

Review

Politics in Muslim Friday Prayer: Jurist Qâdîkhân (d. 592/1195)

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This essay aims at extracting the interrelation of Muslim Friday congregational prayer with politics, as reflected in Islamic jurisprudence with special reference to Hanafî jurist Qâdîkhân. This study also aims at demonstrating, in general, the juristic political thought about the secularity and religion in the Islamic governmental organization. Political literature which composed independently from the juristic texts by the Sunnite Islamic scholars has been scanty. Thereof juristic texts, in general, were invaluable materials for discovering the political thought of them. Furthermore the *Fatâwa* works proved to bare further value as being the best juristic material for they contained the answers given to the actual questions asked by the public and the government. They are also practical matters of their times which interrelated between the theory and practice. Hence, they offered more valuable materials to be examined to discover the real politics of Islam. For this purpose, Qâdîkhân was chosen. His full name is Fakhr al-Dîn al-Hasân b. Mansûr Mahmûd al-Farghânî al-Ûzjandî (d. 592/1192). He was a prominent 6th/12th century Transoxanian Hanafite Turkish jurist. Alongside being a *faqîh*, he worked in the capital city of Bukhârâ in a number of official positions such as *qâdî* and *muftî* during the Turkish Qarakhânid Dynasty (382-607/992-1211). The Qarakhânids were the patrons of a new Turkish-Islamic civilization of the time. Under this Dynasty, the Hanafite School of law was established in this region, and favored the diffusion of Islam from there into the central Asia.

Key words: Qâdîkhân, Friday prayer, politics, secularity.

INTRODUCTION

This article makes an attempt to extract political thoughts from juristic works with particular reference to discover the interrelation of the congregational prayers with politics reflected in *salât al-jum'a* (the Friday Prayer known as FP), and at the same time the political thoughts and governmental hierarchy of the Hanafî Islamic jurists (*fuqahâ*). These thoughts will be extracted from their jurisprudential and juristic works (*fiqh*). *Fiqh* regulated not only the meticulous details of the ritual practices but also the matters which could be classified as legal, economic, social and political. The significance of the Hanafî School of law rests upon being in the political power for over a millennium in the Islamic world. Alongside the political thoughts, the juristic texts, in general, are invaluable materials for discovering the political history of their epochs. Furthermore, the *fatâwa* works proved to bare further value as being the best juristic material for they deal with the actual questions and practical matters of

their times.

For the purpose of this article, the jurist Qâdîkhânⁱ was chosen. He was a compiler of a *fatâwâ* style juristic book which contained the answers given by the official jurists to the questions asked by the individuals and the government. His juristic work *Fatâwa*, also called *al-Fatâwâ al-Khâniyya*, on which little research has been placed by contemporary academicians. This work falls within the time after two centuries when the "gate of *ijtihâd*" or independent reasoning was closed in the fourth/tenth century. He as the majority of the Transoxanian Hanafite jurists such as Shams al-Din al-Sarakhsi (400/1009 to 483/1090) who had been the teacher of Qâdîkhân's grandfather, Muhammad b. 'Abd al-'Azîz al-Ûzjandî, formed the circle of his century in the chain of juristic tradition. This line recognizes the works of Muhammad al-Shaybânî (d.189/804) as *zâhir al-riwâya* (authorized version)ⁱⁱ of their school. Qâdîkhân was one of

those whom the Hanafî School agreed to class as a qualified independent *mujtahid* as being the last jurist of the classical period of jurisprudence, at a time when some degree of legislative creativity was still possible (Juynboll and Linant, 1965).

The jurists of later generations (*mutaakhhirûn*) were not free to give personal or independent legal judgments in the law, for the *taqlîd* or obedience to the established law had been stipulated. But the application of the law to practical situations, the employment of the scholars in the governmental offices such as *qâdî* (judge) and *muftî* (juristconsult), and the procedure of consulting to scholars as the juristconsults for legal opinions by the government and public forced for the further evolution of the law (Lapidus, 1989:193; Coulson, 1990). From the 10th to the 13th centuries juristic procedures also changed. Islamic law became logical and systematic. It reached its definitive literary form of a new phase of compilation, repetition, and formalism. The standard of legal reasoning also declined and logical consistency broke down. In many cases the guiding principles of law were lost in favor of eclectic dependence on analogy from individual cases. The law took the form of a vast reservoir of case materials and precedents which could be used as the basis of judicial decisions but no longer offered a rigid cadre of rules for the regulation of new matters. The authority of law was absolute but it was not adhered to in practice. However in principle, the life of a good Muslim was taken to be the fulfillment of every of God's command in the form of Islamic law as expressed by the jurists, because it was the only way for the connection of the individual with God (Lapidus, 1989:194).

The Hanafites, as is common in the other major three schools of law, recognized two types of congregational; public or social prayers, namely prayer in *jamâ'a*; in grouping, and Friday Prayer; *salât al-jum'a*. Prayer in *jamâ'a* is nonobligatory but voluntary to be performed in grouping or congregation, hence, appropriate to name it as "groupage prayer." This prayer can be performed in every local mosque (*masjid*), the villages can be led by unofficial *imams* or prayer-leaders; but not in the city central cathedral mosque (*jâmi'*) on Friday noon (*dhuhr*) time in the city. The *salât al-Jum'a* as opposed to the prayer in *jamâ'a* is a prayer compulsory to be performed in congregations and in the cathedral central mosque in the city on Friday and at *dhuhr* time behind an official *imam* appointed by the government. The term *jum'a* is a derivative of *jamâ'a*; the community or congregation. However being obtruded with the prayer, this term more than the prayer, denotes the systematic gathering or the unity of the people once a week before the government. A special day and a prayer have been assigned for this social and political gathering. Thereof this prayer can be lawfully referred to as a political prayer. Another prayer that must be performed in congregation is the 'Eid Prayer (*salât al-'Eid*) which is performed twice a year during the feast festivals. This prayer (EP) is correlative and the

conditions stipulated for its validity are almost the same with the FP, the only difference is that first, one may be valid without *khutba*, while the latter is invalid without it. I inquired primarily the FP; for it is the major congregational prayer in Islam and has theoretical-scholarly material for my essayⁱⁱⁱ.

Qâdîkhan, a common place amongst the Hanafî jurisprudents, distinguished two types of conditions required for the obligatory congregational prayer, the FP. The first ones were those affecting the responsible individual; must be male, of sound mind, freeman (not slave), and a resident of the city. These conditions revealed some sufficient information about the thought of social, geographic, religious and economic dimensions of the FP (Kahveci, 2011: 27). The second set of conditions were related to the prayer institutionally; *misr* (city), *sultan* (governmental authority), *jamâ'a* (congregation), *khutba* (sermon), and *al-idhn al-'âmm* (general governmental permission for the mosque the FP to be performed). (p. 182). These stipulations can be the examinant material for the subject-matter in this article. This article put forward the politics of the jurist in two aspects, namely; the political power and obedience to it.

POLITICS IN FRIDAY PRAYER

Political power

The first link has been created by the jurists between the Friday Prayer and the politics is the concept of the city. According to juristic compendia, the city is the first and main criterion that is effective for the religiously valid FP and must be performed at the city centre's governmental-cathedral mosque designated officially for it. Qâdîkhan defined the city administratively suitable for the validity of the FP as "a place where there is a *muftî* and a *qâdî* who could impose penalties (*iqâmat al-hudûd*) and implement the laws (*tanfîdh al-ahkam*)" (p. 174). The significant role the city played in the incumbency of the FP on the Muslim individual is being the place where the government organization is located. This definition pointed out the administrative-jurisdictional dimension of the FP. The public administrative organization is needed for the implementation of law and order and religious life. The city being an urban-administrative settlement with particularly important administrative and legal status differentiates it from a town and a village.

It is obvious that there is an intertwined relationship between the city and congregational prayer that is the interrelationship of ritual and government. This may mean a religious city-state. The Islamic city, as its outstanding characteristics, is correlative to *ipso facto* with the communal ritual obligations such as the obligatory congregational prayers. Muslim city, no question, is a centre for religious institutions and collective religious rituals. And the very structure of the Friday cathedral

mosque is a symbol of Caliph's sovereignty and prestige. It became a public version of the private court of him. Is also a symbol of the compact union of the political and religious aspects of his rule. Since it is the symbol of the authority and the civic and political entity, more than one cathedral mosque indicates multi civic and political entity which is totally against the political philosophy of Islam, that the duty of the government is the maintenance of the unity of the Muslim community. To sum up, the FP is an urban-official ritual. Therefore it is not incumbent on the residents of the villages and towns.

Not only the FP can validly be performed in the city but it must also be under the suzerainty of the leadership of a governmental administrator or a bureaucrat who holds official executive power or a prayer-*imam* appointed by them. The essential qualifications to be appointed as the legal leader of FP are to be an adult and sound-minded male Muslim. Thereof if the ruler ordered a minor or an insane or an infidel or a woman to lead the prayer is not to be permitted (*lâ yajûz*) (p. 180). The statement about the eligibility for leading the FP, as the common view of the Islamic jurisprudence, at the same time establishes the qualifications for the appointment to governmental civil offices. These qualifications clearly prohibited the employment of the infidels and the Muslim women in the governmental posts.

The official hierarchy in leading the FP to the people exposes the scheme of the governmental ruling organization. Leadership of it to the people must primarily be fulfilled by the *Khalîfa* (Caliph) or as a generic term *Imam*, the supreme leader of the Muslim country. This means that he is the Prophet's successor in whose hand are united all the powers of religious and temporal authority. Thereof appointment of the local temporal rulers or the sultans by the Caliph was considered essential to their legitimacy (Lapidus, 1979: 147). Hence, the sultans of the dynasties sought recognition and appointment by the Caliphs. All provincial authorities were considered as the delegates of the Caliphs and governed by virtue of their designation. Qâdikhân expounded that for the validity of the FP, it must officially be led first and foremost by the *Khalîfa* for his sovereignty must preside over all Muslim Dynasties. If for any reason he cannot fulfill this obligation, then by other authorities, political power is delegated by him (p. 180).

The Muslim country was divided into provinces called *wilâyât*, and the governor of each province or district is titled *wâlî*; as a generic term means the highest authority of one administrative unit in one city appointed by the *Khalîfa*. The *wâlî* would usually be responsible for a major city with its number of towns and villages as well. The prime function of the official appointment as *wâlî* was the maintenance of law and order throughout a *wilâya*; a city, in addition, has purely administrative functions such as the collection of taxes, and the appointment and dismissal of judges (*qâdî*) and other officials in the city and province administration. He also exercised judicial

functions related to criminal offences. Thus he was responsible for the execution of sentences. He is the first bureaucrat responsible to lead the FP in city-scale provinces. Qâdikhân says: "If the Caliph dies, he has rulers (*umarâ'*) and governors (*wulât*) in charge of the affairs of the Muslim and in leading the FP; because they had been appointed to take charge of the affairs of the Muslims, they remain on their position as long as they are not deposed" (p. 174). However the governor has the right to delegate power to other officials to lead the FP. But always and at any circumstance he has the power to withdraw and to retrieve the authority he gave to his successor (p. 176). This statement gives room to the governors if they, for any reason refrain from leading even performing the FP.

Second personality after the governor in the provincial administration is the chief of the police (*sahib al-shurtah*). He is one of the members of governor's administrative garrison. *Sahib al-shurtah*, his classic functions are to check the law-breakers and evil-doers, and would often inspect the walls and quarters of the city. He was responsible for keeping peace and order, for stamping out for subversive activities. He also had authority to inflict certain punishments. According to Qâdikhân it is allowed (*yajûz*) for the *sâhib al-shurta* to lead the FP, (p. 174) and he is entitled to lead it until he is dismissed from his post (p. 177). He needs not a special and separate authorization to lead the FP because he is one of the members of the general administration. In legitimization of this permission he employed the custom (*'urf*) as a source of law. He says this is according to the custom" (p. 174). His appointment to his post automatically contains that authority. Based on that, the chief of the police has the power to appoint a deputy for his post and to lead the FP. It was understood that the custom played a significant role for the validity of FP.

At the city level bureaucracy, after the governor and chief of the police the appointed *qâdî* comes on whom the judicial authority is vested. He conducts both marriages and divorces, above all, he judges about the disputes that are brought to him, and applies the punishments. He also is frequently called upon to deliver the Friday sermon (*khutba*). Qâdikhân made two seemingly contradictory statements concerning the *qâdî*'s leadership of the FP. In one he says: "It is not allowed (*lâ yajûz*) for the *qâdî* to lead the FP to the people if he is not ordained specifically for it," and in another statement "if the *wâlî* of the city dies and the day of Friday comes, if the *qâdî* leads the FP, it suffices because he has been delegated the public affairs (*amr al-'amma*) alongside with the chief of police (p. 174). This contradiction may be resolved with the conjecture that in the first statement it means judicial authority, and in the latter, may mean, as a neutral term, the official who has executive power, (Calder, 1986: 36) because it is in his prerogative to impose penalties and implement the laws. It should remember that Qâdikhân served as a *qâdî*.

As it is understood from the text, Qâdikhân is trying to place the *muftîs* (jurisconsults), who are the specialist scholar (*ulama*) in all Islamic knowledge, alongside with *qâdî* as an officially appointed government official. In order to base his verdicts on surer ground, he says that the *muftî* sits in the judicial court nearby the *qâdî* who frequently consults him, as a legal counselor to whom he is bound to refer matters of jurisprudence. *Muftîs* recorded the evidences, interpreted the law on the conformity of state regulations and with the Muslim law. At this point, it can be said that *muftî* means implementation (*tanfîdh al-ahkam*) of law but not imposing of it (*iqâmat al-hudûd*), that is, he has no executive power. For he has no executive power has no authority to lead FP. To lead FP, one must have an executive ruling and administrative post. Hence even a slave who has ruling authority becomes more effective than the *muftî*. May be due to these considerations Qâdikhân made no regulations concerning the FP leadership of the *muftî*. By official appointment to the governmental posts as *qadis* and *muftis* and FP *imams*, the religious class of Islamic scholars embedded into the cohesive political-bureaucratic elite. This decision indicated that he is in favor of the *ulama's* acceptance of religious office as *qâdî* or *muftî* under the layman rulers. He does not treat such procedure with contempt, even though these rulers are usurpers of the political power (*mutaghalib*s).

The head of the country, since he, at the same time is the leader of the religious establishment, could suspend the FP ritual if he sees it fit for keeping the law and order. Qâdikhân expounded that when the ruler prevents the people of a city to perform the FP, they should not perform it. This is exactly the same with how he officially designates a place as a city for the validity of FP, so he has the authority to prohibit them the performance of it. But this prohibition must rest on a legal reason or to abolish its urban status. If he prevents them from FP due to his obstinacy or forces them to FP, then the people decide on a person that will lead the FP for them" (p. 176). It is understood from this statement that the *imam* is also bound by the law; he cannot act arbitrarily.

Transoxiana, as most parts of the Muslim Empire, has always witnessed devastating nomad invasions until the eighteenth century AC. The history of this region may be told in terms of ever repeated nomadic conquests, the formation of empires over oasis and settled populations and the constant tension between pastoral and agricultural people. In general, the history of the Muslims is full of conquests of the military invaders of territory and usurpers of political powers by force and violence (*mutaghalib*s). This new military lords were clients and sometimes slaves, foreign in race and language, and had no historic ties with the societies they conquered. Hence the local *ulama* had a fatal importance for them for their legitimacy over the populace and their obedience to them. In resolving the *mutaghalib*s' legal position

Qâdikhân says: "The *mutaghalib* who has no assignment (*'ahd*); that is ordinance (*manshûra*) from the *Khalîfa*; if his conduct of life or governance (*sîratuh*) amongst the subject-people is like the conduct of the legal rulers, and he rules out the matters between the people with the ruling of the legal sovereignty (*wilâya*), then his leading of the FP is valid" (p. 174).

Qâdikhân seems concerned with *de facto* not *de jure* ruler and attempted to justify the *status quo* of Qarakhânid Dynasty who seized the political power by force. His provision means that within the civic community there emerges any effective government capable of imposing order, FP is valid. He accepted that effective power is in itself a sufficient qualification for legal governance. This might also mean that any form of government is better than none at all. By *mutaghalib*, he also declared that political rights acquired by force were legal and that military power could constitute a valid government (*imamate*). By *sîratuh* he also legitimized any ruler who respected Islamic legal norms and maintained the established system. So the public acceptance or legitimization of the governance of the ruler can only be decided by the *ulama*. By using the paraphrase of "*sîratuh*" he excludes the *jâ'ir*, tyrannous rulers. Qâdikhân does not mention resistance or disobedience to the *mutaghalib*. On the contrary, he is implying the submission and obedience to them is obligatory so as to provide, preserve and maintain the welfare and the unity of the Muslims. This principle shows that legitimacy of a government is based on the legality of the governance, not on the way in taking the power.

It can rightly be adduce that the dominant political idea of Qâdikhân is functionalism. Hence, the government obtained by force can use a legal authority. It can be concluded that the Turkish jurists fostered ideological or religious loyalty of the *mutaghalib* sultans. As the religion and the state are interwoven in Islamic jurisprudence, Qâdikhân by FP is making an effort to bring the religious life under state supervision and the patronage of it; a proper relationship between the state and the religion. State, however indirectly and through the jurists influenced the formulation of religious doctrines so that they will be in accord with the political interests of the state. The conclusion cannot be extracted evidently from the author's provisions that his main objective is to provide the government the opportunities to exert its authority by collecting the people in FP.

Slave administrators had been very common throughout the Muslim history^{iv}. It must be kept in mind that Transoxania region where Qâdikhân lived was administered mostly by bureaucratic elite which depended on the local notables and landlord families, and slave governors throughout the tenth to thirteenth centuries. The elite personnel of the regime, including the sultans were slaves or former slaves. Slaves had been employed in the armies. No one could be a member of the military elite unless he was of foreign origin;

purchased and raised as a slave and trained to be a soldier and administrator. Slave-soldier administrators were the personal property of a master and could be bought and sold. The slave of the Sultan could be a general, an officer in the army or administration. Furthermore, military slaves were eventually manumitted and became freedmen, clients of their former master. In any case in the operation of the army or bureaucracy, legal status was not crucial (Lapidus, 1979: 148). In expounding similar situation Qâdikhân says: "If a slave is invested with an office of a district (*nâhiya*; surrounding village/*rustâq*) and led the FP to its people, it is valid (p. 174). The slaves may legally be vested executive posts but they may not be posited as judges: "If the slave concludes marriage contracts for others, his judicial verdict is not effective, because the people of the judiciary are from those who are entitled to be witnesses in the courts, the slave is not from this people; hence he cannot be from the people of the judiciary" (p. 174). This statement seemed to secure the posts of judges, as Qâdikhân has, from being usurped by the slaves.

In a religiously heterogeneous Muslim society, the appointment of the Non-Muslims in the governmental posts has always been a matter of concern by the jurists. All Muslim cities harbored always a certain amount of Muslim and to some significant amount of Non-Muslim societies. Qâdikhân specifically mentioned the *nasrânî* (Christian), instead of other non-muslims, may be because to represent all. He says: "If a Christian male enters the city, then later became a Muslim, he is not to be leading the FP to the people unless he is politically ordained to lead it based on the fact that he has become a Muslim." This legal decision depicts that being an ordinary or committed Muslim is not enough reason to lead the FP, but one must be ordained officially for that mission. In the following statements he made regulations related to the government that the *nasrânî* must be ordained for leading the FP after he has been converted to Islam. Hence, if he has been appointed as a *qâdî*, then his conversion to Islam, that is, his verdict (*hukm*) is invalid. But however if the *nasrânî* has been subjected to the time he became a *Muslim*, then his leading the FP to the people or judging between them is allowed (*jâiz*)" (p. 175). Preordination before the compliance of the conditions is not valid for the FP. His legal reasoning rested upon that in the first case he was not competent, hence he does not possess the authority, but he can only be authorized for future operation. But in the second case vesting an office (*taqlîd*) with him is subjected (*udîfa*) to the compliance of the status of the legal competence (*ahliyya*) on becoming muslim, this investiture with an office is valid, that is, the appointment can be subjected to the status of legal competence for the future" (p. 175). Ordination by the government is essential and the delegation of official authority (*tafwîd*) before compliance of the competence is invalid. This invalidation may be because the non-Muslims may have exploited the power

delegated to them, that is to say after receiving the office, they did not become a Muslim.

In principle the public or the congregation of the FP has no right and authority to appoint an *imam* to lead them the FP. However, in extraordinary circumstances they have been given this authority. According to Qâdikhân if the public (*âmma*) gathered to bring forward a person to lead the FP whom neither the *qâdî* (ruler) nor the successor of the governor ordained him for it, it is not permissible, if he leads it, the FP is invalid (p. 174). The major case is that the public is entitled to appoint an *imam* for FP if there is no *qâdî* or successor of the *wâlî*; it is permissible due to the necessity (*darûratan*)" (p. 174). If speculations are to be made to find out the reason for this appointment, it can be said that cities and their hinterlands should be divided amongst several Islamic schools or sects, and the rural areas echoing the city situation. Hence sectarian communal and social struggles and warfare have never been extinct. Sectarian identifications were evidently profound and intense. Each group harried to make his *ulama* as *imam* for the FP in the cathedral mosque of the city. This also meant social but furthermore political domination in the city. This power struggle united the townspeople and village people of the same sect in a common cause and created political unrest and upheaval which the governments disgusted. Another situation depicting when the congregants have been granted the power to appoint an *imam* for FP is if the *imam* (governor) prevented the people from performing FP without any legal reason and necessity, and if he prevents them from FP due to his obstinacy (p. 176).

Obedience

The focal and pivotal point of the political thought is the obedience to the political power and its system. In general, where there is obedience there is politics therein. As the meaning of Islam, generally mean the submission or obedience, it can logically be sought in every ritual of it. *Khutba* (sermon) is the main link between FP and the political thought of obedience to the political power; henceforth it demonstrates the political obedience of Islamic jurists. The Cathedral Mosque and its *minbâr* was emperor's seat and closely tied to royal palaces through *khutba* which can rightly be adduced, that it is the weekly publication of the message of the ruler to the public. The only centre in the public gathered is the central mosque. As it was understood from the text of Qâdikhân, the mosque and the *khutba* had intrinsic relation between the religion of Hanafî Islam and the political obedience, as in the other three major *madhabs*. The jurists' political stance towards the obedience to the rulers expose whether they are, according to Bernard Lewis's classification, (Lewis 1986: 141) authoritarian or quietist.

Khutba is an essential part of FP (Lambton, 1985) and it has been made an imperative condition for the validity of the individual's FP. The validity of the *khutba* has strictly been related with the *imam*, the political ruler. As long as he delivered it to the congregation, FP institutionally becomes valid. But for the validity of the congregation's *jum'a*, their listening to it is imperative. Qâdikhân says: "If the imam delivered the *khutba* on Friday and he finished it off, and this congregation left the mosque and another congregation came in but did not listen to it; if the *imam* led the FP to them, this suffices institutionally for the validity of the *jum'a*, because the *imam* delivered the *khutba* while the congregation has been present and thus the stipulation has been complied with" (p. 181). But the FP of the latter congregation is invalid because they did not listen to the *khutba*. Listening to the *Khutba* is an indicator of political obedience to the regime and government in the presence of perceived legitimate authority figures. His statement indicates that public protest of the *imam* is by deserting the *khutba* that frequently occurred in his country.

As an indicator of the obedience Qâdikhân opened a traditional juristic discussion about the merit of being close or far to the *imam*, the prayer leader. By citation of the divergent opinion amongst the *mashayikh* (the founders of the *madhhab*) he says that "Being near to the *imam* is more meritorious" (p. 178). In the respect of the obedience he dealt with the direction of the congregation and regulated it. Direction of the congregation towards the *imam* may also be considered as an approval or disapproval of the government. He says "It is recommendable (*yustahabb*) that the direction of the faces of the congregation should be towards the *imam*, during the deliverance of the *khutba*" (p. 181). Not auscultating the *khutba* means a passive civil protest or disobedience to the government, the obedient audience is expected to quiet down and listen to it attentively and should refrain from everything even performing *salât* (prayer) and should give the *khatib* their undivided attention. He says: "Whoever is near to the *imam*, he should listen and keep silent from the outset of the *khutba* to its end, because auscultation of the *khutba* is imperative (*fard*) for the individual" (p. 182). Due to the long distance to the *khatib* the congregant should refrain from any indication of disobedience. Hence he says, "The jurists unanimously agreed that whoever is unable to hear the *khutba* should not talk with the talk of the humans." He, in this situation, enumerates a number of alternative actions, such as reading Qur'an and remembrance of Allah is more meritorious than keeping silent. "As long as the *khatib* is in the praise of Allah and glorifying Him and preaching the people, then it is on the people to listen to the *khatib* and to keep silent (p. 182). Arrangement of these regulations alludes that the author seems obliged to provide public obedience to the ruler.

Since civil disobedience to the unjust (*jâir*) or tyrannous (*zalama*) is allowed not to listen to the *khutba* in which their names have been mentioned or praised is permissible. In

this respect, Qâdikhân said that being far from the *khatib* (who delivers the sermon) has more merit than not listening to what he said in the *khutba* about praising the oppressors or the tyrants (*zalama*) and so forth" (p. 178). When the imam starts praising the *zalama* and glorifying them, then there is no problem to talk about during the *khutba*" (p. 182). The statements allude that some *imams* praised the regimes of oppressor or unjust rulers or the tyrants in the past. However the existing political regime is contrary in his time. With this statement he seems, in general, like an activist against the unjust rulers and justifying the disobedience to them and calling for action. He mentioned notable examples of predecessor jurists such as Ibrahim al-Nakhâi and Ibrahim b. Muhajir who often participated or led actions of civil disobedience against the government by adopting the techniques of not listening to the *khutba*, furthermore they spoke during its deliverance. In any case not listening to it, invalidates the FP, thus it must be replaced with *dhuhr* (noon prayer) in four *rak'ats*. However, the *khutba* of unjust imam may not be listened to, but fulfillment of the FP behind him is valid (p. 182). He seems to demand from the people to pray behind the *imam* that is ordained by the government. Since the name of the ruler was mentioned in the *khutba*, the holding of the FP had implications for the recognition of the validity of the ruler's authority. It also sometimes carried with the implication of rebellion to the unjust ruler.

Another indication of civil obedience and disobedience is the attendance to FP. According to Qâdikhân there was a group of the *ulama* abandoning the attendance to the *jum'a*, instead they performed *dhuhr* at home and joined the congregation and performed the FP with the *imam* in the *masjid* as a matter of *taqiyya*; tactical dissimulation to protect themselves from government's harm. The *ratio legis* ('*illa*) for their disobedience is that they did not accept the *jair* rulers as sultans and in fact their sultans were *jairs* at their time and they were making this congregational prayer in the mosque as supererogatory or rosary (*subha*) (p. 181). Since attendance meant support to the government, the government officials most probably put surveillance on the people to find out who attended FP and who did not by its intelligence service. This must be very easy in a small society where everybody should know each other. As commonplace for the religious society attendance of the individual to the FP has also been the indicator of the membership to the society. Therefore if someone did not participate to the FP, the rest of the society arraigned him as an enemy who departed from being subject of the Muslim community. Not attending to the FP may socially be interpreted as an excommunication.

Qâdikhân seems to take a mediatory or a seemingly neutral position between the people and the government. His stance may be understandable since he was a governmental official as a *qâdi*. He, like the majority of the Hanafite *ulama* accepted the official offices given to him by the governments and co-operated with them. But by judging from the form of his wording of the discussion,

one may be inclined to say that he is in favor of the governmental authority that is accepted by the people. So far as the *ulama* accepted office is under an unjust government, it deliberately sought to give validity to its exercise of power in order for the government of Islam to continuously make their appointments and salaries legitimate. For the survival the *ulama* needed the government and it was in need of them mutually. Without the *ulama*, effective social resistance was impossible to organize. They led rebellion only to coerce the regime to come back to the requirements of the community^v.

Conclusion

The conclusion can be extract from Qadîkhan's model of discussing the subject-matter as that Muslim Friday congregational prayer is intertwined with politics, henceforth it is right to adduce that it is a totally political, as far as urban worship. Therefore the author has dealt with the political dimension of it rather than its religious technical information. He should not to be accounted as an idealist but a realist. As far as his text of FP was put forward, he was involved in and had paid considerable attention to actual political practices and situations and interpreted the jurisprudential sources in the light of these developments of his community for their legitimacy, however produced no social and political theory in independent works. And as a reality, he generally tend to concentrate on the practices of the rulers and the social and political situations they created. The ideals and ideas of him too had closely been affected by the sequence of these political events.

His text is dependent upon the whim of the obedience to the *de facto* ruler. Therefore he denounced the civil disobedience to him even if his government has not been obtained in accordance with Islamic law. As the political thought shows a commonplace amongst the majority of Hanafite jurists, Qâdîkhân was concerned not only with the ways and means the political power was obtained but how it was used also. He seemed not only being against the obedience to the ruler who is unjust in his governance. In legitimizing these situations, if the actual political or social situations clashed with the precedents, he retorted his independent legal reasoning. In achieving his verdicts, indeed he also followed a delicate balance of actual politics and religion, because he is aware that he is bound with Islamic law. It can be rightly construe that his law did grow out of the society, and is mould with the society, as it is the case with Western systems. His *fiqh* had not become an introspective science, wherein law was studied and elaborated for its own sake, but extrospective, however to a certain degree retrospective. This stance shows that *fiqh* is sufficiently flexible instrument to be used in legitimization and legalization of diverse political situations. So what is the political system of Qâdîkhân; is it religious or secular? This matter was

researched by analyzing his twofold aspects: administration and legislation.

Qâdîkhân's system of government may not be an Islamic version of *ecclesiocracy*, as the more specific term; it denotes the rule by a church or clergy-pointiff or religious leadership. It may be a kind of secularity. He acknowledged that the top authority can be a layman, not even an Islamic scholar or a clergy or a religious personality or a devoted practicing Muslim. This secular supreme ruler is the head of state and religion, that is, he has the religious and political leadership. Furthermore, he is not in favor of the political rule of clerical or Islamic *ulama* personalities. His administrative system, practically, can be conceived as secularization, in the meaning of declericalization of public administration. He found a *modus vivendi* by showing favor to administrative secularity, even he himself is secular in this respect. In reality, as well, all the Sultanates including Qarakhânids were made up secular military elite, who mostly were slave-soldiers of the sultans, were neither religious scholars nor clerics. But they united and mixed the religious and political authority; and they organized the religion.

His government is not completely secular either because secular government is a civil which has no religious hierarchy. But he puts all the religious organizations such as mosques and *madrasas* and the Islamic scholars and officials under secular government organization, secular, non-clerical rulers and their control. He, as a representative scholar of Islamic religion, is satisfied with ruling merely the religious affairs under the authority of such ruler. Furthermore, as religious dignitary he never attempted to have the political ruling power neither as sultan nor as the governor of a province. He legitimized the actual practice. In practice the Qarakhânid Dynasty, in this respect, as characteristics of all medieval states, has, in a way, a theocratic aspect because the monarch Emperor was patron of the head of the official religious institution and "defender of the faith". However, in other way, it was not theocratic since the *Shaykh al-Islam* was held responsible to the Emperor, not *vice versa*. Furthermore, no matter how he claims to rule on behalf of God, he does not claim that he is a vicegerent of God. There are a number of other reasons for the study's finding and a bit of the evidence seems to fit this situation. First and for most, the wording he used to note this is that he makes no condition for the rulers to be religious, even he provided positions for them not to perform the FP.

Is the legislative system of Qâdîkhân religious or secular? It can be rightly put that it is a mixture of both. In a way it is a religious, because he acknowledged that although the executive power is in the hands of the layman rulers, the legislative and judicial power is in the prerogative of the Islamic *ulama* who make laws within the framework of the will of God, though subject to the endorsement of the political authority. It is secular in

distinguishing the matters as religious (*dīnī*) and mundane (*dunyawī*). Islam may be a generic term including both matters, but the separation of the religious parts of Islam from the mundane ones is of vital importance. The term “secular” is to indicate not only the separation of the religious affairs from the state, but also the separation of the worldly affairs from religious ones. Qādīkhān, as the majority of Hanafite jurists, dealt with the worldly sides of the religious rituals and precepts for the concern of the state, not spiritual and next-worldly sides of them which are in the concern of God. It is a clear indication for it to be secular in theory and practice that he is imposing no punishment for not attending to FP, the religious ritual. It is secular in another way that he gives power to Muslim rulers to make decisions and law for the profane-mundane dimension of the religious matters which have been regulated by the Islamic *ulama*, as is the case in prohibiting the performance of the FP for the concern of law and order. And the *ulama* also make juristic regulations for the mundane matters, such as the prescription of the qualifications for the city, mosque and prayer leader for a valid FP. This denotes the legislative secularity because one approximate synonym for secular is worldly. Hence, the worldly and religious things in Hanafite sect must be found out and distinguished in order to classify the secular and religious matters of it.

Qādīkhān's methodology (*usul*) in the *fatāwā* can be summarized as that in the attestation and substantiation of his legal decisions he, juristically, used mostly neither Qur'anic verses nor Prophetic *hadiths* as legal evidences. On the contrary, he employed predominantly the established legal maxims, dictums, formulas and verdicts and the religious evidences based on the mundane-secular necessities. In order to resolve matters depended upon personal opinion he rarely employed analogy (*kiyās*) but used *ijma* and *istihsān* as the sources of law. He also originated some regulations based on customary (*urf*) practices. He did not mention the social or political benefits of his legal decisions. For example, he was not concerned for what political reasons and benefits the city or the sultan has been made a stipulation for a valid FP. It should be remembered that Qādīkhān lived in the twelfth century, after two centuries when the closure of “the gate of *ijtihād*” in *fiqh* started in the tenth century and replaced by the *taqlīd* (imitation) established by the predecessors (*mutaqaddimūn*), elaboration and detailed analysis of them. Hence from the tenth century onwards, the role of the jurists was that of commentary upon the works of the past masters. However he frequently inferred to the legal decisions (*fatāwā*) and legal opinions of the former authoritative *fuqahā* contained in the works of *fiqh* but in fact he in necessary cases exercised personal opinion and individual reasoning which supports his independent decisions. In doing so he quoted the divergent opinions of the previous jurists, but attempted to remove the conflict by putting down his own decision or verdict.

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ⁱ As soubriquet Qādīkhān; Fakhr al-Dīn al-Hasān b. Mansūr Mahmūd al-Farghānī al-Ūzjandī (d. 592/1192), a prominent 6th/12th century Transoxanian Hanafī jurist. He lived in the city of Ūzjand and worked in Bukhārā as a *qādī*, *muftī* and *faqīh* during the Turkish Qarakhānid Dynasty (382-607/992-1211), the patrons of then a new Turkish-Islamic civilization. Under this Dynasty, the Hanafite School of law and Maturīdī School of theology were established in this region, and favored the diffusion of Islam from there into the Tarim Basin and the northern steppes. The city in Turkish Özgön, Özkent, Özgend, Uzkend; Arabic Ūzcend; English Uzgen, Ūzgand, Ūzjdand, within the boundaries of present day Kyrgyzstan. Ūzgand was the only capital of Farghāna and a centre for the trade with Turks. The actual town belonged in the ninth century to the Dihqān (ruling kings and landowners) Chūr-tagin, evidently a Turkish prince. Its most flourishing period was under the first Qarakhānids, when it was the capital of Transoxania. The distance between Ūsh and Ūzgand was seven farsakhs (aprx. Ten miles). Barthold 1928:157.

ⁱⁱ These works are *al-Asl*, *al-Ziyādāt*, *al-Jāmi' al-Saghīr*, *al-Jāmi' al-Kabīr*, *al-Siyar al-Saghīr*, *al-Siyar al-Kabīr*.

ⁱⁱⁱ The edition I used is Qādīkhān's *Fatāwā* (also called *al-Fatāwā al-Khāniyya*) printed on the margins of the three volumes of *al-Fatāwā al-Hindiyya* (also called *al-Fatāwā al-'Alamkiriyya*) (Būlaq/Misr, H. 1310). Friday prayer is discussed in vol. I. The page references of our quotations will be given in brackets throughout this essay.

^{iv} The Gaznavids pioneered the first regime in which the slave soldiers dominated the state; the rulers were themselves former slaves. Lapidus 1989:141.

^v Urban resistance to abusive exploitation of the local rulers, revolts against unpopular governors, and protests against taxation were indeed common. When the ruling classes were weak, both internal contenders for the throne and outside enemies exploited the popular discontent. Town resistance based on religious leadership. Hence *ulama*'s leadership was vital because it helped create coherent pressures both on the people and the ruler. Only with their help could the common people forcibly overthrow oppressor (*jāir*) rulers. Not listening the *khutba* by the *ulama* means the proclaiming the ruler as *jāir*. Hence auscultation of the *khutba* by the *ulama* directly served the needs of the approval of the governors and the leading *amirs*. These ties were significantly contributing to the political system. The rulers had to establish direct ties with the *ulama* and had to please them, by appointing them to governmental posts, and paying lucrative salaries or assign them profitable lands. Lapidus 1989:179.