

THE POLITICAL THEORY OF IBN ABD AL-SALAM AND ITS REFLECTION IN HIS FATWAS

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Abstract

Due to the recent momentum gained in studies of Islamic political thought, there has been a surge in articles, books, and article topics from various perspectives. Particularly, this new field, which has a profound relationship with Islamic jurisprudence (fiqh), holds significant importance in shedding light on the issues faced by contemporary Muslims. Especially, comparative studies between the past and present, and particularly those focused on personality-based political philosophy, which have gained more prominence in Western academia, are of great importance. This article investigates how a political theory can be derived from a work of fiqh through the lens of Ibn Abd al-Salam, and how this political theory manifests in real-life political and social issues. In this context, the article focuses on two works. The first is *Al-Qawa'id al-Kubra*. Through various means throughout the work, an integrated political philosophy regarding the issues of politics has been sought from the principles discussed. Additionally, it aims to demonstrate how a fiqh understanding centered on public interest (maslaha) and harm (mafsadah) influences political theory. The other work is *Kitab al Fetawâ*. Through this compilation of fatwas, the extent to which the political philosophy derived from *Kavâid* has been adhered to is examined. Furthermore, fatwas frequently mentioned in reliable historical sources are analyzed in the article. The article also addresses many contemporary issues and explores how past issues manifest today. In addition, a comparison of Islamic law with other contemporary legal systems is conducted, providing an opportunity to view issues from broader perspectives.

Keywords: Fiqh, Qawaid, Maslaha, Mafsadah, Politics

Introduction

Ibn Abd al-Salam's jurisprudence operates on the axis of benefit (maslaha) and harm (mafsadah). It is observed that the objective of all the rulings he deduced was to secure legal benefits (shar'i maslaha) and eliminate harms (mafsadah). This understanding is most clearly seen in his work *Al-Qawa'id al-Kubra*. The *Qawa'id*, which also differs in style, sometimes concludes a section with questions related to the topic and then answers them, or abruptly shifts from the subject of contracts to the subject of rulings. It also discusses the differences between human knowledge and divine knowledge before finishing the section on human actions and their rulings.

The works of the jurists (fuqaha) on Islamic jurisprudence (fiqh) are not merely expressions of their understanding of fiqh. These works—particularly those dealing with legal theory (usul al-fiqh)—also reflect the school of thought and madhhab (legal school) to which the scholar belongs, both in the religious sciences and auxiliary sciences. For this reason, works on usul al-fiqh often address issues from other fields of knowledge as well. For instance, linguistic rules (sarf and nahw) used in legal deduction (Al-Sam'ānī, 1998, p.226-512; Mollā Fanārī, 1990, 223-269), the science of hadith methodology (usul al-hadith) for the analysis of hadith (Al-Sam'ānī, 1998, p.55-136; Mollā Fanārī, 1990, 80-174), the science of Qur'anic exegesis (usul al-tafsir) for interpreting legal verses (Al-Sam'ānī, 1998, p.96-177), and the science of theology (kalam) for discussions on moral value (husn and qubh) and the characteristics of the legally responsible individual (mukallaf) are all included in works on usul al-fiqh. In this way, fiqh and its principles must be approached with a broad scholarly background. Moreover, fiqh works are not shaped solely by these sciences. Other factors also influence the scholar's understanding of fiqh, such as the society in which they live, geographical conditions, historical periods, political events, and similar factors. A prominent example of this is the way in which the fiqh and legal

principles of Imam Malik ibn Anas, the founder of the Maliki school, were heavily influenced by the society in which he lived.

1. Concepts of Maslaha and Mafsadah

Al-Qawa'id al-Kubra fundamentally revolves around the concepts of benefit (maslaha) and harm (mafsadah). The purpose behind Izz al-Din's emphasis on these concepts is to place the humans at the core of his understanding of jurisprudence. The entire work is shaped around the revival and well-being of humanity. He seeks to achieve this by identifying the highest forms of benefits within the limits of the Shari'a and eliminating all forms of harm. According to Izz, life is inherently lived according to this framework. Human choices and actions in life progress along the axis of maslaha and mafsadah. Every decision in life is made either to secure a benefit or to avert a harm (Ibn 'Abd al-Salām, 1990, pp. 62, 70, 82, 94, 102, 147, 170, 280).

Maslahas, from the perspective of rulings, are of three types: permissible benefits (mubah), recommended benefits (mandub), and obligatory benefits (wajib) (Ibn 'Abd al-Salām, 1990, p.35). Mafsadahs, on the other hand, are of two types: disliked harms (makruh) and prohibited harms (haram) (Ibn 'Abd al-Salām, 1990, p.35). Each of these types of benefits and harms is further divided into those related to the afterlife and those related to worldly matters. The Shari'a determines the benefits of the afterlife. These are defined through the Qur'an, the Sunnah, consensus (ijma'), reliable analogy (qiyas), and sound inferences. Worldly benefits are also primarily determined by the Shari'a. However, in cases where a ruling regarding the world is unknown, these benefits may be identified through necessity, experience, customs, and reliable opinion. All rulings, except for those divinely prescribed without revealed wisdom concerning their maslaha and mafsadah, are based on these principles. In this way, what constitutes good and evil actions is understood through these methods (Ibn 'Abd al-Salām, 1990, p. 36).

Human actions are also divided into two categories. The first category consists of actions that lead to benefit (maslaha), while the second includes actions that lead to harm (mafsadah). Actions leading to maslaha are further subdivided into three types: actions leading to worldly benefit, actions leading to benefit in the hereafter, and actions leading to both worldly and hereafter benefits. Similarly, actions leading to mafsadah are also divided into three categories: those leading to worldly harm, those leading to harm in the hereafter, and those leading to both worldly and hereafter harms. Performing actions that lead to maslaha is commanded by Allah, while performing actions that lead to mafsadah is strictly prohibited by Him (Ibn 'Abd al-Salām, 1990, p. 38).

Maslahas are categorized into four types based on their nature: pleasures and their causes, and joys and their causes. Likewise, mafsadahs are divided into four categories: pains and their causes, and sorrows and their causes. Worldly pleasures, joys, pains, sorrows, and their causes are known through reason. The highest of worldly pleasures is possessing wisdom and being on the path of Allah. The pleasures, joys, pains, sorrows of the hereafter, and their causes are known through the promises, warnings, and threats mentioned in the sacred texts (nass). For example, regarding pleasure, the Qur'an states: *"They will be served with dishes and goblets of gold, and there will be everything the souls desire and the eyes delight in. You will reside therein forever."* (Surah Az-Zukhruf, 43:71) and *"They will be served a cup from a clear-flowing fountain, which brings delight to those who drink."* (Surah As-Saffat, 37:45-46). Concerning joy, the Qur'an says: *"Allah will protect them from the evil of that Day and give them radiance and joy."* (Surah Al-Insan, 76:11) and *"They are rejoicing in Allah's grace, and they wish to convey good news to those who have not yet joined them, that they shall have no fear and will not grieve."* (Surah Ali Imran, 3:170). Regarding pain, the Qur'an states: *"In their hearts is a disease, and Allah has increased their disease. For them, there is a painful punishment because of the lies they used to tell."* (Surah Al-Baqarah, 2:10) and *"He will try to swallow it, but he will not be able to. Death will come to him from every direction, but he will not die. And in front of*

him is a harsh torment." (Surah Ibrahim, 14:17). As for sorrow, it is mentioned: "*Whenever they try to escape from anguish, they will be forced back into it, and it will be said to them, 'Taste the burning torment.'*" (Surah Al-Hajj, 22:22).

When the works of Islamic political thought and the history of jurisprudence are examined, a hierarchical structure in state governance becomes apparent. Although this hierarchy is not explicitly stated in works of the *siyasatnama* genre, it naturally emerges due to the structure of the state. This hierarchy is not solely composed of pure state offices; other actors are also included. For instance, in Islamic political thought, jurists (*fuqaha*) occupy the highest level of the state hierarchy. While they do not directly participate in the governing authority, they play a key role in defining the boundaries of state governance. The jurists are responsible for establishing the legitimacy of the head of state and other state officials within the limits of the Shari'a, grounding the state's actions on a jurisprudential (legal) basis. Although power (*sulta*) resides with the head of state and the surrounding state officials, it is the jurists who grant them legitimacy and credibility, particularly in the eyes of the populace.

In the subsections of this chapter, topics such as the conformity of the head of state's actions to Shari'a, the qualifications and characteristics required for the position, the methods of appointment, resignation, and dismissal, as well as issues related to war, the nature of punishments, and other matters concerning the state will be addressed.

1.1 The Conformity of the Head of State's Actions to Sharia:

Izz al-Din ibn Abd al-Salam argues that the actions of the state must always remain within the boundaries of Sharia. Before presenting this argument, however, he classifies state officials. Adopting a jurisprudential methodology based on public interest (*maslaha*), Ibn Abd al-Salam categorizes state authorities according to the public interest they ensure. Since the head of state holds the greatest potential, he ranks highest. Following him is the judiciary, as judicial authority is broader than other forms of authority. The third rank is the military command, which holds more importance than the authority of the pilgrimage, as the merit of jihad exceeds that of pilgrimage. The ranks of other authorities vary according to the general or specific nature of the benefit achieved and the harm eliminated (Ibn 'Abd al-Salām, 1990, p. 155).

In Ibn Abd al-Salam's political theory, politics must be within the limits of Sharia, and every action of the state and its leaders must comply with Sharia. He elaborates on this principle through an example: when the head of state orders the implementation of the punishment of stoning (*rajm*), the stoning must be carried out with customary stones. The caliph cannot order the use of larger stones or smaller pebbles, as Ibn Abd al-Salam explicitly states (Ibn 'Abd al-Salām, 1990, p. 559). This issue is supported by verses from the Qur'an, particularly the verse from Surah al-Ahzab: "It is not for a believing man or woman, when Allah and His Messenger have decided a matter, to have a choice in the matter. Indeed, whoever disobeys Allah and His Messenger has certainly strayed into clear error." Based on this verse, Ibn Abd al-Salam asserts that no creature has the right to choose or express an opinion in opposition to a ruling from Allah (Ibn 'Abd al-Salām, 1990, p. 646).

This understanding is not limited to penal matters but also applies to the execution of the head of state's orders. Although in state practices, orders are expected to be executed immediately—"an order cuts through iron," or "what the superior requests from the subordinate must be fulfilled with urgency"—these decisions must be carried out only if they fall within the limits of Sharia. Ibn Abd al-Salam explains this through two different manifestations of a single example: if a just ruler, known for his knowledge of jurisprudence, orders the unjust killing of an individual, and the executioner carries out this order under coercion without personal desire, the executioner is not liable for blood money (*diyah*) or retribution (*qisas*). This is because the

executioner, as customary, assumes that the ruler judges with justice. Therefore, the head of state, not the executioner, must pay the blood money for the person killed.

The more relevant aspect of this example is its second version: if, during the reign of a tyrannical ruler, the executioner is ordered to cut off an individual's limb or kill them, the executioner cannot carry out the order unless he is absolutely certain of the validity of the ruling, or at least, unless he is overwhelmingly convinced of it. In this case, Ibn Abd al-Salam likens the ruler to a wicked person from the people who compels a Muslim to kill another Muslim. Lastly, Ibn Abd al-Salam emphasizes that the ruler's coercion to kill someone is equal to the coercion of any other individual (Ibn 'Abd al-Salām, 1990, p. 589).

Ibn Abd al-Salam's understanding of public interest and the justice it generates is so clear that he advocates for even a state official to resist the coercive power of the head of state. Even if the head of state gives a definitive order, as soon as this order results in the loss of another Muslim's benefit, Ibn Abd al-Salam deems the ruling invalid.

Another relevant example concerns the head of state's relationship with the public treasury (bayt al-mal). The head of state has the right to dispose of the treasury according to the needs of the state. He may spend from it within the limits set by jurisprudence. Thus, the head of state is not granted unlimited spending power. In his work "*Qawa'id al-Ahkam*," Ibn Abd al-Salam discusses this issue, stating that if the head of state unjustly takes something from the treasury for himself or purchases something with treasury funds, the property is considered to belong to the state, not to the head of state. In fact, according to this principle, state leaders are considered poor, as they have no personal wealth, and all treasury assets belong to the public. Moreover, Ibn Abd al-Salam emphasizes that if the head of state purchases something for himself from the treasury, he becomes indebted to the treasury and must return the equivalent amount to the public treasury (Ibn 'Abd al-Salām, 1990, p. 617). Similar obligations and legal regulations exist today under the Public Financial Management and Control Law No. 5018 in the Turkish Republic (Public Financial Management and Control Law, 2003).

Another topic addressed under this subtitle of *Al-Qawa'id al-Kubra* is the question of who bears the compensation obligation resulting from the loss of a life or property caused by the head of state. Ibn Abd al-Salam states that such a compensation obligation belongs to the treasury. He asserts that such situations sometimes occur while managing the state, and since the head of state acts on behalf of the people, the obligation of compensation should also be fulfilled by the people. However, Izz stipulates that the loss of life or property must result from actions taken by the head of state to achieve a maslaha (public interest) (Ibn 'Abd al-Salām, 1990, p. 641).

A final example that can be addressed under this topic is the situation where a person, during the reign of an unjust ruler, purchases a piece of land and discovers buried items such as stones, treasure, wood, and timber within that land. In a state with a just administration, Ibn Abd al-Salam states that if the finder of the buried goods cannot find the owner and has lost hope, he must surrender it to the state, meaning the treasury. In the absence of a just administration, he issues a fatwa stating that the found items should be spent in favor of the Muslims, taking their maslaha into consideration (Ibn 'Abd al-Salām, 1990, p. 628).

1.2 Justice, Qualifications, and Attributes Required of the Head of State

The individuals in the executive ranks of the state must possess certain characteristics. Thanks to these qualified administrators, the state's survival is ensured, and justice is established. This topic is one of the subjects addressed in Ibn Abd al-Salam's work. Additionally, some statements specifically regarding the attribute of justice are open to discussion. However, in *Al-Qawa'id al-Kubra*, rather than a conventional enumeration and explanation of the qualities required in the head of state as found in political treatises, the issue is preferred to be approached

through various examples. This approach demonstrates what is theoretically expressed within the work in practical terms.

One such characteristic is that of justice. Izz has an interesting approach to this subject. While addressing the justice attributes of different individuals in his work, it is noticeable that he does not apply the same ruling to similar cases. The most striking example is his different judgments regarding unjust individuals in various positions. For instance, he does not consider the testimony of an unjust witness valid and does not accept their witness. However, when it comes to the head of state, the same ruling does not apply. Izz argues that an unjust person can be a head of state. The noteworthy point here is that while he disregards the quality of justice in a matter as significant as the presidency, he completely rejects the lack of justice in testimony (Ibn 'Abd al-Salām, 1990, p. 117-118).

Ultimately, this issue is rooted in the understanding of ensuring *maslaha* (public interest) and eliminating *mafsadah* (harm). Izz explains that accepting the testimony of an unjust individual in a case would result in harm to the opposing party and deprive them of their interest. However, in the case of a head of state, the absence of a leader—even if that leader is unjust—would lead to the loss of the people's interest and the emergence of *mafsadah*. From this, it can be inferred that even if there are deficiencies in the fundamental qualities required of the head of state, it does not prevent their rise to power. He states that if there is no just person to lead the state, the one with the least oppression should be favored.

Another topic addressed in the same context is the situation of a woman or a non-discerning child becoming the head of state. He ties the validity of their actions, such as appointing judges, governors, and equipping armies, to whether "wise individuals" in their society accept them. Izz characterizes the presidency of a woman or a non-discerning child as a calamity (Ibn 'Abd al-Salām, 1990, p. 117-118). This statement is difficult to understand in light of contemporary values. However, considering the realities of the time and the political environment, this statement is not entirely far from the truth. In a society characterized by the absence of intense diplomatic lines, frequent wars, and harsh conditions, it is natural for discussions about the gender of the head of state to arise, with men being deemed more deserving.

Therefore, the most sound approach to this highly debated topic today would be to progress through the concept of *fitrah* (natural disposition). Until the nature of the concept of *fitrah*—one of the fundamental concepts abandoned by the postmodern world and Muslims—is comprehended, it is difficult to fully grasp political treatises and the accompanying jurisprudential literature.

After discussing justice, Izz addresses the possibility of a sinful head of state. The question arises as to whether their authority would be valid in such a case. He states that if they prevent an act that is forbidden without any excuse, their authority would be void. However, he mentions four opinions regarding small sins. Although he finds each of these views flawed, he ultimately expresses his own opinion. The first view holds that the authority of someone who commits a small sin would cease. Ibn Abd al-Salam argues that not committing even small sins is a trait unique to the prophets, and since this is impossible, the view is invalid. The second view posits that the authority would end upon the discovery of the small sin. The third view is that by having a good opinion, what is normally forbidden for Muslims is permissible for the head of state. According to Izz, this is the worst opinion because Allah does not exempt anyone from what is lawful and unlawful. The fourth view asserts that these sinful acts are fundamentally actions that draw one closer to Allah. Izz considers all four views invalid and connects the issue to his own view. According to him, individuals like the head of state may commit small sins but their authority should continue. The most favorable approach is to inform them that their actions are mistakes while simultaneously concealing their errors. According to Izz, the mistakes of the head of state are among the errors most deserving of concealment.

Finally, Izz al-Din Ibn Abd al-Salam examines the case where the head of state is both just and unjust. His primary emphasis is that they should compensate for the damages caused by their oppression. If they fail to compensate, the matter will transfer to the afterlife, where the rewards for the oppression will be passed on to the rightful owners, and when their rewards are exhausted, the owners will bear the sins (Ibn ‘Abd al-Salām, 1990, p. 183).

1.3 Resignation and the Authority to Dismiss the Head of State

In contemporary discussions of Islamic political history, it is claimed that the head of state (the caliphs) possess all powers, are authorized to do whatever they wish, and are not subject to penal consequences for their mistakes. However, this article, which is distanced from historical realities, does not hold truth. In Islamic history, numerous times, rulers who were not legitimized by jurists experienced failures in their governance. In fact, it is recorded that many of them were removed from their positions. Out of a total of 129 caliphs in Islamic political history, 67 have ended their tenures due to dismissal, resignation, or revolution when the Rashidun Caliphs are excluded (Kavak, 2019). This represents a dismissal or resignation rate of 52%.

A brief assessment of such a ratio is also necessary. The high rate of over half of the caliphs resigning or being dismissed might suggest that Islamic political history has always been characterized by significant instability. However, interpreting historical data solely based on numerical values is a significant error in historical methodology. These figures must be evaluated alongside the cause-and-effect relationships of historical events and the conditions of the time. For example, during the 267-year history of the Mamluks, the head of state changed 36 times for various reasons, whereas in the 616-year reign of the Ottomans, this number was only 11. Evaluating these factors will lead to a more reasonable and valid understanding of Islamic political history.

Regarding the matter of resignation, Ibn Abd al-Salam’s primary view is that if a head of state resigns, their resignation is valid only if there is someone capable to take their place. This is a precautionary measure taken to protect the public interest and prevent political and social chaos (Ibn ‘Abd al-Salām, 1990, p. 582).

Another topic, the authority to dismiss, is not a right that the head of state can exercise freely. A head of state can dismiss a public servant under two conditions. The first is if there is suspicion regarding the public servant, in order to prevent potential harm. The second is if there exists a more capable and competent individual to replace the current servant. Outside of these conditions, it is not permissible to appoint a less competent individual to the position. Additionally, according to some opinions, it is also not permissible to dismiss a public servant to appoint another of equal competence, as constant changes in public service lead to instability (Ibn ‘Abd al-Salām, 1990, p. 451).

1.4 Methods of Assumption of Office by the Head of State

According to Ibn Abd al-Salam, the state always requires a head. This is crucial for ensuring the general interests and eliminating various harms. The head of state must maximize the protection of the interests of the nation, along with other state officials like governors, judges, and law enforcement. Therefore, a state without a head of state would lead to the oppression of the weak, the loss of interests, and the emergence of harms, subjecting honorable individuals to attacks from lesser individuals. Preventing this requires that every individual working for the state must be competent and that virtuous individuals are appointed to these positions. Consequently, it should be preferred that virtuous individuals assume each administrative role (Ibn ‘Abd al-Salām, 1990, p.224).

Before discussing the methods of assuming office by the head of state, Ibn Abd al-Salam first explains the characteristics required of individuals who are qualified for state duties, including

military commanders, judges, imams, muezzins, and those responsible for orphans (Ibn ‘Abd al-Salām, 1990, p. 106-108).

Ibn Abd al-Salam does not elaborate much on the subject of how a head of state assumes office in *Kavâid*. The absence of extensive discussions on this topic is consistent with the general nature of the work. The most competent among the candidates must be selected under all circumstances. The more critical aspect is determining who is most competent. Izz focuses on how to choose between two candidates for head of state who are equal in qualifications. His ruling is that a draw should be held. This is because drawing lots eliminates animosity, hatred, and jealousy and establishes legitimacy among the people (Ibn ‘Abd al-Salām, 1990, p.122-123).

In today’s positive political systems, even the suggestion of choosing a head of state through a draw does not exist. The presence of such a suggestion in a work like *Kavâid* requires careful examination and understanding of the overall nature of the work. Applying such a primitive method to the critical matter of selecting a head of state is noteworthy. However, it essentially provides a means to prevent the stagnation of a system that requires swift decision-making and constant functioning. Thus, a draw occurs only between two candidates who are equally qualified for the position. As soon as the more competent candidate is identified, their assumption of office becomes a possibility. These methods yield more successful results than the current system where every citizen has the right to participate in elections. Within this framework, candidates are evaluated based on their qualifications. Factors like political charisma, eloquence, financial resources, or aversion towards the opposing candidate do not facilitate their assumption of office.

In Islamic political thought, candidates for the position of head of state are chosen to fulfill their duties justly, select their appointees based on competence, and ensure stability within the country.

The last point regarding Islamic political thought is the critique of the notion that caliphs remain in power unchallenged. While caliphs often sought the approval of the elite, their legitimacy was not solely based on the support of the masses. In fact, many of them sought legitimacy through the backing of jurists. The primary requirement for a head of state was to ensure justice, as it is stated that a state governed unjustly cannot last. Thus, it can be argued that the head of state must be subject to legal and moral accountability for their actions.

1.5 Duties of the Head of State

Izz al-Din ibn Abd al-Salam emphasizes the primary responsibilities of the head of state, starting with the fundamental duty of maximizing public benefit and eliminating the greatest harms. While in office, the head of state must act justly towards the oppressed and ensure that the rights of the weak are fully upheld, thereby staying away from God's wrath. This principle is rooted in the tradition of Islamic governance established by Abu Bakr, who, on the day of his caliphate, stated: “O people, the strongest among you is the weakest in my eyes. I will take the right from him and give it to the weakest among you.” This statement lays one of the foundational principles of Islamic politics (Ibn ‘Abd al-Salām, 1990, p. 202).

The actions of the head of state can be classified into two categories: those pertaining to worldly benefit and those pertaining to spiritual benefit. When the head of state acts in matters that are solely the right of God, their actions pertain to spiritual benefit. If they make decisions regarding the rights of individuals, then the benefit is worldly, while the head of state's benefit is spiritual. In cases where the head of state deals with both the rights of individuals and those of God, they achieve both worldly and spiritual benefits (Ibn ‘Abd al-Salām, 1990, p. 487-488).

The understanding within the Islamic political tradition that the powers of heads of state and governors are clearly delineated by jurisprudence is also addressed in *al-Qawaid*. Izz states that

a governor cannot make decisions that violate the prohibitions of Sharia. Engaging in actions that do not yield benefits or lead to harm within state resources is also forbidden. Izz maintains such a benefit-centered approach that he deems it inappropriate for a governor to undertake actions that do not produce benefits or do not avert harm, asserting that there is no point in doing so.

Drawing from a question posed to Izz, a comparison can also be made regarding politics: Is feeding one person ten times equivalent to feeding ten people once? Ibn Abd al-Salam prefers feeding ten separate individuals instead of one-person multiple times. This reflects a different manifestation of a principle found in the *Mecelle* (Islamic civil code). Furthermore, it is also a guiding principle in politics. The *Mecelle* states: “To avert general harm, specific harm is preferred.” This principle in politics can also manifest as prioritizing the greater good over the lesser good, as it is ultimately a matter of justice to favor the interests of a larger group over those of a smaller one.

1.6 Judiciary

At first glance, having a subsection on the judiciary within an article discussing the political theories of scholars might seem outside its boundaries. However, judges are state officials who implement the legal systems established by scholars on behalf of the sultan. The enforcement of the law, the appointment of judges, and their legitimacy are all determined by the decisions of the contemporary head of state. Any ruling given by a judge not appointed by the caliph is considered invalid. A head of state with the authority to appoint judges has several primary objectives in mind: to rectify injustices, to restore rights to their rightful owners, to protect and support the needy, to ensure the swift delivery of just rulings, and to distinguish between the rightful and the wrongdoer (Ibn ‘Abd al-Salām, 1990, p. 166).

The subject of the judiciary is examined from various angles in the literature on Islamic political thought. Izz al-Din ibn Abd al-Salam addresses the topic of the judiciary intermittently in his work *Al-Qawa'id al-Kubra*, highlighting various aspects related to judicial duties. This section of the article will reference and compare these topics with the contemporary Turkish judiciary system (Ibn ‘Abd al-Salām, 1990, p. 252).

1.7 The Concept of Justice in Jurisprudence

Izz al-Din ibn Abd al-Salam explains the understanding of justice in judicial law by clarifying the concepts of justice and equality and pointing out the differences between them. This issue remains relevant and debated today. In his work *Qawaid*, when discussing the justice that judges must observe in hearings, he frequently employs a question-and-answer format. In a relevant question, he notes that while justice implies equivalence, judges do not treat the parties equally in accepting statements; the defendant's testimony is accepted when sworn, whereas the plaintiff's testimony is only accepted if the defendant swears. He raises the question of why the burden of proof falls on the plaintiff (Ibn ‘Abd al-Salām, 1990, p. 104-105).

Izz al-Din ibn Abd al-Salam responds to this inquiry by explaining the concepts involved and addressing any objections. The representative person posing the question appears to be confused about the concepts and does not consider their implications. Equality refers to those who enjoy the same rights and are on the same level, while justice—among its various definitions—means giving everyone what is appropriate and what is their due. Based on these definitions, there must be a distinction between the responsibilities that a judge places on one party and those placed on the other. This differentiation stems from various reasons, the most apparent being that in jurisprudence, the claimant is always obligated to substantiate their claims. If they lodge a complaint, it falls upon them to prove it. This is their responsibility, as the principle of justice inherently requires it. This prevents the burden of proof from being placed on the accused in cases of false accusations and eliminates the suspicion against the

accused. After all, the accused cannot prove something that does not exist. The burden of proof lies with the one claiming the occurrence of an event. This rule is also reflected in the principles of the Mecelle (Mecelle, 1876, Article 76) and the articles of the Turkish Civil Code (Turkish Civil Code [TCC], 2001).

Izz al-Din ibn Abd al-Salam provides a definition of equality in his explanation of the concept of justice. He states that equality means that, in terms of issuing judgments based on observable circumstances, the parties are treated as equals. This implies that when a claim is made, the accused is presumed innocent until proven otherwise. If proof is provided, then the accuser's claim is deemed correct, and the accused is found guilty. Since the judge cannot know what is hidden, equality—and thus justice—has been established in this manner.

2. Fatwas of Ibn ‘Abd al-Salām

In the second chapter of the article, Ibn Abd al-Salam’s maslaha-centered understanding of jurisprudence is explained. The first chapter discusses the political and social circumstances that could lead to the formation of such a jurisprudential understanding. The final chapter addresses the manifestations of the jurisprudential theory presented in the second chapter, both in historical texts and in his work, *Kitab al Fetâwâ*. In each of his fatwas, he consistently adheres to his understanding of jurisprudence, ensuring that his rulings remain within the realm of maslaha (public interest) and mafsadah (harm).

2.1 Fatwas Regarding the Head of State:

As far as can be determined, Ibn Abd al-Salam issued seven fatwas concerning the head of state. Four of these fatwas appear in *Kitab al Fetâwâ*, while the other three are compiled from historical texts. Certain characteristics can be observed in the seven examined fatwas. Firstly, Ibn Abd al-Salam consistently upholds the position and reputation of the head of state (as long as he preserves the public interest and eliminates harm). He also prevents any harm to the individual or the office of the head of state. Thus, his fatwas elevate the head of state to a respectable position in the eyes of the public. Another notable feature is that he always holds the head of state accountable and responsible for every aspect of state and national affairs. As expressed in the second chapter, all matters ranging from the implementation of punishments to marriage fall under his responsibility. Naturally, Ibn Abd al-Salam does not expect these to be executed directly by the head of state; however, ensuring that they are accomplished within the state's capabilities is his responsibility.

In the first fatwa, a question is posed to Izz regarding whether a person who has committed a crime warranting the death penalty has the right to execute the punishment themselves. The query seeks to determine if an individual has the right to enforce their own penal judgment in such a situation and whether this is permissible, preferable, or forbidden. Ibn Abd al-Salam states that issues related to criminal law should be resolved through legal means and that an individual does not have the authority to judge themselves, emphasizing that the execution of the sentence should be carried out by the head of state. In this fatwa, Ibn Abd al-Salam highlights two points. Firstly, he suggests that it is better for a person in such a situation to repent and conceal their sin. This aspect is also evident in the hadith concerning the companion Mâiz, who confessed to adultery before the Prophet Muhammad (peace be upon him). Secondly, Ibn Abd al-Salam does not accept the omission of the head of state and the execution of a task that should be entrusted to him without delegation. This prevents the emergence of tyranny and discord among the people (Ibn Abd al-Salām, 1986, p.35-37).

Another noteworthy fatwa states that if the head of state wishes to marry off a woman by means of a letter written by himself, even if this handwriting is confirmed, the judge is instructed not to consider it. This is because the certainty derived from handwriting is deemed insufficient and weak, thus making it unacceptable. It is noteworthy that he does not even accept the

confirmation of the handwriting as coming from the head of state. He insists on the presence of witnesses to ensure that no harm comes to the public interest (Ibn Abd al-Salām, 1986,p.37-38).

In another fatwa, it is observed that among the significant responsibilities of the head of state—such as protecting the nation, managing state affairs, maintaining economic stability, and conducting wars—is also the duty to assume guardianship and marry off a woman who has been unable to marry due to not having a guardian. This is because ensuring all forms of public interest is his fundamental duty. Here, Ibn Abd al-Salam bases his fatwa on the hadith of the Prophet Muhammad (peace be upon him): "The ruler is the guardian of those who have no guardian." (Ibn Abd al-Salām, 1986,p.45-46)

The final fatwa concerning the head of state in *Kitab al Fetâwâ* discusses whether the guardianship of a head of state who does not perform prayers is valid. The abandonment of prayer is seen as a form of sinfulness, raising the question of whether a sinful individual can be an appropriate head of state. Ibn Abd al-Salam evaluates whether this administrator fulfills the public interest, whether he removes harmful elements, and, lastly, whether he acts justly. If this is the case, he accepts the validity of that individual's leadership. The existence of a social order is deemed paramount, as the removal of a person from office solely for neglecting prayer would create a larger political and social problem. However, he does indicate that tyrannical practices and actions contrary to Islamic law will be opposed and deemed unacceptable (Ibn Abd al-Salām, 1986,p.58-59).

2.2 Fatwa on Tax Law:

Ibn Abd al-Salam's and, generally, the Shafi'i school's understanding of maslaha (public interest) is individualistic in nature. When determining public interest, it predominantly pertains to the individual's welfare. However, in the Hanafi school, the state's interest takes precedence in situations where it conflicts with individual interests, as maintaining the state is considered the most fundamental element for the survival of the community.

This understanding is reflected in the fatwas issued over time. For instance, during Ibn Abd al-Salam's time, Mongol invasions were ongoing. The new head of state, Emir Kutuz, declared jihad against the Mongols and sought to collect taxes from the people to equip the military for war. When Emir Kutuz presented this to Ibn Abd al-Salam, he requested a fatwa on the matter. Ibn Abd al-Salam responded by initially stating that Emir Kutuz and the royal family, along with high-ranking officials, must bear the cost of the military from their own wealth. However, he then accepted the taxation from the populace as a necessary measure for maintaining the state, concluding that it was permissible to raise taxes (Subkī, n.d., p. 215).

The essence of this fatwa reflects the approach of assessing the interests of the community and adapting to the exigencies of the time. It should be noted that Ibn Abd al-Salam only accepted this tax with the condition that it be allocated for legitimate purposes and directed toward public interests. This demonstrates how the foundation of tax law, rooted in the Shafi'i school, differs fundamentally from the Hanafi school's perspective.

2.3. Fatwas on Sermons (Hutbah)

The sermons delivered, especially on Fridays, are essentially brief orations that address contemporary societal or state issues. These sermons often focus on moral topics, but they also discuss political and social matters that have arisen since the time of the Prophet Muhammad (peace be upon him).

Ibn Abd al-Salam's *Kitâbu'l Fetâvâ* contains two fatwas concerning the political aspects of sermons. In these fatwas, he addresses various topics, including the style in which a sermon

should be delivered, important considerations for the preacher, the mention of individuals in the sermon, and the attire that should be worn.

In one fatwa, the question is raised regarding the permissibility of praising the sultan during the sermon, discussing the problems faced by the state or the mosque in which the sermon is given, mentioning the sultan's kindnesses to his subjects, requesting prayers, and referring to weather conditions. The inquiry suggests that during Ibn Abd al-Salam's time, such topics were indeed addressed in sermons. It is noteworthy that the questioner highlights that generally, sermons did not focus on the remembrance of God, praising Him, discussions of Heaven and Hell, prayers, or the actions deemed acceptable or unacceptable for individuals.

In his response, Ibn Abd al-Salam first discusses the general nature of sermons, stating that it is inappropriate to mention the head of state or other state officials during a sermon. He argues that only Allah and His Messenger should be referenced. Mentioning anyone else is not deemed suitable. Praise for the head of state, discussing their actions, or recalling their favors to the people are not included in the content of a sermon. Regarding societal issues mentioned in the inquiry, Ibn Abd al-Salam indicates that only significant matters should be discussed. For instance, mentioning drought conditions and praying for rain or encouraging the people to engage in jihad in the face of an enemy's advance are permissible (Ibn Abd al-Salām, 1986,p.75-78).

In another fatwa, a question is raised about whether it is permissible for the preacher to adorn themselves, wear a belt, or dress in white instead of black. Ibn Abd al-Salam asserts that excessive adornment by the preacher is considered an innovation (*bid'ah*), and that the preacher should adorn themselves according to the legal standards and the Sunnah of the Prophet Muhammad (peace be upon him). Wearing a belt and utilizing a black cloak during the sermon is deemed more appropriate in fulfilling the symbols of the sermon and Friday prayer (Ibn Abd al-Salām, 1986,p.79-80).

2.4. Fatwas Regarding Judges (Qadis)

In *Kitābu'l Fetāvā*, most of the fatwas concerning the head of state also mention judges, as they are among the two fundamental authorities of the state. However, as far as can be determined, there are only two fatwas specifically addressing judges in *Kitābu'l Fetāvā*.

The first fatwa addresses whether a judge can grant custody of a child to a non-Muslim. The inquiry seeks to determine if a non-Muslim can be appointed as a guardian for a Muslim child concerning both managing their property and taking custody of them. Ibn Abd al-Salam argues that this is likely not in the best interest of the child, and due to the potential for the child to convert to non-belief in the future, it is not permissible (Ibn Abd al-Salām, 1986,p.60).

In the second fatwa, a questioner asks whether it is permissible for judges, who are not at the level of *mujtahid*, to adopt and abandon opinions from various schools of thought. Ibn Abd al-Salam responds that it is not permissible for judges of their time to do so, asserting that such actions lead to corruption and wrongdoing. Specifically, for those who are not *mujtahid*, it is certainly not permissible to engage in this practice (Ibn Abd al-Salām, 1986,p.89-90).

2.5. Fatwas Regarding the State's Sect (Madhhab)

The final fatwa that pertains to political matters in *Kitābu'l Fetāvā* concerns the state's sect. This fatwa addresses the differing interpretations between the Hanafi school and the majority regarding whether *zakat* should be given from a child's property. The Hanafis consider *zakat* as a financial act of worship that requires the person to be legally competent, thus deeming it unnecessary to take *zakat* from a child's wealth. In contrast, according to the Shafi'i, Maliki, and Hanbali schools, *zakat* is regarded as a tax that enhances societal welfare and maintains order. Therefore, according to these three schools, *zakat* must be taken from a child's property.

The questioner asks whether the obligation of zakat would be lifted from a child if zakat was prohibited from being collected, according to the Shafi'i school, and how a person responsible for orphans' property should manage that wealth. Ibn Abd al-Salam clearly delineates the limits of the state leader's authority, stating that the head of state does not have the right to implement such a prohibition, and that zakat must be taken from the child's property. However, he also suggests that if there is fear of harm from the head of state, it should be done discreetly (Ibn Abd al-Salām, 1986,p. 161).

Conclusion

The chaotic environment of the era, with constant Mongol and Crusader attacks, has worn down both politics and societal order. During this period, certain tolerances were shown that would be opposed by the Islamic political understanding, and at times, the boundaries of jurisprudence were exceeded. Ibn Abd al-Salam, as a jurist, must present a legal understanding that will reform the people of his time. Thus, with the reestablishment of order, both the welfare of the state and the nation will increase, and the possibility of a life in accordance with the rules determined by Sharia will be ensured.

One of the goals of the many works written by Ibn Abd al-Salam is aimed at the objectives expressed. From a jurisprudential perspective, he attempts to achieve this with his work *Al-Qawā'id al-Kubra*. This first work in the literature of legal maxims focuses on the concepts of maslaha (public interest) and mafsadah (harm). He strives to demonstrate that each ruling of jurisprudence, whether known or unknown, is derived either to fulfill a maslaha if it is halal (permissible) or to eliminate a mafsadah if it is haram (forbidden). This attitude is also reflected in the issues related to politics that the thesis focuses on. The implementation of each political action and the issuance of commands should fundamentally be either to ensure a maslaha or to eliminate a mafsadah.

The maslaha-mafsadah-centered understanding proposed by Izzuddin Ibn Abd al-Salam is also evident in his fatwas. When analyzing both his *Kitab al-Fatawa* and the fatwas mentioned in many reputable history books, he remains true to the understanding he established. Despite facing state leaders and their officials many times to do this, he never abandons this understanding. This attitude, which earned him the title *Bayiu'l-Muluk*, *Bayiu'l-Umara* (the seller of kings, the seller of princes), places him in a distinguished position in both the tradition of Islamic scholarship and the field of Islamic political history and thought.

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