



# Translating Concept of *Al-Hakimiyya* (Sovereignty) Into Practice: A Study on the Implementation of Islamic Law During the First Muslim Conquest of Islamicjerusalem (Bayt Al-Maqdis)

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An investigation on the Muslim concept of *al-Hakimiyya* (sovereignty) highlights judicial aspect as among the important one. Therefore, this research attempts to examine approaches taken by Muslim rulers in translating concept of *al-Hakimiyya* by choosing one of the most conflicting region, namely Islamicjerusalem (Bayt al-Maqdis). By investigating the implementation of Islamic law in Islamicjerusalem during the first Muslim conquest of this region, this paper affirms that Muslims had strategically and successfully translated *al-Hakimiyya* concept into practice by upholding Islamic law as the backbone of Umar's Assurance of Safety to the people Islamicjerusalem. This also guided them in initiating appropriate measures to judiciously implement Islamic law by appointing qualified judges and establishing police department since the first Muslim conquest led by <sup>c</sup>Umar Ibn al-Khattāb.

**Keywords:** *Al-Hakimiyya*, Islamic Law, Islamicjerusalem.

## 1. INTRODUCTION

One of the main elements within the theoretical framework of the Muslim concept of sovereignty is judicial aspect.<sup>27</sup> With regard to this element, Islamicjerusalem as Muslim territory advocates the supremacy of the law, based on the core Muslim teachings, namely, the Qur'ān and Sunnah in ensuring the stability of the government, and remaining on the right path. This paper attempts to investigate approaches initiated by Muslims in translating concept of *al-Hakimiyya* by examining the implementation of Islamic law in Islamicjerusalem during the early Muslim period. The researcher attempts to employ multi-disciplinary research methodologies in conducting this research. While, historical research methodology is used to investigate significant historical accounts, Islamic research methodology will also be employed to provide a basis of Muslim understandings towards the concept of *al-Hakimiyya*.

## 2. THE FIRST MUSLIM CONQUEST AND JUDICIAL IMPACTS ON ISLAMICJERUSALEM

The researcher argues that the first Muslim conquest of Islamicjerusalem led by <sup>c</sup>Umar (13–23 AH/634–644 CE) brought certain

judicial indications, mentioned through <sup>c</sup>Umar's Assurance of *Amān* (Safety) for the people of Aelia. 'In the name of God, the most Merciful, the most Compassionate. This is the assurance of *Amān* (Safety) which the servant of God (the second Caliph) <sup>c</sup>Umar (Ibn al-Khattāb), the Commander of the Faithful, has granted to the people of Aelia...'.<sup>9,13</sup> It can be seen that <sup>c</sup>Umar granted the Assurance of safety in his capacity as the Muslim sovereign. Indeed, the Assurance itself conveyed certain legal implications that involved the people of Aelia and the Muslims; these were known as the rulings of *ahl al-dhimma*.<sup>22</sup> Accordingly, the researcher attempts to examine the main legal implications that affected the people of Aelia due to the first Muslim conquest.

## 3. ACCEPTANCE OF ISLAMIC LAW

With the acceptance of the Assurance, this means that the people of Islamicjerusalem accepted Muslim sovereignty. Implicitly, it also means that they agreed with the implementation of the general Islamic laws. The general Islamic laws here refers to the Islamic rulings regarding contracts such as bribery and monopoly, as well as the rulings regarding personal security such as killing and injury attack.<sup>22</sup> It is worth mentioning here that it became obligatory for the Muslims to follow Islamic law as religious duties; the non-Muslims were required to follow such laws due

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to the implementation of legal aspects of Muslim sovereignty only. Understandably, without having sovereignty, Muslim rulers would have no rights to implement such a law on the non-Muslim subjects.

Gil claims that the implementation of Islamic law was implicated in distinguishing between Muslims and non-Muslims in Islamic Jerusalem, the latter being indicated as having inferior status before the law. It appears they were discriminated against under Islamic law. He argues that Islamic law did not come to a uniform conclusion regarding the degree of responsibility for the life of a *dhimmī*; that is to say, if a Muslim kills a *dhimmī*, is he liable to the death penalty, or must he simply pay blood money, as for the killing of a Muslim? (Gil 1996: 113)

The researcher found Gil's arguments are unjustifiable since the Muslim government gave its citizens (Muslims and non-Muslims) the right to absolute and complete equality in the eyes of the law. Al-Būtī, a contemporary Muslim scholar (1999: 8–14), explains that the uniformity of their rights and obligations was the foundation of equality in Muslim society, in which the rights and obligations of any one person were neither greater nor lesser in any way than the rights and obligations of another person. He adds that Islamic Jerusalem is the best model with regards to the treatment of non-Muslims by a Muslim government. As far as the non-Muslim citizens of the Muslim state were concerned, the rule of Islamic law about them was been very well expressed by the Prophet, 'Beware! Whosoever is cruel and hard on a contractee, or curtails his rights, or burdens him with more than he can endure, or takes anything of his property against his free will. I shall myself be a plaintiff against him on the Day of Judgment' (al-ʿAzīm Ābādī 1997: (8) 211, al-Albānī 2000: (2) 261). In other words, their lives and properties were as sacred as the lives and properties of the Muslims. The Prophet emphasizes the duties of Muslims towards the *dhimmīs*, threatening anyone who violates them with the wrath and punishment of Allāh. Narrated by Abū Bakr, the Prophet says, 'If anyone kills a man whom he grants protection prematurely, Allāh will forbid him to enter paradise' (al-ʿAzīm Ābādī 1997: (7) 313, al-Albānī 2000: (2) 174).

Gil furthers his argument that Islamic laws of inheritance exerted considerable influence on the legal practices among Jews and Christians. They were permitted to act according to their own laws, as interpreted by the leaders of the community and their judges. However, in the Islamic law of inheritance here was an opening for Jewish heirs to appeal to gentile, that is, Islamic courts, in the hope that the *qādī's* (judge's) verdict would afford advantages not available in a Jewish court, especially with respect to women (Gil 1996: 114).

With regard to this argument, which highlights the inclination of certain Jews to a Muslim court, the researcher found that Gil is influenced by his personal bias. Noticeably, Muslim rulers gave freedom and wide opportunity to their *dhimmīs* citizen to appeal to their own courts as well as to the Islamic courts. This practice was based on the Qur'ānic verse:

"...therefore if they (People of the Book) come to you, judge between them or turn aside from them, and if you turn aside from them, they shall not harm you in any way; and if you judge, judge between them with equity; surely Allah loves those who judge equitably" (5: 42).

This had also been so since the first Islamic state founded by the Prophet Muhammad himself. According to Ibn Hishām

(d. 218 AH/833 CE)(1999: (2) 159), there was an educational centre for Jews of Madīnah, namely Bayt al-Madāris. The Prophet used to visit the centre and engage with discussion about Islām. When a Jewish man and a Jewish woman were brought before him in a case of adultery, he called on the *rabbis* of the centre to consult their knowledge of the Torah for the punishment applicable in that case. However, Ramadān (1970: 154) notes that Islamic law would have been applicable for them if both decided to be judged under it. Thus, the Muslim sovereign's commitment toward sustaining justice within the multicultural and multi-religious community is undeniable. The researcher agrees with Ramadān (1970: 146) that the Islamic code of law is unique in that it prescribes complete judicial autonomy for other subjects.

The second legal implication: those who became the *dhimmīs* through the *Amān* (Assurance of safety), such as the people of the Walled City and the city of Ludd, could not be considered as captives, whereas those who were captured by force such as the people in the city of Caesarea would become prisoners. Accordingly, the people of the Walled City and other cities of Islamic Jerusalem that conquered peacefully such as Ludd, Yubnā, ʿAmwās and Bayt Jibrīn were free to perform their daily activities with full protection from the Muslims, subject to their payment of the *jizya*.<sup>2</sup> On the other hand, the latter became prisoners and were treated as captives. Muhammad Ibn Saʿd reported from al-Wāqidi that around 4,000 prisoners from Caesarea who were sent by Muʿāwiya to ʿUmar had been ordered to settle in al-Jurf. Some were used as clerks and labourers by the Muslims, while others were distributed among the orphans of the Ansār. ʿUmar also ordered two captives from Caesarea to take the place of two dead servants of the daughters of Abū ʿUmāma Asʿad Ibn Zurāra.<sup>2</sup>

One can argue that the differentiation of the treatment might be considered as discrimination among the subjects of Muslim sovereign, and could even show unjust treatment. However, the researcher argues that the treatment of the prisoners from Caesarea was justifiable as they showed strong resistance towards the Muslims and could only be reduced by storm after seven years under siege.<sup>2</sup> Moreover, Caesarea was the Byzantine capital of Palestina Prima (Abū al-Rubb 2003: 53), the last city where the Byzantine armies and their supporters were centred in historical Syria after having departed from the conquered cities in the region such as the Walled City of Islamic Jerusalem.

In addition, it seems reasonable that the captives serve the Muslims as a possible way of keeping them under control, away from any access to the Byzantines. At the same time, captives could be introduced by the Muslim approach to dealing with political, social and daily affairs as well as being inculcated with a belonging and towards collectively developing the country. Furthermore, these prisoners of war were retained by the Muslim government until their state agreed to either receive them back in exchange for Muslim soldiers captured by them, or pay certain amount of ransom on their behalf. If their government did not respond to either of these conditions, the Muslim government used to distribute them among the soldiers of the army that had captured them (Syed 2003: 103). The researcher argues that this approach seems more compassionate and appropriate than imprisoning them in detention centres or jails and, later on, inhumanely subjecting them to forced labour. It can be seen that Muslim rulers were guided to preferring a solution that would

allow prisoners of war to be engaged with the people and have direct contact with individuals. Notwithstanding their ‘freedom,’ they would be put under particular guardians, who were ordered to treat them humanely. Indeed, this kind of solution would benefit both parties, prisoners of war and the guardians, in the cause of harmonious development of the country—a long way away from an outrageous way of disposing of them.

Another legal implication is based on the last part of ‘Umar’s Assurance, ‘The contents of this assurance of safety are under the covenant of Allāh, are the responsibility of His Prophet, of the Caliphs, and of the Faithful if (the people of Aelia) pay the tax according to their obligations.’<sup>9</sup> From this it can be derived that the Muslims were required to commit to the Assurance and not to breach its conditions. Allāh says:

‘(But the treaties are) not dissolved with those unbelievers with whom you have entered into alliance and who have not subsequently failed you in aught, nor aided any one against you. So fulfil your engagements with them to the end of their term: for Allāh loves the righteous’ (9:4).

In other words, it was forbidden for Muslim rulers in particular and for other Muslims to breach any condition of the Assurance. Accordingly, Muslim rulers showed their respects and obedience towards the legislation derived from the core Muslim teachings. Thus, no account mentions that the Muslim rulers were going to breach the terms of the Assurance, which could cause any harm to the non-Muslim subjects in IslamicJerusalem. The researcher found an example of how firm the Muslim ruler was in dealing with Muslim aggressive acts against the *dhimmī*. Hamīdullāh<sup>20</sup> reports that ‘in the time of the caliph ‘Umar, certain Muslims had usurped a piece of land belonging to a Jew, and had constructed a mosque on the site. Learning the news, the caliph ordered the demolition of the mosque and the restoration of the land to the Jews.’ He quotes Couchri Cardahi’s<sup>a</sup> comment on this, ‘this house of the *Bayt al-Yahūdī*, still exists and is well-known.’ Therefore, the researcher argues that their deep understanding of the significance of the judicial aspects of sovereignty over the people possibly shaped their approach towards the people of IslamicJerusalem.

On the other hand, since Muslims were obliged to respect the terms of the Assurance, the non-Muslim inhabitants of IslamicJerusalem were also required to respect them. In short, if the *dhimmīs* breached the conditions of the Assurance, this would affect the status of the *dhimmī*, which could cause them to be no longer protected. It was reported by ‘Awf Ibn Mālik that he caught a Jewish man in IslamicJerusalem because he had attempted to rape a Muslim woman. When he reported this to ‘Umar at al-Jābiya, ‘Umar asked him to crucify the Jewish man, who was a *dhimmī* and said, ‘It is not for this that we granted the Assurance... O, people do fear Allah in the covenant of Muhammad, whoever among them did like this, no longer protection for him’ (al-Hindī 1998: (4) 210–211). Hence, the researcher argues that the weightiness of the Muslim caliphs in highlighting the significance of obeying the legislation and implementing it assisted greatly in preventing people from breaching the contract. Undoubtedly, maintaining the law and regulations could minimise the disputes and could develop a peaceful environment.

<sup>a</sup>A Christian of Lebanon, in a series of lectures on Private International Law of Islam, delivered at The Hague, 1933 has commented on that account.

#### 4. APPOINTMENT OF QĀDĪ (JUDGE) RESPONSIBLE FOR ISLAMICJERUSALEM

After discussing the legal implications which can be derived from the document of ‘Umar’s Assurance, it seems important for the researcher to investigate the mechanism employed towards implementing those legal requirements. The researcher found that ‘Umar had shown a great concern regarding the implementation of Islamic law in IslamicJerusalem since the first Muslim conquest. According to Abu Zur‘a al-Dimashqī (d. 281 AH/894 CE), Ibn ‘Abd al-Barr (d. 463 AH/1070 CE) and Ibn Hajar al-‘Asqalānī (d. 656 AH/1258 CE), ‘Ubāda Ibn al-Sāmit (d. 34 AH/654 CE) was appointed by ‘Umar as a judge and teacher in IslamicJerusalem. Al-Maqdisī (d. 390 AH/1000 CE), Ibn Manzūr (d. 711 AH/1311 CE), al-Dhahabī (d. 748 AH/1347 CE) and al-Hanbalī (d. 927 AH/1521 CE) also agree with this statement and note that ‘Ubāda was the first Muslim judge in IslamicJerusalem.<sup>1, 25, 26</sup>

The researcher argues that ‘Umar himself gave high priority to legislative matters since, for him, protecting everyone’s right was a supreme duty. Therefore, he appointed ‘Ubāda to that post as he was a companion of the Prophet, and was well known for his extensive knowledge, and for being pious and just.<sup>4</sup> In addition, Muslim caliphs such as ‘Umar and ‘Uthmān (24-36 AH/644–656 CE) employed a policy that the appointment of judges was the caliph’s responsibility. Although the Muslim territories expanded after the conquest of IslamicJerusalem and other parts of historical Syria, Muslim caliphs paid very great attention to the appointment of judges. Even in the case where they gave authorisation to the judges to deal with cases of dispute, they were still concerned with keeping their right to look at anything very complicated and difficult for a judge to solve.<sup>21</sup>

#### 5. ROLE OF POLICE IN ISLAMICJERUSALEM

The researcher found that under Muslim sovereignty in IslamicJerusalem, Muslim caliphs not only paid great attention to the legislation, they also showed a deep concern to establish the mechanisms needed towards enforcing the legislation appropriately. Therefore, Muslims initiated the establishment of a particular office, namely *al-shurta* (police) to achieve that purpose. Although some Muslim sources such as Khalīfa Ibn Khayyāt (d. 240 AH/854 CE) and al-Ya‘qūbī (d. 284 AH/897 CE) date the establishment of the offices back to the time of ‘Umar and ‘Uthmān, Donner claims that these narrations are weak since there is no clear evidence to support the argument (Donner 1989: 248–249). Nevertheless, the researcher argues that the police office could have existed from the first Muslim conquest of IslamicJerusalem, as in most Muslim territories, the police offices had been established since the time of ‘Umar. For example, Abū Mūsā al-Ash‘arī, the governor of Basra during the time of ‘Umar had developed that office immediately after being sent as the first governor there. It seems unacceptable that ‘Umar neglected the importance of establishing such an office in IslamicJerusalem because he was well known for his deep concern towards ensuring safety; he was even the first Muslim caliph, to introduce the system of the patrols.<sup>21</sup> In addition, the role of police office was of crucial significance in assisting the judges in finding out criminals and executing penalties. Thus, the researcher argues that the police forces might possibly have been formed from the first

Muslim conquest of IslamicJerusalem, although the institutionalisation of the office in a more appropriate structure came later on during the time of Mu'āwīya Ibn Abū Sufyān (Donner 1989: 251–252).

## 6. CONCLUSION

Upon investigating the implementation of the judicial aspects of sovereignty over the people of IslamicJerusalem, the researcher arrived at few conclusions. The researcher found that the Muslim caliphs attempted to implement the Islamic law in IslamicJerusalem with full respect to others' beliefs. While the Islamic law was used in common affairs and shared-interests matters, Christian and Jewish laws were given autonomous rights for internal jurisdiction within both communities in the region. Indeed, all people had equal rights and everyone was equally responsible before the law as all the personal, civil, political, social, cultural and economic rights of an individual were guaranteed under Islamic law.

The researcher also found that Muslim rulers of IslamicJerusalem paid great attention to establishing a suitable mechanism for facilitating the implementation of the law. Therefore, suitable and qualified candidates were appointed to fill the posts of chief judges and judges for all Muslim territories including IslamicJerusalem. In addition, they also established other institutions such as the police to enhance the effectiveness and efficiency of legal mechanism. Due to their understanding of the significant position of just law, they also showed a strong commitment to implementing it over the people of IslamicJerusalem away from any kind of oppression and maltreatment.

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