolution of the Arab and Muslim historical experience with modern states and with the rest of the world,

⁴⁰Muhammad al-Tahir Ibn Ashur, *Ibn Ashur: A Treatise of Maqṣid al-Shariah* (Virginia, 2006).

and the weakening of religious institutions that traditionally used to administer religious matters.

The First Cause: It appears that the defining framework for the state internationally is pegged to nationalistic entities or their approximations. The religious underpinning is no longer an item of concern in establishing the state and its mechanisms. In Arab and Muslim cultural and political circles this precipitated fears and anxiety concerning the matter of identity, not least as the notion of citizenship catches hold and requires virtually absolute equality among individuals and an entirely new balancing act with regard to social factions. What we do know is that the Ottoman ‘capitulations’ published in 1857, and that established an Ottoman state on the basis of equality between various peoples and religions that is, on the basis of ‘citizenship’ stimulated deep anxieties among Muslims, Christians and Jews.⁴¹

The concern for Muslims was that the establishment of equality between Muslims and non-Muslims as regards rights and responsibilities represented a radical break with the past and a potential loss of status. Non-Muslims, for their part, in the light of their new privileges and rights of citizenship, were suddenly subject to mandatory military conscription. They also had to submit to the laws of the state to whose decisions they had not been subjected before. Should litigation arise involving the people of several religions or their clients, the ruling would have to be resolved in mixed courts. Nonetheless, there was great enthusiasm for the Ottoman constitution of 1876. It was suspended in 1878, revived again in 1908, only to be overwhelmed by the tyranny and the policy of assimilation of the latter the Sultan ‘Abd al-Ḥamīd (reign 1876–1918) administration that, within Islam, favoured one legal school over all the others.

The tradition shifted without a new one being adopted. When the Ottoman state vanished and nation states appeared, some of them were neutral as regards Islam. Others were antagonistic toward Islam. This made for confusion and a lack of assurance. The imperialists in the Muslim world, when its nation states were being formed and up until the revivalist movements emerged, laboured to protect these new states’ cultural and religious identity. It was these revivalist movements that later developed the thesis of ‘sovereignty’, meaning the rule of God in all things.⁴²

The Second Cause: So far as the Arab political challenge is concerned, the new nation states in the Arab world have not succeeded in shouldering the burden placed upon them.⁴³ They have not protected the national interest, they have not developed or improved the lives of people, and they have not involved the populace in the process of public affairs. Decade after decade, in a meltdown of values, politics and material things, they lost Palestine. They proved incapable of dealing with the religiously sensitive youth who enlisted in the revivalist religious movements. It was this youth who took up cudgels to bring down the state rather than reform and rescue it. They believed that a religious state, or one that would implement Islam, would alone restore Islam to the Muslim and the Muslim to Islam.

⁴¹ Maurits H. van den Boogert, *The capitulations and the Ottoman legal system: qadis, consuls, and Beraths in the 18th Century* (Leiden, 2005).

⁴² Antony Black, *The History of Islamic Political Thought from Prophet to the Present* (Edinburgh, 2001), pp. 308–340.

⁴³ Albert Hourani, *A History of the Arab Peoples* (New York, 1991), pp. 353–388.

The Third Cause: Religious institutions have been weakened (even though the youth continue to believe that they can protect religion, its vested interests and its social presence).⁴⁴ These institutions have been weakened because of their inability to evolve and change and because of the way states have dealt with them. The traditional institutions can no longer respond credibly to contemporary questions. For their part the reformers do not seem to have succeeded in modernising these institutions or replacing them. The states, on the other hand, have responded to these religious institutions in one of three ways: They have tried to eliminate them, they have tried to make them subservient, or they have adopted a more-or-less neutral stance. Whatever the case, the citizenry reproach the religious elite for not being able to fulfill their duties with respect to religious education, with respect to the issuing of *fatwās* (legal decisions), with respect to protecting the people's interests over those in government, with respect to defending Islam against its critics, and with respect to attaching themselves to the political administration rather than working to set it straight and reform it. Thus the people have set their hopes on achieving political power so as to do what these religious elites proved unable to do by way of serving Islam and implement its regulations.

The modern state is a secular state (*al-dawlah al-madaniyyah*). It is not competent to fulfill religious functions even if it is a dictatorship or even if it is under the leadership of the men of religion (*rijāl-ud-dīn*). The conflict between Islamists and the state for over forty years is the clearest indicator of this fact. The task of the modern secular state is to guarantee religious freedom so that all are able to worship and believe according to the tenets of their faith. It is not to follow this or that juridical/doctrinal school, or precipitate divisions, stimulate factionalism, or in any other manner subvert religion.⁴⁵ But for the state to impose specific religious regulations clearly contradicts the principle of citizenship even in the case where all the citizens are Muslims. Islam has always been pluralistic. There are many different perspectives even within Islam and among and within its juridical/doctrinal schools. For the state to adopt one particular perspective is to rule in favour of one partisan doctrine. That cannot but prejudice against the principle of citizenship and open the door to division. How can a healthy and integrated society do without religious, ethnic and political plurality?

Historically Islam does not divide religion from the state. What it did was to separate certain functions of civic government and religious oversight so that each might accomplish its given work while allowing individuals in society the freedom of thought, and allowing groups the freedom to form philosophical schools, and allowing religions the freedom to practice.⁴⁶ But the ancient experience cannot be revived, although it succeeded for many years without open conflict. Times, places and aspirations have changed. And there is no doubt that, particularly within the Arab world, there is now a problem between religion and state. But to merge religion with politics, or to bring religion under the direction of politics, or to bring politics under the direction of religion will not solve the problem. It will more than likely exacerbate it.

I see no justification for a state to impose *Zakāt* so long as Muslim individuals are committed to giving it. In fact one gives *Zakāt* just as one also prays because both are

⁴⁴Abdelhllah Belkeziz, *The State in Contemporary Islamic Thought: A Historical Survey of the Major Muslim Political Thinkers in the Modern Era* (London, 2009), pp. 241–267.

⁴⁵Hamid Enayat, *Modern Islamic Political Thought* (London, 2005), pp. 111–139.

⁴⁶Black, *The History of Islamic Political Thought from Prophet to Present*, pp. 81–91.

person-specific religious obligations. The revenue from the state's collection of *Zakāt* will not be significant in solving the problems of society. The state can always raise taxes to support its developmental or political objectives. To achieve state revenue targets, deputies in congress can set levels of taxation. They do not have the right to impose an individual-based religious obligation even if it were to have social or economic impact. Muslims have not given their religion short shrift; they have not ceased to fulfill their obligations or to give their voluntary commitment. *Zakāt* by its very nature is an act of assistance, and therefore its social impact is not always obvious. But simply look at the voluntary religious endowments (*awqāf*) and targeted or strategic investments. Muslim societies brought thousands of institutions into being. During the early twentieth century the Awqāf Investment Bank of Istanbul joined the movement. Thus it is not true that Muslims shirk their religious duties or neglect to live according to them, though people have been led to claim religious neglect by the neo-Islamists.

A law that requires citizens to pay *Zakāt* places a burden upon the principle of citizenship. It also constitutes a burden upon the consciences and freedoms of those so obligated, and upon the relationship between the state and its citizens. Some religiously committed citizens do not think it appropriate to pay *Zakāt* to the state. Doing so under duress would not fulfill their religious obligation and they would be obliged to pay *Zakāt* a second time. Other citizens might not recognise the legitimacy of the political regime, and thus do not agree with paying the state their *Zakāt*. The law having been enacted, these people may feel obliged to openly declare their revolt as in the case of the extremists we have known. Still other citizens are constrained by specific doctrinal issues that make it impossible for them to pay *Zakāt* in this manner (for instance the Shī'ah who made their objections known in Kuwait). Finally, there are non-religious people or non-Muslims who are not prepared to fulfill any Islamic religious duty. All these factors constitute burdens on any state that wants to force compliance with religious duties by the sword or the force of the law. It does not weigh this oppressive burden over and against the already realised benefits to the way *Zakāt* funds have been collected.

More seriously, this Kuwaiti law indicates a concession to the Islamists' agenda and their fundamentally erroneous idea. It is simply not true that Muslims do not apply their Lord's *Sharī'ah* and strive to fulfill the regulations of their religion. It is not true that these must now be enforced either by the law or by the sword. And if it is contended that this is an appropriate way to help the state solve social problems, the response is that modern government oversees social and developmental institutions that have nothing to do with religious obligations. Furthermore, the private civic organisations are quite able to voluntarily, intelligently and freely assist in solving social problems either through *Zakāt* or by other means. Throughout the Muslim world funds have been established for *Zakāt* and religious endowment institutions (*awqāf*) for social purposes. aalsalimi@yahoo.com

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