Territory and Jurisdiction

Introduction

Territory and jurisdiction in Islamic law during the medieval period is at once a straightforward consideration, comparable to other legal regimes, as well as a more complicated proposition because of its unique features. On the one hand, Islamic law during this period operates as the legal system of empire, addressing limitations that physical borders place on the jurisdiction and enforcement of law. On the other hand, Islamic law serves as the guiding framework for a community whose identity was premised on "belief," not just borders, where religion often functioned as the primary, legally cognizable status. These dual, sometimes dueling, elements appear throughout medieval juristic discussions as they navigate the "tension between Islam as a universal moral imperative and Islam as a territorially based political identity."[1] Despite increasing variation over time, Islamic law retained a uniformity in the medieval period such that a Muslim could be assured the law would apply to them in the same way wherever they were in the empire.[2]

The link between territory and the Islamic enterprise dates to its earliest period when migration (*hijra*) away from territory emerged as an initial strategy for preserving the new faith in the face of hostile actors. The major migration of this period took place in 1H/622CE, when Muḥammad and his earliest followers emigrated 280 miles north from the city of Mecca to Yathrib (later renamed Medina).[3] This move proved so consequential that it later came to mark the first year of the Muslim calendar. While medieval historical chronicles recognize the event as stemming from the nascent community's need to find territory secure from religious persecution, an additional outcome was the establishment of Islam's first body politic. Whereas in Mecca a spiritual community had grown on the margins of society, in Yathrib/Medina the same community now gained physical territory that it had to govern. The ensuing period saw an exponential growth in laws to govern affairs inside these new borders; law that was at times inspired by divine revelation and other times by pragmatic considerations.[4] This period of

[1] Khaled Abou El Fadl, "Islamic law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Centuries," *Islamic Law and Society,* v. 1, n. 2 (1994): 164.

[2] Marshall Hodgson, *The Venture of Islam, Volume 2: The Expansion of Islam in the Middle Periods* (Chicago: University of Chicago Press, 1977), 123.

[3] This was preceded by a smaller migration of Muslims, but not Muḥammad, to Abyssinia in 615 CE when the situation in Mecca had first significantly deteriorated. See, Ira M. Lapidus, *A History of Islamic Societies,* 3rd ed. (New York: Cambridge University Press, 2014), 35.

[4] Some scholars have suggested that establishing a new polity, law or legal system was not likely part of Muḥammad's plan prior to arrival in Medina, but that the new reality of that context led to these developments.

robust legislation further extended Islamic law's jurisdiction over the community, provoking many questions about the role of territory and its constraints.

Muslim jurists raised and answered these questions in the discourse they produced during the medieval period, especially between the 8th and 13th centuries. They were able to generate guidance relating to territory and jurisdiction without any significant constraints from the core sources of Islamic law: the Qur'ān and Prophetic tradition. The sources certainly provide some justification for positive law that jurists eventually developed but are relatively sparse in their discussion of territory and jurisdiction. In fact, central ideas relating to territory, such as the dichotomy between Muslim and non-Muslim land, were constructs jurists created on their own, largely without reference to scripture.[5] Although scriptural sources were not instrumental to the jurists' development of territorial considerations in Islamic law's international legal regime, those sources are still instructive in locating the potential origins of key ideas. For instance, the Qur'ān speaks explicitly about circumstances of oppression that might lead people to wrongful acts or prevent them from practicing their faith. In such instances, it obligates Muslims to migrate away from these contexts, asking rhetorically: "was not God's earth ample enough for you to emigrate elsewhere?"[6] Subsequently, the Qur'ān indicates that anyone who does not migrate from oppressive territory will not receive God's protection. The only exception is for people too helpless and powerless to emigrate.[7] This verse sets the stage for an underlying concern in the juristic discourse on territory and jurisdiction: refuge. The Qur'ān seems to suggest that the most important virtue of a place of residence is the safety it provides to one's person and one's ability to freely worship. Unsurprisingly then, the parameters of the Muslim polity's jurisdiction, as subsequently outlined by jurists, is "coextensive with secure, nonoppressed Muslim inhabitation."[8] Not only is one obligated to relocate to territory that provides this security but choosing not to do so relinquishes any responsibility the community, and by extension the polity, might have to protect. The sources

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One dates the rise of law around five years after the arrival in Medina. Wael Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005), 20.

[5] Éric Chaumont, "*Dār al-islām* et *dār al-ḥarb:* Quelques réflexions à propos de la géographie théologico-politique Sunnite Classique, en regard du *Kitāb al-Muhaddab d*'Abū Isḥaq al-Šīrāzī (m. 476/1083)," in *Dār al-islām/dār al-ḥarb: Territories, People, Identities,* eds. Giovanna Calasso and Giuliano Lacioni (Leiden: Brill, 2017), 150. There are other ways in which territory is invoked in the Qur'ān, but with less of a connection to the international context, the focus of this volume. For instance, jurists utilize guidance from both the Qur'ān and Prophetic tradition to preserve the sanctity of Mecca, regulating what is permitted within its boundaries. See generally Brandon Wheeler, *Mecca and Eden: Ritual, Relics and Territory in Islam* (Chicago: University of Chicago Press, 2006).

[6] See Q 4/al-Nisāʾ:97.

[7] See Q 4/al-Nisāʾ:97-99.

[8] Manoucher Parvin and Maurie Sommer, "Dar al-Islam: The Evolution of Muslim Territoriality and its Implications for Conflict Resolution in the Middle East," *Int'l J. Middle East Stud.* 11, no. 1 (1980): 3.

then set a framework for understanding territory as intimately connected not simply to belief, but the "freedom" to believe. This thread emerges throughout the juristic discourse on these matters.

The goal of this chapter is to explore essential ways in which the ideas of territory and jurisdiction are invoked in the juristic discourse of medieval Islamic law. A helpful method to do this is by examining how territory impacts duty, which, in my estimation, is the core analytic framework for the Islamic legal tradition.[9] An individual's location is often a key factor in determining the duties they owe and are owed. The chapter begins with a discussion of how and why jurists classify different types of territory in the medieval period. It then moves to discussing the primary context producing territorial classification: warfare. Jurists consider defense of the Muslim polity an essential duty required of both the population and ruler. Territory features prominently in how jurists construct the details of fulfilling the duty to fight (*jihād*). Third, the chapter turns to examine the correlating idea of migration (*hijra*) away from territory where one might suffer harm to their person, property or religious practice. In essence, if one is unable to physically assert control over territory through fighting, then removing oneself from that territory requires consideration. This section also explores how jurists examined questions pertaining to a Muslim polity's jurisdiction over and responsibilities to those remaining behind in non-Muslim territory. The chapter concludes with a discussion of the duty to rescue foundlings, abandoned children often orphaned in the aftermath of war. This also serves as an example of how territory and jurisdiction factor into unexpected areas of medieval Islamic law. Regardless of where the discussion takes place geographically, the interplay between considerations of borders and beliefs permeates juristic thinking on these matters.

Classification of Territory

Arguably the most prominent discussion of territory in medieval discourse occurs when jurists attempt to distinguish between different types of territory. As with the classification of individuals in Islamic law, belief as status under the law forms a key basis for how jurists classify different types of territory. Categorization based on belief was a way for many Muslim jurists to have a "useful instrument in defining rules" governing the relationship between Muslims and non-Muslims in territory where Islam was not sovereign.[10] Generally speaking, jurists divide the world into two broad territories: land where Islam, and thus belief, is sovereign (*dār al-Islām*) and land where Islam is not sovereign (*dār al-kufr* or *dār al-ḥarb*). Discussion on these two territorial

[9] See generally, Adnan Ahmad Zulfiqar, "Collective Duties (*farḍ kifāya*) in Islamic Law: The Moral Community, State Authority and Ethical Speculation in the Premodern World," PhD diss., (University of Pennsylvania, 2018).

[10] Giovanna Calasso, "Introduction: Concepts, Words, Historical Realities of a "Classical Dichotomy," *Dār al-islām/dār al-ḥarb: Territories, People, Identities,* eds. Giovanna Calasso and Giuliano Lacioni (Leiden: Brill, 2017), 2-3.

categories is widespread in the legal literature even though jurists never precisely define either term nor do they devote specific sections to discuss them.[11] In addition to the absence of agreement on the definition of terms, there is no uniformity "on the number of categories into which the world" should be divided, leaving the classification of territories "laden with ambiguity."[12] The terms are resilient but contain "different meanings and functions" based on who is using them, during which time period and in what context.[13]

As noted, *dār al-ḥarb* most often signified territory under non-Muslim sovereignty though its literal translation is as "territory of war." The term appears in a Propehtic ḥadīth describing Mecca prior to Muslim conquest but is elaborated in later centuries by jurists from the Ḥanafī legal school who discuss ways in which territory under Muslim rule, technically *dār al-Islām,* might be re-categorized as *dār al-ḥarb* or equivalent to non-Muslim territory. Abū Ḥanīfa (d. 150/767) notes three conditions that would lead to re-categorization of a Muslim territory: if law other than Islamic law is implemented, in a territory contiguous with non-Muslim land and the land no longer serves as a refuge for its inhabitants.[14] Early jurists tended to prefer Muslims reside among other Muslims to better access religious knowledge. That said, most did not chastise those that chose to reside in non-Muslim territory.[15]

In subsequent centuries, three distinct views developed on the relationship between Islam and its sovereign territory. One position arose among 6th/12th century Mālikī jurists in Spain and North Africa in response to rising threats faced by Muslim populations and sieges of Muslim territory. Their position conflated the religion of Islam and territory where Islam was dominant. As a result, it became unethical, if not sinful, for Muslims to reside in non-Muslim lands.[16] A different position was generally taken by 7th/13th century Ḥanafī and Shāfi'ī jurists residing closer to the central Islamic territories who distinguished Islam from its territory. They permitted residence in non-Muslim territory, even encouraged it at times as something morally

[11] Calasso, "Constructing and Deconstructing," 2.

[12] Abou El Fadl, "Islamic law and Muslim Minorities," 161. For instance, some jurists took six different positions on *dār al-Islām* including terms like *dār al-khilāf, dār al-'adl, dār al-ikhtilāṭ, dār al-nifāq, and dār ahl al-iqrār.* Others also added terms such as *dār al-waqf*, *dār al-Īmān, dār al-hudna* and *dār al-muwāda.* Abou El Fadl, "Islamic law and Muslim Minorities," 161fn56. For a complete lexicographical array of terms referring to these territories, see Giuliano Lancioni, "Concluding Remarks: The Terminological Array," *Dār al-islām/dār al-ḥarb: Territories, People, Identities,* eds. Giovanna Calasso and Giuliano Lacioni (Leiden: Brill, 2017), 423-24.

[13] Calasso, "Constructing and Deconstructing," 15.

[14] Hamid Algar, "Dār al-Ḥarb," *Encyclopædia Iranica*, VI/6, pp. 668-669; available online at https://www.iranicaonline.org/articles/dar-al-harb-the-realm-of-war-lands-not-under-islamic-rule-a-juridical-term-for-certain-non-muslim-territory-though-of (accessed online at 22 June 2021).

[15] Abou El Fadl, "Islamic law and Muslim Minorities," 164.

[16] Abou El Fadl, "Islamic law and Muslim Minorities," 163.

required.[17] The third position fell in between the first two and was associated with Ḥanbalī and Shīʿī jurists in the 6th/12th century. It advocated a preference for residing in Muslim territory but allowed for it still to be ethical to prefer living among non-Muslims.[18]

Defending and Expanding Borders

While a fuller discussion of war and peace in medieval Islamic law occurs elsewhere in this volume, territory and jurisdiction cannot be discussed without some treatment of the duty to fight (*jihād*). This is especially true as it relates to territory classifications connected to belief. As one scholar notes, the rapid expansion of Islam is at least partly credited to the fact that the Muslim "conviction to 'strive' for God to make their belief manifest by carrying out jihad was so strong: it seems to have been as intrinsic to belief as any other religious duty."[19] Medieval juristic discourse on territory requires gaining a sense of how the concept operates in the context of warfare. In particular, the defense and expansion of the frontiers (*thughūr*), the outer edges of the empire, expose many key features of the relationship between Islamic law and territory.[20] From an early period, at least the 3rd/9th century, jurists in central Muslim lands conceptualized engaging in warfare (*jihād*) as a collective duty (*farḍ kifāya*).[21] This meant that the duty was only obligated for a sufficient number of people within a locality but became individually obligated (*farḍ ʿayn*) if certain circumstances arose. For collective duties, the obligation is technically carried by the entire community; however, as long as an adequate number of people in that community perform the duty it is satisfied for everyone else. This is the standard formulation of these duties that has widespread agreement among jurists of different schools.[22] Beginning in

[17] Abou El Fadl, "Islamic law and Muslim Minorities," 164.

[18] Abou El Fadl, "Islamic law and Muslim Minorities," 163-64.

[19] Chase Robinson, "Conclusion: From Formative Islam to Classical Islam," in *The New Cambridge History of Islam, Vol 1: The Formation of the Islamic World, Sixth to Eleventh Centuries,* ed. Chase F. Robinson (Cambridge: Cambridge University Press, 2011): 686.

[20] For a good summary of academic studies on the role of the frontier in Islamic history, see Robert Haug, *The Eastern Frontier: Limits of Empire in Late Antique and Early Medieval Central Asia* (London: I.B. Tauris, 2019), 6-9.

[21] Some scholars have preferred "communal duty" as the definition of *farḍ kifāya*. See for instance, Suleiman Mourad, "The Concept of Just War in Islam," in *The Concept of Just War in Judaism, Christianity and Islam,* eds. Georges Tamer and Katja Thörner (Berlin: de Gruyter, 2021): 113. My own preference is for the broader term "collective duty" since it captures the fact that these duties can exist outside of a community. In certain circumstances, the duties can attach to unconnected individuals who happen to be in a location giving rise to the duty. For instance, strangers on the shore of a river who see someone drowning.

[22] For instance, *see* Shāfiʿī, *al-Risāla*, ed. Aḥmad M. Shākir (Beirut: Dār al-Kutub al-ʿIlmiyya, n.d.), 362 & 366; Shaybānī, *Kitāb al-Kasb*, 71; Ibn Ḥazm, *Muḥallā,* vol. 2, 143; Zarkashī, *al-Bahr al-muhīṭ,* vol. 1, 243-244. Some scholars link the development of a "classical theory" around *farḍ kifāya* directly with Shāfiʿī's attempt to address the need for generating fighting forces on the frontiers without the ruler's permission while also preserving a role for "constituted authority." Michael Bonner, "Some Observations Concerning the Early Development of Jihad on the

the 5th/11th centuries a greater number of jurists in Iraq, Egypt and Spain began to elaborate on more intricate aspects of the *jihād* duty including the role played by frontier towns. Territory featured prominently in the doctrine they developed, particularly in determining when the duty to fight is triggered, who is required to undertake it and when the duty ends.

There are two primary ways in which the duty to fight is activated: either by a Muslim polity deciding to engage in an offensive military campaign or when Muslim territory comes under attack from hostile forces. Scriptural verses pertaining to *jihād* provide the initial impetus for discussing the role of territory and the different responsibilities that arise based on one's proximity to the border.[23] Among the earliest jurists to discuss this dynamic was the Iraqi Ḥanafī scholar Abū Bakr al-Jaṣṣaṣ (d. 370/981) who distinguishes frontier territory in trying to reconcile potentially conflicting verses of the Qur'ān that at once seemed to permit and admonish not participating in the fight.[24] He suggests that these verses contemplate distinct circumstances that trigger different types of duties. In particular, he notes that an enhanced duty exists for people who reside on frontier lands bordering enemy territory as compared to those who reside in the interior.[25]

Jaṣṣaṣ argues that the Qur'ān's verses address two different situations involving people on the frontier. First, individuals in frontier lands are obligated to take up arms because of their geography. He explains that the *jihād* duty converts from collective to individual even in hopeless situations, where the possibility of victory is minimal. Jaṣṣaṣ engages an interlocutor's question as to whether it is better to fight *jihād* against nonbelievers or seek religious knowledge, since the Qur'ān suggests both options are possible. Jaṣṣāṣ responds that for those situations in which there is a fear the enemy will "disgrace" Muslims or overpower them or when an insufficient number of people are available to defend the land, *jihād* becomes an individual duty

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Arab-Byzantine Frontier," *Studia Islamica,* No. 75 (1992), 28. The classical theory also developed as military service became increasingly connected to "one's status as a Muslim." Bonner, "*Jaʿāʾil* and Holy War in Early Islam," 46.

[23] There are several verses in the Qurʾān pertaining to *jihad*, as discussed in more detail by Suleiman Mourad in his chapter for this volume.

[24] Jaṣṣaṣ, *Aḥkām al-Qurʾān,* vol. 4, 318. Rueven Firestone suggests that juristic writing on *jihād* was consumed by the "seeming contradiction" in the *jihād* verses and jurists subsequently came to espouse an "evolutionary theory" of war as an explanation. In this theory, "incremental escalation in militancy" corresponds with "incremental growth and development of the religious community," such that "divine authority for total war" is withheld from Muslims until they acquire the capacity and organization to undertake it. Hence, Muslim scholars concluded that "scriptural verses regarding war were revealed in direct relation to the historic needs of Muḥammad during his prophetic mission." Firestone, *Jihad*, 50. The theory might also be framed as a pragmatic one, advocating for a less aggressive posture when the community's capabilities (and size) made it a less effective fighting force against any opponent.

[25] Jaṣṣaṣ, *Aḥkām al-Qurʾān,* vol. 4, 318.

and is preferred over the pursuit of knowledge.[26] If frontier residents refuse to engage in fighting or are incapable of defending their territory, then the *jihād* duty is triggered for everyone else until the borders are secure. In this scenario, since the primary group responsible for undertaking the duty has been derelict, legal responsibility for defense extends further to inhabitants beyond the frontier.

The second scenario is where the front line is maintained and people in the border region carry out the *jihād* duty. In this case, the duty does not extend to anyone else assuming the frontier fighters are sufficient to repel any threats. Jaṣṣāṣ explains that where people in the frontier fear the enemy, lack the ability to resist or fear for their lands and offspring, then the duty automatically extends to the entire "community," which must respond promptly.[27] For Jaṣṣāṣ the duty here is collective; anyone from the "interior" lands (i.e. lands beyond the frontier) who wishes to join the fight may do so, but it is also permissible for them to stay behind.[28] Those who stay behind are not without responsibility; Jaṣṣāṣ requires these people to remain "alert" so they are ready to respond should they be called on to assist in the frontier.[29]

In the fifth/eleventh to the seventh/thirteenth centuries, jurists in the Islamic heartland expand the role of territory even further in the doctrine defining the *jihād* duty. The underlying question they pursue is what obligation exists in those situations where a particular locality, usually on the frontier, comes under enemy attack. Incursion into Muslim territory represented one of the situations that transformed *jihād* from a collective duty to an individual obligation for the people facing imminent hostilities. Most jurists consider the duty transformed for the people in the immediate vicinity of the attack, factoring in its duration and intensity as well.[30] Typically, caliphal authority played a key role in sanctioning *jihād*, but for jurists an imminent, existential threat to Muslim territory, and the lives within it, required frontier populations respond to the

[26] Jaṣṣaṣ, *Aḥkām al-Qurʾān,* vol. 4, 318.

[27] Jaṣṣaṣ, *Aḥkām al-Qurʾān,* vol. 4, 311.

[28] Jaṣṣaṣ, *Aḥkām al-Qurʾān,* vol. 4, 310.

[29] Jaṣṣaṣ, *Aḥkām al-Qurʾān,* vol. 4, 312.

[30] For example, Mawārdī, *al-Ḥāwī al-kabīr,* vol. 14, 113; Qarāfī, *al-Dhakhīra,* vol. 3, 387-89; Baghawī, *Sharḥ al-Sunna* vol. 10, 375; and, Kāsānī, *Badāʾiʿ al-ṣanāʾiʿ,* vol. 7, 98. While many scholars place the duty on the "inhabitants" of the frontier generally, Ghazālī mentions women specifically, presumably to stress a more important point about the rights that third parties might have on an individual and the corresponding duties they are owed. Ordinarily, a woman would need permission from a guardian, a husband or parent, to participate in *jihād* when it is a collective duty. However, in situations where an attack has occurred and there is no time to prepare, third party rights are suspended in favor of the locality's need for defense. In other words, everyone, regardless of their social status, is required to fight and the ordinary constraints that previously limited an individual's involvement are no longer valid. Ghazālī, *Wasīṭ*, vol. 7, 11. Shīrāzī also creates a similar exemption. Shīrāzī, *Muhadhdhab*, vol. 3, 269-270.

invading enemy without delay.[31] This burden shifts outward from the frontier based on how capable the town's population is in defending itself. If they lacked the capability to defend the territory then the nearest population was obligated to buttress the frontier forces; if they prove incapable of repelling the enemy, then the obligation moved further out to the population in the next closest territory.[32]

For instance, the Iraqi Shāfi'ī jurist Mawārdī (d. 450/1058) stipulates that *jihād* becomes an individual duty when forces are necessary both to resist enemy seizure of Muslim-controlled lands and to help secure Muslim lives and property. The duty is elevated from a collective one requiring some participation to an individual one mandating everyone participate. Unlike other jurists, Mawārdī does not attribute the change in duty to whether the enemy enters Muslim territory or whether they are still on the outskirts. For him, the key factor is the persistence of the attack: a continued attack threatened to place possession of frontier territory in enemy hands.[33] The Andalusian Mālikī jurist Ibn ʿAbd al-Barr (d. 463/1071) agrees, noting that if the enemy attack continues, then the duty becomes individually assigned to "every person in that vicinity" especially those with the "requisite strength necessary to achieve victory" regardless of whether they are "lightly armed" or "young."[34]

The precise point when an enemy attack was classified as "commencing" depended on when the enemy was considered to have "entered" Muslim territory. In other words, what violation of territorial integrity was severe enough to enhance the duty to fight such that broad participation was required? For most jurists between the fifth/eleventh and seventh/thirteenth centuries, in various Muslim lands, an attack definitively occurred when enemy forces entered within the boundaries of a Muslim city. At this point, it was mandatory for all inhabitants to come to the city's defense.[35]

A related question arises as to whether any duty exists prior to an actual invasion? In other words, at what proximity to Muslim territory does Islamic law's duty to fight get triggered? For example, the Iraqi Shāfi'ī jurist Yaḥyā b. Sharaf al-Nawawī (d. 676/1277) mentions three scenarios prior to the actual entry of the enemy that are sufficient to convert *jihād* from a collective to an individual duty. The first scenario is if enemy forces set foot on any part of

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[31] Ibn Qudāma, *al-Kāfī,* v. 5, 497; Ghazālī, *al-Wasīṭ*, vol. 7, 12; Nawawī, *Rawḍa al-Ṭālibīn*, vol. 7, 416. Kāsānī notes that while normally any *jihād* duty can only be discharged with specific instruction from the "leader" (*imām*), in cases of imminent attack the inhabitants of a besieged town do not need to wait for the state's instruction as long as they are capable of handling the hostile situation themselves. See Kāsānī, *Badāʾiʿ al-ṣanāʾiʿ,* vol. 7, 98. See also

[32] Ghazālī, *al-Wasīṭ*, vol. 7, 12.

[33] Mawārdī, *al-Ḥāwī al-kabīr,* vol. 14, 112-113. It should be noted that he continues to hold it as a collective duty for everyone else.

[34] Ibn ʿAbd al-Barr, *Istidhkār*, vol. 14, 292.

[35] Baghawī, *Sharḥ al-Sunna* vol. 10, 375.

Muslim territory. The second is if they shed blood within the territory, presumably even without any physical incursion. The third is when the enemy sets up camp outside the gates of the city but does not actually enter it.[36]

In addition to the duties of the frontier inhabitants, some jurists in the sixth/twelfth century with personal connections to the frontier also sought to explain the level of responsibility for those residing beyond the frontier. Typically, their position was that participation was required from those residing beyond the frontier if either the population in a border town is unable to defend the land or there is an insufficient number participating in the fight. For instance, the Shāfiʿī jurist Abū Ḥāmid al-Ghazālī (d. 505/1111), who eventually resided in Iraq, but was from the eastern frontier province of Khurāsān, requires non-frontier participation only if there is insufficient capability to address the enemy threat without it.[37] Similarly, another Shāfiʿī scholar, Al-Ḥusayn b. Masʿūd al-Baghawī (d. 516/1122), also from Khurāsān, states that Muslims who reside outside a besieged town, but are the nearest fighting force, will be collectively bound to join the fight if the townspeople under attack cannot adequately fulfill the duty. However, if the townspeople are sufficient, then "outside" help is classified as optional, but not as a duty.[38] The Central Asian Ḥanafī scholar ʿAlāʾ al-Dīn al-Samarqandī (d. 593/1144), from north of Khurāsān in Transoxiana, considers *jihād* to be a collective duty but configured differently for the people who are on the borders between Muslim land and hostile territory. If the people on the front lines do not participate and the people in nearest proximity to them don't participate, then the *jihād* duty becomes required for everyone who is able, either in the form of fighting or supplying provisions.[39]

Another area jurists explore is the extent to which Islamic legal duties for the defense of territory also extend to offensive actions into enemy territory. From as early as the second/eighth century, jurists begin asking what duty remains after a territory has been adequately defended but a ruler wants to aggressively pursue the enemy into foreign territory. Their discussion highlights a tension between *jihād* as a pietistic duty and *jihād* as a mechanism for achieving a ruler's stately ambitions. At the technical level, jurists address the question by constructing arguments on whether to interpret certain imperative clauses in Qur'ānic verses

[36] Nawawī, *Rawḍa al-Ṭālibīn*, vol. 7, 416. He does note that this opinion is not shared by everyone, for instance, Ibn ʿAbī Hurayra believed it was still a collective duty. The Mālikī jurist Abū Bakr b. al-ʿArabī (d. 543/1148) conceives of it slightly different. He says the obligation is triggered based on the relative dominance of Islam in a particular locality. If Islam, by which he likely also means the Muslim population, is pervasive in a territory, then the obligation is collective; if the enemy is dominant, then fighting is prescribed for everyone. Ibn al-ʿArabī, *Aḥkām al-Qurʾān,* vol. 1, 205.

[37] Ghazālī, *Wasīṭ*, vol. 7, 12.

[38] Baghawī, *Sharḥ al-Sunna,* vol. 10, 375.

[39] Samarqandī, *Tuḥfat al-Fuqahāʾ*, vol. 3, 294.

on *jihād* as "invitations" or "commands." Early authorities, such as the Iraqi scholar Ibn Shubruma (d. 144/761), rejected giving the ruler any privilege to obligate *jihād* into enemy territory because he viewed the verses as invitations not commands.[40] However, most jurists in the medieval period understood the *jihād* verses as commands, which led them to contemplate the extent to which a ruler could use this command to extend the duty beyond protecting the borders of Muslim territory.

Consequently, questions arose over how far the state can extend its authority over the *jihād*-duty. For instance, would a fighter still be duty-bound to engage in battle if an enemy no longer poses a threat? Specifically, does a fighter's duty persist after Muslim lands and populations have been secured? Further still, does the duty extend to fighting in other territory and does it remain intact until the enemy converts to Islam or pays a poll tax (*jizya*)? According to the reported opinions of early authorities in the Hijaz and Iraq during first/seventh and second/eighth centuries, if Muslim lands and populations are secure, then neither the leader nor those following him are required to engage in an offensive attack on the enemy; the *jihād* duty can be completed without pursuing the enemy beyond Muslim territory.[41] Others disagree, arguing that the leadership and fighting force must persist in their assault until conversion or payment of a poll tax takes place. This is the position held later by Jaṣṣaṣ's colleagues and was reportedly also the position of some important Companions of the Prophet such as al-Miqdād b. al-Aswad (d. 33/654) in Mecca and Abū Ṭalḥa (d. 34/654) in Medina.[42]

On these questions, Jaṣṣaṣ acknowledges that if enough inhabitants of the frontier are able to gather into an armed force and repel the invaders then there is technically no additional duty.[43] However, possibly as a sign of his desire to strength an increasingly weakened caliphate during his time period, Jaṣṣaṣ privileges the ruler's authority to utilize the *jihād* duty for additional strategic objectives beyond territorial defense. If the ruler desires offensively engaging the enemy in its territory, then Jaṣṣaṣ obligates it on individuals.[44] Mawārdī, also an Iraqi jurist in the following century but from the Shāfiʿī school, shares this sentiment, noting

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[40] Jaṣṣaṣ, *Aḥkām al-Qurʾān,* vol. 4, 311.

[41] Jaṣṣaṣ, *Aḥkām al-Qurʾān,* vol. 4, 312. This includes Ibn ʿUmar, ʿAṭāʾ b. Abī Rabāḥ, ʿAmr b. Dīnār and Ibn Shubruma.

[42] Jaṣṣaṣ, *Aḥkām al-Qurʾān,* vol. 4, 312.

[43] Jaṣṣaṣ, *Aḥkām al-Qurʾān,* vol. 4, 311.

[44] Jaṣṣaṣ, *Aḥkām al-Qurʾān,* vol. 4, 311. In his view, any imperative verb should, by default, be interpreted as a command not an invitation. Ibid., 313. The "legal effects" of the imperative form is a "major point of disagreement" in Islamic legal theory (*uṣūl al-fiqh*). If there is a command to "do this" then should it be considered as falling "within the legal value of the obligatory or also within that of the recommended and the indifferent?" Wael Hallaq suggests that a "minority" of jurists held that the imperative form could equally indicate "obligation, recommendation and indifference," others said that it only signified "recommendation" and the majority said the imperative was "an instrument by means of which only obligatory acts are decreed." Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunnī uṣūl al-fiqh* (Cambridge: Cambridge University Press, 1997), 48.

that, in addition to defending Muslim lands, the collective duty to fight extends to military campaigns within non-Muslim lands. Unlike the defensive context though, pursuit of an aggressive *jihād* against a hostile enemy can only be triggered for a commander on the frontier if he receives permission from the ruler (*lam yakun lahu an yabtadiʾ jihād illā bi-idhni al-khalīfa*).[45] The Mālikī jurist Ibn ʿAbd al-Barr (d. 463/1064) in Spain also notes that *jihād* involving military expeditions with troops into enemy territory is a collective duty as long as the capacity to defeat the enemy exists for those who participate.[46]

Jurists across the schools tie territory intimately to the role of the ruler, outlining Islamic legal pre-requisites for a ruler that include responsibilities over the land. For instance, the Egyptian Shāfiʿī jurist Abū Isḥāq al-Shīrāzī (d. 475/1083) requires the ruler to "gather an army to remove disbelievers from Muslim lands." Subsequent to that, the ruler must place "trustworthy commanders" (*umarāʾ thiqāt*) throughout the retaken territory to secure it and must also provide security by building "fortresses" (*ḥiṣn*) and "digging trenches" (*ḥafr khandaq*).[47] His contemporary and fellow Shāfiʿī in Iraq, Mawārdī, says a ruler must possess certain qualities including the bravery and courage to "defend territory" (*ḥimāyat al-bayḍa*) and "wage war against enemies" (*jihād al-ʿadūw*).[48] Another Iraqi Shāfiʿī a century later, Ghazālī, mandates that every leader raise an army annually to undertake military excursions in order to demonstrate "Islam's presence" and put forward a "compelling propagation."[49] He notes that these campaigns

[45] Māwardī, *Aḥkām*, 44. If a ruler (*imam*) appoints a commander (*amīr*) over a particular portion of territory, then that person acquires certain responsibilities including the obligation to wage war if the territory borders a hostile neighbor. It should be noted that Māwardī uses the terms *imāmah* and *khalīfa* interchangeably throughout the text. Ibid., 41. As Mona Hassan points out, Sunni scholars would refer to the leader as "caliph (*khalīfah*) in his capacity of succeeding the Prophet's guardianship over the community's affairs, *imām* in reference to his leadership position, or *amīr al-muʾminīn* for his role in commanding the faithful." Hassan, *Longing,* 99.

[46] Ibn ʿAbd al-Barr, *Istidhkār*, vol. 14, 292. Two centuries later, the Egyptian Mālikī jurist Shihāb al-Dīn al-Qarāfī (d. 684/1285), argued *jihād* was not only a collective duty, but one that, once engaged, must be carried out until the specific adversary has either accepted Islam or paid the poll tax. Qarāfī, *Dhakhīra,* vol. 3, 385.

[47] Shīrāzī, *Muhadhdhab*, vol. 3, 270.

[48] Māwardī, *Aḥkām*, 5.

[49] Ghazālī, *Wasīṭ*, vol. 7, 6. Some have argued that *jihād* actually functioned as a way to legitimate a ruler, especially after the loss of political unity in the late 8th century. Rudolph Peters, *Jihad,* 5. That said, it may not be accurate to view this annual *jihād* as a "functional rule." As Khaled Abou El Fadl has pointed out, at times a jurist might believe that they are articulating an "actual social or political practice," but in reality it is simply "aspirational in nature." Hence, in the case of yearly *jihād,* El Fadl argues that a misreading or change in the context in which the jurist's statement was made may mean that the functional rule is actually aspirational. However, if the statement was meant as a moral prescription then the rule continues to remain valid regardless of the circumstances. Khaled Abou El Fadl, "Between Functionalism and Morality: The Juristic Debates on the Conduct of War," in *Islamic Ethics of Life: Abortion, War and Euthanasia,* ed. Jonathan E. Brockopp (Columbia: University of South Carolina Press, 2003), 104.

should not focus broadly on regions under the control of disbelievers, but rather advance on areas of strategic importance.[50]

Other schools also held similar positions. The Levantine Ḥanbalī scholar Ibn Qudāma (d. 620/1223) reasons that a minimum of one military engagement per year is necessary because a tribute (*jizya*) must be collected from "non-Muslim subjects" (*dhimma*) annually "in exchange for providing them protection, which is an alternative to waging war against them" (*wa-hiya badalun ʿan al-nuṣrah fa-kadhālik mubdaluhā wa-huwa al-jihād*).[51] In Egypt, the Mālikī jurist Qarāfī reports that ʿAbd al-Malik mandated that the ruler send troops on a military expedition (*ighzāʾ ṭāʾifa*) against the enemy once a year, either led by the ruler or a deputy of his.[52]

The protection and expansion of territory plays a pivotal role in legal guidelines that jurists developed for the *jihād* context. Territorial considerations determine when and for whom jurists trigger the duty to fight. These considerations not only establish when jurists believe the duty commences, but also when it ceases. In the process, territory also comes to define the responsibilities and powers jurists assign to the ruling sovereign in the Muslim polity. In fact, jurists consider the ability to defend territory as an essential quality every ruler must possess and regularly demonstrate through proactive military engagements along the frontiers. The dichotomy that emerges in the war context between territory where Islam has dominion and where it does not is how medieval jurists come to divide the world. It is this same division that also factors into another key idea in Islamic law that invokes territory and jurisdiction: migration (*hijra*).

Migration

Returning to the idea of migration mentioned earlier in the chapter, arguably one of the defining discussions on territory in the medieval period concerns the conditions that necessitate moving away from an area. Often, the common feature of these areas was the presence of a non-Muslim sovereign. In determining the necessity of migration, jurists inquired as to whether Muslims in a particular non-Muslim territory had jurisdiction over their own affairs. For some jurists, it was simply not possible for Islam to meaningfully exist separate from a territory where Muslims were sovereign. Hence, these jurists required all Muslims to emigrate should they find

[50] Ghazālī, *Wasīṭ*, vol. 7, 6.

[51] Ibn Qudāma, *Kāfī,* vol. 5, 457. He goes on to note that based on need, the *jihād*-duty can be carried out more than once a year. He does note that not all engagements with "non-Muslims" are divided into either getting tribute or fighting. For instance, fighting might be excused (or postponed) if these non-Muslims are received as guests, if it is necessary to wait for reinforcements, if the supply chain on the road to battle is not sufficient, if delaying the fight will allow them time to be tempted to become Muslim, etc. Ibid., 457.

[52] Qarāfī, *Dhakhīra,* vol. 3, 386. The purpose would be to "call them to Islam" (*yadʿūhum ilā al-islām*), "stop the harm they are causing" (*yakuffu adhāhum*), make Islam known to them, fight them till they enter the faith or pay a tribute.

themselves outside of a polity controlled by Muslims.[53] For other jurists, the question was whether a particular territory adequately allowed for the performance of religious obligations or, conversely, whether the territory threatened to cause the individual to lose their faith.[54] If the territory allowed the practice of Islam, then there was no requirement for a Muslim to leave and some jurists even argued that it might be an obligation to stay in order to propagate the faith.[55] As for the territory where a Muslim was expected to emigrate to, for most jurists its prime feature was a "domain in which the law of Islam" prevailed. For Ḥanafīs, however, the key attribute of this territory was that it provided protection (*ʿiṣma*) for Muslim lives, liberties and properties.[56]

Khaled Abou El Fadl provides a useful summary of the key positions held by jurists in the medieval period on Muslims in non-Muslim territory. He notes that in the early period, before the 4th/10th centuries, jurists loosely held two opinions regarding residence in non-Muslim territory: either they approved or disapproved. Among those who voiced their disapproval were jurists from the early Ḥanafis, Mālikīs and Shīʿa. Reportedly Mālik (d. 179/796), after which the Mālikī school was named, was adamantly against Muslims living in, or even traveling to, the territory of non-believers because he felt they would be subject to the jurisdiction of non-Muslim laws.[57] Second/eighth century Shīʿī jurists were also ambivalent about Muslims residing in non-Muslim territory but their reasoning was a bit different: they took issue with the limited access to jurists in these areas.[58] The fear was that this absence of jurists would negatively impact a Muslim's knowledge of their faith and presumably lead to greater sin. However, the sinfulness was not enough for them to be deemed an unbeliever. In fact, Jaʿfar al-Ṣādiq (d. 148/765) suggested residence in non-Muslim territory might even prove more beneficial to the faith.[59] Similarly, some Ḥanafīs such as, Muḥammad al-Shaybānī (d. 189/804) allowed residence in non-Muslim areas but restricted the benefits they could subsequently receive from the Muslim polity. The argument drew an analogy between these Muslims and nomads at the time of the Prophet. The nomads were not required to join the Muslim polity but were limited in the benefits they could expect from it.[60] Muḥammad b. Idrīs al-Shāfiʿī (d. 204/819-820), eponym of

[53] Abou El Fadl, "Islamic law and Muslim Minorities," 145.
[54] Abou El Fadl, "Islamic law and Muslim Minorities," 146.
[55] Abou El Fadl, "Islamic law and Muslim Minorities," 145.
[56] Giovanna Calasso, "Introduction: Concepts, Words, Historical Realities of a "Classical Dichotomy," *Dār al-islām/dār al-ḥarb: Territories, People, Identities,* eds. Giovanna Calasso and Giuliano Lacioni (Leiden: Brill, 2017), 34.
[57] Abou El Fadl, "Islamic law and Muslim Minorities," 146.
[58] Abou El Fadl, "Islamic law and Muslim Minorities," 149.
[59] Abou El Fadl, "Islamic law and Muslim Minorities," 148.
[60] Abou El Fadl, "Islamic law and Muslim Minorities," 146.

Shāfiʿī legal school, shared this view and allowed Muslims to live in non-Muslim territory because of past occasions when this had been permitted by the Prophet.[61]

By the 5th/11th century, El Fadl notes that jurists began to distinguish between entering non-Muslim territory temporarily and residing in it permanently. For example, the Ẓāhirī jurist Ibn Ḥazm (d. 456/1064), based in the Iberian Peninsula, expressed a firm dislike for any entry into non-Muslim territory, even temporarily to trade, if it meant being subjected to non-Muslim law.[62] This strong position might be attributed to the fact that towards the end of the 5th/11th century Christian powers initiated the reconquest of "significant Muslim centers."[63] The Mālikī jurist Ibn ʿAbd al-Barr al-Qurṭubī (d. 463/1071) took a less restrictive position, forbidding permanent residence in non-Muslim lands but permitting temporary presence.[64] The Ḥanafī jurist, Abū Bakr al-Sarakhsī (d. 483/1090-91), based in the Khurāsān frontier, agreed with this sentiment and argued against permanent settlement in non-Muslim lands, especially the rearing of children there.[65] However, he takes the argument one step further, contending that temporary entry to trade with non-Muslims is necessary from a public welfare standpoint with the exception of selling weapons. In his opinion, any earlier requirements to migrate lapsed after the Prophet's lifetime.[66] The Shāfiʿī jurist al-Māwardī (d. 450/1058), based in the caliphate's center Baghdad, took a drastically different position, one that gained greater currency in the centuries that followed. He contends that as long as a Muslim is able to "manifest" their religion in non-Muslim territory then that territory actually becomes a part of *dār al-Islām* and residency there is not a problem. In fact, remaining in those lands is preferrable to migrating because it presents the opportunity to convert others to the faith.[67] For Shāfiʿī jurists, "liberties" accorded to Muslims in territories outside Islamic sovereignty became a distinctive feature of how they classified a territory.[68]

Following the 5th/11th century, juristic discussion on territory was impacted by the rising number of Muslims living under non-Muslim rule, though it took some time for jurists to adjust to this new reality. They returned to the question of migration, asking whether it should still be

[61] Abou El Fadl, "Islamic law and Muslim Minorities," 146-147.

[62] Abou El Fadl, "Islamic law and Muslim Minorities," 149.

[63] Alan Verskin, *Islamic Law and the Crisis of the Reconquista: The Debate on the Status of Muslim Communities in Christendom* (Leiden: Brill, 2015), 3.

[64] Abou El Fadl, "Islamic law and Muslim Minorities," 149.

[65] Abou El Fadl, "Islamic law and Muslim Minorities," 149.

[66] Abou El Fadl, "Islamic law and Muslim Minorities," 149.

[67] Abou El Fadl, "Islamic law and Muslim Minorities," 150. Migration can also present significant issues for established communities like those in Baghdad because it might encourage population transfers that could be destabilizing. Verskin, *Reconquista,* 32. In the early period, this same migration helped "augment" the politically weak Muslim population and "weaken the migrants' places of origin." Ibid.

[68] Abou El Fadl, "Islamic law and Muslim Minorities," 150.

obligatory on Muslims to return to territory under Islamic sovereignty given how many Muslims were now situated in non-Muslim lands due to trade, conversion or conquest. Ibn Rushd ("the grandfather," d. 520/1122) extended the prior stringency of the Mālikī school's opinion, prohibiting Muslims from entering or living in *dār al-ḥarb,* even for trade.[69] For him, despite the changed demographics, the central rationale behind the earlier opinion remained the same: Muslims in non-Muslim territory would be subject to non-Muslim law. He builds on this argument and contends that any Muslim that accepts the jurisdiction of non-Muslim law must themselves be unethical and corrupt. As a consequence, their credibility is suspect and Ibn Rushd prohibits them from acts for which trustworthiness is a prerequisite, such as providing court testimony or even leading prayer.[70] Some have suggested that this position on migration may have been a defensive strategy contemplated to deal with the instability caused by Christian annexation of Muslim areas.[71] Other Mālikī jurists outside the Iberian peninsula took a more flexible position. For instance, Abū ʿAbd Allāh al-Māzarī (d. 536/1141), living under Fatimid rule in Tunisia, noted that it was preferable for Muslims to avoid residing in non-Muslim territory but their doing so would not undermine their credibility; a variety of motives might be behind not migrating away from non-Muslim sovereignty.[72]

Similar to the Mālikīs, El Fadl notes that Shāfiʿī and Shīʿī jurists stayed consistent with earlier opinions from their respective predecessors, ruling that a Muslim could remain in non-Muslim lands as long as it was possible for them to "manifest" their religion. If they feared a loss of faith then they were obligated to migrate away.[73] For other jurists, the fact that a territory was under Islamic sovereignty was not sufficient to warrant migrating to it. They insisted that if corruption was widespread in a Muslim territory then it made the land equivalent to non-Muslim territory. This territory no longer provided the necessary protection against sinfulness and it was preferable to migrate to a place of greater "physical safety" and "religious fulfillment."[74] Within Shīʿī discourse this features more formally in the introduction of a distinction between *dār al-islām* and *dār al-īmān* ("realm of faith"). This third category of territory was distinguished by the "prevailing acceptance of the Shīʿī imams among its people."[75]

Jurists open to engagement with non-Muslim territory often take account of the liberties available to Muslims there. This requires them to investigate what they mean by the ability for a Muslim to "manifest" their faith in a particular space. For many Ḥanafīs, this tended to mean

[69] Verskin, *Reconquista,* 38-39; Abou El Fadl, "Islamic law and Muslim Minorities," 150.

[70] Abou El Fadl, "Islamic law and Muslim Minorities," 151.

[71] Verskin, *Reconquista,* 39.

[72] Abou El Fadl, "Islamic law and Muslim Minorities," 151.

[73] Abou El Fadl, "Islamic law and Muslim Minorities," 152.

[74] Abou El Fadl, "Islamic law and Muslim Minorities," 152.

[75] Algar, "Dār al-Ḥarb," *Encyclopædia Iranica*, 668-669.

manifesting and applying Islamic rulings; others added additional requirements like the appointment of a Muslim judge or a Muslim governor in lands where Muslims had significant numbers. In a circuitous way, if these conditions were met then Ḥanafī legal doctrine would classify the territory as part of *dār al-Islām* and outside the context of "non-Muslim territory."[76] Shāfiʿī and Ḥanbalī jurists defined "manifesting Islam" as specific to whether it was possible to perform religious duties and acts of worship in a particular territory. In other words, in order for a Muslim to remain in a territory he must be able to fulfill those requirements of Islamic law that pertain to individual religious practice. This did not include those parts of Islamic law that pertain to criminal or commercial law, areas of concern to society at large.[77]

Jurisdiction Beyond Borders

As noted earlier, when considering the conception of territory and jurisdiction in medieval Islamic law it is necessary to account for how "belief" confers status under the law. Islamic law functioned as both guidance for a borderless religious community and the legal regime of territorially-bound empires. Its application outside lands under Islamic sovereignty raised questions as to the nature of the Muslim polity and Islamic law's jurisdiction over non-resident Muslims. "The vast majority of Muslim jurists" assert that Muslims are part of a singular community even if they don't reside together.[78] In other words, all Muslims "belong" to the Muslim polity (*dār al-Islām*) simply as a result of their belief in Islam and irrespective of where they are physically present.[79] The corresponding inquiry then is what consequence this type of belonging has on the inviolability (*ʿiṣma*) of a Muslim's life and property?[80] In other words, what protections, if any, exist by virtue of membership within the broader religious community even in the absence of actual presence under Islamic sovereignty?

A range of opinions exist on this question, roughly falling within four broad positions. For some jurists, primarily associated with the Shāfiʿī school, a Muslim's life and property receive protection regardless of where they are located.[81] The protection persists even when the

[76] Abou El Fadl, "Islamic law and Muslim Minorities," 158.

[77] Abou El Fadl, "Islamic law and Muslim Minorities," 159. Algar, "Dār al-Ḥarb," *Encyclopædia Iranica*, 668-669.

[78] Abou El Fadl, "Islamic law and Muslim Minorities," 165.

[79] Chibli Mallat has a useful discussion of this distinction between territorial status and belief status in his comparative discussion of public law. He notes that the "Westphalian 'territorial model' of nation-states," which he associates with "Western law," can be juxtaposed against the "Islamic 'personal model' in which the application of law to an individual depends more on membership in a given religious sect than on citizenship in a nationally defined territory." See, Chibli Mallat, "Comparative Law and the Islamic (Middle Eastern) Legal Culture," *The Oxford Handbook of Comparative Law,* eds. Mathias Reimann and Reinhard Zimmermann (Oxford: Oxford University Press, 2006), 624.

[80] Abou El Fadl, "Islamic law and Muslim Minorities," 165.

[81] Abou El Fadl, "Islamic law and Muslim Minorities," 167.

person is not physically proximate to their property because, for instance, they are travelling. As a consequence, some jurists even obligate a Muslim polity to protect non-Muslim territories that host Muslims.[82] On the other hand, the Ḥanafīs limit the Muslim polity's jurisdiction to individuals that reside within its borders. Departing from Muslim territory, and its associated protections, functions as a waiver of legal inviolability (*ʿisma muqawwima*).[83] However, a non-resident individual is still considered a part of the broader Muslim spiritual community which allows them to retain moral inviolability (*ʿisma mu'aththima*), before God and in the afterlife.[84] Ḥanafī jurists consider anyone inside the Muslim polity's territorial limits, Muslim or non-Muslim, entitled to protection from the state.[85]

That said, jurists tend to recognize that idea of inviolability must contend with other more complicated jurisdictional questions. For instance, jurists ask what protection is owed to the property of Muslims who reside in a non-Muslim territory that is conquered by the Muslim polity? For Ḥanafīs, as well as Shīʿa and Zaydīs, they distinguish between two types of property: movable and immovable.[86] Regarding movable property, they resolve that it is protected and cannot be confiscated since it is the possession of Muslim residents. On the other hand, immovable property does not receive the same allowance; it is confiscated with the rest of the conquered territory because it is connected to the location not any individual owner.[87] Shāfiʿī jurists approach the matter differently, insisting that a Muslim and their property are protected regardless of location; there is no waiver of inviolability simply due to residence in non-Muslim territory.[88] Mālikī jurists evolved in their position. Some report that an early position, held by Mālik, agreed with Abū Ḥanīfa and granted legal inviolability based on territorial protection not belief in Islam.[89] Later Mālikī jurists emphasized a distinction between property and people, arguing that while the Muslim himself would receive protection his property would not.[90]

Building on this, jurists also consider whether a Muslim polity can assert extraterritorial jurisdiction in cases where a Muslim in non-Muslim territory is either criminally liable or the victim of criminality. This takes up the issue of legal inviolability: to what extent is the Muslim

[82] Abou El Fadl, "Islamic law and Muslim Minorities," 167.
[83] Abou El Fadl, "Islamic law and Muslim Minorities," 165.
[84] Abou El Fadl, "Islamic law and Muslim Minorities," 166. See also, Muhammad Mushtaq Ahmad, "The Notions of Dār al-Ḥarb and Dār al-Islām in Islamic Jurisprudence with Special Reference to the Ḥanafī School," *Islamic Studies* 47, no. 1 (2008): 8.
[85] Ahmad, "The Notions of Dār al-Ḥarb and Dār al-Islām," 9.
[86] Abou El Fadl, "Islamic law and Muslim Minorities," 167-68.
[87] Abou El Fadl, "Islamic law and Muslim Minorities," 166, 168.
[88] Abou El Fadl, "Islamic law and Muslim Minorities," 167.
[89] Abou El Fadl, "Islamic law and Muslim Minorities," 175.
[90] Abou El Fadl, "Islamic law and Muslim Minorities," 168-69.

polity responsible for the protection of Muslims outside its territory? Using murder as the paradigmatic case, jurists ask whether simply being Muslim is enough to extend the polity's jurisdictional reach or can the Muslim polity exercise jurisdiction over a Muslim murderer only if they are inhabitants of the polity? For Shāfiʿī jurists, courts in Muslim lands have a type of universal jurisdiction over Muslims, regardless of where they are located, even in criminal matters. The type of accountability they can demand for a murder committed outside Muslim territory varies based on the status of the victim. If the murdered individual is Muslim, then the offender will be liable as long as they had the requisite *mens rea*: knowledge (or awareness) that the victim was Muslim.[91] This is also the position of the Mālikī, Shīʿa and Zaydī schools.[92] If the victim is non-Muslim then "atonement" is the extent of liability a Muslim polity can seek.[93] Hanāfī jurists dissent from this shared position, arguing that courts in Muslim polities do not have jurisdiction to punish extraterritorial crimes; they cannot hold a Muslim criminally liable for killing another Muslim in non-Muslim lands.[94] As with the typical Hanāfī posture, territory defines the terms of engagement and Muslims who leave the Muslim polity relinquish its protection. They give Muslim courts no jurisdiction over immoral or sinful acts committed externally.[95]

The preceding discussion examines aspects of juristic thinking on the jurisdictional reach of a Muslim polity, specifically in relation to the issue of Muslims residing in non-Muslim territory. A related question they address is whether Islamic legal obligations are generally operative in non-Muslim territory. In other words, to what extent can Muslims living outside Islamic sovereignty act in ways contrary to Islamic law? More importantly, could they act this way without being labelled immoral or sinful? For most legal schools the answer is straightforward: obligations are applicable regardless of territory. Practically speaking though, it was simply not possible to undertake many obligations outside of Muslim territory since that territory was a necessary condition for performance. The very fact of living in a non-Muslim territory precluded the ability to perform certain obligations.[96] For their part, Ḥanafī jurists seem to recognize this practical issue and dispense with catering to an ideal; they simply note

[91] Abou El Fadl, "Islamic law and Muslim Minorities," 167.

[92] Abou El Fadl, "Islamic law and Muslim Minorities," 168.

[93] Abou El Fadl, "Islamic law and Muslim Minorities," 167.

[94] Ahmad, "Notions of Dār al-Ḥarb and Dār al-Islām," 12; see also, Abou El Fadl, "Islamic law and Muslim Minorities," 165 & 173-174.

[95] Abou El Fadl, "Islamic law and Muslim Minorities," 177. Regarding the Ḥanafī disposition that emphasized individuals territorial identity over their religious and restricted the jurisdiction of the Muslim polity accordingly, see Samy Ayoub, "Territorial jurisprudence, *ikhtilaf al-darayn:* Political boundaries & legal justification," *Contemporary Islamic Studies,* no. 2 (2012): 2; Ahmad, "Notions of Dār al-Ḥarb and Dār al-Islām," 8-10.

[96] Abou El Fadl, "Islamic law and Muslim Minorities," 165 & 173-174.

that various Islamic legal obligations and prohibitions are not applicable in non-Muslim territory.[97]

Foundlings

At this point, it may be helpful to explore an area of medieval Islamic law where one may not expect a role for territory and jurisdiction but one exists, nonetheless. This helps demonstrate the pervasiveness of territorial considerations in Islamic law as a whole. One helpful illustration of how medieval jurists approached questions of territory and jurisdiction occurs in discussions on duties owed to foundlings (*laqīṭ*) and the associated rights to guardianship over them.[98] These discussions typically explore what status to give a foundling and what characteristics were necessary to be considered a legitimate caretaker. By way of background, a foundling is typically a "human child whose parentage and whose status (free or slave) is unknown;" many jurists define a foundling as a "young, abandoned child" who is subsequently found.[99] In addition to the linguistic meaning, Kāsānī says the term has a customary meaning as the name given to a "lost child" (*al-ṭifl al-mafqūd*).[100] Ghazālī has a definition similar to most other jurists, but includes the requirement that the lost child must have "no guardian."[101] Jurists also offer opinions on the exact age for a foundling to be

[97] Abou El Fadl, "Islamic law and Muslim Minorities," 174.

[98] Sometimes also referred to as *manbudh*. There does not seem to be a clear distinction between the two terms and they are often used interchangeably.

[99] A.M. Delcambre, "Laḳīṭ," in *Encyclopedia of Islam*, 2nd ed., ed. C.E. Bosworth, et. al. (Leiden: E.J. Brill, 1982): 639; *See,* Shāfiʿī, *al-Umm*, vol. 4, 73. The issue of how a child actually becomes abandoned is not discussed by most jurists. The one exception is Māwardī who begins his discussion on foundlings by mentioning three scenarios leading to a child's abandonment. First, is the case of a child whose parent passes away and it has no other guardian. Second, is a child whose mother concludes that she is too weak to care for the child (*taḍʿaf ʿan al-qiyām bihi*) and so abandons him. Māwardī, *al-Ḥāwī al-kabīr,* vol. 8, 34. And finally, he mentions the child who is conceived out of an illicit sexual relationship (*fāḥisha*) and subsequently abandoned by his mother, who fears being dishonored. Interestingly, each scenario Māwardī highlights presumes the absence of the father and places the onus for abandonment on the mother. This discussion of causation does arise with other jurists as well. Many Ḥanafīs, for instance, "define a foundling as a living child who has been abandoned by its parents out of fear of destitution or to avoid an accusation of fornication." *See,* Sujimon, "Foundling," 358. For jurists definitions of foundlings, see Ibn Ḥazm, *al-Muḥallā,* vol. 8, ed. M. Munīr al-Dimashqī (Cairo: Idārat al-Ṭabāʿat al-Munīrat, 1928-34), 274; Ibn Qudāma, *al-Kāfī,* vol. 3, 465; Ghazali, *al-Wasīṭ*, vol. 4, 303 & 306; Nawawī, *Rawḍat al-Ṭālibīn,* vol. 4, 484.

[100] Kāsāni, *Badāʾiʿ al-ṣanāʾiʿ,* vol. 6, 197.

[101] Ghazali, *al-Wasīṭ*, vol. 4, 303 & 306. This was Shāfiʿī's opinion as well, though he presumes a t of who qualifies as a foundling. *See*, Shāfiʿī, *al-Umm*, vol. 4, 73. Nawawī also includes the absence of guardianship as part of his definition. Nawawī, *Rawḍat,* vol. 4, 484. He notes that there are a few different words for a "lost and abandoned child" (*al-ṣabī al-mulqā al-ḍāʾiʿ*): *laqīṭ, malqūṭ* or *manbūdh*. Nawawī, *Rawḍat,* vol. 4, 483.

considered a lost *child* as opposed to an adult.[102]

In simple terms, the foundling-duty consists of an individual assuming responsibility for an abandoned child they happen to come across. The obligation might be categorized as a type of duty to rescue, similar to the obligation to rescue someone drowning (*inqādh al-gharīq*).[103] Unlike the drowning scenario, imminent harm is generally absent in the foundling context, but the inherent vulnerability of a child presents its own degree of urgency. Substantively, the foundling-duty is premised on a broader obligation to preserve anything that might be diminished or even perish without proper care.[104] Shāfiʿī is reported to have stated that "taking custody of everything exposed to waste, when no one else can secure it, is a collective duty."[105] The foundling-duty emerges from general principles requiring the preservation of life and property.

The link between foundlings and territory can initially be found through a connection with property law. Medieval Islamic legal treatises often discuss foundlings immediately following sections on rules for handling intentionally abandoned property (*luqṭa*).[106] This placement gives some indication of how jurists approached the issue of foundlings and the types of inquiries that guided the law they developed around rescuing them. One can surmise that jurists felt it made most sense to extend the rules governing abandoned property to the case of foundlings. What precisely was "abandoned property" (*luqṭa*)? The Andalusian jurist Ibn Rushd "al-Ḥafīd" (d. 595/1198), not to be confused with his grandfather mentioned earlier, notes that broadly speaking *luqta* is the "property of any Muslim that is exposed to loss" regardless of whether it is lost in an inhabited area or a "desolate area."[107] He cites three types of found property. The first type of property is the kind that would be squandered if left unclaimed. The

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[102] For instance, Ibn Rushd notes that in terms of age, a *laqīṭ* is a "minor child, who has not attained puberty." Ibn Rushd, *Bidāyat al-mujtahid wa nihāyat al-muqtaṣid*, vol. 2 (Beirut: Dār al-Maʿrifa, 1982), 309. Nawawī excludes from the definition any child who has attained puberty (*bāligh*), arguing that they are not in need of assistance in their upbringing. Nawawī, *Rawḍat,* vol. 4, 484.

[103] This is a duty jurists often utilized to explain how collective duties (*farḍ kifāya*) functioned. The standard account describes a scenario where individuals on the shores of a river observe someone drowning and asks what obligation they owe to the drowner. Jurists argue that it is not sufficient for bystanders to remain onlookers: their proximity to the imminent emergency situation triggers a duty for each of them. See for example, Qarāfī, *Dhakhīra,* vol. 10, 24; Rāzī, *Maḥṣūl*, vol. 1, 131; Zarkashī, *Baḥr al-Muḥīṭ*, vol. 1, p. 153.

[104] Ghazālī, *al-Wasīṭ*, vol. 4, 303. Also see v. 4, 306; Shīrāzī, *Muhadhdhab* vol. 2, 312; Marghīnānī, *al-Hidāya,* vol. 4, 361; Ibn Qudāma, *al-Kāfī,* vol. 3, 465; Māwardī, *al-Ḥāwī al-kabīr*, vol. 8, 34; Qarāfī, *Dhakhīra,* vol. 9, 131; Ibn Ḥazm, *Muḥallā,* vol. 8, 273-274.

[105] Ibn Rushd, *Bidāyat*, vol. 2, 309.

[106] The link between abandoned property (*luqṭa*) and foundlings (*laqīṭ*) is also evident from their shared linguistic root (*l-q-ṭ*).

[107] Ibn Rushd, *Bidāyat*, vol. 2, 305.

second, is a type of property that is not yet in someone's possession but may be destroyed if it isn't secured. The final type of property is the kind where there is no fear of it being lost.[108] Premodern jurists across the schools consistently create analogs to these types of properties when discussing foundlings. As a result, they asked similar questions to the property context: is an individual permitted to take possession of abandoned property or must they avoid doing so; in cases where possession is taken, is there an obligation on the property finder (*multaqiṭ*) to search for the actual owner? Furthermore, how should abandoned property be used? Can a finder utilize the property before securing ownership rights over it? Jurists apply each of these questions to the foundling context considering abandoned children analogous to abandoned property. They begin with an inquiry as to whether a foundling should be treated like a slave or considered a free person, an issue with significant ethical considerations.[109]

One of the most important questions that arises in this context is what status to give foundlings since their origins are unknown.[110] How far should the analogy to property extend? Should a foundling be considered "free" for legal purposes or can they be classified as a slave? This determination potentially alters the nature of the finder's guardianship. If the child can be considered a slave, then the finder can assert ownership rights, which allow him to derive economic benefit from the child. The child's status is also crucial in determining whether property law applies (since slaves were property) or another set of legal rules. In general, jurists respond to this question by following the presumption (*aṣl*) held by Shafīʿi that foundlings are "free by default" because freedom is the original state of human beings.[111] In fact, this opinion

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[108] Ibn Rushd, *Bidāyat*, vol. 2, 308.

[109] The question of whether the foundling is free or not is usually connected to whether anyone has patronage (*walāʾ*) over him and, if so, who is entitled to be the foundling's patron. The determination often comes with associated responsibilities including financially supporting the child, etc. Ulrike Mitter, "Origin and Development of the Islamic Patronate," in *Patronate and Patronage in Early and Classical Islam*, eds. Monique Bernards & John Nawas (Leiden: Brill, 2005), 94.

[110] This is not a discussion unique to Islam, but present within the larger discourse around slavery. In Roman civil law, later adopted into British and American law, the concept of *partus sequitur ventrem* ("that which is brought forth follows the womb") dictated the child's status. This only applied to cases *extra matrimonium*, but if the child was conceived *in matrimonio* then "its condition dates from its conception." George Leapingwell, *A Manual of the Roman Civil Law: Arranged After the Analysis of Dr. Hallifax* (Cambridge: Deighton, Bell and Co., 1859), 39.

[111] Shāfiʿī, *al-Umm*, vol. 4, 73. Kāsānī says it is vital to know whether the child is free or a slave and what his lineage is. He suggests that the child is free by default and subject to laws specific to free people until evidence to the contrary appears. Kāsāni, *Badāʾiʿ al-ṣanāʾiʿ,* vol. 6, 198. Shīrazī takes it one step further, requiring no investigation into the child's status and simply presuming that he is free when he is found. Shīrāzī, *al-Muhadhdhab* vol. 2, 312. Ibn Ḥazm expands on the notion that the original state of human beings is freedom, noting that the reason a foundling (*laqīṭ*) is free, without any other authority over them, is because everyone is a child of Adam and Eve, the "original" humans. Ibn Ḥazm, *Muḥallā,* vol. 8, 274; *see also*, Kāsāni, *Badāʾiʿ al-ṣanāʾiʿ,* vol. 6, 197. Both Adam and Eve were free and children of free people acquire their parents' status without exception. Ibn Qudāma classifies

was adopted by the majority of other jurists as well.[112]

In addition to property law, premodern jurists generally also discuss territory when assessing the qualities necessary to qualify as a "finder" (*multaqiṭ*) capable of assuming responsibility for the foundling.[113] These qualities are premised on an overriding concern jurists have for creating circumstances that are in the child's best interest. Thus, as a bare minimum the finder must have "free" status, as well as be considered "trustworthy" and "sane."[114] These qualities were not necessarily absolute pre-requisites but created preferences when more than one person was claiming guardianship over the foundling. In other words, jurists might prefer a finder be "free," but they do not categorically prohibit a slave from being a guardian to a foundling.[115]

Similarly, among the qualities jurists consider when assessing a finder is their territory of residence. For instance, Shafiʿi reportedly opined that, in general, town dwellers, living a "settled" life, are considered preferable to nomads when it comes to guardianship of a child.[116] The reasoning seems to be pragmatic: there is a greater likelihood that an abandoned child is originally from a densely populated town as opposed to its outskirts.[117] Jurists prefer keeping the child in familiar territory because they consider believe this consistent with the child's long-term interests. Jurists factored in territory when offering legal guidance in an effort to bring greater stability to the child's upbringing.

A more interesting question arises when territory serves as a proxy for determining

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foundlings as free based on a narration from ʿUmar where Sunayn Abū Jamīla said: "I found a foundling, so I brought him to ʿUmar who said: "Go away, he is free and upon you is his guardianship and for us are his financial expenses." Ibn Qudāma, *al-Kāfī,* vol. 3, 465.

[112] See Muzanī, *Mukhtaṣar*, 185. *See,* Burhān al-Dīn al-Marghīnānī, *al-Hidāya sharḥ badāya al-mubtadī,* vol. 4, ed. Naʿīm Ashraf Nūr Aḥmad (Karachi: Idārat al-Qurān wa-ʿulūm al-Islamiyya, 1996), 362; Ibn Qudāma, *al-Kāfī,* vol. 3, 465; Kāsāni, *Badāʾiʿ al-ṣanāʾiʿ,* vol. 6, 197; Sujimon, "Foundling," 361 ("the majority of Muslim scholars...declare that man is born free.").

[113] The pre-modern literature includes some debate over who precisely carries the burden of guardianship over the child. Some argue that guardianship belongs to the finder while others suggest it resides with the community collectively. Ibn Rushd, *Bidāyat*, vol. 2, 309.

[114] Ibn Rushd, *Bidāyat*, vol. 2, 309; Marghīnānī, *al-Hidāya,* vol. 4, 364-65; Nawawī, *Rawḍat al-Ṭālibīn,* vol. 4, 485. Muzanī also mentions the requirement that a finder be trustworthy (*thiqa*). Muzanī, *Mukhtaṣar*, 185. Like Ghazālī, Nawawī requires that the finder certify his uprightness through testimony (under oath) prior to assuming responsibility for the child. Nawawī, *Rawḍat al-Ṭālibīn,* vol. 4, 484.

[115] Shāfiʿī reportedly preferred that a finder be a free person, but does not preclude a slave from ever acquiring guardianship over a foundling. Muzanī, *Mukhtaṣar*, 185. Other jurists tend to prefer the finder be a free person, but explicitly allow a slave, or a slave in the process of manumission, to take custody of a foundling with permission from their master. Qarāfī, *Dhakhīra,* vol. 9, 131. *See also,* Nawawī, *Rawḍat al-Ṭālibīn,* vol. 4, 486.

[116] Muzanī, *Mukhtaṣar*, 185 (reporting Shāfiʿī opinion); Nawawī, *Rawḍat al-Ṭālibīn,* vol. 4, 486.

[117] Nawawī, *Rawḍat al-Ṭālibīn,* vol. 4, 488-89.

religious affiliation. In the foundling context, jurists typically seek to align the foundling's religion with that of the individuals who find them; the preference is for a foundling and finder to come from the same community. This becomes a more complicated proposition when the foundling's religion is unknown and cannot easily be ascertained. In the medieval Muslim polity, Islamic legal injunctions operated on the assumption that every individual could be classified as a member of a specific religious community. Hence, jurists insisted that every foundling be assigned a religious community in order to trigger the appropriate obligations and guidelines. For instance, jurists generally prohibit non-Muslims from assuming guardianship over Muslim foundlings, though they are more receptive to the opposite.[118] Interestingly, while it would certainly have been in the foundling's long-term interest to be classified as "Muslim" in a Muslim-led polity, jurists were careful about potentially altering a child's actual religious affiliation. Hence, there does not seem to be a default assumption of automatically considering every foundling a Muslim. Instead, territory serves as a critical factor in approximating the child's likely religious community. Characteristics of the place where the abandoned child is found help assign a particular faith to them.[119]

Two features of a territory that jurists might utilize in assigning an unaffiliated foundling to a religious community are the composition of the resident population and the ruling political power. Typically, most jurists focus their attention on the demographic makeup of the area where the foundling is discovered. The dominant religion among the population of a particular locality becomes the default religious community for any foundling discovered there whose faith is unknown. For instance, Shāfiʿī reportedly permitted a child found in a locality inhabited almost exclusively by non-Muslims to be taken in by a non-Muslim. In that circumstance, the child is considered non-Muslim until he comes of age, at which point he can choose Islam.[120] Similarly, Shīrazī reasserts the Shāfiʿī position in the 5th/11th century arguing that if a child is found in a Muslim land among Muslims or in a Muslim locality captured by non-Muslims then he should be considered a Muslim. However, if he is found in a locality where there are no Muslims then he should be considered a non-Muslim.[121]

Ibn Rushd al-Ḥafīd notes that a disagreement existed among jurists as to whether abandoned property, the legal category most analogous to foundlings, should be taken into

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[118] Muzanī, *Mukhtaṣar*, 185; Marghīnānī, *al-Hidāya,* vol. 4, 363-64.

[119] A related discussion of interest is taken up by Elizabeth Urban in her work discussing the children of Christian concubines. She notes the status of these "half-bloods" was primarily concerned with their potential loyalty (or lack thereof) to the Islamic empire. See Elizabeth Urban, *Conquered Populations in Early Islam: Non-Arabs, Slaves and the Sons of Slave Mothers* (Edinburgh: Edinburgh University Press, 2020), 107, 123.

[120] Muzanī, *Mukhtaṣar,* 185. For instance, in the caretaking of a non-Muslim, they favor a Muslim over a *dhimmī. See,* Nawawī, *Rawḍat al-Ṭālibīn,* vol. 4, 486.

[121] Shīrāzī, *Tanbīh*, 90-91.

custody; the dynamics of local political power and demographics in a particular territory where the property territory came to influence the debate. He reports that Abū Hanīfa and Shāfiʿī believed the property should be taken into custody while Mālik and others said it should not. Beyond simply considering the religious affiliation of the political authority or the dominant religious community, jurists also ask whether a territory is inhabited by "trustworthy" (*qawm maʾmūnīn*) people and ruled by a "just" (*al-imām ʿādil*) political authority. This analysis impacts jurists' impression of whether the finder is worthy of guardianship. If both characteristics, trustworthy and just, are associated with people in the territory then a finder from that area is permitted to take custody of the property, and by extension the foundling.[122] In other situations, where a ruler may be unjust or residents untrustworthy, jurists express reservations. They are primarily concerned with whatever option is most likely to insure the "found property's safekeeping," which, in this case, is the child itself.[123] The general attributes of a particular community are connected to the territory where they live and become its reputation. For the purposes of medieval Islamic law, that reputation is imputed upon everyone else and becomes a determinative factor in what is and is not permissible.

While earlier jurists focus exclusively on the demographics of an area's inhabitants, Ibn Qudāma, writing in the 7th/13th century in closer proximity to the empire's border, also requires assessing who holds political power locally. Hence, he considers the default religion of any foundling to be Islam as long as they are found in territory under Muslim political control. The only exception to this scenario would be a case in which, despite the presence of a Muslim ruler, the inhabitants of a particular locality were exclusively non-Muslim; in this case, the foundling should be treated as a non-Muslim. Ibn Qudāma also addresses situations where political power might be in non-Muslim hands, but Muslims also reside in that territory, noting two opinions. The first says that political power is controlling; if non-Muslims administer a territory, then any foundling discovered there should be treated as a non-Muslim. The second opinion advocates for the child to be considered Muslim because, all things equal, preference should be given to Islam.[124] Furthermore, these two opinions also offer insight into how jurists weigh political power in their decisions about the foundling's best interests. In the situation that Ibn Qudāma describes, non-Muslims control political authority, but presumably Muslims have some level of social dominance. Hence, the question arises as to what is in the best interests of the child: being a part of a community that is politically dominant in an area or one that is socially preeminent?

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[122] Ibn Rushd, *Bidāyat*, vol. 2, 305.

[123] Ibn Rushd, *Bidāyat*, vol. 2, 305.

[124] Ibn Qudāma, *al-Kāfī,* vol. 3, 465. In some respects this second opinion betrays the widely-held Islamic theological position that, in their primordial state, human beings all begin as "muslims"; their innate religious disposition is Islam and only after birth do religious labels attach. Hence, preferring Islam for the foundling is simply restoring the child to his original state before it was disrupted by the circumstances of his birth.

Some jurists see social dominance to be powerful enough to overcome the influence of non-Muslim political rule, while others, possibly taking a more pragmatic approach, defer to political power as the controlling factor.

Conclusion

This chapter explores some of the key features of territory and jurisdiction present in medieval Islamic law. It is primarily informed by the discourse of jurists responsible for crafting Islam's legal guidelines. The medieval Muslim polity was structured around belief and its legal paradigm, Islamic law, was based on the idea of obligation. Individuals within the polity were viewed through the prism of religious affiliation; this affiliation was the premise of the laws that applied to individuals. Alongside representing a spiritual community, the Muslim polity was also an empire and law had to accommodate the requirements of governing its boundaries. As a result, jurists crafting legal rules moved between the practical considerations of territory and the transcendent commitments of faith, endeavoring to find a workable balance between the two. In many respects, this balance marks the entire juristic enterprise in the Islamic legal tradition.

From the perspective of territory and jurisdiction, jurists divided the world into blocs centered on the potential for hostilities between Muslim sovereigns and neighboring states. The context of war, defending and expanding land, became instructive in defining jurisdictional reach and the nature of legal responsibilities associated with territory. Similarly, jurists also formulated conditions obligating migration away from land that threatened one's life, possessions, or ability to practice the faith. Just as warfare was central to the juristic discourse on territory and jurisdiction, so was migration. Yet not everyone could migrate nor did jurists require them to. Thus, the juristic discourse also contemplates how law applies to people that remained in territory where Islam was not sovereign. It considered whether these people still received the protections of a Muslim polity simply due to their shared faith and despite no longer being resident within its borders. And in the same vein, could the Muslim polity hold non-resident Muslims accountable for violations of Islamic law? In asking these questions jurists explored the extent to which Islamic law contemplated a Muslim sovereign possessing universal jurisdiction over all believers regardless of where they were.

Beyond the evident areas of law where considerations of territory and jurisdiction would be expected, various other parts of the Islamic legal tradition also factor in these two ideas. In articulating a duty to rescue foundlings, jurists inserted a role for territory in both determining the status of the abandoned child and assessing the appropriateness of the finder's guardianship.

In the process they shed further light on the connection between territoriality, jurisdiction and belief in medieval Islamic law.