

al-Mawardi

THE ORDINANCES OF
GOVERNMENT

A TRANSLATION OF

*Al-Aḥkām al-Sultāniyya wa' al-Wilāyāt
al-Dīniyya*

Translated by

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CENTER FOR MUSLIM
CONTRIBUTION TO CIVILIZATION

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The Ordinances of Government

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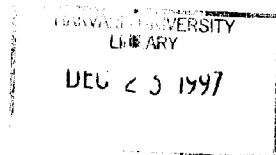
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Seven, carrying out legal penalties against those who deserve them. If the matter concerns one of God Almighty's rights, he should personally seek it without being asked to, so long as it is established by a deposition or indisputable evidence. If it pertains to the rights of human beings, its carrying out depends on being requested by the person who has the right. Abū Ḥanifa has made action in both cases dependent upon the demand of a plaintiff.

Eight, to look after the interests of his district by putting an end to usurpation in the streets or in open spaces, and by removing trespassing annexes or buildings. He has the right to take action of his own accord, even if there is no contending party. Abū Ḥanifa has stated, however, that he may not look into such matters unless there is a contending party. Since that, however, is a right that belongs to God Almighty, in regard to which plaintiff and accused are of equal standing, it is more appropriate for the legal authority to assume sole responsibility for it.

Nine, examining his witnesses and secretaries, and choosing his deputies and substitutes for their positions and relying upon them so long as they show straightforwardness and integrity, and firing and replacing them when they show signs of culpability or betrayal. Those who cannot cope with their duties are to be dealt with according to the one he prefers of the following two options: either they are replaced by stronger or more efficient subordinates, or they are reinforced by means of others whose presence with them should prove more effective.

Ten, to deal impartially in his adjudication with the strong and the weak, and rule equitably between the mean and the noble, never succumbing to personal whim to deprive the deserving of his right or to favour one who is in the wrong. As God, most high is He, has said: "O, David, We have made you a viceroy in the earth; therefore, judge among men with fairness and do not follow caprice, for it might lead you from God's path. Surely those who deviate from God's path will have a terrible torture awaiting them for failing to remember the Day of Reckoning" (Qur'an 38:26).

In his commission to Abū Mūsā al-Ash'arī, 'Umar ibn al-Khaṭṭāb, may God approve of him, covered the conditions of the judge's office, and showed the rules of appointment, saying: "Now, judging is a clearly defined duty and a tradition to follow. So, try to understand what you are told, for saying the truth avails nothing unless it is heeded. Deal equally with all men in your gestures, in your court judgement, and in your company, so that neither the noble may expect favour from you nor the weak despair of your fairness. Proof is demanded from the claimant, an oath is demanded from a defendant. Reconciliation among Muslims is permissible, unless it makes wrong right or right wrong. Do not let a decision you made yesterday deter you from returning to the truth today after careful reasoning has led you to find it out, for the truth is eternal, and going

back to what is right is better than persisting in the wrong. Use your reason to resolve uncertainty in matters that may not be found in God Almighty's Book or in His Prophet's example. Then learn precedents, and judge by analogy. Set for the one who claims to have a missing right or proof a deadline which he may not exceed; if he brings proof, rule in his favour, otherwise declare that he has lost his case, for that is more effective in dispelling suspicion and clearing up confusion. Muslims are generally to be considered upright in dealing with each other, except one who has been whipped for a crime, or known to have given false testimony, or is suspect in regard to his family relationship or clientship, for God forgives on account of oaths and wards off punishment by means of evidence. And beware of getting restless, bored, or disgusted by the contending parties, for upholding the truth when needed is greatly rewarded by God and brings honour to one's name. Farewell."

If it is suggested that this commission was defective on two counts: one, that it does not contain a phrase with which the authority is conferred; and, two, that it considers only apparent probity of the witnesses rather than inherent moral fortitude learned by checking and interviewing, which is really at issue. To the charge of the missing word of appointment two things may be said: first, that the appointment had already verbally preceded it, so that the commission letter was confined to exhortation and rules; second, that the terms used in the commission have the sense of appointment implicit in them, such as his saying "understand what you are told" and his instruction "whoever brings proof, rule in his favour, otherwise declare that he has lost his case", so that the content of these injunctions, combined with the circumstances make words of appointment redundant.

As to its concern with the external probity of witnesses, it may be countered with two arguments: first, he may have thought so and mentioned it as a statement of his belief, not as an injunction; second, it may be taken to mean that they are found to be forthright upon checking and interview, unless some flaw is found in them, with the exception of one who has received a whipping sentence.

Such a judge, however general his jurisdiction, is not empowered to collect the land tax, for its dispensation is done by others, namely the army commanders. Charities, however, lie outside his jurisdiction if managed by a trustee; if no trustee has been placed in charge of them, then it has been suggested that they become part of his general powers, and he has to collect them and dispense them to those who need them, because they are owed to God by those who offer them in His name. It has also been claimed that he has no power over them, and is in fact forbidden to handle them, as they are normally distributed according to the discretion of religious leaders, the same rule applying to them as to leading the Friday and Feast prayers.

If his appointment is a special one, it is conferred within the limits indicated and its jurisdiction restricted to the areas specified, as in the case of a judge