Modern approaches to address the concept of territorial division in Islamic jurisprudence [version 2; peer review: 1 approved with reservations, 1 not approved]

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Abstract

Background: This article examines how current jurists can deal with a juristic division of the world into abode of "Islam" and "infidelity". The success with which jurists re-evaluate this dichotomy will have major impacts on how an Islamic state interacts with non-Muslim governments on the one hand, and Muslims residing temporarily or permanently in a non-Muslim territory on the other.

Methods: Here, an attempt made to review the concepts of Dar Al-Islam and Dar Al-Harb from two perspectives: that of the dialectical limits and liberalization, as discussed in secondary material such as books, research articles, and reports.

Results: This paper has explored and discussed the criteria for identifying Dar Al-Islam and Dar Al-Harb in Islamic jurisprudence.

Conclusions: This article analyzes the various arguments put forward to establish new ways of peaceful coexisting and maintaining healthy international connections.

Keywords

Modern Approaches, Territorial Division, Islamic jurisprudence

Any reports and responses or comments on the article can be found at the end of the article.
Introduction

The terms “Dar Al-Islami” (land of Islam or peace) and “Dar Al-Harb” (land of war or blasphemy) have become vital to modern-day Islamic juristic discourse and some Muslim scholars, especially those of the Hanafi schools such as Alkasani (2010) and Alsarkhasi (2001), who divide the entire world into Dar Al-Islam and Dar Al-Harb. In addition, others (e.g. Alzuhaili, 1981) have added a third term, “Dar Al-Ahd” (land of truce or treaty), to the existing Islamic division of the world between Dar Al-Islam and Dar Al-Harb. Arguably, the introduction and use of this third term is a response to the many circumstances and events that have emerged that challenge the premodern Islamic binary discourse. For example, there have been political developments in matters of state sovereignty in the public arenas of international law, social change, and geographical movements and affiliations. Ongoing immigration has caused a crucial reconsideration of the Dar Al-Islam/Dar Al-Harb divide because, for example, Muslim immigrants have been required to adapt themselves to new and different realities (i.e. new countries, new peoples, multiple religions, etc.) in order to apply for citizenship or for a passport from that country and so on. There has been considerable focus on immigrants’ children and the extent to which they adapt themselves to such challenges or conserve their original culture, religion, and languages within their new communities.

The issue of immigration has led to some other crucial questions arising that have required a further critical review of the premodern juristic division between Dar Al-Islam and Dar Al-Harb. For example, can the concept of Dar Al-Islam still exist while the state of Islam is divided into multiple countries (i.e. it is not a single state/empire as in the past)? Can the non-Muslim world be described as a place of war, while Muslims find more protection and security in the West than their Islamic countries? Is it possible to invest some of the juristic opinions into developing a broader concept of homeland, thereby facilitating the idea of coexistence, and creating an understanding between those who differ in religion and residency?

Alshirazi (2018) claims that the relationships that once existed and prevailed between countries, regarding the concepts of sovereignty, the minority, and the majority, are no longer the same in this era in which treaties and agreements have a prominent impact on the international reshaping of the United Nations. Additionally, advanced and advancing information technology have impacted on the reshaping of international relations, with technology also having a strong impact on the spread of information, and transmitting ideas and beliefs to people around the globe regardless of objections, barriers, or issues pertaining to rights/permission.

In contemporary times, interactions between the countries of the world are largely based on mutual commercial benefits, political and military collaborations, as well as mutually agreed uses of social spaces, all of which are enacted independently of belief and ideology. Given these contemporary international transformations and formations, it is arguably not tenable for contemporary jurists to posit a juristic division of the world based solely on the dichotomy of “the land of Islam or peace” and “the land of war or blasphemy”. It follows, given this, that there is a question as to whether they will adhere to this division or respond to the changes of their era. The response has serious ramifications for the nature of Islamic countries’ relationships with non-Muslim governments on the one hand, and Muslims living temporarily or permanently in non-Muslim territories on the other.
Methods
In order to assess the data suitability, the author applied certain criteria. For instance, I searched using the keywords mentioned above, to find out in Google Scholar and in Saudi Digital Library SDL, which has access via our institutions to major research databases. Also, access to more than 169 Databases including ProQuest, Web of Science, Scopus, Taylor & Francis and many others. Additionally, SDL has access to more than 50,000 journals around the globe and more than 5,000,000 postgraduates’ theses and dissertations. Therefore, after specifying those secondary research data, the author has prepared the required discussion using qualitative approach, dividing them into sections based on thematic titles as shown throughout the paper. For example, breaking the discussion into its appropriate places of the paper, trying to look at both sides of an argument so as to overcome the alleged bias, if any, in the paper. Moreover, based on secondary data such as books, research articles, and reports, this paper reviews the concepts of Dar Al-Islam and Dar Al-Harb from two perspectives: those of dialectical constraints, and liberalization. It additionally examines the Islamic division of the world through the premodern Islamic juristic discourse by examining the criteria for defining Dar Al-Islam and Dar Al-Harb in Islamic jurisprudence. The material from this preliminary discussion is then used to suggest new ways of peaceful coexistence as well as the development of good international relationships.

Results
The land of peace and the land of war is not an actual state, rather it is just a concept of laws and protection (Boettke, & Candela, 2020). The land where the Islamic laws of Muslims are regulated and the safety is managed by Muslims is called the land of Islam. On the other hand, a land of war is a land where the laws of war are regulated and its safety is not governed by the Muslims even if most of its individuals are Muslims. So, it has been clarified that the land of peace and the land of war is neither land nor the inhabitants, it is just a law or a safety. It has been notified that there is a huge difference between both nations. Dar al Harb Fi‘lan is referred to as the actual land of war, for example, the land of Israel which occupies the Islamic land of war. Thus, Israel is the best example in this regard. On the contrary, Dar al Harb Hukman is referred to as the potential land of war that encompasses the other lands which are not occupying Islamic land and are not linked with the direct war against the Islamic lands.

Above all, the idea of Dar- al-Islam (the land of peace) and Dar-al-Harb (the land of war) serve to introduce the land of Muslims and the land of non-Muslims. Dar-al-Islam is a land where all Muslims have complete freedom to perform their Islamic rituals. While the land of war is governed by non-believers therefore it doesn’t allow Muslims to perform their Islamic duties. The idea is not based on forcing the non-believers to practice Islam or the believers to practice the acts of the disbelievers, rather, it is just a concept that differentiates a state of Islam from the state of other religions (Abdelgafar, 2018).

The Quran didn’t introduce the idea of the land of peace and the land of war. To put it in another way, the classification has not been recognized from the Quran, even though it wasn’t identified at the time of the prophet and the companions of the prophet (Stephens, 2018). Nearly after hundred years, into the early Abbasid dynasty, Muslim scholars introduced this concept. This concept was an effort made by the classical Muslim scholars to shed a light on their context and to perform specific Islamic laws of which the practice diversified, thus focusing on the state that Muslims inhabited.

The situation that motivated the Muslim scholars was a consistent war between the Muslims and the Non-Muslims (Al Shlowiy, 2022). The Romans were Muslims while the Persians were Non-Muslims. To overcome the losses and conflict between the two countries, the Muslim scholars felt the need to divide states. The main aim behind dividing the countries was to make sure that the laws of Jihad are adopted in the correct place and surroundings. It also proved to be very helpful in issuing fatwas, as per the accurate social and political domain. At that time, the Muslims were very powerful in the international political position.

It is very important to explain in detail the perspective of Muslim scholars. The Muslim scholars disagreed with the announcement of the definition of the Dar-al-Islam and Dar-al-Harb, the idea of the Hanafi school, and the other three main schools of jurisprudence (Maliki, Hanbali, and Shafi’i). The concept is protection not a question or reinforcement of any religion over the other. This perspective is called a binary perspective. Hanafi school is one of the four historic main Sunni schools of Islamic Jurisprudence (Domiyrov et al., 2021). It is the madhab with the greatest number of believers, obeyed by roughly one-third of Muslims worldwide. It is common in Afghanistan, Turkey, Pakistan, Central Asia, Bangladesh, and Egypt, along with parts of India, China, Iran, and Russia. Hanafi focuses on the Quran, Hadith, and the Juristic precedence.

It is also true that not all scholars agreed with this binary perspective and they didn’t classify the states according to that system. According to the Shafi’i school, a dominating non-Muslim state which is not initiating a war with the Muslims doesn’t form a Dar-al-Harb. This depicts that jihad cannot be simply pursued because the state is not a state of Muslim
belonging to the international committee of the Nation States, and conventional diplomatic relationships. Thus, in the present circumstances, any Muslim-ruled country, which is a member of the UN, is therefore in a friendly agreement with all other members of the united nations by the law of the united nations charter (Amin, 2015). When a country signs the agreement to be a part of the united nations, it signs a contract. Islam asks Muslims to fulfill all contracts that have been decided upon, despite being the contract signed with Muslims or Non-Muslims (The Quran, 5:1, 2:177).

Consequently, the phrases such as the Dar- al-Islam (house of Islam) and Dar- al- Harb (the house of war) are not stated in the Quran or any Hadith (Charpentier, 2021). Abou El Fadl states that the only lessons that Quran narrates are “the land of the hereafter” and “the land of the earthly life”, with the previously described as apparently preferable to the latter. Abou El Fadl is a world’s renowned Shari‘ah and a scholar of human rights. He owns a B.A. degree in political science and holds thirteen years of teaching experience in Islamic jurisprudence. He was awarded the human rights award at the University of Oslo. His latest works address human rights, authority, beauty in Islam & Islamic law, and democracy. His book named the great theft was identified as one of the top 100 books of the year by a Canadian newspaper. His other famous books include reasoning with God, the search for beauty in Islam, Islam and the challenge of democracy, and the place of tolerance in Islam.

Land of Islam and land of war in premodern Islamic juristic discourse
Sergeevich (2020) traces the evolution of the concepts of Dar Al-Islam/Dar Al-Harb in Arabic dictionaries as well as Islamic jurisprudence in order to examine their development. He concludes that the concept of a world divided into two geo-religious territories emerged in the early centuries of Islam, that the terms represent the distinction between the Muslim and non-Muslim worlds, and that they are the standard used to decide who belongs to both of those realms. It is also the case, however, that the terms also possess resonances of cultural symbols and values. Huwaidi (1990) observes that some Muslim jurists, in the past and present, have divided the world into two major parts. Others such as Alzuhaili (1981) have added two additional divisions, “Dar Al-Ahd” (land of the covenant or treaty) and “Dar Al-Hyad” (land of neutrality). As Huwaidi (1990) points out, dividing the world into two or three named sectors is not just the invention of Muslims, even if Muslim jurists adopted and developed it. The Romans, for example, divided people into Patriots, Latins, and Foreigners, with “foreigners” originally being called “enemies”, “others” or “barbarians”. Huwaidi argues that the Romans came to adopt this latter way of thinking due to the rise of Islam at that time. Indeed, the Romans began to use the parallel religious concepts of “Christian homes” and “homes of disbelief”.

In Islamic juristic discourse, however, more complex criteria are applied to those lands. Indeed, there is no single basis that can be considered to define the lands of Islam, of war, or of covenant, even though a search will reveal various definitions of those terms. Alzuhaili (1981) argues that there is no such thing as a “Dar Al-Hyad” (land of neutrality) in Islam since it is included in “Dar Al-Ahd” (the land of the covenant). This is because the concept of the land of the covenant has been expanded to cover all non-Muslim countries in the world today, as long as infallibility remains and fighting does not exist. Peace is the foundation of Islamic international relations. Ahmad (2008) additionally cites Alzuhaili’s argument that the legal repercussions of an act done in such a state (i.e. Dar Al-Hyad or land of neutrality) are rarely discussed in Islamic jurisprudence. This may be because such a state did not exist in the immediate vicinity of the jurists in question or, more crucially, because the inhabitants of such a state did not have the legal protection of the Islamic state due to the absence of a treaty. For a variety of reasons, the premodern Islamic juristic texts have defined the lands of Islam, Harb, and Ahd in various ways. However, from the following definitions, it is evident that Muslim jurists differ in their definitions of the lands due to their differences of opinion about the standards and controls set out for them. Definitions are largely based on the following criteria:
1) The criterion of worship (the ability to demonstrate the two testimonies – that Allah is the one God and that Mohammed is his prophet – and the Pillars of Islam, such as prayer, zakat, and so on).

2) The criterion of authority and governance (the rule of Islamic law or lack thereof).

3) The criterion of military power (i.e. whether the military power supports a benign Islamic government or is at the disposal of other militant groups).

4) The criterion of the size of the population, whether large or small.

As a result, Muslim jurists have given “Dar Al-Islam” several definitions, and these include that of Alsarkhsy (2001, p1253) who notes that Dar Al-Islam is a name for the place that is in the hands of Muslims, a sign of which is that Muslims feel secure in it. Meanwhile Al-Kasani (2010, p131), of the Hanafi school, has written that: “What is meant by adding the lands of Islam and disbelief is not Islam or disbelief in themselves. Rather, what these terms describe are security and fear, respectively. Consequently, it means that if there is safety for Muslims at all times, then it is the land of Islam. Otherwise, it is the land of unbelief”.

Abu Mansur Al-Baghdadi of the Shafie school (1980, p270) argues that: “Dar Al-Islam is every land or house (territory) in which the call of Islam has arisen from among its people without a guard, judge or tribute”. He further observes that, “Muslim law covers the people of the dhimma (non-Muslims with protected status) if the people of the heresy did not fight against the people of Sunnah, for it is the land of Islam”. He concludes, “If the matter is against what we have mentioned, then it is the land of unbelief”. Meanwhile, Ibn Muflih of the Hanbali School (2003, p190) defines the differences between Dar Al-Islam and Al-Harb as follows: “Every land that has been conquered by Muslim armies and that has a Muslim government is the land of Islam, but if the rule of the infidels prevails, according to Islamic teachings, then the land is the land of Al-Harb. There are no other additional lands”.

According to the Zaydi sect of Shia Muslims, “Dar Al-Islam is where the two testimonies and prayer appear, and where there is, additionally, no blasphemy, except in the eyes of Muslims” (Alshawkani, 2004, p57). He argues that when Jews and Christians practice their religion in Muslim countries this is not deliberately anti-Islamic. It is simply that such religious practices offend Muslims because they deviate from Islam.

The definitions of contemporaries who cling to the classical juristic division of the lands do not deviate from the terminology of the ancients. For instance, such scholars see that Dar Al-Islam is every country in which Islamic law prevails in legislation and implementation, and that power and pride are with Muslims, whether the majority of the population are Muslim or not. As for the land of war, this encompasses all lands in which there is no sovereignty or protected status for Muslims, where Islamic judgments in law are not applied, and where Muslims are not able to live under an actively Islamic government (Abu Zahra, 1995, p277; Afifi, 1986, p128; Alzuhaili, 1981, p175).

From the discussion above, it becomes clear that Muslim jurists differ in their definitions of Dar Al-Islam, Dar Al-Harb and other terms used to describe the relationship between Muslim and non-Muslim lands, territories, and governments. However, Ahmad (2008) argues that the central distinction between Al-Islam and Al-Harb has been widely misinterpreted in recent years. It is commonly conceived that the partition of the universe into two domains is inextricably linked to the belief that the usual relationship between Dar Al-Islam and Dar Al-Harb is uniformly one of enmity. In light of such comments, it is frequently asserted that one must either embrace or reject the following two assertions:

- That the globe can be divided into a “Land of Islam” and a “Land of War” and
- That the relationship between Muslim and non-Muslim countries is necessarily one of hostility.

Those scholars who see the two assertions as inextricably linked argue that the divide envisioned by Muslim jurists is permanent and unchangeable. This may, in turn, lead to violent thinking. However, according to Bonzatto and Ortunes (2015), fundamentalism is a recent but not always violent movement. Commenting further, it should be noted that Bonzatto and Ortunes (2015) examine the concept of a land of peace and a land of war, and note various interpretations. Fundamentalism, according to Bonzatto and Ortunes, “presents the threads coming from a period of conflict and reform in Islam.” As a result, each fundamentalist group has its own interpretation of the Qur’an, as well as its own political and religious goals. However, for a better knowledge of the subject, it is necessary to rely on some books by authors who hold opposing viewpoints, such as Bernard Lewis and Edward Said.
are notions that are not found in either the Qur'an or the Sunnah. According to Badar and Nagata (2017), the law of war (Dar Al-Harb) reigns supreme, and the land of war (Dar Al-Harb), where the law of war – or the potential for Muslim conquest – reigns supreme.

Those who do not agree that the typical international relationship between Muslim and non-Muslim political entities is one of conflict claim that Muslim jurists drew this distinction based on the conditions of their time, and that it is unsustainable in present times. As contemporary thinker Tariq Ramadan (1999) argues, Dar Al-Islam and Dar Al-Harb are notions that are not found in either the Qur’an or the Sunnah, whose ideas are global and eternal, and transcend all geographical boundaries. In contrast, during the first three centuries of Islam, Islamic scholars evaluated and classified the many places in and around them at that time. For example, they looked at the geographical divisions, the powers in place through religious affiliation and influence, and the ever-changing nature of alliances.

Developing a peaceful harmony

It has been seen that some legal judgments can be retained to develop the idea of homeland, peaceful harmony, and sorting out the matter of religious and inhabitancy differences. The issues concerning how an Islamic state engages or interacts with a Non-Islamic state and how Muslims live in a Non-Muslim state need to be determined. Launching principles and mechanisms for constitutionalism can prove to be very helpful in giving rise to peaceful harmony. The protection of human rights is one of the most fundamental aspects of gaining a secure and peaceful environment for emigrants. The state should govern a law that results in the safety of the equal human rights of all the inhabitants. These rules and laws can be initiated with the serious participation of all the inhabitants (Ilyasin & Tohet, 2020). When citizens would pay heed to provide safety to the ones who immigrated to their state, it would bring quicker results for the protection of human rights. Religion and the state should always be kept officially separated. The separation of religion and state does not mean the separation of religion and politics. Religion and the state can easily be separated, while religion such as Islam cannot be separated from politics.

The practice of dividing the world into two domains (Islam and Harb) has been retained primarily by the Hanafi School; a majority of Muslim schools such as the Maliki, Shafie, and Hanbali have rejected this division. Therefore, the question arises as to what motivated Hanafi scholars to establish such a division and why most other Muslim scholars have rejected it. According to the Hanafi School, Muslims who live in Dar Al-Islam are protected (ma’ soum) by Islamic law. For Muslims living outside of Dar Al-Islam, protection merely means that the people who abuse their rights will be held accountable in the Next World, i.e. in the hereafter, by God’s court. This is known as “Ismah bi’I Islam,” or protection based on one’s association with Islam (Alsarkhasi, 2001).

According to Hanafi jurists, this means that the rights of Muslims living outside Dar Al-Islam’s territorial bounds will not be enforced by the Islamic state’s courts, as these courts can only exercise jurisdiction over the area under the effective control of Dar Al-Islam’s Imam (i.e. the ruler). In other words, Islamic courts are unable to take recognition of a judicial action that occurs outside of their jurisdiction. The Islamic state’s courts do not have jurisdiction over wrongs committed outside the borders of the state unless it has a contract or treaty with the body that has suzerainty over that territory. In contrast, the Islamic state is obliged to preserve the rights of all those who dwell permanently, or even temporarily, inside its borders, whether Muslim or non-Muslim. All people living within an Islamic state’s geographical boundaries are assured of legal protection, whether Muslim or non-Muslim. This is known as the “protection of one’s rights as a result of residing in an Islamic country” (Alsarkhasi, 2001).

The bottom line of the Hanafi School’s position is that “Ismah” (used here according to its core meaning of “protection”) guaranteed solely to those who live inside the geographic bounds of the Islamic state, regardless of whether they are Muslims or non-Muslims, according to what we may call, the municipal law of Islam. Furthermore, Islamic law differentiates between various non-Muslim political bodies based on their attitude toward Islam and Muslims. If a
In contrast to the Hanafi School, the majority of Shafie, Maliki, and Hanbali Muslims believe that Islamic law has no territorial boundaries. As a result, if a Muslim disobeys a Shariah norm, he will be punished not only in the Hereafter but also in this life by the Islamic state’s courts. Similarly, if a non-Muslim resident of a non-Muslim state abuses the rights of any Muslim, the wrongdoer will be punished by the Islamic state’s courts if he is captured by Muslims or enters the Islamic state. It follows, that “Ismah,” or legal protection, is conferred because of a person’s religious affiliation (Islam) rather than his or her domicile in a politically determined land (Dar). Concerning non-Muslim citizens of an Islamic State (Ahl Al-Dhimmah), it should be noted that it is believed that they are protected as long as Muslims have signed a Dhimmah treaty with them. A majority of Shafie, Maliki, and Hanbali Muslims thus compare non-Muslims to alien non-Muslims (musta’mmin) in Dar Al-Islam; protected by Muslims under an Aman (reciprocal safety) contract (Ibn Qudamah, 1999; Ibn Alqayim, 2014).

Tariq Ramadan’s (1999) assertion that the division of the world into Dar Al-Islam and Dar Al-Harb does not exist in the Quran or Sunnah is open to challenge, especially about Sunnah literature. His un-nuanced assertion may have led to confusion about this matter. The next section of this paper discusses some Islamic juristic rulings including some from the basic sources of Islamic law, on the Islam/Harb distinction, from a territorial (as opposed to purely religious) perspective.

Discussion of territorial division in Islamic jurisprudence

Ahmad (2008) argues that though we cannot always deduce directly the teachings of the Islamic texts (i.e. the Quran and the Sunnah), certain things may be inferred. Thus, instead of interpreting the texts literally, Hanafi scholars such as Alkasani and Alsarkhasi strive to extract general principles from these texts and then apply them to the entire field of law. If a ruling emerges from one of the most authoritative texts that is different from the literal interpretation given in a text of lesser authority, they interpret the secondary text in light of the general principle. This may result in them treating the rule mentioned in the secondary text as an exception to the general principle if compatibility between the two is impossible. Through this approach, the Hanafi preserve uniformity in the judicial system.

Passages and traditions, ranging from inferred principles from the Quran to explicit directives in both the Quran and other kinds of Islamic literature, establish different laws for Muslims who live in and beyond Dar Al-Islam. For example, the Qur’an classifies some Muslims who immigrated from Makkah (at that time Dar Al-Harb) to Medinah (at that time Dar Al-Islam) as “fuqara” (poor; empty-handed) even though they owned property in Makkah (Qur’an 59: 8). According to Hanafi scholars, the reason for this interpretation was that they had lost the titles to their property in their native land because of their move to Dar Al-Islam. Another proof of their loss of ownership was the fact that the Prophet Muhammad did not return these assets to them after the conquest of Makkah (Hamidullah, 1987; Alsarkhasi, 2001).

When the Muslims in Makkah were persecuted and forced to flee to the Islamic state of Medinah, those who did not migrate were denied the Islamic state’s protection (Quran 16: 106–110 and 4: 97–99). The Quran thus asserts that the Islamic state (Dar Al-Islam) has no legal responsibility to protect the rights of such people. However, if requests for assistance are received regarding “matters of faith,” the Islamic state is obliged to assist those people, even militarily, if necessary (Quran 8:72; Quran 4: 75–76). It is also the case that the Islamic state is compelled to act according to the conditions of any treaty they sign. Further comment on the territorial nature of the Islam/Harb divide is found in the case of Abu Busair and his associates. These people were not subject to the Islamic state’s control since they were Muslims who had immigrated to places other than Medinah. However, the Prophet did not feel legally obliged to hand them over to the non-Muslim rulers of Makkah. It is worth noting that, as a non-Hanafi scholar, Ibn Alqayim (2014), a well-known Hanbali jurist, sees grounds for a territorial jurisdiction in this case. He claims that by not putting a halt to these people’s activities, the Prophet did not break any treaty provisions because they were “out of his control”. In short, they were not under his jurisdiction.

Additional evidence of the Islam/Harb divide as a territorial matter includes the idea, at least according to Hanafi jurists, that non-Muslims can acquire ownership of property they capture from Muslims if they carry it to Dar Al-Harb. Several arguments have been advanced in support of this rule. It is important to note, however, that taking possession of property by force does not provide a justifiable reason for its ownership within Dar Al-Islam. According to the Hanafi school of thought, this is because the basis for “Ismah” (legal protection) is Hirz (safe custody), which is based on Dar (a land’s jurisdiction) rather than Din (religious belonging).
However, what of the territorial Islam/Harb divide and monetary exchanges? According to Abu Hanifah and Muhammad Ibn Al-Hassan Al-Shaibani, if a Muslim exchanges one Dirham for two Dirhams in Dar Al-Harb, the transaction is valid, because the Muslim exchange partner took the property with his or her consent. The matter of a Muslim’s property in Dar Al-Harb is unlike that of the property of the musta’minn (Non-Muslims with a protection contract) in a territory of Islam. Musta’minn property becomes legally protected under the contract of Aman (reciprocal safety) (Alsarkhasi, 2001 p.104)

Moreover, if a Muslim soldier commits adultery or fornication (Zina) in Dar Al-Harb, he will not receive the appropriate punishment because the cause of action occurred beyond the Islamic state’s jurisdiction. However, if he commits such an act within the Muslim army’s camp, additional punishment can be imposed. The same is true when it comes to imposing the Qisas (death) penalty (Alsarkhasi, 2001 p. 84, 115, 116).

Correspondingly, the courts of Dar Al-Islam are unable to resolve any musta’minn issues (issues concerning non-Muslim temporary residents of the Dar Al-Islam) that emerged while they were still in Dar Al-Harb. The musta’minn do not become residents of Dar Al-Islam just by having a contract of Aman. However, they also need to be in Dar Al-Islam territory at the time that the issue arises if legal redress is required.

Muslims should still respect a person’s rights if he comes to Dar Al-Islam from Dar Al-Muwa’dah (a territory of mutual peace) without a new Aman contract. Similarly, if he enters Dar Al-Harb and Muslims control the land thereafter, Muslims must maintain his rights even there, “his status is similar to that of a dhimmi who joins a Dar Al-Harb that is later controlled by Muslims.” (Alsarkhasi, 2001 p.98). The above examples are from Hanafi scholars’ points of view.

In contrast, other Muslim scholars, including the Maliki, Shafie, and Hanbali schools are of the view that Islamic law is applicable everywhere, especially, to Muslims as well as to those who are in contract with Dar Al-Islam, though this depends on the contents of their contracts. They argue that the legal protection “Isma’il” of the faithful Muslim relates to a Dar Al-Islam based on the universal religion and not merely one of physical territory. According to this perspective – and with reference to the example previously given - those Muslim immigrants who lost the titles of their property in their native land as a result of their move to Dar Al-Islam, were entitled to have their property returned once Makkah was conquered by Muslims, as happened later on in history. Those Muslims who did not migrate from Dar Al-Harb were entitled to the Islamic state’s protection (Ibn Qudamah, 1999; Ibn Alqayim, 2014).

Moreover, if the “location” of Dar Al-Islam and Islamic law can be anywhere where there are Muslims, non-Muslims cannot acquire the ownership of property that they may capture from Muslims if they carry it to Dar Al-Harb. What is more, if a Muslim exchanges one dirham for two dirhams in Dar Al-Harb, the transaction will be void because Muslims are bound by Islamic law everywhere. It is also the case that if a Muslim soldier commits adultery or fornication (i.e. Zina) in Dar Al-Harb, he must submit to the appropriate punishment. Similarly, the courts of Dar Al-Islam can oversee and resolve any musta’minn issues that emerged whilst the plaintiffs were still in Dar Al-Harb but only once the issue has been raised in Dar Al-Islam. It remains the case, however, that the situation regarding Abu Busair and his associates is not applicable to the concept of Dar Al-Islam as a religious concept rather than one of geographical place. The Prophet Muhammad’s treaty with the Makkans included a provision requiring him to return anyone who migrated to Medina, where he then lived. Abu Busair and his associates immigrated to a different place from Medina, in (other words, they moved outside the geographical bounds of the treaty). Thus, the Prophet did not break any treaty provisions Ahmad (2008).

The discussion above makes clear that both major views emanating from the Islamic schools of jurisprudence are inaccurate. This is because the division of the world into two parts, whether framed in religious or territorial terms, is juristic; hence, it lacks both legal and Sharia reasoning, although the division itself is arguably based on the divine texts of the Quran and Sunnah. Yet this division is purely derived from received wisdom rather than constant rational argument. Eqigg (2017) claims that continuing to adopt the premodern juristic view of the concepts of “land of Islam” and “land of war” can lead to unfortunate results. For instance, in the mentality of terrorist movements, it could provide justification for aggressive acts directed against non-Muslims in their lands, whether as combatants or civilians. In addition, a too simplistic division of the world into Islam and Harb may cause extremists to harm Muslims residing in non-Muslim countries. Furthermore, by advocating the juristic dictionary definitions of homelands, the jurists may encourage some Muslims in the West to abrogate the money and properties of non-Muslims by enabling them to argue that it is permissible to deceive the private and public facilities of some countries on the pretext that since their inhabitants live in a “land of war/imbilief”; the property is free for Muslims. In doing so, they make two grave errors:

First, they are flouting the legal and Sharia rulings that urge the fulfillment of pledges and the keeping of trusts and charters - even where these have been entered into with people who profess a different religion. The second is that they substantiate the negative image of Muslims that may already exist in non-Muslim countries.
Land of Islam and land of war in contemporary Islamic juristic discourse

Contemporary Muslim jurists such as Aljudai (2007), Alhaj (2006) and Alfaiouri (2006) approach the concept of an Islam/Harb divide from several angles in order to analyze and evaluate this heritage according to what is consistent with the Qur’anic vision of civilized living. In addition, Bork (2017) discusses modern views of the territorial division between the Lands of Islam and War in ancient Islamic legal theory, and in so doing focuses on views that challenge obsolete constructs of the world and advocates appropriate substitutes. He does this by utilizing the perspectives of two modern Muslim thinkers: Tariq Ramadan and Wahbah Al-Zuhail who have both attempted to establish new models which consider present realities, as well as offering a vision of Muslim-Non-Muslim cooperation based on Islamic law. The perspective of many contemporary jurists can be summarized as follows.

First, they emphasize that the issue is generally perceived through the lens of custom and usage rather than according to binding legislation. Moreover, based on the criteria referred to above, contemporary juristic writings unanimously state that the division of the world into “Dar Al-Islam”, “Dar Al-Harb” and “Dar Al-Ahd” is the work of the jurists in the second century of the Prophet Mohammed. Alhaj (2006) observes that such a division arose from, “the necessities and conditions imposed by the special societal circumstances at that time”. This juristic development of the original sources is not based on significant legal evidence but rather, on, well-intended interpretation. It should not, therefore, be taken as a binding religion, but rather as a guide. Moreover, Ian argues that Dar Al-Harb, in particular, could have been “civilized” in the same way that the Byzantine Empire had been, but that it had not bowed to God’s will as defined by Islamic theology and jurisprudence. It is also worth noting that this terminology is fluid and has evolved over time, with varying degrees of consensus among scholars and rulers about what it actually indicated in terms of geographical region.

Some contemporary researchers such as Alali (2006) have attempted to establish this juristic division by citing a group of hadith texts in which the terms “Dar Al-Islam” or “Dar Al-Hijrah” are mentioned, and their opposites, “land of polytheism” or “land of infidelity”. They argue that such texts confirm that this division was common in the words of the Companions. However, whilst these references can possibly be interpreted as describing a divided world, they are not definitive. Meanwhile, the context in which the terms “Dar Al-Hijrah”, “land of the faithful” and “land of immigrants” mentioned are in the context of a doctrinal and faith dimension, which has nothing to do with the political significance that later jurists added to it. Whatever the motives and purposes that led those jurists, either from Hanafi or from other Islamic schools, to make this division; they biased their interpretation of it more towards faith and belief than towards the politics of a geographically conceived Islamic nation (Alhaj, 2006). Furthermore, their interpretation of the concept does not describe either an original or a permanent basis for the geography of the land of the Islamic caliphate, which represents a starting point for all perceptions about the nature of internal and external relations, particularly, for the Muslim community. Secondly, contemporary jurists such as Al-Qaradawi (2010) and Topolyak (1997) have employed a new concept of “safety” to emphasize that the “land of Islam” at present is no longer confined to the historical boundaries of the premodern “land of Islam”. Rather, they suggest, it has expanded greatly to include every spot in which there is a Muslim who acknowledges to his Lord the two testimonies and establishes his laws in himself according to his ease and ability. Badr (1982) claimed that historical Islam’s international connections have gone through three periods of varying duration: the ages of expansion, interaction, and coexistence. Any attempt to define Islamic international relations regulation must keep this historical context in mind.

Suleiman Muhammed Topolyak, a modern Islamic researcher, records in his discussion of the ruling on the political asylum of a Muslim in a Non-Muslim country that the concept of ‘abode of infidelity’ has changed today from what it meant in the past. For instance, we can see that a foreigner in a non-Muslim country enjoys legal and judicial protection, which are the same as a citizen, regardless of a religion. Yet, in many cases, these immigrant Muslims are allowed to practice their religious rituals, establish mosques and Islamic centers without objection (Topolyak, 1997). In the same way, Al-Qaradawi (2010) states that a Muslim may reside in any country in which the environment of religious, political, and civil freedom prevails, even if it is a secular country. Especially, if immigration or residence in those countries is for legitimate purposes such as seeking sustenance, knowledge or asking for security.

By referring to the past juristic tradition, we find such words among Alshafie (2001), where he “states that the Messenger of God said that the imposition of emigration can only be on those who afford it, but those who have been tempted in their religion in a country where they embraced Islam. Because the Messenger of God authorized people in Makkah to stay there in Makkah after their conversion to Islam such as Al-Abbas bin Abdul-Muttalib because they did not fear sedition”. Ibn Taymiyyah (2005) believes that the criterion of either residing in the abode of infidelity or emigration is based on the extent to which a Muslim can obey God in that abode or not (Spencer, 2018). Therefore, there is no doubt that this can only be achieved with the presence of security and safety. If a Muslim finds this in a place where he lives, then there is no need to emigrate. “This is the all-encompassing principle”. On the other hand, From the translation of Sahih Bukhari book 52, Ibn Abbas narrated that: on the day of conquering Makkah, the Prophet said, “there is no emigration after the conquest but Jihad and intentions. When you are called (by the Muslim ruler) for fighting, go forth immediately (Klik, 2022).”
To explain more, the command to emigrate in Islamic law is related to the existence of safety elements in religion, self, and accommodation. However, with the conquest of Makkah, the necessity to emigrate was no longer necessary as it was a base of Islam and, additionally, safety exists there. Therefore, emigration is to a place that achieves for a Muslim the purpose of emigration, which is to enable him to establish his religion and protect himself from harm. This indicates that staying among non-Muslims is not self-blameworthy. Rather, it depends upon the extent of what is achieved from it in the interests of the Muslim. When contextualizing some Hadiths in this regard, confirming the legitimacy of the residency of a Muslim in other than the abode of Islam, including the survival of a group of companions who immigrated to Abyssinia and did not join the Messenger of God in the land of Islam, i.e. Medinah, during the seventh year of the Hijra. The Prophet did not blame them for immigrating to the abode of Islam nor did he issue anything that offended their stay among non-Muslims in Abyssinia (Eqigg, 2017). It was previously stated in the early juristic definitions of Dar Al-Islam that the Hanafis make a criterion of distinguishing Dar Al-Islam from the other houses by “achieving security and safety for Muslims”. This safety can be achieved according to Zaydi jurists by the ability of just showing the two Shahada and some rituals of Islam (Alshawkani, 2004, p575; Alsarkhasi, 2001).

Third, the specific political and social data of the world has changed. The juristic classification of homelands, as previously mentioned, is a discretionary classification dictated by the conditions of the Islamic nation and the nature of international relations existent at the given time. However, the situation has changed, and the existence of recognized international treaties, the criminalization of wars that have not arisen from a response to aggression and resistance to occupation, and the emergence of states of citizenship, as well as the rights of religions, races, and colors necessitate that the whole world has become a space for tolerance and peaceful coexistence between and among all human beings. Henkel (2004) conducted an empirical study in Germany and concluded that many religious Muslims have recently undergone a major shift to a more “inclusive” position. To understand this transition, Henkel studied the transnational experience of Turkish Muslims in Germany, especially the experience of the “second generation” of Turkish immigrants, as well as the recent development of Turkey itself, where Islam has accelerated its integration into modern society. As Henkel notes, for many religious Muslims of the traditional Turkish Islamic tradition, a free society has become a social background conducive to the practice of Islam.

Commenting upon associated themes, it can be seen that some of the analysis of the Orientalist Bernard Lewis is based on the classic Islamic comparison between Dar Al-Islam and Dar Al-Harb. In his reading, he shows the inherent hostility of Islam to non-Muslims. However, the conflict is only one aspect of the complex relationship that exists between Islam and “Western” societies. For most Muslims, Dar Al-Islam and Dar Al-Harb are no longer relevant categories that define their social relationships with non-Muslims. However, the conceptual opposition of Dar Al-Islam and Dar Al-Harb points to a question that remains important to religious Muslims and that has been answered in different ways at different times: in what kind of society can one live a Muslim’s life? According to Arangul (2017), millions of Muslims presently live under non-Muslim governance. This is a level of magnitude unmatched in the past. Muslims were unwilling to legitimize non-Muslim supremacy for a variety of reasons during periods when they had free and/or prosperous countries. However, when historical reality begins to turn against them politically and economically, immigrant Muslims have grown to believe that this is feasible if they follow certain Islamic teachings.

Moreover, the “land of Islam”, whose standards were defined by premodern jurists, no longer exists except in historical and juristic works. The abode of Islam became distributed among many nations of more than fifty countries, and its names became linked to races and nationalities as well as, sometimes, the names of families and royals (i.e. not in the name of the religion itself, which was the basis for belongings). In addition, whereas Muslim people of the premodern land of Islam did not leave unless they were merchants, involved in Jihad or as tourists or visitors to other places for limited periods, today, they are in many parts of the world in which Muslims permanently reside, either through long-standing affiliations to those regions or by action.

Given these new determinants, Mawlawi (1990) believes that the criteria that the jurists specified in the past to distinguish the land of Islam from the land of war are no longer valid for defining an accurate description of this land in this era. Accordingly, he poses the questions: What is the standard to the Sultan of Islam, what are the implementations of its provisions, and what is needed to establish its rituals? Is it the establishment of Islam completely? This means that most Muslim countries are no longer a “land of Islam” today (Haikal, 1996). Is it sufficient to apply the provisions of Islamic personal status to the exclusion of all other laws? This means that we exclude the “land of Islam” of ancient Islamic countries like Turkey and Tunisia. Is it sufficient for Muslims to freely perform the rituals of Islam such as prayer, fasting, Hajj and zakat to be considered a “land of Islam” based on the legacy of the past? There are Muslims and they practice their rituals more freely than in some Muslim countries Mawlawi (1990). As for the “land of war”, it is no longer clearly defined, given that Muslims are now linked with most of the countries of the world that are under the banner of the United Nations with treaties, charters, and alliances that cannot be revoked as long as everyone abides by their requirements per what is customary in “international legitimacy” Mawlawi (1990).
In addition to this, the “land of war” - according to Howeidi (1990) is no longer necessarily located in the square of others. Rather, most wars in this time take place in the homes of Muslims; a scenario that did not occur in the time of the ancient jurists, as they only envisioned war between the Muslims as a whole, and the non-Muslims as a whole. Then “our jurists who used the term Dar Al-Harb did not live the terrestrial unity that we live in today, but they lived in a world of separate islands which do not coexist, hence, it was the jurisprudence of war.

Ahmad (2008) wrote that the Quran and Sunnah texts do not lend themselves to such an extension of the abode of Islam and war because, like all past Messengers of God, the Prophet’s wars included an element of Divine punishment for his foes, and he had, therefore, conclusively demonstrated the reality of his mission beyond all doubt, at least as far as his immediate addressees in seventh-century Arabia were concerned. Other than the Prophet’s closest addressees, non-Muslims cannot face any worldly punishment for their rejection of Islam. This is because it would violate the Quranic prohibition on compulsion in questions of religion (Qur’an 2: 256). This part of the Prophet’s mission was also acknowledged by the fuqaha, who used it as the foundation for various regulations. In any case, Jihad does not advocate for the coercive conversion of non-Muslims to Islam. Rather, Muslims must oppose those who seek to disrupt the Divine plan by harassing those who seek to force them to accept or reject a certain faith.

Therefore, what we need today is the “jurisprudence of peaceful coexistence”; a reality that is different in quantity and quality. Mawlawi (1990) also claimed that the West is no longer a land of battle, but rather a land of call because the premise on earth is that it is for the call, based on the Almighty’s statement that “We did not send you but a mercy for the worlds”. Moreover, jurisprudence councils in Europe, America, and India have unanimously agreed that the land of Muslim minorities is a place of covenant and call, not a place of conflict (Al-Awa, 2006). It is critical, therefore, to be cautious when words from premodern Islamic international law such as “Dar Al-Islam,” “land of infidelity,” “land of war,” and “land of covenant,” to the realities of today’s world and individual countries as a consequence of the changed nature of international relationships, their complexities, and the nature of overlapping attributes of the same.

Conclusion
“Dar Al-Islam” and “Dar Al-Harb,” have become dangerous phrases in Islamic jurisprudence. However, several circumstances have emerged that put into doubt Dar Al-Islam and Dar Al-Harb in classic Islamic discourse. State sovereignty, immigration, geographical mobility, and citizenship are all effective examples of such ongoing issues. As a result, Muslim jurists have been compelled to adjust to a new and different reality (new countries, people, religion, language, and so on). As a result, new approaches to the premodern Islamic jurisprudence’s concept of geographical partition have, and are, being developed. It follows that some legal opinions could be invested to expand the concept of homeland, promote peaceful coexistence, and resolve the issue of religious and residency differences. Issues pertaining to how an Islamic state interacts with non-Muslim governments on the one hand, and how Muslims reside temporarily or permanently in non-Muslim territory, have been influenced by this debate. The concept of Dar Al-Islam and Dar Al-Harb, as well as the criteria for identifying Dar Al-Islam and Dar Al-Harb in Islamic jurisprudence have been examined in this work and new path for the furtherance of peaceful coexistence and healthy international relationships identified. Additionally, the study also focuses on a new path for the furtherance of peaceful coexistence and healthy international relationships. The study concludes that the concepts of the land of peace and the land of war are not related to the Quran and Sunnah. It has also been stated that even it wasn’t introduced at the time of the prophet and its companions. Later on, some Muslim scholars identified the concept of Dar Al-Islam (the land of peace) and Dar Al-Harb, (the land of war), in the early Abbasid dynasty. The main aim of introducing this concept was to emphasize the idea of practicing the Islamic laws of the Muslims and to focus on the land where they lived. Due to a consistent war between the Muslims and the Non-Muslims, the need to divide the state came into the light to cope with the losses and challenges caused by the conflicts between the two countries namely Romans (Muslims) and Persians (Non-Muslims). Another reason behind dividing the countries was to ensure that the laws of Jihad are issued in the correct place.

Data availability
No data are associated with this article.

Acknowledgments
The author is very thankful to all the associated personnel in any reference that contributed to for this research. The author would additionally like to thank the Deanship of Scientific Research at Majmaah University for supporting this work under Project number R-2022-169.
Open Peer Review

Current Peer Review Status:  

Review Report 06 September 2022

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Che Zarrina Sa’ari
Academy of Islamic Studies, University of Malaya, Kuala Lumpur, Malaysia

1. The author should further explain that this juristic division of the world is used/practiced in political matters or dividing borders in the contemporary world and give evidence to support this claim. Specify the states or countries that practice this division especially from Hanafi jurists.

2. If the author cannot prove that this juristic division of the world is used/practiced to show the borders or states, and that it has only been discussed in the jurists’ books, what is the importance of this issue being discussed in this article? Please provide convincing arguments.

3. Add more current sources (within 5 to 10 years back) to support your data.

4. The author cited many quotations from many scholars/books that show his weakness in dealing with and analyzing collected data. Thus, he could not show his own understanding of the issues discussed.

5. The terms used are not consistent, please relook to the translation of the term Dar al-Islam, Dar al-Harb and Dar al-Ahd.

6. This article aims to identify and introduce new approaches to expand the concept of homeland, promote peaceful coexistence, and resolve the issue of religious and residency differences as well as develop a new path forward for peaceful coexistence and better International relations. However, the author only highlighted them in the conclusion without identifying, examining, outlining, and discussing specific new paths.

This article can be said to be written in the form of a review paper and very little highlights its own ideas in building a new idea to face the juristic division of the world.

Is the work clearly and accurately presented and does it cite the current literature?
Partly

Is the study design appropriate and is the work technically sound?
Yes

Are sufficient details of methods and analysis provided to allow replication by others?
Partly

If applicable, is the statistical analysis and its interpretation appropriate?
Not applicable

Are all the source data underlying the results available to ensure full reproducibility?
Yes

Are the conclusions drawn adequately supported by the results?
Partly

Competing Interests: No competing interests were disclosed.

Reviewer Expertise: Islamic thought

I confirm that I have read this submission and believe that I have an appropriate level of expertise to confirm that it is of an acceptable scientific standard, however I have significant reservations, as outlined above.

Reviewer Report 08 August 2022

https://doi.org/10.5256/f1000research.134312.r144597

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Chris Prejean
University of Haifa, Haifa, Israel

Editorial Note: This report was updated on [23/09/22] to include references to works cited by the reviewer.

In his “Modern approached to address the concept of territorial division in Islamic jurisprudence,” H.A. Alotaibi outlines some of the contours of Muslim juristic discourses of territoriality and its association with migration. In premodern discourse, territoriality is often divided into the Abode of Islam, meaning a territory ruled by a Muslim power, and the Abode of War, meaning a territory ruled by a non-Muslim power. Alotaibi shows that the discourse of premodern jurists and modern reformers is not always so neatly divided into a binary system. What’s more, modern reformers reformulate the premodern discourse to fit an international world order governed by larger
bodies such as The United Nations. After a review of the sources, the author attempts to identify a new path forward for “peaceful coexistence” and “good international relations.”

**Is the work clearly and accurately presented and does it cite the current literature?**

The author makes it clear that some premodern and modern authors divide the Islamic world into two parts. This was well said by Khaled Abou El Fadl nearly three decades ago:

“Premodern Muslims discussed many different types of abodes, depending on the particular objective being considered, whether territorial, theological, jurisdictional, or legal. But in all cases, it is a gross oversimplification to claim that in Islam, the world is divided into the abode of Islam the abode of infidels or war’ (p190).”

The author also mentions some of the complexity of premodern discourse, but lacking from engagement is mention of just how complex the situation in premodern legal works was. A look at Abou El Fadl's works would greatly enhance this paper. Assumptions of a binary world divided into two territories is, as the author hints at, a rehash of orientalist views of Islam's dichotomous worldview in which Muslims viewed Islam as in a constant state of war. But the author might have also mentioned that many modern Muslims have adopted this view without questioning its assumptions, which would help contextualize the essay and the causes of misunderstandings of the concepts of territoriality and jurisdiction.

The article's organization could have benefited from streamlining a thesis. By the end of the article, I was left without an idea of what contention was being made. Was there supposed to be an argument about a new model for coexistence, and if so, why was this dealt with in the short penultimate paragraph? What the article seems to be is a review of some of the issues associated with territoriality and jurisdiction. An organizational structure fitting this purpose might have been more beneficial to the reader. For example, the author might have organized around the rulings emanating from one's of religion or the jurisdiction.

The paper engages the well-known and foundational texts of the major schools of Islamic law in the premodern period. There is some engagement with the texts, but many of the citations are translations without enough context or are unclear translations. For example: “Muslim law covers the people of the dhimma (non-Muslims with protected status) if the people of the heresy did not fight against the people of Sunnah, for it is the abode of Islam” (p4). The same is to be said of the translation and citation – which also includes an incomplete sentence – of Shafi'i in paragraph 2, p.9: “When contextualizing some Hadiths in this regard…” Throughout the paper, the phrase “those who...” is used abstractly without clear referents. See two examples at the beginnings of paragraphs on p.5. There are many awkward or hard transitions with unclear referents that make it difficult to follow the rationale of the statements, for example, on p.4: “The definitions of contemporaries who...”. The flow of content does not always logically follow due to a lack of signposts or organization. See for example p.6 where the author transitions to Ramadan's assertions that appeared many paragraphs prior.

The paper would be much improved if terms were used consistently. In the introduction, Dar al-Islam is referred to as the “land of Islam or peace” and the Dar al-Harb as the “land of war or blasphemy”. But at the end of the introduction, they are called the “house of Islam” and the “house of infidelity,” respectively; later in the translation of al-Kasani’s text the term “abode” is used. And
there are more examples of inconsistency. It should also be noted that the translation of Dar al-Harb as the land of “blasphemy” does not seem to equate to the general sense of the meaning of premodern jurists. The alternate to Dar al-Harb is typically – though there are more – Dar al-Kufr or Dar al-Shirk, both meaning something like the abode of unbelief or association (with other gods), neither of which mean blasphemy. Some other better word choices might be made. Instead of “ancient” and “old” to refer to juristic activity before the modern period, “premodern” or “classical” might be used instead. For clarity, the translation of ma’sum and ‘isma as “protection” might be termed “inviolability (of person and property).” This would be helpful to distinguish ‘isma from hirz. Lastly, in my knowledge, the more common term used in juristic discourse for a pact of safety is Aman, as in ‘ahd al-aman, rather than Amn.

The list below notes some of the factual errors, unclear statements, and citation issues.

- P.1: “In addition, others (e.g. Alzuhaili, 1981) have added a third term, ‘Dar Al-Ahd’ (house of truce or treaty), to the existing Islamic division of the world between Dar Al-Islam and Dar Al-Harb.”
  - The Dar al-Ahd was spoken of since at least the 10th century, and the way the sentence is written makes it seem as if the modern reformer created the category.

- P.8: “Secondly, contemporary jurists such as Al-Qaradawi (2010) and Topolyak (1997) have employed a new concept of “safety” to emphasize that the “house of Islam” at present is no longer confined to the historical boundaries of the old “house of Islam”. Rather, they suggest, it has expanded greatly to include every spot in which there is a Muslim who acknowledges to his Lord the two testimonies and establishes his laws in himself according to his ease and ability.”
  - This “new” view is the same one espoused by premodern jurists who also thought that Islam is wherever a Muslim brought it, which is acknowledged in the paper (p. 7). But the paper does not cite Mawardi who made this claim. It would be helpful to show or engage the sources to clarify what is new about the view or perhaps why it mattered to the researcher or jurist being cited. It is unclear what this view adds to the development of the discourse on territoriality and jurisdiction from the premodern to the modern period.

- P.9: “This is a level of magnitude unmatched in the past”.
  - This claim proceeds a statement that millions of Muslims live under non-Muslim governments. But Muslims lived at least partially under non-Muslim governance in many colonial territories, not to mention the Mongol invasion of Islamic lands in the 13th century or the large populations of Muslims living in Sicily in the 11th, to mention just a couple examples. Some nuance would be helpful here, especially since the abode of Islam might still be considered as such even after being conquered by a non-Muslim ruler such as a Mongol. For instance, according to some in the Hanafi school, wherever Islamic law is applied, the territory is to be considered the Dar al-Islam.

- P. 9-10: “In addition, whereas Muslim people of the old abode of Islam did not leave unless they were merchants, involved in Jihad or as tourists or visitors to other places for limited periods, today, they are in many parts of the world in which Muslims permanently reside,
either through long-standing affiliations to those regions or by action."

- What is the basis for this contention? Is the theory of juristic discourse conflated with the fact that they were? Some proof of this contention is necessary to establish its veracity. Or alternatively it might be said that the jurists held positions that might theoretically be followed by a believer. I might suggest a review of migration studies or social history of the premodern period for explicit examples.

- P.10: “Rather, most wars in this time take place in the homes of Muslims; a scenario that did not occur in the time of the ancient jurists, as they only envisioned war between the Muslims as a whole, and the non-Muslims as a whole.”

- This is difficult to understand based on other claims in the article that Orientalists such as Bernard Lewis (and Schacht might also be included here) associate a dichotomous view of the world as ones always at enmity with one another. I am not sure that the envisioning of war between Muslims and non-Muslims was of religious origin, but one of medieval societies. In the medieval period all nations were seen in conflict unless some agreement had been made. Something else to consider is whether jurists ever discuss intra-Muslim conflict, rebellion (Kharijites for example), or living under an unjust Muslim ruler.

**Are sufficient details of methods and analysis provided to allow replication by others?**

While the article outlines some of the issues associated with premodern juristic discourse, a deeper, precise, and more substantive dive into them would have been welcome. How did the premodern law schools and their rulings on territoriality develop over time? The same could be said about the discussion of the Muslim reformers. There is mention of Abu Zahra, the twentieth-century Egyptian reformer, and al-Zuhayli, a Syrian jurist, but little to no mention is made of other well-known modern reformers (Shaltut, for example) or how they relate. Nor is there mention of the impacts of colonialism on reformers and its significance to the development of ideas of territorial boundaries in Islamic international law. Also unclear to me is the lack of specificity of the “changed nature” of international relations that resulted in reinterpretations or abrogation of premodern juristic discourse, though the author does well to mention the United Nations. Likewise, there is no discussion of premodern juristic discourse on the abrogation of the necessity for all Muslims to migrate from foreign territory to Islamic territory. All of these left me with methodological questions: why were certain modern jurists or researchers chosen as representatives of new models of juristic discourse territorial division, and how do they fit into their contexts? What were some of the contradictions in the sources that they were working out?

**Are all the source data underlying the results available to ensure full reproducibility?**

There are references to Islamic magazines or journals that are not easily locatable and cannot therefore be accessed and analyzed by a reviewer (Alshirazi is one: the link leads to the home page). Likewise, one source citation (Eqigg) links to an unpublished PDF or produced by an unknown source that might become irretrievable. The author cites Alfaitori but does not engage his ideas. It is unclear whether Bork is a Muslim jurist, as seems evident from the article. Volume and page numbers of books should be included for reproducibility. For example, Ibn Qudama and Ibn Qayyim al-Jawziyya are cited without reference to volumes or page numbers.
Does he fulfill his purpose?

The article promised to identify a new path forward for peaceful coexistence and better international relations, but they are only emphasized in a final paragraph. No specific path is identified, outlined, or examined. Instead, the article is a review of different juristic discourses, which can be found in many academic articles and books published over the last three decades or more. The article might better foregrounded a path of peaceful coexistence by relating it to the history of juristic discourse. In the end, I did not leave with a better understanding of the overlap of migration with territoriality and jurisdiction, nor of how new theories of territoriality by Muslim jurists helps the author identify a better path forward between Muslim and non-Muslim communities.

References

Is the work clearly and accurately presented and does it cite the current literature?
Partly

Is the study design appropriate and is the work technically sound?
Partly

Are sufficient details of methods and analysis provided to allow replication by others?
Partly

If applicable, is the statistical analysis and its interpretation appropriate?
Not applicable

Are all the source data underlying the results available to ensure full reproducibility?
Partly

Are the conclusions drawn adequately supported by the results?
No

Competing Interests: No competing interests were disclosed.

Reviewer Expertise: My expertise is premodern Hanbali jurisprudence. My research discusses the relations between Muslim and non-Muslims, including the rules of war and jihad, territorial boundaries and jurisdiction.

I confirm that I have read this submission and believe that I have an appropriate level of expertise to state that I do not consider it to be of an acceptable scientific standard, for reasons outlined above.
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