



AL-AHKAM AL-SULTANIYYAH OF AL-QADI ABU YA'LA AND AL-MAWARDI ON THE ISLAMIC SYSTEM OF GOVERNMENT: A CRITICAL EVALUATION OF THE RELATIONSHIPS AND DIFFERENCES

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Abstract

The aim of this paper is to examine and evaluate the relationship between al-Ahkam al-Sultaniyyah of al-Qadi Abu Ya'la and al-Mawardi; the two laws of Islamic System of Government that outline the legal doctrines for political, administrative and military offices by the tenth century Shafi'i jurist, al-Mawardi and Hanbali jurist, al-Qadi Abu Ya'la. The study hypothesises that al-Qadi Abu Ya'la's book is almost the same as that of al-Mawardi, even though there are many places in which the bulk of the wordings of both texts look alike but opinions were ascribed by each writer to different scholars. The study will, therefore, critically examine some of the areas of parities and disparities in these two books of Islamic System of government with the aim to establishing which of the two authors have copied from each other and to what extent such an act is found to have been carried out.

Keywords: *Al-Ahkam al-Sultaniyyah, al-Qadi Abu Ya'la, al-Mawardi, Legal doctrines, Islamic System of Government.*

Introduction

The two authors of *al-Ahkam al-Sultaniyyah*; al-Qadi Abu Ya'la (380-458 A.H / 990-1065 C.E), and al-Mawardi (364-450 A.H / 974-1058 C.E) were contemporary and prominent jurists in eleventh century in Iraq. However, the former belongs to Hanbali *Madhhab* and the latter belongs to the Shafi'i *Madhhab*. They were also known to belong to the same political class with the former serving as Qadi of *Dar al-Khilafah* (Caliphal palace) under Caliph al-Qaim bi Amr Allah (422-467 A.H / 1031-1074 C.E), from 447 A.H / 1055 C.E.; a post he held till his death in 458 A.H / 1065 C.E.²⁷² The latter was conferred with the honorific title of *aqda al-qudah* (the supreme *qadi*) of Baghdad by the same Caliph al-Qa'im bi Amr Allah in the year 429 A.H / 1038 C.E, the post he also held till his death in 450 A.H / 1058 C.E.²⁷³ The main contribution of both treatises to Islamic legal literature and political thought is their outline of legal doctrine for political, administrative and military offices. Nimrod Hurvitz is of the opinion that these offices and institutions had been in existence for hundreds of years, al-

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272 See Abu al-Husayn Muhammad ibn al-Qadi Abi Ya'la (d.526 A.H), *Tabaqat al-Hanabilah*, ed. Shams al-Din Abu Abd Allah Muhammad ibn Abd al-Qadir Uthman al-Nablusi (Dimashq: Matba'at al-I'tidal, 1350 A.H), vol. 2, p. 380-381; See also H.A.R. Gibb, J.H. Krammers and others, *The Encyclopaedia of Islam*, (Leiden: E. J. Brill, 1979), Volume 1, part A-B, p. 766.

273 See Taj al-Din Abi Nasr Abd al-Wahhab ibn Ali ibn al-Kafi al-Subki, *Tabaqat al-Shafi'iyyah al-Kubra*, ed. Abd al-Fattah Muhammad al-Hulw and Mahmud Muhammad al-Tanahi, 2nd edition, (n. pp: Hajar li al-Tiba'ah wa al-Nashr wa al-Tawzi'i, 1413 A.H / 1992 C.E), Volume 5, pp. 267-271.

Mawardi and al-Qadi Abu Ya'la were seemingly the first jurists to address them from a legal perspective.²⁷⁴

Historical Background of The Two Authors

Al-Qadi Abu Ya'la

Al-Qadi Abu Ya'la ibn al-Farra' is regarded as the most prominent Hanbali scholar in Baghdad during the first half of the eleventh century. Historical antecedents are replete with the facts that he was born on the evening of 28th or 29th *Muharram*, 380 A.H.²⁷⁵ He was said to have been brought up in Baghdad, one of the principal seats of learning and education in the Muslim world at that time. His father, Abi Abd Allah al-Husayn (d. 390 A.H / 1000 C.E), was a Hanafi expert on the tradition of the Messenger of Allah and a jurist of high repute.²⁷⁶ As one of the most celebrated scholars of his time, al-Qadi Abu Ya'la played a significant and dynamic role in imparting the knowledge of jurisprudence, legal studies, Qur'anic interpretation, Prophetic traditions, theology and other branches of knowledge. He was characterized by his biographers as a man of knowledge in theology and law, and an outstanding figure in political and religious affairs whose followers were uncountable, whose works were taught, whose legal judgments based on personal opinions (*fatawa*) were sought for, and whose lectures (*majalis ilm*) were well attended by people of different *Madhahib*.²⁷⁷

Al-Mawardi

He is Abu al-Hasan Ali ibn Muhammad ibn Habib al-Mawardi al-Shafi'i. He was born in Basra in 364 A.H / 974 C.E. After completing his basic education in Basra, he learned *SAW* (jurisprudence) from al-Qadi Abu al-Wahid al-Saymari. He then went to Baghdad to study under Abu Hamid al-Isfaraini. His proficiency in *SAW*, ethics, political science and literature proved useful in securing a respectable career. His variety of knowledge drew to him the attention of the authorities and he was appointed as *qadi*. He fulfilled the responsibilities of this post in various towns like Ustüwa' and Nishapur before being entrusted with the role in Baghdad.²⁷⁸ He acted for Caliph al-Qadir bi Allah (381-422 A.H / 991-1031 C.E) in his negotiations with the Buyids, and in the year 429 A.H / 1038 C.E, the succeeding Abbasid Caliph al-Qa'im bi Amr Allah (422-467 A.H / 1031-1074 C.E) conferred on him the honorific title of *aqda al-qudah* (the supreme *qadi*). Caliph al-Qa'im bi Amr Allah later appointed al-Mawardi as his roving ambassador and sent him to a number of countries as the head of special missions. In this capacity, he played a key role in establishing harmonious relations between the declining Abbasid caliphate and the rising powers of the Buyids and Seljuks.²⁷⁹

274 See Nimrod Hurvitz, *Competing Texts, the Relationship between al-Mawardi's and Abu Ya'la's al-Ahkam al-Sultaniyyah*, (Harvard Law School, 2007), p. 2.

275 See Abi al-Husayn Muhammad ibn al-Qadi Abi Ya'la, *Op. Cit.*, p. 193.

276 Abu Ya'la's father was a Hanafi by *Madhhab*. He held the office of notary (*shahid*) in his life-time. He was said to have refused the office of chief justice offered to him by caliph al-Muti' and the Buyid prince Muizz al-Dawlah. See H.A.R. Gibb, J.H. Krammers and others, *Op.Cit.* p.765.

277 See Muhammad Abd al-Qadir Abu Faris, *al-Qadi Abu Ya'la wa Kitabuhu al-Ahkam al-Sultaniyyah*, (Bayrut: Muassasat al-Risalah, 1403 A.H / 1983 C.E), p. 89. See also Abu al-Husayn Muhammad ibn al-Qadi Abi Ya'la *Op.Cit.*, pp.377 and 382.

278 Taj al-Din Abi Nasr Abd al-Wahhab ibn Ali ibn al-Kafi al-Subki, *Op.Cit.*, Volume 5, p. 267.

279 See Shams al-Din Muhammad ibn Ahmad Uthman al-Dhahabi, *Siyar A'lam al-Nubala'*, Vol. 18, 11th edition, (Bayrut: Muassasat al-Risalah, 1422 AH / 2001 C.E), pp. 64-68.

Al-Mawardi was a great *faqih* (jurist), *muhaddith* (expert in *Hadith*), sociologist and expert in political science and constitutional law. He was acclaimed as one of the ablest men of his age and a leading scholar in the Shafi'i *Madhhab*. He was not only a distinguished *qadi* but also a distinguished author. He wrote mostly on law, politics and sociology. Among his well-known monumental works are *Kitab al-Hawi*, *al-Iqna'*, *Nasihah al-Muluk*, *Qawanin al-Wizarah wa Siyasat al-Mulk*, *Tashil al-Nazar wa Ta'dil al-Zafar*, *Kitab al-Amthal wa al-Hikam*, *Kitab Adab al-Takallum*, *Kitab Adab al-Duniya wa al-Din*, *Kitab Adab al-Qadi*, *Kitab Ma'rifat al-Fada'il* and *Kitab al-Ahkam al-Sultaniyyah*. It was on this last book that his fame chiefly rests. The book is regarded as one of the first scientific treatises on constitutional law, political science and state administration in Islam. Al-Mawardi died at the age of 86 in the month of Rabi'-Awwal, 450 A.H / 1058 C.E.²⁸⁰

Relationship and Differences Between The Two Books

Some of the scholars who have made frantic efforts to study the relationship and differences between the two *al-Ahkam al-Sultaniyyah* of al-Qadi Abu Ya'la and al-Mawardi are Donald Little (1974), Muhammad Abd al-Qadir Abu Faris (1980), and Nimrod Hurvitz (2007). Nimrod Hurvitz is of the view that most scholars either kept silent about al-Qadi Abu Ya'la's treatise or dismissed it as a mere copy of al-Mawardi's own with the exception of Donald Little and Muhammad Abd al-Qadir Abu Faris whom he said were able to compare the two texts and take a close look at the dozens of differences between them. He maintain further that Donald Little's short article on the two *al-Ahkam al-Sultaniyyah* is limited to the institution of *al-imamah* and despite his narrow focus, he was able to make a number of pertinent observations regarding the discrepancies between the methodology, style and contents of the two texts and thereby submit that al-Qadi Abu Ya'la's book is almost the same as that of al-Mawardi's book as far as the issues raised in both of them are concerned.²⁸¹

The focus of attention of Muhammad Abd al-Qadir Abu Faris, as mentioned by Nimrod Hurvitz is the quest for the original text of the two, which in his opinion is that of al-Mawardi.²⁸² In his own study, Nimrod Hurvitz made a detailed comparison of the two, and examines the creative strategies and methodologies their authors utilized when preparing these pioneering and highly influential treatises. He submits that al-Qadi Abu Ya'la's *al-Ahkam al-Sultaniyyah* was written to showcase the opinions of the Hanbali *Madhhab* on Islamic constitutional matters because al-Mawardi, in his treatise always refers to the legal opinions of al-Imam al-Shafi'i, al-Imam Malik and al-Imam Abu Hanifah; the founders of three *Madhahib SAWiyyah* (School of Law) and nearly ignores the founders of the fourth *Madhhab*, i.e., al-Imam Ahmad ibn Hanbal who was only cited twice by al-Mawardi.²⁸³ This, as mentioned by Nimrod Hurvitz, clearly shows that al-Mawardi is, somehow, expressing his disrespect for the Hanbali *Maddhab*.²⁸⁴ Thus, al-Qadi Abu Ya'la's version of *al-Ahkam al-Sultaniyyah* is a clear case of partisan scholarship in which he attempts to showcase the prestige of the Hanbali *Maddhab* at the expense of the other three *Madhahib* because the total number of al-Qadi Abu

280 For more details about his life and works, see: Taj al-Din Abi Nasr Abd al-Wahhab ibn Ali ibn al-Kafi al-Subki, Op.Ci.,t pp. 267-285; See also Shams al-Din Muhammad ibn Ahmad Uthman al-Dhahabi, Op.Cit., Vol. 18, 11th edition, pp. 64-68; and, H.A.R. Gibb, J.H. Krammers and others, Volume 6, pp. 869.

281 See Donald Little, "A new look at al-Ahkam al-Sultaniyyah," The Muslim World, Vol.64, (1974), pp. 1-15. See also Nimrod Hurvitz, Op.Cit., p. 1-55.

282 See Muhammad Abd al-Qadir Abu Faris, Op.Cit., pp. 521 and 544.

283 See Nimrod Hurvitz, Op.Cit., p. 31.

284 Ibid.

Ya'la's references to the other three founders of the *Madhahib* in his book are very few in total.²⁸⁵ In addition, Nimrod Hurvitz is of the opinion that the intellectual contestations and disagreements in which the Hanbalis (al-Qadi Abu Ya'la's *Madhhab*) and the *Mutakallimun* (al-Mawardi's intellectual companions) confronted each other may be the reason behind the discrepancies that appear in the two versions of *al-Ahkam al-Sultaniyyah*.²⁸⁶ This history of controversy, as mentioned by Nimrod Hurvitz, explains why both authors choose to ignore the founders of each other's *Maddhab*, and then emphasized different moral issues in order to express themselves through different styles of legal writing.²⁸⁷ Therefore, it is possible that, as members of the same elite and political group, one of them might have copied from the other and it is also possible that both of them might have copied their *al-Ahkam al-Sultaniyyah* from the same source.²⁸⁸

There are lots of similarities between the books in terms of the method adopted by both authors; the topics discussed by both of them were the same and arranged in the same manner. The two books were titled by their authors as *al-Ahkam al-Sultaniyyah*. Al-Mawardi, in the preface of his own version of *al-Ahkam al-Sultaniyyah*, states that the reason which led him to write his *al-Ahkam al-Sultaniyyah* was due to a request of *wulat al-Umur* (the people in authority, or, the caliphs) so that they would be able to be acquainted with the various views and opinions of the *Madhahib al-Fuqaha'* on what is compulsory for them to do in their duties.²⁸⁹ However, al-Qadi Abu Ya'la, in his own version, did not state any reason for writing his *al-Ahkam al-Sultaniyyah*. What he said, instead, was that he had previously written *Kitab al-Imamah* and that this was mentioned by him in his *Kutub al-Mu'tamad*, in which he explained the *Madhahib al-Mutakallimin* including their arguments and his counter evidences, and that he now thought it wise to write a separate book on *al-Imamah* so as to delete some of the arguments and evidences which he had mentioned therein, and to include additional chapters relating to the appointments that are permissible for the *imam* to make;²⁹⁰

The two books addressed various issues in Islamic constitutional and public laws in a systematic and comprehensive manner. Their authors, in their writing offered a legal conceptualization of government offices and institutions such as the appointment of the *imam* (the leader of the Islamic state), the *wuzara'* (ministers), *umara'* (governors), commander of jihad and commanders of expeditions for the public interest, *qudah* (judges), *nazir al-mazalim* (public complaints officer), heads of the families, leaders of the *Salawat* (prayers), officers on *Hajj* and *Zakah* management officers, tribute and land tax, provincial and local governments, distribution of the spoils of war, reclamation of lands and water supply, public amenities and infrastructural facilities, land grants and concessions, status of the chamberlain and its rules, crime and punishment, and the institution of *al-hisbah* (enjoining good and forbidding evil). These topics in both books started with *al-imamah* and ended with *al-Hisbah*. These topics, as maintained by Nimrod Hurvitz, were classified into twenty chapters by al-Mawardi, while al-Qadi Abu Ya'la classifies his into seventeen chapters by merging four topics in one chapter.

285 Ibid., 31-32.

286 Ibid., pp. 43-44.

287 Ibid., pp. 43-44.

288 Ibid., pp. 5 and 42. See Muhammad Abd al-Qadir Abu Faris, Op.Cit., p. 505.

289 See Abu al-Hasan Ali ibn Muhammad ibn Habib al-Basra al-Mawardi al-Ahkam al-Sultaniyyah wa al-Wilayat al-Diniyyah, 3rd edition, (Bayrut: Dar al-Kutub al-'Ilmiyyah, 2006), p. 3.

290 See Abu Ya'la, al-Ahkam al-Sultaniyyah, ed. Muhammad Hamid al-Faqi (Bayrut: Dar al-Kutub al-'Ilmiyyah, 1421 A.H / 2000 C.E), p. 19.

The topics are the appointment of the *wuzara'* (ministers), *umara'* (governors), commander of jihad and commanders of expeditions for the public interest;²⁹¹

There are many places in which most of the wording in the two books looks alike but opinions are still ascribed to different scholars.²⁹² A particular example of this is the discussion about the necessity to appoint an *imam* for *Salat al-jumu'ah*.²⁹³

Some topics, as mentioned by Nimrod Hurvitz, were also found to have been discussed by both authors in a distinctly different manner and these topics were, sometimes, found to receive more space and attention from one author than the other. Such a discrepancy, for example, is found in the discussion of wages to be given to the *a'immah* (the *imams* of the prayers) and the *mu'adhdhin* that makes the calls to *Salah*.²⁹⁴

Also, there are large segments of al-Mawardi's version of *al-Ahkam al-Sultaniyyah* that do not appear in al-Qadi Abu Ya'la's version. An example of such a divergence is the discussion on the *Salah* to seek for rain during periods of drought.²⁹⁵ Al-Qadi Abu Ya'la', in his version of *al-Ahkam al-Sultaniyyah*, discusses this issue only briefly and also did not complete the *Hadith* which he narrates as evidence to support his claim that this type of *Salah* was actually performed by the Messenger of Allah (P.B.UH) during his life time, and that the *Salah* and the supplication of the Messenger of Allah were accepted and answered by Almighty Allah.²⁹⁶ Al-Mawardi's version, on the other hand, did not only render the complete *Hadith* but also takes further steps to render the poetry that was said to have been recited by 'Ali ibn Abi Talib to celebrate the moment.²⁹⁷

Furthermore, al-Mawardi, in his version of *al-Ahkam al-Sultaniyyah*, often cites two or more opinions on any given legal question. Although, he cites that of al-Shafi'i²⁹⁸ more frequently than any other *faqih*. For example, Abu Hanifah²⁹⁹ and Malik³⁰⁰ feature prominently in his version of *al-Ahkam al-Sultaniyyah*. The only other *faqih* cited severally is the Hanafi scholar, Abu Yusuf.³⁰¹ It is, therefore, not surprising when al-Qadi Abu Ya'la also uses his own version of *al-Ahkam al-Sultaniyyah* to showcase the tradition of the Hanbali *Maddhab* and ignore the founders of the other three *Madhahib*.³⁰² This is demonstrated clearly in most of his discussions in which he mentions the opinions of al-Imam Ahmad ibn Hanbal alongside with the opinions of three well-respected Hanbali *fuqaha'* from the fourth century

291 Ibid., pp. 29-60. See also Abu al-Hasan Ali ibn Muhammad ibn Habib al-Basra al-Mawardi Op.Cit., pp. 25-81.

292 Nimrod Hurvitz, Op.Cit., p. 10. See also Abu al-Hasan Ali ibn Muhammad ibn Habib al-Basra al-Mawardi, Op.Cit., p. 130.

293 See also Abu al-Hasan Ali ibn Muhammad ibn Habib al-Basra al-Mawardi, Op.Cit., p. 130.

294 See Abu Ya'la, Op.Cit., pp. 97-98. See also Abu al-Hasan al-Mawardi, Op.Cit., p. 129.

295 See Abu al-Hasan al-Mawardi, Op.Cit. p. 133-135. See Abu Ya'la, Op.Cit., pp. 107-108.

296 Ibid. See also Muhammad Abd al-Qadir Abu Faris, Op.Cit., pp. 108. See Nimrod Hurvitz, Op.Cit., pp.15-16.

297 Ibid., pp.18-19.

298 He is al-Imam Muhammad ibn Idris al-Shafi'i, the leader of the Shafi'i Madhhab. For details about his life and works, see Shams al-Din Muhammad ibn Ahmad Uthman al-Dhahabi, Op.Cit., Vol. 10, 11th edition, pp. 5-99. See also Nimrod Hurvitz, Op.Cit., p. 29.

299 He is al-Imam Abu Hanifah, the leader of Hanafi Madhhab. See Ibid., Vol. 6, pp.390-403. See also Nimrod Hurvitz, Op.Cit., p. 29.

300 He is al-Imam Malik ibn Anas, the leader of the Maliki Madhhab. For details, see Ibid., Vol. 8, pp. 48-135.

301 For details about his life and works, see al-Khatib al-Baghdadi, Tarikh Baghdad, ed. Mustapha Abd A-Qadir Ara', 1st edition, (Bayrut: Dar al-Kutub al-Ilmiyyah, 1417 A.H / 1997 C.E), Vol. 14, pp. 245-263.

302 Ibid., p. 31. See also Muhammad Abd al-Qadir Abu Faris, Op.Cit., p. 526.

Hijrah: al-Khiraqi,³⁰³ Abu Bakr al-Khallal,³⁰⁴ and Ghulam al-Khallal³⁰⁵ including the titles of their books.³⁰⁶

Conclusion

From the foregoing analysis on the relationship between al-Qadi Abu Ya'la's and al-Mawardi's *al-Ahkam al-Sultaniyyah*, our findings show that al-Qadi Abu Ya'la's book is almost an exact replica of al-Mawardi's work as far as its pattern and subjects of discussion are concerned because the bulk of the wordings of both texts look alike but opinions were sometimes ascribed by each writer to different scholars. It is therefore possible, as maintained by Nimrod Hurvitz, that al-Qadi Abu Ya'la's *al-Ahkam al-Sultaniyyah* was written to showcase the opinions of the Hanbali *Madhhab* on the Islamic constitutional matters because al-Mawardi, in his treatise, frequently refers to the legal opinions of al-Imam al-Shafi'i, al-Imam Malik and al-Imam Abu Hanifah; the founders of three *Madhahib SAWiyyah* several dozens of times and nearly ignores the founders of the fourth *Madhhab*, i.e., al-Imam Ahmad ibn Hanbal. It is also possible, as maintained by Muhammad Abd al-Qadir Abu Faris and Nimrod Hurvitz, that as members of the same elite and political group, one of them might have copied from the other and it is also possible that both of them might have copied their *al-Ahkam al-Sultaniyyah* from the same source.³⁰⁷

303 He is 'Umar ibn al-Husayn ibn 'Abd Allah ibn Ahmad Abu al-Qasim al-Khiraqi al-Baghdadi popularly known as Abu al-Qasim al-Khiraqi. He was one of the first and the most celebrated of the Hanbali jurisconsults. One of his notable works is the *Mukhtasar*, the first precise of the Hanbali SAW which enjoys a considerable success in contributing to the education and formation of numerous generations of legal scholars. See Abi al-Husayn Muhammad ibn al-Qadi Abu Ya'la, *Op. Cit.*, pp. 331-332.

304 He was regarded as one of the leading scholar of the Hanbali *Madhhal* and, a dedicated and devoted theologian. Among his notable works are *Kitab al-jami'*, *al-Sunnah* and *al-Faz Ahmad*. See Shams al-Din Muhammad ibn Ahmad Uthman al-Dhahabi, *Op.Cit.*, Vol. 14, 11th edition, pp. 297-298.

305 He is Abu Bakr 'Abd al-'Aziz ibn Ja'far ibn Ahmad popularly known as Ghulam al-Khallal. He was a highly esteemed Hanbali Muhaddith and a jurisconsult of high repute. He owes his by-name to the fact that he was the principal disciple of Abu Bakr al-Khallal (d. 311 A.H / 923 C.E). He transmitted his master's *Kitab al-Jami'*, the first great compilation of the Hanbali jurisprudence and completed it under the name of *Zad al-Musafir*. See *Ibid.*, pp. 334-340.

306 See Muhammad Abd al-Qadir Abu Faris, *Op.Cit.*, p.545. See also Nimrod Hurvitz, *Op.Cit.*, p. 32.

307 See *Ibid.*, p.505. See also Nimrod Hurvitz, *Op.Cit.*, pp.5 and 42.