

Is Islamic Law Influenced by the Roman Law? A Case Study of International Law

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Abstract

Some Orientalists claim that Islamic law is a copy of Roman law or even that it is Roman law in an Islamic veil. This paper attempts to study international law of Islam and compare it with the international law notions of Roman law. It first evaluates claims of the Orientalists about the Islamic law in general and then compares International law of Islam with the Roman notions of international law. It concludes that, at least in the case of international law, Islamic law is not influenced by Roman Law because development, sources, literature or discourse related to and topics of siyar are distinct than the Roman jus gentium and jus fetiale. This indicates that siyar developed in a very different atmosphere and independently through reasoning of Muslim jurists and hence the two systems are independent of each other.

Keywords: Islamic Law, Roman Law, International Law, Siyar, Jus Gentium, Jus Fetiale

Introduction

The First Crusade¹ was initiated in 1096 against the Muslim world and continued for more than a century.² Mahmoud Shakir, an authority on Orientalism, asserts that Crusade, Evangelization³ and Orientalism⁴ were three institutions working in a parallel manner. Orientalists took pain of learning Arabic and other languages of Islamic Civilization⁵ and translated a great number of books so that the Europeans will learn from the knowledge of the *dar al-Islam*.⁶ They wanted to highlight to the European intellectuals that Arabs were ignorant people but then “Muhammad” appeared claiming to be messenger of God. He made-up a new version of religion calling it Islam where in fact it was a plagiarized version of Christianity and Judaism. The Orientalists presented Islam and Islamic civilization as a copy of other Euro-centered civilizations.⁷

Islamic law was one of the spheres of knowledge that Orientalists wrote significant books about. They had the same view about Islamic law and thus asserted that Islamic Law is influenced by other civilizations, especially, the Roman law. This paper discusses the influences of Roman law over Islamic law with a focus on the area of international law and carries out comparison of the salient features of Islamic International Law with Roman International Law.

The paper first studies views on the general influence of the Roman law on Islamic law, and how the claim of the influence is responded by the scholars. After the general observations, the paper discusses the Islamic and Roman notions of international law. First the method of warfare of both the civilizations is discussed. Then different aspects of the Islamic international law are compared with the different international law notions of Roman civilization.

2 The Influence of Islamic Law by the Roman Law

Roman law is one of the oldest laws and legal systems developed in Europe. This law and legal system has roots in customs of the people of Roman empire which was converted into the Twelve Tables and later the Justinian’s Code further developed it. The Justinian’s Code is codified in three books of law only.⁸ While on the other hand, most of the schools of the Islamic law have their manuals of jurisprudence, which are very broad and discusses variety of topics, unlike the Roman law. The Orientalists could not approve of the fact that the Islamic law developed independently. Especially when the European powers colonized the Muslim world and were triumphant. They confined the words of “civilization,” “civilized” and “civilized nations” for themselves while excluding others.⁹

The Orientalists were not ready to accept independence of the Islamic law and approve that this Law is an outcome of the Islamic civilization.¹⁰ Therefore, they came with the view that Islamic law is influenced by the Roman law. Perhaps the first one to come with such a view was Italian Orientalist, Dominico Gatteschi, in 1865.¹¹

Goldziher (1850-1921), the famous Orientalist, is also of the same view. English Orientalist, Sheldon Amos (1835–1886) says that Mohammedan Law, which is a phrase used to refer to Islamic Law, is the Roman, Justinian law in the Arabic veil. While Henry Hugues states that Islamic Law in principle is the Roman Law with very minor changes. Some of the Orientalists went to the extent to say that the Arabs, referring to Muslims, only ‘added some mistakes’ to the Roman law.¹² Overall, all of them, some of the with a very hostile tone, insist that Islamic law is influenced by the Roman law.¹³ The interesting point is that some of them even did not understand Arabic.¹⁴

Al-Said al-Dasuqi Eid summarized the reasons based on which the Orientalists claim that Islamic law is influenced by the Roman law into five basic reasons. We, however, for ease of understanding, have put those five into the following four reasons:

- a. Muhammad (peace be on him) had paid visits to Syria prior to becoming a prophet. There, he learned Roman law and then incorporated the same into Islamic law.¹⁵ However, it would be very naïve to claim that Muhammad (peace be on him) learned Roman law during his visits to Syria. Reason being, these were short visits and for commercial purpose only. There is no evidence available to suggest that Muhammad (peace be on him) even met a scholar during his visits, let alone “learning Roman Law.” The claim becomes further doubtful when all agree upon it that Muhammad (peace be on him) was illiterate so he was neither interested in the law nor had command over the subject. No doubt, Prophet Muhammad (peace be on him) met some priests but that was a short meeting and due to short nature of the meeting, no discussion about law or jurisprudence may have taken place among them.¹⁶
- b. That Muslims, following conquest of the countries where Roman law was applicable, would have been influenced by the Roman law. It is a ‘strong’ argument presented by Goldziher,¹⁷ Sheldon Amos,¹⁸ Alfred Von Kremer (1828–1889) and other Orientalists for proving their thesis.¹⁹ They also assert that the two great Imams of the Islamic law, i.e., Imam Abd al-Rahman al-Awza'i (707–774) and

Imam Shafi'i (767-820), were from Syria and the people of Syria were familiar with the law of Roman empire, therefore, they contend that they were influenced and hence Islamic law was influenced.²⁰ While on the contrary, we see that the sources of Islamic law differ with the sources of Roman law. Roman law originated primarily from the customs of the people and ordinances of the rulers. While Islamic law is primarily derived from the Quran and the traditions of the Prophet and not from the customs.²¹ Moreover, after the conversion of the Roman empire to Christianity their law continued to be based on the same sources and hence the same old law. While Islam brought revolutionary changes in the society and rejected most of the customs of the people.

In addition to this, as Nallino has said, there should have been Arabic translations of the Roman Law so that jurists, who were not familiar with other languages, would use as a source. The fact however is that there was none, therefore, the claim that they have benefited from Roman literature appears to be unfounded.²²

Another factor, which refutes this possibility, is the pride that the jurists and the trust they put in the sources of Islamic law. They believed that the Qur'an suffices as a source for all the law. They rely on a verse of the Qur'an where Allah Almighty asserts, "It lacks nothing." In case of need for interpretations, nonetheless, there is the traditions of the Prophet (peace be on him) are available in great numbers. As a result, they did not resort to other sources, such as the Roman law.

It is also noteworthy that the Beirut institute of Roman Law was destroyed decades prior to Imam Awza'i and Imam Shafi'i held the position of Imams. Moreover, both of them belong to the *Ahl al-Hadith* school of Islamic Law,²³ which in principle refutes use of reason and rationality and reliance on sources that are not strictly deduced from the texts of the Qur'an and Sunnah. Most importantly, Imam Awza'i and Imam Shafi'i did not commence discussions on law and jurisprudence, instead, this task was already performed by Imam Abu Hanifa²⁴ and his disciples, Imam Abu Yusuf and Imam Muhammad, as well as Imam Malik and his disciples. This means that later figurers played a major role in the formation of schools of law and in the development of the Islamic law. Imam Shafi 'i's contribution was confined to the discussion on questions raised by and responses provided by Imam Abu Hanifa and his

disciples. In his books, he only shows his agreement or disagreement with the views of the Hanafis.²⁵

- c. Orientalists also contend that there is a possibility that the customs of the people of Arabian Peninsula may have been indirectly influenced by the Roman law and hence Islamic Law would have been influenced.²⁶ Again, Nallino presents detailed evidence to show that pre-Islamic Arabs were ignorant of the Roman law.²⁷ Even to suppose that the Arab pagans were influenced by the Roman law, the Prophet (peace be on him) abolished most of the prevalent customs whereas the rest of customs, that survived, were Shari‘ah Islamized.²⁸
- d. The last claim is that there are similarities between Islamic law and the Roman law; therefore, it is logical to infer that the predecessor has influenced the later.²⁹ Mahmood Ahmad Ghazi (1950-2010) also discusses these similarities and concludes that they cannot prove the influence of the Roman law.³⁰

Notwithstanding, there are some Orientalists, like Carlo Alfonso Nallino, Fitzgerald and Georges-Henri Bousquet, who also believe that Islamic law did not borrow from the Roman law. Muhammad Hamidullah’s edited book “*Hal lil-Qanun ’l-Rumi Ta’sir ‘Ala al-Fiqh al-Islami?*” (Is Islamic law influenced by the Roman law?)³¹ is a compilation of views of Muhammad Hamidullah and the mentioned Orientalists. They assert that Islamic law is not influenced by Roman Law. The main thesis of this book is to refute the claim of influence of the Roman Law over Islamic Law.³²

Another prolific scholar of Islamic Law, Imran Ahsan Khan Nyazee (b. 1945), has a different view regarding the subject. He says that some Orientalists like Max Weber and Joseph Schacht argue that Islamic law borrowed considerable details from Roman law, which is, in his view, natural for one civilization to benefit from another.³³ In addition, he contends that it is also a possibility that human minds come to the same conclusions without borrowing from each other. Lastly, he asserts that though even if Islamic law borrowed from the Roman law, it should be subject to the Islamization test and will be accepted after it passes the same.³⁴ He, in a personal interview with the author said that “it will be naive to deny this (the influence of Roman law). You just have to look at some of the *qawa ‘id* (principles or maxims of Islamic law) to know about the influence. The condition I have stated however is that prior to acceptance of the rules, the Muslim jurists always Islamized this influence.”³⁵

3 Comparison of the Roman and Muslim International Law

The preceding discussion leads us to conclude that most of the Muslim scholars and some Orientalists do not agree that Islamic law is influenced by Roman Law whereas the views of others are problematic. In the sense that most of these views are based on assumptions without being supported by concrete evidence, and in case of some of them, it was because of their ignorance of Islamic law that they believed in such a thing.³⁶ We, however, believe that yet another test could be useful to see if there is influence of Roman law or not. For doing so, we will compare the Islamic international law or *Siyar*³⁷ with Roman law in the coming paragraphs and observe the outcome.

3.1 Law of Warfare

Romans contributed some ideas to the law of war and peace, yet their ethics of war were severe.³⁸ Among their contribution is the Just War theory, or *bellum justum*. According to this theory, wars that were fought in contravention of the rules laid down by the Romans were all unjust. Cicero (106-43 B.C.E.), a famous Roman philosopher and statesman, states that Just War must be fought in defense of self and honor.³⁹ He continues to say that demand of compensation prior to commencement or declaration of war is included in the Just War.⁴⁰

Some of those who fought against the Roman Empire were of the view that the Romans had no rule to observe at the time of war. Calgacus⁴¹ says “To plunder, slaughter, and rapine they falsely give the name ‘empire’ they make desolation and they call it ‘peace’.”⁴² The annals of history also shows that the Roman army would torch villages during or after the war. They also used to kill without distinction between combatants and non-combatants. The Trajan Column in the Rome suffices to explain their ethics of war.⁴³ In addition, Cicero says that at the time of war, the law falls silent.

According to Islamic law, however, the law never falls silent. It is always applicable and derogation from it is not allowed. Prophet Muhammad (peace be on him) saw the corpus of a woman in the battlefield during the Conquest of Makkah and expressed his extreme anger. He then announced that women should not be killed during war.⁴⁴

Whenever the Prophet (peace be on him) would dispatch an army, he would instruct the leader not to break his pledge; not to kill children; not to mutilate the dead bodies; and the rest of the laws and rules of war in Islam would be reminded to them.⁴⁵ The traditions of Prophet (peace be on him) also show that attack without prior warning, burning human beings alive or setting on fire their corpses, committing corruption, destruction of enemy’s property, committing perfidy, killing children, women, aged, priests and

generally non-combatants and committing genocide are strictly prohibited by the Islamic Law.⁴⁶

The same rule was followed during the Caliphate of Abu Bakr.⁴⁷ Above all is the Quranic verse explaining the Islamic law of war, which instructs the Muslims “not to transgress limits”, because Allah does not like transgressors.⁴⁸

3.2 Notions of International Law

Romans do not have international law proper; however, their notions related with international law are divided between *jus gentium* (law for others),⁴⁹ *jus fetiale* (law of *fetiales*)⁵⁰ and *jus belli* (Law of War). Because we have already compared Roman law of warfare with the Islamic rules of conduct of war, therefore, below we only compare *jus gentium* and *jus fetiale* with Islamic law.

3.2.1 Sources of the Two Systems

Sources of the Roman Law are primarily customs of the people of the Rome while ordinances issued by the ruler has a place in the system.⁵¹ However, we do not know what are the sources of *jus gentium*, which is defined as the law that regulated affairs of the Romans with the non-Roman individuals.” Even Cicero himself uses the term *jus gentium* in different senses.⁵² We do not even know whether it was created by the Romans or it was practice of other people and Romans adopted it later on. As far as *jus fetiale* is concerned, it is a religious concepts and deals with moral aspect of relations of Romans empire with others. It is for the reason that the task of the *fetials* was not making law, but religious ceremonies.⁵³ It is also for the same reason that *jus fetiale* is a part of Rome’s sacred law or *jus sacrum*.

On the contrary, we find that sources of Islamic international law are the same as the sources of the rest of the Islamic jurisprudence. It is for the reason that *siyar* is a part of the Islamic law. Quran is the primary source of *siyar*, then Sunnah of the Prophet (peace be on him), followed by the conduct of the Rightly Guided Caliphs, alongside Islamic history, juristic literature and analogy.⁵⁴ The vast area of the sources of *siyar* gave it a chance to be developed and have the ability to solve legal issues. Therefore, sources of *siyar* are totally and fundamentally different from the sources of Roman law generally, and *jus gentium* and *jus fetiale* specifically.

3.2.2 Development of the Two Systems

Very little is known of the development of *jus gentium*. Some hints of this system do appear in the writings of early Romans, which however cannot shed light on its different aspects. It seems that *jus gentium* developed after the Romans came into contact with other peoples. Yet, it is not known as to who developed it and how. Overall, Roman magistrates

started applying *jus gentium* and it became a part of the Roman law. *Jus fetiale*, on the other hand has religious basis.

Siyar, on the contrary, is rooted in the Qur'an and *Sunnah* primarily. Its development started from the time Prophet Muhammad (peace be on him) migrated to Madinah⁵⁵ and its development continued in the coming years. The Muslim jurists developed the system of *siyar* as an independent subject after 2nd century after *hijra*.

3.2.3 Discourse on the Two Systems

Perhaps the oldest source where the term *jus gentium* is found is the works of Cicero who, as mentioned earlier, used the term in different senses, which made it difficult to understand its scope.⁵⁶ Even now, very limited literature is available on the same. *Jus fetiale* is also not rich from the perspective of its sources.⁵⁷

Whereas the researchers on *siyar* know that the literature on the topic was developed during the life of the Prophet (peace be on him) and further enriched when Imam Zayd (d. 120 AH) and Imam Abu Hanifa (80-150 AH) worked on the topic. Work of Imam Abu Hanifa in fact triggered a discourse in relation to the subject and the discussions covered by the same. His book on *siyar* and the books written by Imam Muhammad b. Hasan were refuted by Awza'i, which caused richness of the literature overall.⁵⁸ Then, the works of the earliest jurists on *siyar* were further elaborated and commentaries are written on it. Nowadays, every manual of Islamic law contains a chapter on *siyar* or *jihad*. Even the discussions on the topic is still in its heat in the Muslim world.

Therefore, literature of *jus gentium* and *jus fetiale* show that these notions were very primary and little known whereas *siyar* was a topic of lively and heated debates among the jurists of Islamic law.

3.2.4 Contents of the Two Systems

The available sources on *jus gentium* indicate that it was part of the Roman private law,⁵⁹ and specifically, for dealing with issues that relate to Roman versus non-Roman citizens. Therefore, it generally discusses the dealings with others, or aliens, hence it contains most of the issues of private international law.

Whereas, we find in the books of Islamic law issues that cover all aspects of war and peace that the contemporary International Law and International Humanitarian Law deal with and more. *Siyar* explains Islamic *jus ad bellum* and Islamic *jus in bello* alike. It discusses the causes of war, conduct of hostilities, spoils of war, prisoners of war, issues of *dar* (domain, jurisdiction), peace, apostasy and other topics of public and private international law. Therefore, it appears that contents of the Roman and

Muslim International Law are different. *Jus gentium* and *jus fetiale* deal with something different than subjects of *siyar*.

4 Conclusion

Crusades, Evangelization and Orientalism were three forces of Christendom in confrontation with the Islamic world. Orientalists had the task of translation of Islamic literature and hence introducing Christendom with the literary treasures of Islam. One of the objectives of the Orientalism was deformation of the other, and to convince the crusaders that they are fighting an ignorant and uncivilized nation. Based on this, they endeavored to portray that Islamic law is nothing else than a copy of other civilizations—especially the Roman civilization. They contended that Islamic law is in fact Roman law but in the Islamic dress. Some of the claims of the Orientalists are unfounded and even at times cannot pass the basic test of rationality, and some do appear genuine.

However, in the case of Islamic international law, the discussion above shows that there is no direct or indirect relationship of *siyar* with Roman international law. The claim is evident not only in the notions of international law, but in the ethics of warfare as well. Romans had almost no organized law for the conduct of war. Their conduct with the enemy was cruel. While Muslims had a law for war which covered both *jus ad bellum* (the cause of war) and *jus in bello* (the conduct of hostiles). Moreover, the development, sources, literature and topics of *siyar* are distinct than the Roman *jus gentium* and *jus fetiale*, which indicate that *siyar* developed in a very different atmosphere and independently through reasoning of Muslim jurists.

Notes and References

- ¹ It was a military expedition against the Muslim world initiated by the Byzantine empire. See for details: Mark Cartwright, “First Crusade,” *Ancient History Encyclopaedia*, <https://www.ancient.eu/First_Crusade/> (Last accessed: November 11, 2019).
- ² “The Crusades,” *The History Learning Site*, <<http://www.historylearningsite.co.uk/medieval-england/the-crusades/>> (Last accessed: November 11, 2019).
- ³ Activities of Catholic church intended to convert others to Christianity.
- ⁴ Encyclopaedia Britannica defines Orientalism as a “Western scholarly discipline of the 18th and 19th centuries that encompassed the study of the languages, literatures, religions, philosophies, histories, art, and laws of Asian societies, especially ancient ones.” However, Edward Said, an authority on Orientalism, defines it as “Orientalism can be discussed and analyzed as the corporate institution for dealing with the Orient – dealing with it by making statements about it, authorizing views of it, describing it, by teaching it, settling it, ruling

- over it: in short, Orientalism as a Western style for dominating, restructuring, and having authority over the Orient.” See; Megan C. Thomas, “Orientalism,” *Encyclopaedia Britannica*, <<https://www.britannica.com/science/Orientalism-cultural-field-of-study>> (Last accessed: November 14, 2019); Edward Said, *Orientalism* (New York: Vintage Books, 1979), 3.
- ⁵ Mahmoud Shakir, *Risala Fi Tariq Ila Saqafatina* (Cairo: Maktabah al-USrah, 1997), 35-60.
- ⁶ He intentionally uses the term *dar al-Islam* for the Muslim world. The intention, apparently, is to avoid using the terms produced in the West, but to use the original terms of Islamic literature.
- ⁷ *Ibid.*, 35-60.
- ⁸ Jaap Hage, “Sources of Law” in *Introduction to Law* (Cham: Springer, 2017), 4-8.
- ⁹ The term “civilized nations” used in United Nations Charter refers to European states and with this term European states are distinguished from other “uncivilized states”. See: James Sloan, “Civilized Nations,” *Oxford Public International Law*, <<https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1748>> (Last accessed: November 16, 2019).
- ¹⁰ Mahmood Ahmad Ghazi, *Muhazarat-e-Fiqh* (Lahore: Al-Faisal Nashiran, 2016), 22.
- ¹¹ Aibek S. Ahmedov, “On Question of Influence of Roman Law on Islamic Law,” *Dritto Storia*, <http://www.drittoestoria.it/8/Contributi/Ahmedov-Influence-%20Roman%20law-on-Islamic-law.htm#_ftn47> (Last accessed: 16 November, 2019); Al-Dasuqi al-Said al-Dasuqi Eid, *Istiqlal al-Fiqh al-Islami ‘An al-Qanun al-Romani wa al-Radd ‘Ala Shubah al-Mustashriqin* (Giza: Maktabat al-Tawiyah al-Islamiyah, 1989), 11.
- ¹² *Ibid.*, 11-12.
- ¹³ For instance, Theodore Ion calls Abu Hanifa as Hanife, Muslim as Mussulman and the rest of the terminologies which indicate unacquaintedness of the writer with Arabic language and hence the early Islamic sources. See Theodore P. Ion “Roman Law and Mohammedan Jurisprudence: I.” *Michigan Law Review* 6, no. 1 (1907): 44-52. doi:10.2307/1272666.
- ¹⁴ Such as Amos and Gatteschi. See; Patricia Crone, *Roman, Provincial and Islamic Law: The Origins of the Islamic Patronate* (New York: Cambridge University Press, 1987), 1-2.
- ¹⁵ Al-Dasuqi Eid, *Istiqlal al-Fiqh al-Islami*, 17.
- ¹⁶ *Ibid.*, 20-21.
- ¹⁷ Ignác Goldziher, *Introduction to Islamic Theology and Law*, trans. Andras Hamori and Ruth Hamori (Princeton, N. J: Princeton University Press, 1981), 31–40.
- ¹⁸ Crone, *Roman, Provincial and Islamic Law*, 2.
- ¹⁹ Al-Dasuqi Eid, *Istiqlal al-Fiqh al-Islami*, 23-24.
- ²⁰ Ion “Roman Law and Mohammedan Jurisprudence: I.” 49.
- ²¹ Ghazi, *Muhazarat-e-Fiqh*, 23.
- ²² Al-Dasuqi Eid, *Istiqlal al-Fiqh al-Islami*, 36.
- ²³ *Ahl al-Hadith* are those who want to have a justification from the holy text in all their decrees and fatwas and in every legal issue, they avoid reliance on the reason and analogy. *Ahl al-Ray*, on the other hand, equally use reason and

analogy, especially in cases where there is no specific text guiding the subject, or while the Prophetic *hadith* is not authentic. Imam Abu Hanifa is considered as the leader of the *Ahl al-Ray*. Imam Awza ‘i and Imam Shafi ‘i belong to the other school. See; Muhammad Abu Zahra, *Abu Hanifa* (Cairo: Dar al-Fikr al-Arabi, 1991), 83-93.

- ²⁴ Students of Abu Hanifa were the first to write books on Islamic law. They wrote the views of the Imam in different books. *Zahir al-Riwaya* is a set of books written by Muhammad b. Hasan al-Shaybani, the student of Abu Hanifa. Imam Shafi ‘i has memorized most of its parts and his works are only in response of the books written by the Shaybani. Other jurists also wrote responses to the books of the students of Abu Hanifa, which caused richness of Islamic law. See for details; Imran Ahsan Khan Nyazee, “Following a Madhab,” Nyazee. Available on <http://www.nyazee.org/islaw/theory/madhab.pdf> (Last accessed: Nov, 03, 2019).
- ²⁵ Imam Shafi ‘i was one of the admirers of Abu Hanifa, he says “All those who study *fiqh* are children of Imam Abu Hanifa.” See; Islamic Education Team, “Criticism levelled against Imam Abu Hanifah,” *Islamic Education*, <https://www.islamieducation.com/criticism-levelled-against-imam-abu-hanifah/> (Last accessed: November 18, 2019).
- ²⁶ This is what Ion also believes. See Ion “Roman Law and Mohammedan Jurisprudence: I.” 47.
- ²⁷ Al-Dasuqi Eid, *Istiqal al-Fiqh al-Islami*, 42-43.
- ²⁸ *Ibid*, 46.
- ²⁹ *Ibid*, 48.
- ³⁰ Ghazi contends that Roman law and Islamic law are basically different from each other. He mentions many differences between the two in order to prove that the two laws are completely distinct from each other. See for details: Ghazi, *Muhazarat-e-Fiqh* (Lahore: Al-Faisal Nashiran, 2016), 16-26.
- ³¹ This book contains five articles in total, two of which are by Muslim scholars whereas Orientalists write the remaining three articles.
- ³² Isam Tallima, “Hal lil-Qanun al-Rumi Tasir ala al-Fiqh al-Islami?” *Aljazeera*, <http://mubasher.aljazeera.net/opinion/%D8%B9%D8%B5%D8%A7%D9%85-%D8%AA%D9%84%D9%8A%D9%85%D8%A9-%D9%8A%D9%83%D8%AA%D8%A8%D9%87%D9%84-%D9%84%D9%84%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D8%B1%D9%88%D9%85%D9%8A-%D8%AA%D8%A3%D8%AB%D9%8A%D8%B1-%D8%B9%D9%84%D9%89-%D8%A7%D9%84%D9%81%D9%82%D9%87-%D8%A7%D9%84%D8%A5%D8%B3%D9%84%D8%A7%D9%85%D9%8A%D8%9F> (Last accessed: November 15, 2019).
- ³³ Nyazee, *Outlines of Islamic Jurisprudence* (Islamabad: Federal Law House, 2007), 188-89.
- ³⁴ *Ibid*.
- ³⁵ Imran Ahsan Khan Nyazee, personal interview with the researcher, April 10, 2017.
- ³⁶ As mentioned before, some of the Orientalists were unacquainted with Arabic language and hence they failed to access the primary sources of Islamic law. In addition, some of their writings are very biased and enmity is very clearly seen in their writings.
- ³⁷ *Siyar* is Islamic international law. Muhammad Hamidullah, a famous scholar of *siyar*, defines it as, “That part of the law and custom of the land and treaty obligations, which a Muslim *de facto* or *de jure state* observes in its dealings

- with other *de facto* or *de jure* states.” Muhammad Hamidullah, *The Muslim Conduct of State*, (Lahore: SH Muhammad Ashraf, 2011), 3.
- ³⁸ See for details: Zahid Jalaly, “Exploration of the Roman Notions of International Law,” *Kardan Journal of Social Sciences and Humanities*, 1(2) 83–96.
- ³⁹ “History of war ethics,” BBC, <<http://www.bbc.co.uk/ethics/war/just/history.shtml>> (Last accessed: November 16, 2017).
- ⁴⁰ *Ibid.*
- ⁴¹ He was a warrior and head of Caledonians who fought the Roman empire. See “CALGACUS”, *Undiscovered Scotland*, <<http://www.undiscoveredscotland.co.uk/usbiography/c/calgacus.html>> (Last accessed: November 17, 2019).
- ⁴² Christopher Kelly, *The Roman Empire: A Very Short Introduction* (Oxford: Oxford University Press, 2006), 22.
- ⁴³ The mentioned wall shows that the Roman army would cut the heads of the killed members of the enemy people and would carry it to their emperor so that he would know that his army committed this to the people. Taking heads of the enemy to the emperor is evident in their Trajan’s Column in Rome. See for details: “Caput Mundi – Beheading and Barbarism on Trajan’s Column,” *Roma Invicta*, <<https://garethharney.wordpress.com/2013/06/21/caput-mundi-beheading-and-barbarism-on-trajans-column/>> (Last accessed: November 11, 2019).
- ⁴⁴ Abu Dawood, *Hadith* number, 2669.
- ⁴⁵ The *hadith* is mentioned in the *Sahih Muslim* in the book of Jihad, Hadith number 1731. The English translation is taken from <<https://sunnah.com/muslim/32>> (Last accessed: November 11, 2019).
- ⁴⁶ Muhammad Munir, "The Prophet (Peace be Upon Him)'s Merciful Reforms in the Conduct of War: The Prohibited Acts" *Insights* Vol. 2 Iss. 2-3 (2010) Available at: <http://works.bepress.com/muhammad_munir/12/> (Last accessed: November 11, 2019).
- ⁴⁷ See for details of the instructions: Appendix I of Muhammad Mushtaq Ahmad, “Use of Force for the Rights of Self-determination in International Law and Shariah: A Comparative Study,” (Unpublished Master’s Thesis, International Islamic University Islamabad, 2006).
- ⁴⁸ 02:190.
- ⁴⁹ *Jus gentium* means the rules governing Roman relations with others, but it was focusing on the relations of individuals, not states and societies, so it could not be called international law proper. See for details, Jalaly, “Exploration of the Roman Notions of International Law,” 86-88.
- ⁵⁰ In order to regulate war and related matters through religious norms; Romans had established a system of ceremonies to which they referred as “*fetiales*”. They established a priestly college of the *fetiales* in the early years of the ‘republic’, to engage in the ceremonies of declaration of war and creation of peace. *Jus fetiale* is a part of Roman *jus sacrum* (the sacred law), which regulated legal and religious affairs of Rome with other states. See for details, *ibid.*, 89-90.
- ⁵¹ Hage, “Sources of Law” in *Introduction to Law* (Cham: Springer, 2017), 4-6.
- ⁵² Jalaly, “Exploration of the Roman Notions of International Law,” 86-88.
- ⁵³ For instance, in cases where Rome was convinced that war would be waged against such an ‘enemy’, it would send head of the *fetiales*, those who were

working in the college of *fetiales* and concerned with ceremonies of war and other related issues, to frontier of the enemy state and he would reiterate some words in presence of three adult males of the enemy state as a sign of declaration of war against them. The method of declaration was that *fetiales* would through a javelin dashed in blood into enemy territory and hence, a war would be formally declared from then on. See; *Ibid*.

- ⁵⁴ Hamidullah, *The Muslim Conduct of State*, 18.
- ⁵⁵ *Hijrah* in the history of Islam started after the Prophet of Islam and Muslims migrated from Makkah to Madinah, the then Yathrib.
- ⁵⁶ W. W. Buckland, *A text-book of Roman law from Augustus to Justinian* (London: Cambridge University Press, 1921), 53.
- ⁵⁷ See for details, Jalaly, "Exploration of the Roman Notions of International Law," 86-88.
- ⁵⁸ It is reported that Imam Awza 'i after reading a copy of Imam Muhammad's *Siyar al-Saghir*, said that the people of Iraq do not have knowledge of *siyar* so they should not write books on it. Imam Muhammad when received the comment of Imam Awza 'i, wrote a greater book on the topic, titled *al-Siyar al-Kabir*. In addition, Imam Abu Yusuf wrote a book titled *Refutation of Siyar of al-Awza 'i*. See for details: Zahid Jalaly, "Analysis of Origin, Development and Nature of Islamic International Law," *Kardan Journal of Social Sciences and Humanities* (2018), 3-29.
- ⁵⁹ Unlike public law, private law is that branch of law which regulates the relations between individuals. Elisabeth Zoller, *Introduction to Public Law: A Comparative Study* (Leiden: Martinus Nijhoff Publishers, 2008), 1-3.