

# State and community in Islam: Rights, responsibilities and obligations vis a vis individuals<sup>1</sup>

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## Abstract

In this paper, we will try to explain how the idea of a state which is a servant of its individual citizens must be the supreme issue in nowadays Islamic community. The main thing is that we are not here to speak just about rights, responsibilities and obligations of the state and the community, but rather we are here to speak about the link between the state and the community. First of all, the main problem in Islamic history and in modern times is the question what should be the proper function of an Islamic state. If we give a definition, or a framework, of all these functions - rights, responsibilities and obligations - then we do not need to explain individual roles in an Islamic community, because when the key purpose of the State is known, then the responsibilities and obligations of individuals are also known. *Qur'an* and the *Sunna* teach us the fundamental rights of individuals: right to live, to have property and to freely choose what kind of life do they want to live, and it is well known that there is no place for coercion. Therefore, the supreme issue during the Islamic history, from early historical times of the *sahaba* to the present days is one question: what do we mean when we say "Islamic state" or "Islamic community"? We will explain in this paper that according to Islam the main purpose of a state is to protect individuals, first of all, their property, because we cannot speak about freedom without property rights. Therefore, we put the property right' on the pedestal, and as we shall see, all other rights and obligations are derived from them. When we speak about property rights we speak about everything: abortion, banking, censorship, child custody, child-raising practices, conscription, contracting, copyrights, crimes, eminent domain, food quality, freedom of speech, press, religion, association, immigration, political systems, privacy, school systems, taxation, etc. We are told that we must sacrifice our personal needs in order to maintain order in a society, but in Islam, a state is not God, but rather just an institution which has an obligation to protect our lives, property and freedom, not to be the machinery of social control.

## ***State: Necessary evil or machinery for good***

*Property is the most fundamental and complex of social facts, and the most important of human interests; it is, therefore, the hardest to understand, the most delicate to meddle with and the easiest to dogmatize about.*

*William Graham Sumner*

The main issue regarding the state and the community is putting them in their proper places. What is meant by this statement is that a state in ancient Greece was considered as political and social order where human nature fulfills its end. From this perspective, the state was considered to be organic, and it was like a human being. In *Qur'anic* context the state is not the end of our nature, on contrary, there is no such a thing as an organic state. State will not go to the heaven. This organic state is pyramidal-hierarchical

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organization of human relationships where members (citizens) of the community are part of the machinery which is the state. From Islamic perspective there are many definitions of the state, but to give a definition of something we need to explain its nature. So every definition of the state is proper one, but the question is not about defining it, but rather the question is what kind of option do we really want.

There are two basic options, that is, two approaches to the idea of state:

1. It can be viewed as necessary evil, because the state has a power of monopoly and power to coerce its subjects (citizens) to do some kind of involuntary actions. Therefore, if we consider the state to be necessary evil, we want to give much more power to citizens, and to have far more power in private hands.
2. As opposed to the first view, one can also view state as a body of good, therefore, Friedrich List said that we need the Statesman. Statesman would be another name for Superman. His actions are good for the society, because the Statesman knows what is the best thing to do. This kind of state is the traditional one, pyramidal structure with top-down management. The power is centralized and it is not very limited.

From these two types of state we can draw a few conclusions. First of all, in the first type, the state in its nature is not a good innovation. In reality, the state is not a human being; it is just a name for a social organization. What we mean by the state is that one group of people have a monopoly on power in their hands and that power is given to them by citizens. We (citizens) give to them the power to have a monopoly on law and protection, and the state in its nature is nothing but a form of organization. This kind of state can be recognized in the Roman period. According to Roman thought, the state must be limited with laws and legal organization. Hence, in comparison with the Greek notion of state, individual rights - like private property - were much better protected.<sup>3</sup>

The second type of state as a form of human organization is an organic one which is already mentioned. From this perspective, state is the highest product of human virtue. There is less freedom for an individual and family, so the private sector is less recognized in this kind of state.

In order to see which kind of state, or social organization, Islam favors, we as Muslims need to reinterpret our text sources, the *Qur'an* and the Prophetic tradition. To understand the basic nature of human actions and behavior, we need to see how we stand in contrast to the means of production or scarce resources.

In this paper, I will focus on the analysis of a relationship between a state and a civil society and the balance between them.

The main purpose of a state is to organize a society, and the meaning of organization is to know which kind of action is proper and which is not.

### ***State and community: issue of property***

Among many theoretical observations of Islam, those focused on Islamic social and political order appear to be especially problematic. Modern Muslims are faced with the challenge to define an Islamic political view. If we go back to the medieval period of Islam, we shall see Muslim scholars discussing about an ideal Islamic state from another perspective which is almost forgotten. In Muslim medieval structure of legal system, we can recognize polycentricism. It is the structure which is opposed to monopolistic statutory law. From this point of view, this interpretation of state institutions is immensely different than what we have today.

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<sup>3</sup> Ahmet Davutoglu, *Alternative Paradigms: The Impact of Islamic Western Weltanschauungen on Political Theory*, university Press of America, USA, 1993.

For example, early Muslim scholars recognize the importance of free choice and private property. Unfortunately, the theory of private property did not evolve in the following years, and it was discussed marginally. The conception of state and how would it be organized was the main issue of political Islam. Today, there are some Muslim scholars who recognize the importance of this medieval heritage.

First of all, when we want to describe a political and social order in Islam, we need to know that Islam in its essence is not against private property. On contrary, in the *sunnah* we find many arguments for private property.

In order to introduce an individual to the concepts of Islamic state and community, it is essential to explain the role of property in Islamic discourse. It is not rare to read that Islam, from perspective of a Muslim, has answers for every single problem we can imagine in our minds. To avoid the hypostatization the most important thing for all of us is to stay realistic. Why is this important and where is the link between reality and political Islam?

Islam is not here to say to us that there is an ideal conception and structure of community, because in Islamic theology there is just one ideal world and it is not this one. Therefore, it is important to be realistic and to see what we can change. It is not enough just to criticize something; the more important question is: what are the alternatives?

From this position, and with information about medieval Islamic community, we shall see that the definition of property is the answer for our questions. However, I am not here to discuss just property. Before any discussion, we need to explain the concept of property in its basic and essential terms. In this sense private property is the core of all our relationships. Everyone has some basic understanding of private property, but many of us never think about that very carefully.

Herman Hoppe said that *property is the most basic category in the social sciences*<sup>4</sup>. I would add that the first problem that emerged in the ideal world, in Eden, emerged because of the lack of knowledge about property. When Adem ate from the forbidden tree, he learnt his first lesson and it was about property.

That tree was not in his possession, it was the *boundary of order*. All discussions, on any issue, are essentially linked to *property*. Human beings are not static, they are dynamic, and therefore, they must have an interaction with each other, and every action entails exchanges of goods.

*Qur'an* emphasized this issue of human actions, and the main purpose of *Qur'anic* text is *nahy an al-munkar wa amr bi al-m'aruf*.

This sentence is mentioned many times in *Qur'an* and it is precisely the point of this divine revelation: to give a direction to the community to do profitable actions and to keep individuals from any actions that are harmful for their own bodies and their community as well.

There is a story about two Adem's sons in *surah al-Maida* which is important for our further discussion. Works on private property in Islam, rarely take this story in consideration, because this verse does not speak directly about private property. To understand why I mention the story in this context it is necessary to read what *Qur'an* said about Adam's two sons when one of them wanted to kill the other one:

*"If you ever stretch out your hand to kill me, I will never stretch out my hand against you to kill you, for I fear God, the Deity of the universe. Indeed, I would prefer that you bear my sin and your sin so that you become one of the Inferno's dwellers, and such is the penalty of the inequitable."*<sup>5</sup>

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<sup>4</sup> Hans-Herman Hoppe, *A theory of socialism and capitalism*, Ludwig von Mises Institute, Alabama, 2010, p. 18.

So, where is the link between this story and private property? Relations between individuals are based on the rules of property. In Islamic tradition private property is not unknown, but to speak about property which is based on the definition of private property as boundaries of order would be a new framework for Muslim mentality. In this story about Adem's sons where one of them extend his hands to kill the other one, we have a story about "self ownership" in a sense that we own our bodies. Thus, to kill someone means to attack private property. In order to create a political theory of Islam, our starting position should be this one.

Ali A. Allawi stated that: "*Many modern thinkers have argued that Islam lacks a tradition of political theorizing - at least in the western sense of the word.*"<sup>6</sup>

I would say that Islam lacks a tradition of private property in a sense of *contractual exchanges*.<sup>7</sup> It means that human actions and reactions are based on the definition of what property is, *how it should be controlled and by whom*.<sup>8</sup>

Our social system is based on our interpersonal relationships, and to understand our personal rights and obligations means to know the nature of property. To understand the conflict between Adem's sons in this *Qur'anic* chapter is to give a right definition of property. Adem's son, killed by the hands of his brother, gave us the answer: "*I will never stretch out my hand against you to kill you, for I fear God, the Deity of the universe.*"

In this interpersonal conflict, it is obvious that killing someone is not a right thing to do, but another thing, far more important, is to understand why we cannot go and kill someone if we want to. God created us and gave us the freedom to live and interact with other members of society. However, to know how to interact with others we need to know boundaries of order. In Islamic tradition those boundaries of order are known as *hudud Allah*.

In order to understand those boundaries, one needs to have some fundamental knowledge of the idea of *property*. The ultimate feature of any social system depends on property and its definition. The way in which one defines private property determines how will he act in the world.

If we want to speak about state and community, the first step is to give an answer to the main question and it is the definition of private property. Does one have the exclusive right of ownership of his body or not, depends on this answer. Because of that, private property is the core of our society. From one side, we have a compulsory system and from another one voluntary systems in which owners can act freely and transfer their property without any coercion. Property is the central key in our society, and because of that, Muslims are in great need for a definition of property.

This issue of property is not just political, it is primarily theological one. In what sense? To speak about individual relationships, and whether they have free will is a theological issue. From this point of view, classical Islamic scholars left a great heritage to us.

There are many projects which aim to reform Muslim mind; however, a project which establishes boundaries of order on private property is non-existent in our discourse. Prior to any deeper analysis of those boundaries of order, another fundament needs to be introduced into our discussion, and that is the free will.

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<sup>5</sup> Quran, 5:28/29. Translated by Ahmad Hamid and Mohamed Hamed, Dar El Shorouk , 2011, p. 132.

<sup>6</sup> Ali A. Allawi, *The crisis of islamic civilization*, Yale Universety Press, USA, 2009, p. 159.

<sup>7</sup> Hans-Herman Hoppe, *A theory of socialism and capitalism*, Ludwig von Mises Institute, Alabama, 2010, p. 8.

<sup>8</sup> Butler Shuffer, *Boundaries of order - private property as a social system*, Ludwig von Mises Institute, Alabama, 2009, p. 5.

### ***Free will as basic rule of life***

Islam considers all human beings as free individuals, born without sin. Therefore, the most fundamental issue is that in Islamic theology each person exists to act and to be responsible for their actions: *"And say: The Truth has come from your God. So let him who desires to believe to do so, and he who desires to disbelieve let him do so as well."*<sup>9</sup>

We can act in accordance with the Guidance of Allah or to act wrongfully, thus, human beings are always in some kind of action, and the free will is in the action.

Why is so important to speak about free will? If we accept as a fact that we have a free will to choose how to act, than we can speak about the conception of a civil society which is in the most cases self-regulated.

In this case Islam is very close to the classical liberalism which *is based on the conception of civil society as by and large self-regulating when its members are free to act within the very wide bounds of their individual rights. Among these, the right to private property, including freedom of contract and exchange and free disposition of one's own labor, is given a high priority.*<sup>10</sup>

To have a discussion about free will in a deeper sense, means to speak about religious, legal, market, and ethical issues. For example, in regard to market, the free will implies that each person has a choice to make a transaction of his property freely, without obstacles and coercion of some third party. Again, how we choose to and to organize our society depends on our definition of free will. If human beings lacked this capacity for making choices then they would be treated like things, without any moral sense.

Only a man has a possibility to be a trader and a free will to choose what kind of trade he will do, and he may make errors in his predictions, but in that case he will still learn from that experience. Thus, to be a subject in the market means to have a free will, and it must be allowed for human beings to make use of their free will.

So, to speak about society in first place, we need to do two things, to give a definition of free will and of private property. Thanks to this gift of free will, humans can make actions to be close to other subjects in a society, and to have any kind of interactions some boundaries must exist, and those boundaries are derived from the definition of private property.

To have free will means to have liberty, the freedom to choose one option, without any constraints. Therefore, when we have these notions defined - free will, private property and freedom to choose - then we can speak about state and community. Otherwise, any political theory or discussion on the concept of Islamic state and society is impossible.

### ***Private property as boundaries of order***

One must bear in mind that to deal with a community means to deal with different human beings who pursue their own self-interests. One way for a state to deal with community is to uniform it and to coercively direct its development in accordance with the interest of the state. Another solution is a state which recognizes the existence of different interests and respects it. The latter solution is definitely closer to Islam, and this is apparent from the fact that the early Islamic state had a polycentric legal system. When it comes to the issue of property one of the most fundamental question is by whom it is owned. Who has the control over the property?

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<sup>9</sup> Quran, 18:29. Translated by Ahmad Hamid and Mohamed Hamed, Dar El Shorouk , 2011, p. 364.

<sup>10</sup> Ralph Raico, *Classical Liberalism and the Austrian School*, Ludwig von Mises Institute, Alabama, 2012, p. 1.

*The principal disagreement between the advocates of private capitalism and the state capitalism has to do with whether the ownership of productive property shall remain in private hands or be confiscated by the state.*<sup>11</sup>

There is no political order based on the theory which is opposed to property. It is just the question in what extent a state has the control over the private property. For a Muslim society the most misunderstood issue is this one. No theory of private property approaches the property in this sense, in which private property is a sort of a boundary in our lives. Every political system deals with our lives, bodies, incomes, savings, education, etc.

In order to understand what is the purpose of state and community we need to set some lines, to separate community from a state, and the main way for doing so is private property. On one hand, there is a state which has a power to enter into an individual's personal space, into their private lives, and to set rules which must be obeyed. For example, Adam Muller said that a state is always in the centre and we must see all of our actions as a reaction to this *immortal thing which we call the State*.<sup>12</sup>

As we see, establishing private property as a boundary of order is not very simple. It depends on one's vision of the concept of State. For some political theorists, the state is in the centre of our lives, thus, we exist to serve to the state. However, Muslims must be aware that states do not go to the heaven, and that we are here to serve to God, not to the state.

From the Islamic theological perspective, a state is nothing but a means and not the centre of human lives. God did not create us to serve to the state, He created us to serve to Him, and that means to be independent individuals. Each human has a higher purpose in life than to serve to a state and for Muslims this purpose is to maintain the connection with their Creator. God tells us that He gave us this boon, which we call life, to serve Him: "*And in no way did I create the Djinn and mankind except to worship me.*"<sup>13</sup>

Muslims like to say that their religion provides the solutions for all aspects of human life but when someone asks them about the Islamic system of government, it is difficult to hear some concrete answers. The most important part of Islamic history is the period of al-Madinah. The population of al-Madinah was composed of different peoples with different religious backgrounds. Therefore, the Prophet did not create a centralized state with monolithic legal system.

Murad Wilfried Hofmann separates Islamic history in three periods:

*" - The Islamic-Jewish Confederation of al-Madinah, ruled by the Prophet of Islam, Muhammad (saws), from 622-632, that is 10 years.*

*- The so-called Golden Era of the 'four rightly guided caliphs, Abu Bakr, 'Umar, 'Uthman and 'Ali from 632-661, that is 29 years.*

*- The period since the rightly guided caliphs, i.e., 1340 solar years, during which the Muslims were ruled by caliphs, kings, emirs, sultans, generals, colonels, and revolutionary guides - a period characterized by tyranny, despotism, abuse of power, injustice and exploitation of the poor."*<sup>14</sup>

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<sup>11</sup> Butler Shuffer, *Boundaries of order - private property as a social system*, Ludwig von Mises Institute, Alabama, 2009, p. 278.

<sup>12</sup> Alexander Gray, *The development of Economic doctrine*, Longmans Green and CO., Great Britain, 1931, p. 251.

<sup>13</sup> Quran, 56:51. Translated by Ahmad Hamid and Mohamed Hamed, Dar El Shorouk, 2011, p. 666.

<sup>14</sup> Murad Wilfried Hofmann, "*Governing under Islam and the Islamic Political System*", American Journal of Islamic Social Sciences, Volume 18, IIIT, USA, 2001, p. 2.

The Prophet knew that every individual has his own free will to act as he wants to, so he created a confederation and a polycentric legal system. In some sense confederated system is a sort of anthrostate.<sup>15</sup> In this political system free association is allowed and there is a supply of different sets of rules. For example, Jews had their rules and laws whilst Muslims had their own, however, they all coexisted in one community. This kind of political order is interesting from a theoretical position, because generally, today we do not have polycentricism, demanded by the Islamic concept of state. We can see that in this kind of organization, non-Muslims have rights to live in accordance with the rules stipulated by their respective religions and their legal systems. One example of this polycentric legal system can be found in the famous book *Kitab al-Amwal*, written by Abu 'Ubayda, in which he discusses selling wine and pork. He concluded that non-Muslims are allowed to do so because wine and pork are in their hands and therefore they are the owners of that property. It is forbidden in Islam to make such a sale, however, they as non-Muslims are not subjected to the *sharia* laws, because they have their own legal systems and sets of rules which do not forbid such sales.<sup>16</sup>

It is often presumed that an Islamic government is monocentric and Islam monolithic, because great number of Muslim scholars considered that an Islamic government should be monocentric and the majority of them tend to presume a unitary state.

But there is another approach to political Islam, the one which is described as a polycentric plural society and which is close to minarchist political Islam.

*"Political Islamists have failed to fully articulate a minarchist political Islamic vision. This failure stems partly from the conventional view, widespread among Muslims and non-Muslims that governance should proceed from a central state apparatus."<sup>17</sup>*

From the point of view of the private property, the strong central government can easily be very oppressive and restricting for the free will of individuals and community, alike. In contrast, in polycentric legal system it is much easier to find the private property as boundaries of order. Minarchist political Islam is not something new in Islamic history, but nowadays it may look innovative.

Is it possible to maximize individual liberty and social order in this kind of state, with polycentric legal system, private property rules and minarchist political system?

To have private property means to possess something and the goods can be owned by individuals or corporations or political entities. From the beginning of our history we are witnesses of those clashes between civil and political institutions. To possess some goods means to have a control over those items and that means also to have some rights. Those rights should first be protected and the line between what is mine and what is yours should have to be very clear. That line must exist not just between individuals, as members of a community, but also between individuals and a state as a political entity.

Property ownership is a social concept so that *political and other social systems are defined by how property is owned within them.*<sup>18</sup>

In an Islamic state the private property must be secured, because liberty is defined by how much authority you have over your ownership. To understand the nature of a free and peaceful society means to answer

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<sup>15</sup> An anthrostate is a set of laws and institutions that govern the behavior of individuals, but which do not govern a behavior within geographic borders.

<sup>16</sup> Abu Ubayd al-Qasim ibn Salam, *Kitab al-amwal*, Dar al-hadj al-nabawi, al-Mansura, 2008, p. 1/109-112.

<sup>17</sup> Asma Afsaruddin, *Islam, the State, and Political authority: Medieval issues and modern Concerns*, Palgrave Macmillan, UK, 2011, p. 189.

<sup>18</sup> Butler Shuffer, *Boundaries of order - private property as a social system*, Ludwig von Mises Institute, Alabama, 2009, p. 126.

the question: do we own ourselves and what is the Islamic position to this statement? If we own ourselves, does it mean that we have an ultimate control over our lives? And what is the role of the government in our lives? Islam in its nature and tradition is much closer to the state where *our lives, property and honor are divine*.

*"Social conflicts arise out of sense that one's interests have been trespassed by another. As we have seen, the extent of our ownership interests is defined by the boundaries of what we claim. Since it is not an expression of our liberty to transgress the boundaries of order, our decision-making authority necessarily ends at our boundary lines. If each of us confined our actions to what is ours to own and control, conflict with others would cease. This is why peace and liberty are compatible only when considered within the self-limiting context of property ownership."*<sup>19</sup>

Civil society provides certain balance between central power of government and power of the people on the other side. This line between government and civil society is *foundation of liberal economics which found its expression in the rise of capitalism, free enterprise and private property*.<sup>20</sup>

Due to this liberal heritage, some Muslim scholars support this point of view that Islam also allows the right of private property, free enterprise, market economy, etc.<sup>21</sup> They hold the position that Islam in its core has a different moral dimension whose philosophic foundations are in *tawhid*, that is, God's unity and Sovereignty. For a Muslim, God's unity is very liberal concept because it means that individuals recognize absolute power in our Creator and not in the State. This fundamental foundation of *tawhid* means power of individual and civil society.

If civil society means decentralized power as check and balance of central power then this institution is well recognized in Islamic history. In Islam there is no such thing as kings or popes. On contrary, we began with the *ummah* which means a nation without boundaries, where all humans are members of the same family. This concept of one family is ideal and maybe utopian, but to know which ideals and foundations are in the core of Islamic religion we need to know that in Islamic conception of ideal society, cooperation and voluntary exchange is recognized as moral foundation. Cooperation between people on the basis of market exchange with open borders and fiscal conservatism was the main political agenda in first centuries.<sup>22</sup>

In order to speak about civil society, it first must be understood what it is. For liberal position, civil society is a different sphere from the State, one which operates according to its own logic and language, without coercion. This fundament of civil society is recognized in Qur'an:

*"Oh you who have believed! Do not devour your wealth between you in sinful pursuit, but better in mutual lawful trade, and do not kill yourselves, for indeed to you God is All-Merciful."*<sup>23</sup>

Mutual and lawful trade means voluntary exchange which is the core of civil society. To have this lawful trade means to have private property as a boundary of order. This voluntary exchange is far more different than the exchange between a state and community. A state has a power to take one part of our property

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<sup>19</sup> Ibid., p. 131-132.

<sup>20</sup> Will Kymlicka - Simone Chambers, *Alternative Conceptions of Civil Society*, Princeton University Press, United Kingdom, 2002, p. 173.

<sup>21</sup> Muhammed Arif, "Toward the Shari'ah Paradigm of Islamic Economics: The beginning of a Scientific Revolution", *The American Journal of Islamic Social Sciences*, volume 2, IIIT, USA, 1985, p. 79.

<sup>22</sup> Fathi Hasan Melkawi, *Manzum al-Qiyam al-'Ulya*, The International Institute of Islamic Thought, USA, 1981, p. 66.

<sup>23</sup> Quran, 4:29. Translated by Ahmad Hamid and Mohamed Hamed, Dar El Shorouk, 2011, p. 89.



and because of that, we need to have strong civil society which will be able to balance between the power of the State and the power of people.

### **State and community**

In Islamic system, public goods can be provided to the community by the government, as well as voluntarily by some individuals or organizations or through the private sector. Islam encourages provision of public good by nonprofit organizations and private sector. This concept of private property is the core of our discussion because it is the line between civil society and the State. For us, it is very important issue which goods will be provided by the public sector. In the time of the Prophet, the government was very limited:

*"A close look into the public finance of the early Islamic state, especially during the life of the Prophet when revenues were tight, may indicate that the main services provided by his government were defense, the judiciary, and running the state's administrative affairs. Thus any public borrowing by the Prophet, either in cash or in kind, may be assumed to have been for payment for such services. On the other hand, drinking water, mosque construction, feeding the poor, freeing slaves, and meeting some defense and foreign guest expenses were provided by philanthropic action in response to calls by the head of the state."* <sup>24</sup>

Our Islamic history teaches us that philanthropy might be a good instrument for providing public goods and services. One of good examples is the education system in the early Islamic period which was provided by the private sector, especially by the institution of *waqf*. Voluntary agents were there to provide public goods, and from that perspective Muslim society in the beginning was far more civil society, with a very small and limited government.

*"The provision of public goods by voluntary agents has been a characteristic of Islam from beginning. Upon the Prophet's arrival in Madinah, a mosque was built by voluntary labor and material. Defense activities started on a voluntary basis, as the faithful volunteered labor and weapons. The provision of lights in the mosque and food to the poor were also provided on a voluntary basis. The Prophet even called upon the Muslims to buy a local well from its owner and then allow the other Muslims to take its water for free. The institution of waqf (nonprofit trust) was also established to provide free drinking water to poor and the inhabitants of Madinah as well as to oversee certain local agricultural lands and wells."* <sup>25</sup>

Knowing our rights and obligations as a community means to know what kinds of goods are provided by the public sector and what are the ones, on the other hand, that should be provided by the private sector. God is satisfied with lawful trade without coercion and if the market mechanism is able to provide certain goods then it should do so, because as we know a state first has to collect revenues from its citizens through taxes in order to be able to provide the mentioned public goods or services. Moreover, even court officials or judges can be private as we find in the *Qur'an* in *surah Al-Nissaa*: " *And if you apprehend a dispute between them, then send for an arbitrator from his family, and an arbitrator from her family (...)*"<sup>26</sup>

If a state does not have financial ability to provide some necessary public goods as public administration, law enforcement, and defense, in that case the private sector can be taxed. *Sharia* law emphasizes the right

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<sup>24</sup> Monzer Kahf, "Budget Deficits and Public Borrowing Instruments in a Islamic Economic System", The American Journal of Islamic Social Sciences, volume 11, IIIT, USA, 1994, p. 203.

<sup>25</sup> Ibid., p. 204.

<sup>26</sup> Quran, 4:35. Translated by Ahmad Hamid and Mohamed Hamed, Dar El Shorouk , 2011, p. 99.

of private property so any coercive borrowing has to be justified on strong grounds of public interest<sup>27</sup> but there is to know that Islam demands from individuals to undertake social work and produce the goods that we need on a voluntary basis.

From the beginning of Islam, the state was limited and its obligation was to provide the rule of law when it comes to protecting citizens' contracts, defense and it was a kind of minarchist Islamic state with three main governmental institutions: military, police and courts.

On the other hand, civil society needs to obey to the *sharia* law so that every individual has the right of free cooperation with other members of the society. Civil society is the private sector, and all rights and obligations are settled in it. The role of a state is to protect individuals and their property rights and we cannot speak about freedom without property rights as boundaries of order. For example, if we speak about the education system, we need to know that civil society is there to provide that service in the way people want it. If the private sector does not have a financial power to provide that kind of good then it is up to the state to provide the public good, in this case education. Every individual needs education and the private sector is there to provide that and the problem of curriculum is also the private issue. If there is a number of non-Muslims in a society, they are free to educate themselves in a desirable and for them acceptable manner and the state is there to protect that freedom and contracts.

Therefore, the legislative power of the Islamic state is limited and the lines between the power of the state and the power of people is recognized in accordance to definition of private property. If the state in the time of the Prophet was ideal concept how to organize one society in accordance to the islamic sharia law in that case the answer is very clear. The power of the state is there to be limited with the power of the civil society which purpose is to provide public goods in manner of cooperation and lawful trade, and the state in the first place is there to protect each individual and to intervene if someone violates the rules of the property. In Islamic state every individual has a right to be protected, and to live his own life and it is against the sharia law to do harmful things to other members of society and violate the rights of the others. And the State needs to be with limited power and to provide peaceful environment to the citizens.

## Conclusion

To conclude this short paper, an Islamic state can only be minarchist as our analysis of the original Islamic state has shown. The idea of a strong state which has a right to coerce members of a society into submission is un-Islamic. The role of the state should be to protect lives and property of citizens and to ensure that contracts are respected. Private property is the core of the balance between the state power and the power of people. As we concluded, in the time of the Prophet the power of the state was very limited and voluntary actions of individuals were preferred in providing of public goods. Moreover, the state was providing certain public goods just on special occasions when the civil society was not capable of doing so. Islamic history teaches us that public goods, for instance the institution of education, were in the hands of the civil society (*waqf*). Each individual has a right of free cooperation and even non-Muslims can organize their lives in accordance with their religions and beliefs.

This concept of a minarchist Islamic state was implemented in the time of the Prophet; however, today we are witnessing the existence of welfare state, in which the government can intervene arbitrary into the lives of citizens. Muslims should tend to achieve the ideal minarchist model of state, as introduced by the Prophet, as much as possible.

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<sup>27</sup> Monzer Kahf, "Budget Deficits and Public Borrowing Instruments in a Islamic Economic System", The American Journal of Islamic Social Sciences, volume 11, IIIT, USA, 1994, p. 216.

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