

Public Ownership in Islam: Its Nature and the State's Responsibilities Regarding It

(Translated)

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Public Ownership

Public ownership is the permission granted by the Shariah to the community to share collectively in benefiting from the assets regarding which the Shariah has stated that they are jointly held among them, and that both individuals and the state are prohibited from appropriating them individually. It is, therefore, an ownership belonging to the totality of people, reserved for them, from which those who are alive may benefit, as may those who come after them until the Day of Resurrection.

When the communal utilities are unavailable, people scatter throughout the lands in search of them. Examples include water and energy. Public ownership includes inexhaustible minerals, and it also includes things whose very nature prevents individuals from possessing them, whether these minerals are visible and can be benefited from without great cost, such as salt, or hidden, such as gold, silver, iron, and copper; and whether they are solid, such as crystal, or liquid, such as oil.

The Nature of Public Ownership

Ownership in Islam is divided into three types: private ownership, public ownership, and state ownership. One reason for addressing public ownership is that it is connected to fiscal policy, both in terms of expenditure upon it and in terms of generating revenues through the state's utilization of it for the benefit of the Ummah. Public ownership is characterized by the following qualities:

First: It is among the communal utilities (مرافق الجماعة *muraafiq al-jamaa'ah*)

Public ownership consists of those utilities needed by all people. If they cease to exist or become scarce, people disperse throughout the lands in search of them in order to obtain them. The Messenger of Allah (saw) said: «المسلمون شركاء في ثلاث: في الماء، والكلاء، والنار» **“The Muslims are partners in three things: water, pasture, and fire.”** [Sunan Abi Dawud].

The mention of these three things in the hadith is not by way of restriction, but rather by way of illustration. These three things carry the same ruling as the things used to facilitate access to them. Likewise, many existing resources take the same ruling as water, pasture, and fire, such as oil, gas, minerals, salt, sulphur, bitumen, rivers, seas, lakes, stones, trees in forests, firewood, coal, fish in the seas, wild birds, grazing lands, and solar energy. [al-Khawli, al-Bahi: *Wealth in the Shade of Islam*, pp. 91–92; Dr. Rafiq Yunus: *Principles of Islamic Economics*, pp. 117–118; Dr. Muhammad Rawwas: *Studies in Islamic Economics*, p. 104]

Second: Some of it is created by Allah (swt), and some of it is arranged and produced by human beings

Examples of public ownership created by Allah (swt) are those mentioned under the first point. As for examples of public ownership produced by human beings, these are means and arrangements that enable benefit from the ownership created by Allah (swt), such as machines used for pumping water, desalination machines, conveyance pipelines, electricity-generating machines, electricity poles and cables, oil-extraction machinery, oil pipelines, loading and unloading ports, oil refineries, coal mines and extraction machinery, quarries or stone pits, nuclear energy, atomic furnaces, facilities for harnessing solar energy, dams, bridges, tunnels, artificial canals, artificial lakes, streets, international roads, public squares,

gardens, playgrounds, schools, mosques, hospitals, railways, seaports, airports, and shelters. These are among the arrangements made by human beings, and people are more entitled to their ownership as public ownership.

Third: It is characterized by abundance

Water, pasture, and fire are among matters that are not rare. They are characterized by abundance and are suitable for all people to benefit from. They are also among the necessities of life. Therefore, the state must undertake the regulation of individuals' benefit from them, so that no one is wronged in the course of exercising this benefit, and so that the strong do not dominate the weak by monopolizing access to them.

Fourth: Individuals may not own their assets when they are unlimited in quantity

The communal utilities mentioned in the noble hadith, «المسلمون شركاء في ثلاث: في الماء، والكأ، والنار» «The Muslims are partners in three things: water, pasture, and fire,” may not be transferred into individual ownership. The evidence for this is what al-Tirmidhi narrated: «عن أبيض بن حمال، أنه وفد إلى رسول الله صلى الله عليه وسلم، فاستقطعه الملح، فقطعه له، فلما أن ولى، قال رجل من المجلس: أتدري From Abyad ibn Hammal, that he came as a delegate to the Messenger of Allah (saw), and asked him to allocate the salt to him, so he allocated it to him. When he turned away, a man from the gathering said, 'Do you know what you have allocated to him? You have only allocated to him abundant, inexhaustible water' — meaning a mountain of salt, that is, a great wealth that does not run out. He said: So, he took it back from him.”

Salt was likened to abundant, inexhaustible water because it does not run out. When our master Muhammad (saw) realized that it was a mineral that does not cease — meaning that it was plentiful, namely a mountain of salt — he took it back and prohibited individual ownership of it, because it was collective ownership. This applies to all minerals and is not restricted to salt alone.

Among the inexhaustible minerals, we may mention some examples discovered by human beings in this age, such as oil, gas, gold, silver, copper, salt, iron, tin, coal, lead, uranium, aluminum, and so on. These minerals and their like are strategic materials from which every member of the subjects of the state has the right to benefit, because they are among the riches that Allah (swt) created and stored for human beings in the depths of the earth. These materials also complete the state's ability to exercise sovereignty over sensitive resources, which have an impact upon wealth, currency, civil industry, military industry, space exploration, and the accumulation of wealth.

For this reason, Islam has surrounded these resources with legislations that determine the competent authority for investing them, and that enable all members of the subjects of the state to benefit from them through all forms of benefit that the state determines for the community. This is among the matters that the books of fiqh have discussed extensively.

Fifth: The impermissibility of individuals owning some of its assets that are limited in quantity

There are minerals of limited quantity that may be privately owned and treated according to the ruling of **rikaz** — buried treasure in the earth whose owner is unknown, whether it is a mineral or money — and upon it is **khums**. The Messenger of Allah (saw) was asked about lost property, and he said, «ما كان في طريق ماتِي، أو في قرية عامرة، فعرفها سنة، فإن جاء صاحبها، وإلا فلك، وما» «That which is found on a frequented road, or in an inhabited village, announce it for one year. If its owner comes, then it is his; otherwise, it is yours. As for that which is not found on a frequented road, nor in an inhabited village, then upon it and upon rikaz is khums.” [Sunan al-Nasa'i and Sunan Ibn Majah]

It is permissible for an individual to own a spring of water, unless the community cannot do without it. However, he may not own the road, the pavement, the seashore, or anything similar from the communal utilities, or anything connected to a public benefit. Yet, he may

benefit from these utilities without possessing them as ownership, such as by sitting in the road or the masjid, fishing in the sea or river, or sitting in a garden. Once he leaves these places, he no longer retains any priority in benefiting from them, nor is it permissible for him to reserve the place he had used. Any other individual has the right to benefit from these places, and the authority-holder may regulate such benefit.

The State's Responsibility Regarding Public Ownership

The Khilafah (Caliphate) State bears direct responsibility for caring for the people. Included within this care is the preservation of private wealth and public wealth. Included within the preservation of this wealth is preventing aggression against public ownership. Also included within this care is the establishment of legal controls derived from the Islamic Shariah that regulate benefit from public ownership and protect it for the interest of the community.

What follows is an explanation of the areas of responsibility borne by the Khilafah State with regard to the wealth of public ownership.

First: The responsibility to prevent transgression and the infliction of harm

The state does not permit aggression against the properties of public ownership, regardless of the party from which such aggression arises. It is the entity charged by the Shariah with protecting this ownership and preventing the greedy or the reckless from destroying any wealth, utility, machine, road, square, beach, or anything similar belonging to the community. It is not permissible for the authority-holder to own any part of public ownership, nor to grant it to his relatives. He is to be held accountable for this by the Majlis al-Ummah, the Court of Grievances (Mah'kamat al-Mazhalim), and the general body of the Ummah. The Ummah must formulate a system for holding the authority-holders accountable.

In this regard, al-Mawardi says, *والذي يختص بنظر المظالم يشتمل على عشرة أقسام: فالقسم الأول: النظر في (وأيضا) تعدي الولاية على الرعية... والقسم الخامس: رد العُصوب (أخذ مال متقوّم محترّم بلا إذن مالكة دون خفية)، وهي ضربان: أحدهما: عُصوب سلطانية، قد تغلب عليها ولاية الجور، كالأمالك المقبوضة عن أربابها، إما لرغبة فيها، وإما لتعدي على أهلها. فهذا إن علم به "That which falls specifically under the jurisdiction of grievances comprises ten categories. The first category is examining the transgression of rulers against the subjects... The fifth category is the restoration of usurped property — that is, the taking of valuable and inviolable property without the permission of its owner and without concealment. This is of two types. The first is usurpations by authority: properties over which unjust rulers have gained control, such as properties seized from their owners, either out of desire for them or as an act of transgression against their people. If the wali of grievances becomes aware of this while reviewing affairs, he orders its return before any complaint is brought before him; and if he is not aware of it, then it depends upon the complaint of its owners." [Al-Ahkam al-Sultaniyyah, pp. 101–103]*

Second: Intervention to regulate benefit from utilities

This includes, for example, designating places in streets or squares for parking cars, for pedestrian crossings, for seating in markets, or assigning specific places for sea fishing, swimming, or extracting salt from salt marshes. This is considered intervention to ensure an appropriate share for every member of society within the limits of his need, so that the strong do not dominate the weak in exploiting these utilities, and so that quarrels or disputes are prevented during such exploitation.

Third: Reconciliation between those disputing over benefit from public ownership

It is part of human nature to compete in seeking worldly goods and to race toward benefiting from public wealth, because it is held in common and is not divided into separate shares whose owners are known. This leads to dispute and disagreement within the community. The state therefore intervenes to establish the right and settle the disagreement. This is within its right, and it is also obligatory upon it. Imam Ahmad said regarding one who sits in public property, *(وإن قعد وأطال منع من ذلك لأنه يصير كالممتلك... وإن استيق إليه اثنان احتمل أن يقرع بينهما،*

واحتتمل أن يقدم الإمام من يرى منهما. وإن كان الجالس يضيق على المارة؛ لم يحلَّ له الجلوس فيه، ولا يحل للإمام تمكينه بعوض، (ولا غيره) «If he sits and prolongs his sitting, he is prevented from doing so, because he becomes like one who owns it... If two people race toward it, it may be that lots are drawn between them, and it may be that the Imam gives precedence to whichever of them he sees fit. If the one sitting causes constriction for passers-by, then it is not lawful for him to sit there, nor is it lawful for the Imam to enable him to do so, whether for compensation or otherwise.» [Cited by Ibn Qudamah in Al-Mughni, 6/63]

Fourth: Protecting the public hima (حمى)

The Khalifah — that is, the state — has the right to designate part of public ownership as protected for certain public purposes, and also to designate part of people's private property for such purposes, as occurs today. Ibn Abbas narrated from al-Sa'b ibn Jaththamah, who said: The Messenger of Allah (saw) said: «لا حمى إلا لله ولرسوله» **“There is no hima except for Allah and His Messenger.”** [Fath al-Bari, commentary on Sahih al-Bukhari]. Abu Ubayd al-Qasim ibn Sallam said, (في الحديث الذي يحدثه الصعب بن جثامة عن النبي صلى الله عليه وسلم يذهب إلى أن للإمام أن «In the hadith narrated by al-Sa'b ibn Jaththamah from the Prophet (saw) it indicates that the Imam may designate as hima that which is for Allah, such as the hima of the Prophet (saw) and such as that which Umar designated as hima. He says that all of this falls within hima.” [Al-Amwal, p. 299; al-Mawardi, Al-Ahkam al-Sultaniyyah, pp. 233–234]. Abu Ubayd al-Qasim ibn Sallam holds that hima for Allah (swt) and His Messenger (saw) occurs in two forms. The first is that land is protected as hima for horses engaged in fighting in the path of Allah (swt), and the Messenger of Allah(saw) did this. The second is that land is protected as hima for the livestock of charity, and our master Umar (ra) acted upon this. [Abu Ubayd, Al-Amwal, p. 297; al-Mawardi, Al-Ahkam al-Sultaniyyah, pp. 233–234] This refers to what al-Bukhari and Abu Dawud narrated concerning the Messenger of Allah(saw) designating al-Naqi' as hima. [al-Mawardi, Al-Ahkam al-Sultaniyyah, p. 233]

Hima means the allocation of permissible land for a public interest (Maslahah). It is an exception from the public utilities; however, this does not make the hima private ownership, nor state ownership. Instead, it remains public ownership. Public ownership includes public permissible properties and everything endowed for the public interest (Maslahah) . [Dr. Rafiq Yunus, Principles of Islamic Economics, pp. 44–45]

During the time of the Messenger of Allah (saw) and the Khulafa' Rashidun after him, hima was designated for grazing the horses of jihad and the camels of charity. As for today, it may be designated for similar purposes, such as facilities of the army prepared for jihad, its barracks, training camps, shooting ranges, or similar purposes.

Fifth: Regulating land reclamation — the revival of dead (barren) land

Islam encouraged the revival of dead land. Concerning this, the Messenger of Allah (saw) said, «من أحيا أرضًا ميتة فهي له» **“Whoever revives dead land, it is his.”** [Fath al-Bari, commentary on Sahih al-Bukhari, 5/23]. He also said in another narration: «من أعمار أرضًا ليست «Whoever cultivates land that belongs to no one has more right to it.” [al-Bayhaqi, Al-Sunan al-Kubra, 6/146]

According to al-Shafi'i, dead land, (كل ما لم يكن عامرًا (معمورًا)، ولا حريمًا لعامر (ما أضيف إليها وكان من مرافقها؛ وسمي به لأنه يحرم منع صاحبه منه)، فهو موات وإن كان متصلًا بعامر. وقال أبو حنيفة: الموات ما بعد من العامر، ولم يبلغه الماء. وقال أبو يوسف: الموات كل أرض إذا وقف على العامر منادٍ بأعلى صوته، لم يسمع أقرب الناس إليها في العامر) “Everything that is not cultivated, nor a protected boundary of cultivated land — meaning what is attached to it and forms part of its utilities; and it was named as such because it is prohibited to prevent its owner from it — is dead land, even if it is connected to cultivated land.” Abu Hanifah said: Dead land is that which is distant from cultivated land and which water does not reach. Abu Yusuf said: Dead land is every land where, if a caller stood at the edge of cultivated land and called out at the top of his voice, the nearest people to it in the cultivated land would not hear him.” [al-Mawardi, Al-Ahkam al-Sultaniyyah, p. 223] Al-Mawardi holds that neighbors and those who are farther away are equal in the revival of

dead land. Imam Malik, however, holds that the neighbors of dead land from among the people of cultivated land have greater right to revive it than those farther away. [al-Mawardi, Al-Ahkam al-Sultaniyyah, p. 223].

Revival, in contemporary usage, is referred to as land reclamation. States today undertake the greater burden of it, and they may encourage revival by enacting laws that encourage individuals to carry out reclamation through exemption from taxes and fees, and by providing support through the establishment of infrastructure and reduced-cost electricity.

It is permissible for the Khalifah to allocate portions of this dead land. In this regard, Abu Yusuf, addressing Amir al-Mu'minin Harun al-Rashid, said, (وسألت يا أمير المؤمنين عن الأراضين التي افتتحت عنوة، أو صولح عليها أهلها... وليست بملك لأحد، ولا في يد أحد، فهي موات، فمن أحيها، أو أحيها منها شيئاً، فهي له. ولك أن تقطع ذلك من أحببت ورأيت، وتؤاجره، وتعمل فيه بما ترى أنه صلاح. وكل من أحيها أرضاً مواتاً فهي له. وقد كان أبو حنيفة رحمه الله يقول: من أحيها أرضاً مواتاً فهي له إذا أجازته الإمام. ومن أحيها أرضاً مواتاً بغير إذن الإمام فليست له، وللإمام أن يخرجها "You asked, O Amir al-Mu'minin, about lands that were conquered by force, or whose people entered into reconciliation over them... and which are not the property of anyone, nor in anyone's possession. They are dead land. Whoever revives them, or revives any part of them, they are his. You may allocate such land to whomever you wish and deem appropriate, lease it, and deal with it according to what you see as beneficial. Whoever revives dead land, it is his. Abu Hanifah, may Allah have mercy on him, used to say: Whoever revives dead land, it is his if the Imam permits him. But whoever revives dead land without the permission of the Imam, it is not his, and the Imam may remove it from his hand and deal with it as he sees fit, whether through lease, allocation, or otherwise." [Abu Yusuf, Al-Kharaj, pp. 63–64]

Abu Yusuf justified Abu Hanifah's condition of the Imam's permission on the basis that the Imam settles disputes between people in matters over which they differ, or in cases where they harm one another. It appears that the opinion of Imam Abu Hanifah is more suitable and more acceptable, because people are governed by greed, desires, and selfishness. In light of continuous growth and the shrinking of dead lands after the expansion of building and urban development, the likelihood of disputes occurring becomes greater under what is called population explosion. Therefore, there is no escape from state intervention to regulate and control the revival of dead land, so that disorder does not become widespread.

Whoever revives land and then leaves it unused for a period exceeding three years, the state is the authority capable of taking that land from him and giving it to someone else. The evidence for this is the saying of the Messenger of Allah (saw) who said, «من أحيأ أرضاً ميتة فهي له، وليس لمحتجر حق بعد ثلاث سنين» **Whoever revives dead land, it is his; and one who merely reserves land has no right after three years.** [al-Zayla'i, Nasb al-Rayah, 4/290]. It is also reported in the Musnad of Imam al-Shafi'i that Umar ibn al-Khattab (ra) said, (قال عمر بن الخطاب رضي الله عنه: "ليس لأحد إلا ما أحاطت عليه جدرانه، إن إحياء الموات ما يكون زرعاً، أو حفراً، أو يحاط بالجدران، وهو مثل إبطاله التحجير، يعني ما يعمر به مثل ما يحجر) "No one has anything except that which his walls encompass. The revival of dead land is that which is done by cultivation, digging, or enclosing it with walls. This is like his invalidation of mere reservation — meaning that what is developed is what is effectively reserved." [Musnad al-Shafi'i, p. 382]. Here, the importance of the state undertaking oversight and regulation becomes clear: it must know who cultivates the land and who leaves it unused, and then take the appropriate measure concerning him.

Abdullah ibn Abi Bakr narrated, (جاء بلال بن الحارث المزني إلى رسول الله صلى الله عليه وسلم فاستقطعه أرضاً، فقطعه له طويلة عريضة، فلما ولى عمر قال له: يا بلال، إنك استقطعت رسول الله أرضاً طويلة عريضة قطعها لك، وإن رسول الله لم يكن ليمنع شيئاً يسأله، وإنك لا تطيق ما في يدك. فقال: أجل. قال فانظر ما قويت عليه منها فأمسكه، وما لم تطق فادفعه إلينا نقسمه بين المسلمين. فقال: لا أفعل والله شيئاً أقطعني رسول الله صلى الله عليه وسلم. فقال عمر: والله لتفعلن. فأخذ منه ما عجز عن عمارته فقسمه بين المسلمين) "Bilal ibn al-Harith al-Muzani came to the Messenger of Allah (saw) and asked him to allocate land to him. He allocated to him a long and wide tract of land. When Umar (ra) became Khaleefah, he said to him, "O Bilal, you asked The Messenger of Allah for a long and wide land, and he allocated it to you. The Messenger of Allah would not

refuse anything he was asked for, but you are not able to manage what is in your hand.” He said: “Yes.” Umar (ra) said, “Then look at what you are able to manage of it and keep it, and what you are not able to manage, hand it over to us so that we may divide it among the Muslims.” He said: “By Allah, I will not give up anything that the Messenger of Allah allocated to me.” Umar said: “By Allah, you shall certainly do so.” So he took from him what he was unable to cultivate and divided it among the Muslims.” [al-Bayhaqi, Al-Sunan al-Kubra, 6/246]. This intervention by our master Umar (ra) was an intervention by virtue of his being the Khalifah, or head of state. He undertook this action because he considered it to be part of his right as the authority-holder, not a transgression against the property of others.

As for the state’s ability to acquire new lands, this is permissible if, on the one hand, it is for the interest of the community, and if, on the other hand, the state pays financial compensation to the owner when the land is part of individual ownership.

It is also among the duties of the Khilafah State to undertake land reclamation itself, and to encourage individuals to carry out reclamation as well. It may give certain lands to some people for reclamation and for possessing the benefit of them, after the state brings water to them through canals and pipes, and secures electricity, hospitals, and transportation routes to these areas subject to reclamation. This accelerates work in those decertified regions and may help reduce desertification, a problem that has come to concern economists.

Sixth: Supervising and regulating awqaf

Linguistically, **waqf** means endowment. To make a house waqf is to endow it. In this sense, the verb is used according to a rare usage in the language. It is also said: “I endowed” and “I caused to be endowed.” In this sense came the hadith narrated by Abdullah ibn Umar (ra), who said: «أصاب عمر أرضًا بخيبر، فأتى النبي صلى الله عليه وسلم يستأمره فيها فقال: يا رسول الله، إني أصبت أرضًا، إن شئت حبست أصلها وتصدقته بها، غير أن لا يُباع أصلها، ولا «: بخيبر لم أصب قط مالا أنفس عندي منه، فما تأمرني فيها؟ فقال قال: فتصدق بها عمر في الفقراء، وذوي القربى، والرقاب، وابن السبيل، والضيف، لا جناح على «يبتاع، ولا يوهب، ولا يُورث من وليها أن يأكل منها، أو يطعم صديقًا بالمعروف غير متأكل فيه أو متمول» **Umar acquired land in Khaybar, so he came to the Prophet (saw) seeking his instruction regarding it. He said: “O Messenger of Allah, I have acquired land in Khaybar, and I have never acquired any wealth more precious to me than it. What do you command me regarding it?” He said, “If you wish, endow its original asset and give it in charity, provided that its original asset is not sold, purchased, gifted, or inherited.” He said: So Umar gave it in charity for the poor, relatives, slaves, the wayfarer, and the guest. There is no blame upon the one who administers it if he eats from it, or feeds a friend, according to what is customary, without seeking to acquire wealth from it or make it a source of personal enrichment.** [al-Bayhaqi, Al-Sunan al-Kubra, 6/263; Sunan al-Nasa’i, Kitab al-Ahbas, p. 612]

Technically, **waqf** is the endowment of the original asset and the dedication of its benefit. The person who confines the asset is called the **waqif**, and the endowed property is called the **endowed asset**. Wealth may be endowed under various forms, including family waqf, charitable waqf, and waqf for public ways. The waqif is the one who confines his asset, either while it remains under his ownership or while it is placed under the ownership of Allah (swt).

It is stated in Al-Mughni by Ibn Qudamah, (وأكثر أهل العلم من السلف ومن بعدهم على القول بصحة الوقف. قال جابر: لم يكن أحد من أصحاب رسول الله صلى الله عليه وسلم ذو مقدرة إلا وقف) **Most of the people of knowledge, from the early generations and those after them, hold the validity of waqf. Jabir said: None of the Companions (ra) of the Messenger of Allah (saw) who had means failed to make waqf.** [Ibn Qudamah, Al-Mughni, 6/185]

If a Muslim makes something waqf for the Muslims — that is, an unrestricted waqf — it is permissible for him to benefit from it, because he is included within the general body of Muslims. For example, if he makes a masjid waqf, he may pray in it; or if he makes a well waqf, he may draw water from it. This falls under public ownership. As for when he makes waqf for specific people, such as his children or his descendants, the waqf remains confined to those people.

