Authority in Islam: The Institutionalization of Islam and the Elusive Transfer of Authority from Society to State

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Abstract

Islam is not merely a religion; it expands beyond that to include almost everything. Politics and Islam have always had a fickle relationship, yet a somewhat more stable one in the past. This was due mainly to the fact that Islam existed as an underlying foundation to societal life and basic political interactions; today, things have developed in such a manner that Islam has been institutionalized into either state-inclusive bodies that exist on a political bargain or de-facto opposition basis, or criminal groups that are deemed to be enemies of the state. Islam as an all-inclusive way of life for people is now merely a reflection of whatever these new Islamic institutions dictate. The way in which these Islamic institutions came into existence and their political relationship with the state presents us with a very interesting yet “locked” paradigm of existence, whereby a huge gap forms between the state and society. In order to understand how this paradigm came into being, this paper will go through the process of explaining and analyzing the different groups, mechanisms and structures that changed the application of Islam in the Middle East. Using the work of Anwar Majid’s Freedom and Orthodoxy as a theoretical framework, the paper will first examine the rise of the Ulama class and their role in the process of Islamic state institutionalization. The paper will then move on to show how Islamic legal authority was transferred from society and given to the state, with the Ulama class being the new keepers of this authority, and how the colonial encroachment of Western laws was the vehicle of this transfer. That is not to say that pre-colonial Islamic societies were model ones and that colonialism is the direct cause of this transfer. Finally, the paper will examine the process of “institutionalization” and how this process manifested itself in the modern age.

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The Ulama Class

The Islamic Republic of Iran is the most obvious example of the privilege and power that comes with being part of the Ulama class. In Iran, there is an established hierarchy of power and knowledge wherein everyone who is a Muslim has a member of the Ulama class over him, who will interpret the religion for that person. This system not only ensures compliance, but it also ensures monopoly over Islamic knowledge by limiting and discouraging thought on Islamic affairs. Another method of monopolizing knowledge is mobilization and entry into this class; the city of Qom acts as an Islamic Shia center for mobilizing and training future members of this class. A common practice in Arab and Islamic states is the dogmatic schooling in social sciences and humanities and the re-framing of history. School systems and curriculums are constructed by the state and its institutions (Ulama institutions included), these curriculums encourage mindless recitation of “Islam” and the teaching of fabricated viewpoints as history. The mindless recitation of Hadith and Quran is the most dangerous because this effectively nulls people’s minds and perceptions of the deeper meanings, values and lessons of Islam. Children are taught to recite, but are then not taught the meaning of what they recite. Instead of becoming a way of life, Islam is reduced to grades based on how well you sound out the Arabic words while reciting Quran, or if you remember the narration chain of a certain hadith (the hadith itself; its many meanings and interpretations become secondary). This kind of schooling distances people from Islam and the study of Islamic history at an early age because, in their minds, they went through 10-12 years of studying it and growing up with it. They have already acquired all the Islam they need to live out their lives. The sad reality is that this process of state education is nothing more than the preliminary process of power exertion through monopoly of knowledge. It is merely one manifestation of the many subtle “micro-physics” of power. Students who study under this model effectively have their Islamic education halted once their school years are over. The model here is one where “Islamic knowledge” can only be disseminated through certain channels and by qualified individuals. Whilst this may seem natural, it is an abnormality in the process of pursuing Islamic knowledge since it strips away all agency of pursuing knowledge from the individual and transfers it to the Ulama. This is done by pushing ideas onto people that distance them from the actual sources and leaves all the work to be done by the Ulama; ideas such as distinctions between laymen and men of knowledge, ideas that limit those who do not speak Arabic from engaging with the primary sources of the religion, and ideas that discourage people from applying their own efforts in understanding and interpreting the religion, even if they do meet these qualifications. All these are common slogans that we grew up with as children. Being common is what made them powerful, and it was this initial powerful message that started the process of knowledge monopoly by the Ulama.

This process of initialization and education monopoly has a two-fold impact on the power of the Ulama class; the first one is that it actively allows the Ulama to shape and re-shape the Islamic discourse according to their views, political ties, interests etc. The second one is that it makes their class an exclusive one, a class that can only be entered after completing X years of study in Y institution, and adopting the general Z mentality. The X, Y and Zs of the Ulama class give them a huge advantage over any other group that claims to be Islamic, especially when these X, Y and Zs are institutionalized and

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3Ibid.

4Ahmad Al-Shuqairi, A young Saudi journalist and host of the show Khawter, alludes to this in his book where he compares and contrasts societal ethics and values that Islam calls for between the Arab world and Japan. The point he makes clear is that Japanese society has a lot of Islamic ethics built in to it by virtue of practice and that the Arab world merely says ‘recites’ these values on paper and in schools.

built around states. This way, these X, Y and Zs have more legitimacy than them. This process of institutionalization gives the Ulama class formality in Islam; giving up the ability to think in Islam and interpret it in a manner that is different to the Ulama is the unconscious "cost of formality" that is paid by Muslims in order to enjoy the benefits that are provided to them while being Muslims. Unlike De Soto’s economic conception of these benefits (that they take the material form of a firm’s ease of operation and ability to use public and private facilities), Islamic benefits are both material in the traditional sense and also spiritual. The promise of righteousness, heaven, 70–77 virgin wives, prosperity in life and the afterlife, and good health are all spiritual benefits that are granted only to those who follow the Islam laid out by the Ulama. Any deviation from this mold of Islam will lead to incurring the “costs of informalità”; again, these are both material and spiritual; material in that there is favoritism given to Muslims who adhere to the Ulama class’s Islam while everyone else gets marginalized.

An example of this is the monopoly of middle class/upper class jobs in Sudan; those who are affiliated with the Muslim brotherhood ruling party in Sudan are given access to these jobs and their day-to-day businesses run smoothly. Others, whether or not they are Muslim, who do not align themselves with the brotherhood in some form or other are met with permits, random violations, burning down of property, and random acts of vandalism. They are also attacked spiritually, being labeled as infidels, blasphemous, and eternal hell-dwellers. The ability to deal out these benefits comes only through the “formal” institutionalization of the Ulama class; this elevates their status and power, making them providers of Islam. The power they hold through this position as providers is directly tied to the power they hold over knowledge, as discussed previously. Having the power to dictate and codify Islam through a monopoly of knowledge and then having the power to assign and deal out “formal” benefits and “informal” punishments based on that version of Islam is the equivalent of establishing near-absolute power over Islam and Muslims. The root cause of this problem is the loss of communal or societal authority in Islamic law, and having all that authority centralized within a state structure, as will be discussed in detail. But, initially, one must show how the model of institutionalization as outlined above manifests itself in reality.

When heavy institutionalization of the power of the Ulama class takes place alongside the state, this class gains the ability to provide goods and services for people, along with their ideology and theology. When “ruling classes [venture] into programs of social reform and welfare” they automatically assume this role as a provider to the masses. This relationship, although positive for the masses in terms of material benefits, is very asymmetrical in terms of power structure and reciprocity. By the very virtue of being in a provider role, the upper ruling classes (Ulama class in this case) have the added credibility and legitimacy of the people’s “welfare” behind their ideologies and policies. They also hold in their hands the actual material resources that the people need in order to survive in a world that is shaped after the image of the West; a capitalist world where “politics and economics cannot be separated in a capitalist society, any more than religion and society in an Islamic one.” Not only does the Ulama class hold the keys to the resources, vis-à-vis the state, but they also claim sole ownership over a major component of Islamic and Arab societies, which is Islam itself. This duality in role and power structure gives them even more legitimacy and added power. This aspect of domination is always most prevalent in times of civil unrest or whenever there is need for political support. The Freedom and Justice Party (FJP) in Egypt represented the political arm of the Muslim Brotherhood

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6De Soto, Hernando. The Other Path: The Economic Answer to Terrorism. New York: Basic Books, 1989: 139-153. This process of institutionalization exemplifies what de Soto means as formal institutions that provide for people.


8Ibid.
and it was the party that won the elections. The FJP would rely on social mobilization through “bread votes,” they would come in as the “proper Muslims” and they would offer food and basic services (medical or legal) to people in the villages under their party name in exchange for support. This practice is also seen in the Gulf States in a more indirect manner. The actual political power in the GCC states lies in the hands of the monarch in power. But there is always a certain religious underpinning that is perpetuated under their rule. The monarchs are seen as the vanguards of their own Muslim societies, and this image is further upheld by keeping members of the Ulama class within the state sphere of influence instead of them being part of mainstream society.

Institutionalization

Of course, in order for these “providers” to exist, the institutions they build must have a basis in Islam, history and nationality. They must hold some form of initial legitimacy, other than the fact that they are Islamic (although, sometimes, merely being Islamic is enough). Anouar Majid argues that “the all-encompassing worldviews of Euro-American ideologies have resulted in the retreat of Islam and other-non European traditions into dangerous orthodoxies and a growing climate of suspicion, fear and terror.” This orthodoxy that Majid talks about becomes the legitimizing factor for establishing the many Islamic institutions of the Ulama and it also helps their ideological leanings become more extreme. Slogans like “Islam is the solution” become a common mantra that is both easily used and accepted by everyone. But these slogans only truly gain legitimate power once they are institutionalized and put side-by-side with the state. This process of institutionalization of the Ulama class has its roots in Islamic history: Caliphs and Sultans would have Ulama under their pay who, through their work, would effectively legitimize the political will of the ruling authority. This process was never clear-cut, but it was always combated by a class of local Ulama and muftis who emanated from within the society. The institutionalization of the Ulama near the state, and the elimination of the societal class of Ulama, began with the Western incursion and the re-definition of what constituted power politics, society and nations:

...the world’s non-capitalist societies were confronted by the choice of accepting or rejecting Westernization, the two main strategies available to colonized people since then. In much of Europe, the period is marked by the abandonment of tradition, the de-throning of monarchies and their replacement with nations (with tricolor flags inspired by the French model) and the politics of “public opinion.” Free trade (except in the protectionist United States), facilitated by the revolution in transport and communication technologies (railway, steamships, telegraphy) and the exploitation of academic scientific research in industry, was the mantra of the age. And so with increasing standardization, history ceased to be a collection of local histories and became world history.

The very idea of what constituted a modern state and society was now being shaped by an almost alien, antithetical force against Islam. This is what sparked the orthodoxy trend in Islamic thought; however, this incursion produced another form of movement among the rich and elite classes of Arab and Muslim societies. The “notables” of these societies adopted the incursion and built their states in a Western model, in which the attempt was

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10Majid, 108.
12Al-Mawardi, The Ordinances of Government, 21-23. A closer reading of this text shows how the author was actually reacting to political realities on the ground and then legitimizing the actions taken by the political institutes. The author was under the patronage of the Abbasid Caliphate.
13Hallaq, 10-12.
14Majid, 108.
made to centralize power in state institutions and take it away from local societies and communities. The British would rule by creating a class of Westernized elite under them. This class would be the main driving force when it came to the reformation of the modern “independent” state and it would naturally be modeled on the West. This process had the dual effect of further stratifying society (the noble elite class and the marginalized masses) and creating a power vacuum and role for Islam. Islam could no longer be applied in its traditional manner, wherein it was an integral part of the fabric of the societies. Islam itself was split, part of it fell into the culture category and the other part had to be institutionalized in order to be applied. This institutionalization has happened previously, and it resulted in the creation of the four madahib, which hindered the development of Islamic societies and divided them. Under the new state-based structure of society, Islam could only be applied as either formal or informal law if it was part of a ministry and had some sort of state legitimacy. The main crux of this process is the transfer of Islamic legal and political authority from the society to the state.

Transfer of Legal Authority

“Islamic Law was slowly transformed into a state law, where the legal judicial independence of the socially grounded legal profession was displaced by the corporate and extra-social agency of the modern state.” This is where we first see the initial loss of authority of Islamic law from the hands of the community to the hands of the state. This transfer occurred through several processes that were common to the colonial powers. These processes took the form of translating and codifying whatever form of local law existed and then slowly changing that to colonial law, or having colonial-appointed judges and scholars as legal authorities whose interests were mainly commercial. The transfer of authority essentially meant that the law would be, in part, defined by the interests of the state authority from which the law gains its own authority. In its very fundamental roots, Islamic law gained its entail authority from the knowledge and expertise of the muftis and their fatwas. Although the law would emanate from the “person” of the mufti, the authority behind the law was communal. The two main reasons behind the mufti’s law being communal are simple. First, the mufti himself was always a member of the local community and his interests were aligned with those of the local community that he served. This is mainly because the mufti would receive his salary or pension through the local communal waqf that was in charge of either education or mosques. Seeing and consulting with the mufti required no financial compensation to him and this made the “law” very accessible and informal to some extent where the communal interests of the law were intact. The mufti was essentially a member of the community he preached to, and this made him more connected to and in tune with the needs and nuanced ideology of the community he lived in. Second, the mufti’s opinion was never binding and there were lively debates and disagreements between muftis. Opinions would be weighed out in terms of authenticity, experience, knowledge etc. Not only did this create a culture of plurality and adaptability within the Islamic legal structure, it made sure that the authority behind the mufti’s opinion remained dispersed. By dispersing the authority of Islamic laws to the various views of different muftis, the grander source of authority still resided within the community as opposed to the centralized state. As mentioned previously, the mufti’s salary tied him to the community, this simple bond actually being more important than if it were simply a salary. The Ottoman reforms in 1826, which were modeled on European states, bought an end to the local waqfi by creating a ministry of endowments

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15Sirelkhatim
17Hallaq, 86.
18Ibid, 96.
19Ibid, 10-12
and having this ministry directly oversee and absorb all the waqfs into it. This allowed for the creation of salaried posts for local notables who would administer the endowments on behalf of Istanbul.”

This effectively translates to the practice of appointing muftis whose salaries and pensions were now granted by state favoritism. This simple process of putting the management of endowments into a ministry is in reality the loss of economic authority from the local communities to the centralized state.

Another aspect that defines the shift of Islamic legal authority from society to the state is the enforceability mechanisms that were instrumental to the law. Enforcement of laws upon a community, by definition, has to come from a “higher authority”. This follows the basic philosophical principals of the social contract. People will only give up their autonomy and ability to enforce their own version of what they see as “natural law” through consent of endowing this natural right to a higher authority. A community of individual members who enjoy equal standings cannot enforce any laws on each other.

In the context of Islamic law, we see that the Western philosophy of the social contract takes a slightly different form where there is an extra safe guard in place. Under the social contract theory, the enforceability of laws came from the state. The law itself would also emanate from the state and its bodies. In essence, the communities under the social contract theory entrusted the state with organizing their interests into laws, and enforcing those laws upon the community itself. The community had less autonomy but were instead living in a secure environment where they could lead prosperous lives.

This form of the social contract theory was more or less the modus operandi of the colonial states. The structure of the Islamic state was slightly different. The laws that governed most of the daily interactions between people and Islamic law would come from the muftis and their fatwas. The authority of this law, as explained previously, comes from the mufti and, by extension, the community. The authority enforcing the laws came from the state. The separation of the legal authority and the authority that enforces the law was set up. In classical Islamic legal systems, the authority of enforcing the laws came from the state. The separation of the legal authority and the authority that enforces the law was an integral aspect of keeping general authority with the community. The state would appoint the judges, or the qadis, who would pass their judgments relying on the body of laws that emanated from the community of muftis. Since the judges are appointed by the state, they have the legal authority of a higher power that is legitimate in the eyes of the people. In modern Islamic countries, we see both the legislative and enforcement judicial authorities under the direct control of the state.

Authority is derived from the interests of the entity that holds it. The colonial states did not seek to harmonize the community; they were more commercial in their approach, seeking only to enhance the colonizing states’ commercial benefit through the colony. Depending on who the colonizers were, we see different agendas in place. The British were more focused on creating extractionary institutions that merely transported the wealth of their colonies to their English mainland. The French would seek to effectively spread their own cultural ethos in the areas that they colonized (this led them to declare their prize colony of Algeria a French province). Whatever laws or institutions were set up in these colonial lands, these only served the grander purposes of the colonial state’s goal to increase its wealth and power. Even laws that would seek to educate the local population were essentially meant to establish hierarchies and social classes between the colonizer, the colonized, the provincial leaders, the middle class, and the peasantry.

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20 Ibid, 96-97.
22 Hallaq, 12-13.
law to protect its own trade and commerce as well as authority, than was the old regime.”

This was the natural way in which laws were structured in most of the British colonies at the time. Even after their independence, these countries would still suffer from remnants of the British colonial legal system. These remnants manifested themselves in the form of legal structures, heavy codification of local laws, state authority that has its own interests behind creating the laws, and phasing out the interests of the community in the process.

In colonial India, the British would always “phase out the indigenous experts whose loyalty was, in any event, considered suspect.” This simple act of phasing out the local due to lack of loyalty to the Crown effectively started to sever the community from its own history. The expertise and the knowledge of the local jurist, and the knowledge that he attained by studying the work of his predecessors, becomes lost in the process and the society loses a crucial link to its own past and history. Not only is the law itself lost, but some of the societal cohesion as well. Interacting with a local jurist who is from the community is very different from interacting with a British officer who applies Islamic law to Muslims, and Hindu law to Hindus. The dynamics change, the frequency of interaction becomes less, and (even though this is just a probability, but a high one at that) the intended function of the Islamic law (harmony within the community and oneself) becomes lost as well. Applying a law from the outside when it is meant to be created, debated, and applied from within the very nuances of the community harms the very nature of the law itself.

In my opinion, being inherently structured to emanate from within the local community, Islamic law serves the purpose of safeguarding the very basic principles that this law stands for and seeks to apply (communal cohesion, goodness in self and balance).

Indonesia underwent a similar process whereby we see the transfer of authority from society to state. However, in this context, the Dutch colonizers of Indonesia had a problem with both Islamic and the local oral form of communal law known as adat. “Much like Islamic law, adat was not intended to apply to the letter, but represented a guide to proper conduct or a minimal limit to what could be tolerated by a particular, local community.”

This principal of adat in Indonesian societies shows us how the authority was now further diffused within members of the community itself. Adat law was essentially oral and this meant that it required no writing or codification. The most unique aspect about adat laws was their communal aspect in terms of legal authority. The laws were not held by an elite educated class but were instead “diffused in the community” and were applied by the community itself. The authority of this law purely resided within the community and was applied along with Islamic law to create communal legal systems that were indigenous in their interests, authority and application. The Dutch decided that the oral adat laws needed to be written down, studied and codified. The Dutch legal imagination could not fathom the idea of having laws that were not written down. This simple act of writing down the laws and later bringing in Dutch oriental scholars in order to “discover” them and codify them was a death sentence to the very foundation of the adat laws. The Dutch even classified the adat laws as a science of its own, or a different kind of legal codex that needed to be studied and taught to the colonial aristocratic locals of Java as law, separate from Sharia or Islamic Law, and this was deemed by the Dutch to be a nuisance.

The codification of adat into law and then further developing this new form of law away from Islamic law created social and legal rifts in Indonesian societies that still exist till today. Adat and Islamic law were both meant to function without codification, and since they were similar in that regard, the two managed to co-exist and created a unique communal legal system that was explicitly Indonesian. Not only do we see the transfer of legal authority from community to state here, but we also see the devastating effects that

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25Hallaq, 86.
27Ibid, 92.
this has on populations. The legal codes that were written by the Dutch were then used into the future by local *adat* judges as canonical texts. The rich oral history that defined *adat* was now replaced by cut and dried legal codes that were put in direct competition with Islamic law, when the two historically reinforced each other. These post-colonial problems would start to emerge in the Arab world as well, and they would be based more on concepts of political institutionalization whereby Islamic law was only a tool to be used by the Ulama and the states.

At the beginning of the post-colonial period, the orthodox version of Islam was heavily despised and looked down upon by the new and emerging Arab states. Members of the Muslim brotherhood in Egypt were persecuted, the Islamic movement in Sudan was kept at bay from the political process, and the ruling bargain between the Al-Sauood and the Wahabis had not yet happened. Subsequently, these groups came to be, in some form or another, associated with state politics and gained their legitimacy through aligning with the state. The process of institutionalization was initiated mainly by the state in order to legitimize itself in an Islamic way to the people; a by-product of this act was that the Islamic institutions would also gain legitimacy for their actions and dogma. This was not the case, however, in all Arab and Muslim states, but it was the developing trend. With the coming of the modern state structure the Ulama class had to be brought into the system either in the form of a ministry of endowments, judicial courts, operating offices, or else become objects that the states set out to eradicate.

With the discovery of oil and opening up to the modern capital world, Saudi had to have a clear-cut stance with regard to its Islamic institutions. This need to institutionalize everything was widespread throughout the states of the Arab world, especially if they wanted to be taken seriously as modern nation states. The governments of these states had to in some way or another institutionalizes Islam in order to maintain it around them, or else lose it for good to the ill-defined and unimportant lines of culture. The Islamic institutions, of course, would lose a lot of their autonomy in the process and this loss would change the focus of these institutions from actually being Islamic to re-defining themselves with the states’ idea of what is Islamic. The National Islamic Front in Sudan and the Taliban in Afghanistan are perfect examples of this. Once these groups assume state control or power, the kind of Islam they implement is the most extreme, orthodoxical kind that could ever be imagined: the effective of this institutionalization then becomes apparent.

Majid’s argument helps us see what happens to Islam when it met with the Western incursion: the pressure to institutionalize gives the Ulama class an opportunity to finally gain legitimacy and authority at the expense of their autonomy and that of the local community in which they are supposed to operate. These institutions not only gain legitimacy for their ideas but they also gain the ability to actively codify and recodify their own interpretation and ideologies in law. This law is then either published as Sharia law or Islamic law, and becomes the basis for *ijtihad* etc. The law that is defined within these institutions then becomes the guidelines for what constitutes Islam and what does not. The problem with this, as mentioned above with the X, Y and Z model of the Ulama class, is that such institutions are exclusive in their thought process and ideology, the verysame ideology that was pushed to orthodoxy when these institutions were first formed still lingers on in every text that they publish. What is worse is that the power and hold that these institutions have over Islam continues to remain unchecked and to develop in a negative manner, insofar as it does not interfere with state policies. The most prominent Islamic institutions all concern themselves with petty matters that are limited mainly to the private sphere of people’s Islamic lives. Islamic economic, political or social reform is rarely ever discussed or taken into serious consideration compared with issues such as women’s veil (hijab) and sexual features (fatwas on what women can and cannot do).
Through codification, these institutions become somewhat eternal. At the same time, these institutions cannot do anything productive in a world where Islamic reform is most needed; publishing is useless and extreme fatwas about almost anything have become a common practice and nothing to be ashamed of, nor frowned upon. Kahled Abou El-Fadl talks about the concept of “dial-a-fatwa” and institutions that literally offer Islamic fatwas over the phone and on the spot to anyone who needs them.28 Issuing one small fatwa on a little matter requires the significant thought process of ijtihad that has been denied the people.

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