

# THE CRITICISMS OF IBN KHALDÛN, THE MALİKİ QADİ, ON THE INSTITUTION OF JURISDICTION AND THE JUSTICE ETHICS IN THE 14th CENTURY

*Maliki Kadisi İbn Haldun'un, 14. Yüzyıl Kadılık Müessesesi ve Adalet Etiği Hakkındaki Eleştirileri*

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**Abstract:** Ibn Khaldûn was an alfaquin who came from an elite family and was raised by taking lessons from the most important scholars of his time. Moreover, he reached the competence of the office of qadi with a multifaceted education including mental sciences such as philosophy and logic as well as various religious sciences such as the Qur'an, hadith, fiqh, fiqh procedure and kalam. As a result of these sciences, he has produced original works by both applying and observing the professions he has acquired, and in this sense, he is one of the high personalities of the Islamic world. In his work called the Muqaddimah, he introduced various professionals of the period he lived in and described their tasks and he also frequently discussed about qadis and alfaquis; he reveals his critics from various aspects including the problems of professional ethics. In this study, the errors he identified in the conduct of the cases in the context of the relationship between the judiciary and politics from the work of Muqaddimah is emphasized primarily, then his thoughts on the problems of judicial ethics regarding the qadis and faqihs are emphasized, and the ethical reasons and the interpretations of the institution of Qadi are focused finally. Since he himself has been a qadi six times and has died as a head of the Maliki sect, his ideas are also analyzed from his biography in which he describes his experience as a qadi. Thus, it is revealed that the thinking system of Ibn Khaldûn which was assumed by the researchers of Ibn Khaldûn was not centered on ethical concerns; the most fundamental ethical concern in the field of law as an alternative approach to claims that it constructs politics and law "based on power".

**Keywords:** The Qadi, Jurisprudence, Justice Ethics, Fiqh, Philosophy and Sociology of Law

**Öz:** İbn Haldun, seçkin bir aileden gelen ve zamanının en önemli alimlerinden ders alarak yetiştirilmiş bir fakihdir. Üstelik kur'an, hadis, fıkıh, fıkıh usulü ve kelim gibi çeşitli dini ilimlerin yanında felsefe ve mantık gibi aklı ilimler dahil çok yönlü bir eğitim ile kadılık makamının yetkinliğine ulaşmıştır. Bu ilimler neticesinde edindiği meslekleri hem uygulayarak hem de gözlemleyerek özgün eserler ortaya koymuş, bu anlamda İslam dünyasının yüksek şahsiyetlerinden biridir. Mukaddime adlı eserinde, yaşadığı dönemin çeşitli meslek erbablarını tanıtır görevlerini anlatırken, kadı ve fakihleri de sıklıkla konu edinir; meslek etiği problemleri dahil olmak üzere çeşitli yönlerden eleştirilerini ortaya koyar. Bu çalışmada öncelikli olarak Mukaddime eserinden, yargı ve siyaset ilişkisi bağlamında davaların yürütülmesinde tespit ettiği hatalar, daha sonra kadılar ve fakihlere dair yargı etiği sorunlarını ortaya koyduğu düşünceleri vurgulanmakta, som olarak etik gerekçeleri ile kadılık müessesesine dair yorumlarına odaklanılmaktadır. Kendisi de altı kez kadılık makamına gelmiş ve Maliki mezhebinin başkadısı olarak vefat etmiş olması nedeni ile kadılık tecrübesini anlattığı biyografisinden de fikirleri analiz edilmektedir. Böylece kimi İbn Haldun araştırmacıları tarafından varsayılan İbn Haldun'un düşünce sisteminin merkezinde etik kaygısının olmadığı; siyaset ve hukuku "güç temelli" olarak inşa ettiğine dair iddialara alternatif bir yaklaşım olarak, bu yazıda hukuk alanındaki en temel etik kaygısı açığa çıkarılmaktadır.

**Anahtar Kelimeler:** Kadılık, Fakihlik, Adalet Etiği, Fıkıh, Hukuk Felsefesi ve Sosyolojisi

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## INTRODUCTION

Ibn Khaldūn is one of the most important thinkers in the field of social sciences, one of the most important thinkers of the Islamic world after Ibn Rushd and recognized in both the Islamic and Western worlds.<sup>1</sup> His main work includes theories of politics, law and justice within his theory in the Muqaddimah on the rise and fall of civilizations. Ibn Khaldūn's full name is Abu Zayd Waliyyuddin Abdurrahman B. Mohammed B. Mohammed B. Mohammed B. Hasen al-Hadram al-Maghribi et-Tonusian. His ancestors were amongst the well-known families of the time who settled in Sevilla in Spain during the 9.th century AD. His family emigrated from this city to North Africa in the thirteenth century, when the Christian attacks began again for the purpose of conquest, and eventually settled in Tunisia; From 1228 to 1574, they held important positions in the government of the Hafsid dynasty, which ruled in the region. Ibn Khaldūn received a very thorough education in Tunisia and later in Fez (Morocco in present-day). His education consisted of religious sciences such as the Qur'an, hadiths approved by the Maliki school, dialectical theology (ilmū'l-kalam), law (fiqh) and sufism (tasawwuf); a breadth of philosophical disciplines, including ethics and rhetoric, including logic, mathematics, natural philosophy, metaphysics, and politics. We can also say that he received practical training for government service in today's discourse.<sup>2</sup>

Ibn Khaldūn was drawn into political life and the intrigues of this life in the early period. At the age of 25, he was imprisoned for his involvement in a conspiracy against the ruler of Fez. After managing to get out soon after, his experience in the fields of politics and diplomacy continued for many years. He was often used in sensitive diplomatic missions and saw the changing fate of dynasties and sultans, rulers from both sides. In 1375, he withdrew from active politics and diplomacy, as he anticipated the many and dangerous situations of political intrigue at that time, and took refuge in

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<sup>1</sup> See; Syed Farid Alatas, "Ibn Khaldūn's Autobiography and His Character", Oxford University Press, 2013; Michiel Leezenberg, *Ibn Khaldūn: An Intellectual Biography*, no.1, The University of Chicago Press, 2021, pp. 346–48.; Bruce Fudge, "Robert Irwin, Ibn Khaldūn: An Intellectual Biography, Princeton, N.J.: Princeton University Press, 2018, Pp. 267.", *International Journal of Middle East Studies*, vol. 51, no. 2, Cambridge University Press, 2019, pp. 340–42; Abdullah Drury, "Ibn Khaldūn: An Intellectual Biography", *Islam & Christian Muslim Relations*, vol. 30, no. 4, Taylor & Francis Ltd, 2019, pp. 528–30; Schwanitz Wolfgang G., "Ibn Khaldūn. An Intellectual Biography", *Middle East Quarterly*, vol. 26, no. 4, 2019, p. 1.; Ahmet T Karamustafa, "Allen James Fromherz, Ibn Khaldūn: Life and Times, (Edinburgh: Edinburgh University Press, 2010). Pp. 224", *International Journal of Middle East Studies*, vol. 43, no. 2, 2011, pp. 366–68; Mohammad Miharja Nurhidayahti, "Ibn Khaldūn", *American Journal of Islam & Society (Online)*, vol. 31, no. 3, 2014; Mohammad Salama, "Allen James Fromherz, Ibn Khaldūn, Life and Times", *Der Islam (Berlin)*, vol. 89, no. 1-2, 2012, p. 203; Charles Issawi, "Ibn Khaldūn", *Encyclopedia Britannica*, 13 Mar. 2023, <https://www.britannica.com/biography/Ibn-Khaldun>. Accessed 18 March 2023.

<sup>2</sup> Also see, Muhammad Hozien, "Ibn Khaldūn: His Life and Works", Retrieved May, 2009; Mehmet Kuyutar, "The Science of History in Ibn Kaldun's Classification of Sciences", *Toplum ve bilim*, no. 91, 2001, pp. 229–41.

Kal'at Ibn Salaam (in present-day Algeria), a fortress in the desert. He spent his following years here writing his first book, *al-Muqaddimah*, on world history, and in November 1377 he finished this introductory chapter, as he wrote in his autobiography. In 1382, Ibn Khaldûn left western North Africa and settled in Cairo, but he did not manage to escape the dangers of active politics by leaving the Maghreb, staying out of political intrigues, although he concentrated on research and teaching. In Egypt, he was appointed chief qadi or qadi of the Maliki sect several times, but was often dismissed for political reasons. Thus, he had a practical experience in the administration of justice. His work as a mudarris and qadi in Cairo for more than 20 years resulted in some writings, especially fatwas, that is, theological-fiqh views. In his autobiography, he wrote about his experiences as a qadi. Ibn Khaldûn, who spent the last years of his life in Egypt and went on pilgrimage and visited Jerusalem during this time, died in 1406 while he was the chief-qadi in Egypt.<sup>3</sup>

After this section, the basic concepts in Ibn Khaldûn's idea of justice will be explained and then the answers to the following questions will be put forward; According to Ibn Khaldûn's conception of justice, what are the issues that should be considered in the negotiation of legal cases? What are the ethical problems that may arise in the institution of qadi? What are the basic principles that should be considered while performing the service of qadi?

## I. BASIC CONCEPTS IN IBN KALDUN'S IDEA OF JUSTICE

In his scientific studies, Ibn Khaldûn (in agreement with the thinkers of his time) saw that people gathered in beer and lived in communities because they were by nature a social being. According to him; the reason people's lifestyles are different is because their way of living conditions such as geography, climate, rurality, urbanity, fertility of the land, war or peace conditions, etc. are different challenging.<sup>4</sup> The purpose of individuals coming together and living in communities is that they provide the subsistence needs necessary for their survival through cooperation. He calls this bond that people make by coming together "asabiyya".<sup>5</sup> He divides it

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<sup>3</sup> Muhsin Mahdi, *Ibn Khaldûn's Philosophy of History: a Study in the Philosophic Foundation of the Science of Culture*, University of Chicago Press, 1964; Mahdi, *Ibn Haldun'un Tarih Felsefesi*. Çev. Aydın F., <https://www.vbky.com.tr/media/t1/001/648/484/259/ibn-haldun-ilk-18-sayfa.pdf>, Accessed 5 March 2023

<sup>4</sup> Ibn Khaldûn, *Muqaddimah*, Ed. Arslan Tekin, İlgi Kültür Sanat Yayınevi, İstanbul, 2015, vol.1, p. 273. ; Marta Bucholc, "Ludwik Gumpłowicz (1897–1898), Ibn Khaldûn: An Arab Sociologist of the 14th Century", *Journal of Historical Sociology*, vol. 35, no. 3, 2022, pp. 320–32.

<sup>5</sup> Ibn Khaldûn, *Muqaddimah*, vol.2, p. 784; Alfred Gierer, "Ibn Khaldûn on Solidarity (Asabiyah): Modern Science on Cooperativeness and Empathy: a Comparison", *Philosophia Naturalis*, vol. 38, no. 1, 2001, pp. 91–104; Mohammed Al cabid Al-Jabri, "Ibn Khaldûn's Thought: Al-'Assabiyya And The State, Khaldûnian Theoretical Dimensions In The Islamic History (Book Review)", *Islamic Quarterly*, vol. 40, no. 2, Islamic Cultural Centre, 1996, p. 127.

into two parts: the *asabiyya* of descent and that of reason. Ibn Khaldūn emphasizes that the primary goal is to survive, the luxury need come only after providing the first goal. Because, moving to settle down after the necessary subsistence supply in order to survive comes first and then producing art, thought and science, and accordingly the development of rural life emerges. The *asabiyye* of reason is coming together with the reasons that arise for these later needs.<sup>6</sup> In fact, Ibn Khaldūn continues his approach to ethics, economics and politics as a requirement of the practical mind that actually came from Aristotle.<sup>7</sup> Ibn Khaldūn emphasizes that economic and political development emerge together.<sup>8</sup> In this sense, Bedouinism, that is, rural life, precedes *hadari*, that is, city life. The livelihood needs and resources here are naturally changing and diversifying as a *hadari* society.<sup>9</sup>

Ibn Khaldūn states that people need authority and power after the establishment of social life, that is, a ruler, in order to "protect themselves from someone's attacks" and to avoid hostilities and cruelties arising from the animal side, which is an aspect of human nature.<sup>10</sup> Moreover, he considers it necessary that the authority to judge should be one of the people themselves. According to him, "the meaning of the state" is; the "authority" that has prevailed over other people, seized power, and made others obey him.<sup>11</sup>

Of course, Ibn Khaldūn also clarifies the conditions for the obedience of tribes and tribals to city governments in the process of urbanization; if there is a ruler in the city, the ruler should defeat them and make them obey. According to him; if there is no ruler in the city, it will be

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<sup>6</sup> Ibn Khaldūn, *Muqaddimah*, vol.1, p. 287.

<sup>7</sup> Mark Muhammad Ayyash, "Rethinking the Social-Political through Ibn Khaldūn and Aristotle", *Interventions* (London, England), vol. 19, no. 8, 2017, pp. 1193–209; See; Mustafa Özel, "Bir iktisat klasiği olarak İbn Haldun'un Muqaddimah'si", *Dîvân İlmî Araştırmalar*, p. 21 (2006/2), p. 1-8; Also see; Mohammad Zakaria, "Khaldūnian Understanding of Economico-Legal Philosophy: A Living Mechanism for Civilizational Existence", *Journal of Ibn Haldun Studies*, Ibn Haldun University, vol. 5, no. 1, 2020, pp. 33–54.

<sup>8</sup> Muhammet C. Ilgaroğlu, "İbn Haldun Düşüncesinde Sosyo-Ekonomi Ve Ahlâk", *Al Farabi Uluslararası Sosyal Bilimler Dergisi*, v.3, No:1, pp:17-24, 2019; Jm Muslimin, "Society, Law and Economy: Contextualizing Ibn Khaldūn's Thought", *Al-Iqtishad: Jurnal Ilmu Ekonomi Syariah*, vol. 11, no. 2, 2019

<sup>9</sup> Ibn Khaldūn, *Muqaddimah*, vol.1, p. 96.; see; Moh. Pribadi, "Ibn Khaldūn's Social Thought on Bedouin and Ḥaḍar." *Majalah Al-Jamiah*, vol. 52, no. 2, 2014, pp. 417–33.

<sup>10</sup> Ibn Khaldūn, *Muqaddimah*, vol.1., p. 127.

<sup>11</sup> Ibn Khaldūn, *Muqaddimah*, vol.1, p. 128.; Also see; Ahmed Abozeid, "Re-Reading Ibn-Khaldūn in the 21st Century: Traveling Theory and the Question of Authority, Legitimacy, and State Violence in the Modern Arab World", *Arab Studies Quarterly*, vol. 43, no. 2, 2021, pp. 146–71; Tamara El. Khoury "Linda T Darling, A History of Social Justice and Political Power in the Middle East: The Circle of Justice from Mesopotamia to Globalization", *Comparative Legal History*, vol. 2, no. 2, Routledge, 2014, pp. 338–44.

necessary to be subordinated to a sovereign president by force to preserve the life and prosperity of the city. If this president is strong enough to perform forced obedience, he shall ensure obedience by force; if not, it separates them and draws some of them to its side, and with the help of them obliges the rest to obey. Ibn Khaldûn states that those who remain will obey for fear of invasion or because it is impossible for them to migrate.<sup>12</sup>

Also, where he explains the meaning of pledged allegiance, Ibn Khaldûn makes similar explanations to the "social contract" approach often which is expressed in the philosophical literature.<sup>13</sup> According to him; the original oath to the order is qualified to "make a covenant". Starting from the root of the word Bey'a (to sell, to buy), he states that the word means "to reach the hand" when contracting. He argues that the examples of verses and hadiths which include terms of the sharia and the "allegiance to the caliphs" are in the form of taking oaths and in the same way. This form of agreement is not forced and is carried out voluntarily. He even underlines that what is the forced one does not have a verdict according to Imam Malik.<sup>14</sup> As a matter of fact, he clarifies the meaning of the custom as the right and law that one must obey against the sultan and the imam.<sup>15</sup> Therefore, Ibn Khaldûn states that authority and law provided by voluntary obedience in the time of the Prophet are separate from all other forms of politics and authority and as the best form of government.<sup>16</sup>

Ibn Khaldûn was an original thinker in revealing the function of law and justice and its importance in the development of society. In this sense, he calls the science he performs the science of Umran.<sup>17</sup> He employs the term Umran as a literal meaning, mostly in the sense of culture and civilization. Of course, the scope of his ideas about the content of justice and law was Islamic. In this respect, according to him, the social function of law and justice is to maintain a stable social order, which is necessary for the development of established civilizations. The content of the religious, namely the Islamic law, aims not only to ensure a stable social order, but also to ensure the salvation of believers and guarantee them a happy life in the hereafter. Ibn Khaldûn pointed to the function of law in social and historical processes and emphasized that it is also possible for rulers who have to ensure stability to adopt an instrumental approach.<sup>18</sup>

Nevertheless, his normative position is focused on sharia as law that would guarantee the interests of both the ruler and his subjects when

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<sup>12</sup> Ibn Khaldûn, *Muqaddimah*, vol.1, pp. 335, 336.

<sup>13</sup> Leonardo Capezzone, "The City and the Law. Aspects of Ibn Khaldûn's Critique of the Philosophers", *Philological Encounters*, vol. 5, no. 1, 2020, pp. 4–24.

<sup>14</sup> Ibn Khaldûn, *Muqaddimah*, vol.1, p. 443.

<sup>15</sup> Ibn Khaldûn, *Muqaddimah*, vol.1, p. 444.

<sup>16</sup> Ibn Khaldûn, *Muqaddimah*, vol.1, p. 406.

<sup>17</sup> Ibn Khaldûn, *Muqaddimah*, vol.1, p. 125.; see, Laroussi Amri, "The Concept of 'umran: The Heuristic Knot in Ibn Khaldûn", *The Journal of North African Studies*, vol. 13, no. 3, 2008, pp. 351–61.

<sup>18</sup> See; Mourad Laabdi, "Ibn Khaldûn Between Legal Theory and Legal Practice", *Journal of Islamic Studies*, vol. 32, no. 1, Oxford, England, 2021, pp. 27–61.

'applied without corruption and nepotism'. In fact, Ibn Khaldûn's use of a normative method that defines the theories of law and justice, scientific analysis and values that developed by him within the new civilization science (Umran) forms a whole consistent with his logical reasoning, and the Islamic faith is the touchpoint in both of his approaches.<sup>19</sup>

After summarizing his ideas about the basic principles involved in the formation of society and the development of political and legal authorities, we can move on to Ibn Khaldûn's ethical criticisms in these systems. Ibn Khaldûn's power-oriented thoughts on politics and social order are rather expressed as an analysis of the existing reality. However, in his thoughts on law, ethics is in the category of "what should be" and is analyzed accordingly.

## II. ETHICAL PROBLEMS IN THE CONDUCT OF CASES

In the 14th century in which Ibn Khaldûn lived, the duty of qadi was shaped by a historical process in which the mayor who performs the neighborhood administration, the district governorship in the nature of the district administration and finally the judgeship in the nature of justice service is intertwined.<sup>20</sup> Therefore, it served as a structure open to the intervention of politics since there was no separation in the present sense.

During the period of Ibn Khaldûn, the caliphs appointed others to the post of qadi because they were engaged in politics, jihad and conquests. But they appointed people who were bound by the bond of descent or friendship. Ibn Khaldûn, who states that the conditions of the office of qadi are obtained from the books of fiqh and the works called *Ahkamu's Sultaniyye*<sup>21</sup> and explains that while the qadi in the period of the first caliphs was only to settle the disputes of the people, the duties of the qadi in the period of the later caliphs differed.<sup>22</sup>

According to Ibn Khaldûn, the duty of the caliph, which is to settle disputes and enmities among the people, is related to the judicial system. According to him; it is among the general duties of the caliphate since it is essential that these cases be resolved according to the Shari'a rules of law based on the Qur'an and hadiths. Especially in the early days of Islam, the caliphs performed their duties as qadis themselves and did not transfer those tasks to others. It was Umar who first transferred this authority. He held Abu Darda responsible for the verdict in the cases with him in Medina. He also

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<sup>19</sup> Lars Gule, "Ibn Khaldûn: Law and Justice in the Science of Civilisation", *Philosophy of Justice*, vol.12, Springer Netherlands, 2014, pp.119-38, <http://ndl.ethernet.edu.et/bitstream/123456789/18761/1/130..Guttorm%20Fløistad.pdf>, Accessed 7 March 2023.

<sup>20</sup> Also see; Rabbani Ruhul Amin/Mohammad Zakaria, "Categorized Conception of Islamic Legal History of Ibn Khaldûn: A Retrospective Paradigm of Legal Cartography", *Journal of Ibn Haldun Studies*, Ibn Haldun University, vol. 3, no. 1, 2018, pp. 141-58.

<sup>21</sup> For more information, see, Ebul Hasan El-Mâverdi, *El- Ahkâmü's Sultâniyye*, Beyrut, 1405/1985; Ali Şafak, " El- Ahkâmü's Sultâniyye ", TDV İslâm Ansiklopedisi, <https://islamansiklopedisi.org.tr/el-ahkamus-sultaniyye>. Accessed 18. March 2023.

<sup>22</sup> Ibn Khaldûn, *Muqaddimah*, vol.1, p. 468

appointed qadis for Basra and Kufa. In his famous instruction to Abu Musa, Ibn Khaldûn refers to the general provisions concerning the accident, including, in today's terminology, the principles of trial law.<sup>23</sup>

Briefly, the ethical problems identified in the Qadi especially in terms of conducting the cases are as follows;

- Trying to gain the consent of the important people,
- Deciding according to rank and position,
- Choosing to dismiss cases because the judge cannot render a verdict when there is another option.<sup>24</sup>

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<sup>23</sup> Ibn Khaldûn, Muqaddimah, vol.1, p. 467, 468.; The instructions of Umar to Ebu Musa;

Hey Ebu Musa! It is a solid obligation to settle the cases among the people and it is a sunnah that should be implemented accordingly. When two people are judged before you, understand the words of both for the first because the verdict is given and the judgement is carried out only after the cases are settled. Words of truth and justice that are not applied in action are useless. Since the plaintiffs are present in the court of judgement, act according to the rules of justice in every case so that those who are superior to the others do not dare to ask for injustice (deciding in their favor). Let the weak one not despair of your justice.

Hey Ebu Musa! The claimant proves his right with evidences and witnesses. The one who denies is given an oath. With the exception of reconciliation by making haram halal and halal haram, the plaintiff Muslims can reconcile. One day, if you realize that your previous judgement is not right after you solve the case and give the verdict, don't hesitate to apply for the right. Because, right and justice is older. Returning to the truth is better than continuing on the wrong path.

Hey Ebu Musa! When you come across an issue that is not in the Quran and Sunnah and that you hesitate, think carefully. Look for the similar events. Judge by comparing them to the others that you can't find in the Qur'an and hadiths.

If someone makes a claim, give him time for the evidence he will bring. If he proves his case with his evidences and witnesses within the appointed time, he wins the claim; otherwise, the judgement will be against him. Because, acting this way clear doubts, the right emerges clearly. Muslims are fair witnesses against one another. They can testify for or against each other. However, those who have been flogged with a whip after being sentenced to hudud, those who are certain to have given false testimony and those who falsely attribute themselves to each other by lineage and friendship are excluded from this. Because, it is essential that the witnesses haven't been disproved (their ideas haven't been refuted) in order to prove the cases in the provisions of Shariah. Shariah deprived the condemned and guilty people from the right of testifying.

Hey Ebu Musa! Avoid from the words and actions that express sadness, distress and weariness during the trial of adversaries. Undoubtedly, the reward given by Allah is very great if you give the correct verdict and the right finds its owner and Allah will exalt the name of the person who does so, that's it!

<sup>24</sup> Ibn Khaldûn, Trans. Akyüz V., Bilim ile Siyaset Arasında Hatıralar, et-Ta'rîf bi-İbn Haldun ve Rihletuhu Garben ve Şarkan, Dergah Yayınları, 2011, p. 160.

### III. ETHICAL PROBLEMS IN THE DUTY OF FAQIH

While explaining the common points of Umran science with other sciences, Ibn Khaldūn also emphasizes how the proofs of social life affect fiqh. He explains the effects of social life in "the faqihs' chanting of wisdom and purposes in the Shari'a rulings".<sup>25</sup> He explains that the faqihs analyze the social concepts and facts and benefit from them while fulfilling the wisdom and purposes of Sharia since they are responsible for protecting the society.

Ibn Khaldūn states that there are disagreements among the scholars of fiqh and gives information about them. He finds it natural that there will be differences in understanding words and phrases due to the Arabic language.

However, he also states that "the evidences such as ijma(consensus), kisaas(qisas), istihsan(approval), istislah (reclamation), istishab (companionship), kavli-i sahabi (companions considerations), tradition, which are outside the nass, are also the subject of dispute."<sup>26</sup> According to him; another reason why they disagree by explaining the method is that they ground on the similarities between the events whose provisions are clear with hükmü nass (clear provisions) and those who are not clear in provisions while comparing them and therefore some divergences emerge. He also emphasizes that not all Companions have the authority to issue fatwas, and that religious matters are not asked of those who are not people of fatwa. When the matter is fatwa, he reminds that what they learned is from their referring to the Companions who had memorized the Holy Quran and learned their nāsih and mensūh (The abrogation of a Shari'ah ruling by a later Shari'ah proof.), the muhshabis from the Prophet Muhammad.<sup>27</sup> He says that these are called qur'ra which means those who read the Qur'an. But according to him; this is unique to the early days of Islamic civilization. Ibn Khaldūn states that the science of fiqh only on Islamic Law developed and the profession of faqih emerged in this way when expanded the boundaries of Islamic civilization and the number of people who read the Qur'an increased.<sup>28</sup>

Ibn Khaldūn divides the fiqh performed by Fukaha and Ulema into two parts. The first is the way of the people of Re'y and the people of syllogism, which emphasizes that those who adopt this method are Iraqis, and the representative is Imam Hanafi. The second is the way of the Ahl al-Hadith, which states that those who adopted this method were the people of Hejaz, and that their representatives were Malik bin Anas and Imam Shafi'i.

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<sup>25</sup> Ibn Khaldūn, Muqaddimah, vol.1, p. 115.

<sup>26</sup> Ibn Khaldūn, Muqaddimah, vol.2, p. 927; see; Amer A Qobbaj, "Arabic Language Sciences, Literature and Arts in Al- Maghreb and Al-Andalus through Ibn Khaldūn's "Muqaddema", Journal of Arts and Social Sciences, vol. 8, no. 2, 2017, pp. 31-57.

<sup>27</sup> Ibn Khaldūn, Muqaddimah, vol.2, p. 927.

<sup>28</sup> See; Mohammad H Fadel., "Structural Interrelations of Theory and Practice in Islamic Law: A Study of Six Works of Medieval Islamic Jurisprudence", International Journal of Middle East Studies, vol. 40, no. 4, Cambridge University Press, 2008, pp. 680-82.

<sup>29</sup> Another scholar of fiqh who grew up later was Ahmad bin Hanbal. He explains that the four imams and four sects of fiqh were exemplified by the countries over time. Hanafi, Maliki, Shafii and Hanbali are allocated fiqh and sects. <sup>30</sup> Thus, he explains the historical process related to the science of fiqh and faqihs in detail. It can be understood from this that if we compare Ibn Khaldûn's duty as a qadi and his political identity, both the education he received and his mastery of the historical process make him competent in both areas.

In addition, according to the information given by Ibn Khaldûn, there were deteriorations in the subsequent periods of luxury and prosperity with indulgence in them when the caliphate turned into property and sultanate. He explains that it became unappreciated and ostensible, and that the person in question was brought to a situation where only the one who held the power was in his hands although the Ahlu'l Hal wa'l-Aqd, that is, the Shura, was present with the deteriorations. Ibn Khaldûn emphasizes that it is wrong for rulers to expel qadi and faqihs from Ahlu'l Hal wa'l-Aqd, that is, from the Shura.<sup>31</sup> Because, according to him, the main reason why this office was respected within the state was that they were the practitioners of the Sharia precepts. Referring to the hadith "Scholars are the heirs of the prophets", Ibn Khaldûn proves his objection to the removal of faqihs and scholars from the advisory council. However, he also explains how this hadith should be understood. As a matter of fact, according to him; the scholars of the time no longer apply the Shari'a rulings they have expressed orally in their lives as in the time of the prophet. <sup>32</sup> According to Ibn Khaldûn, the scholars mentioned in the hadith are those who have the Sharia by living and they are the heirs of the Prophet. We understand that he regards the scholars of the time as the transmitters of judgments. He also clearly states that the majority of the faqihs of his time consisted of these transmitters.<sup>33</sup>

#### IV. ETHICAL PROBLEMS IN THE JUDICIAL AUTHORITY

Ibn Khaldûn explains that the most basic duty of the qadis is to protect the law of the people. But he says as an interesting determination that;

"Though, the institutions of the qadi and the mufti are necessary to settle disputes. However, this need is not necessary and public. Those who perform the services mentioned in the majority may not be needed. Mostly, the people do not need them. These duties are only given importance by the government that looks after the interests and affairs of the people."<sup>34</sup> His

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<sup>29</sup> Ibn Khaldûn, *Muqaddimah*, vol.2, p. 928.; Necmettin Kızılkaya, "Ibn Khaldûn's Concept of the History of Fiqh and Its Impact on the Historiography of Islamic Law in the Modern Era", *Ibn Haldun Çalışmaları Dergisi*, vol. 1, no. 1, 2016, pp. 33–62.

<sup>30</sup> Ibn Khaldûn, *Muqaddimah*, vol.2, p. 932.

<sup>31</sup> Ibn Khaldûn, *Muqaddimah*, vol.1, p. 472.

<sup>32</sup> Ibn Khaldûn, *Muqaddimah*, vol.1, p. 473

<sup>33</sup> Ibn Khaldûn, *Muqaddimah*, vol.1, p. 474

<sup>34</sup> Ibn Khaldûn, *Muqaddimah*, vol.2, p. 816; also see ; Antony Black, "Ibn Khaldûn (1332–1406)." *The History of Islamic Political Thought*, New edition, 2, Edinburgh

emphasis on the establishment and functioning of the judicial system in the context of this relationship between law and politics is remarkable and very important.

According to him; it is not possible for those who are in charge of religious duties such as qadi, mufti, mudarris, imam, orator and muezzin to obtain great wealth. He interprets the reason for this as refraining from humiliating their own positions and personalities by pandering to those who occupy positions of office engaged in world affairs due to the honor of their professions. He explains that his opinion on this subject was challenged by another thinker, who proved it as evidence by showing the wages and pensions of the qadi, the imam and the muezzin from the account papers of the state office in the time of the caliph of the time, Ma'mun.<sup>35</sup> From this point of view, we see that Ibn Khaldûn determined the social basis of the principle of the exercise of his duties in accordance with the "principles of impartiality and independence of the judge" in today's judicial ethics, and thus reveals his approach to how the judicial system should function.<sup>36</sup> In addition, the treasury revenues were classified for the salary of the faqih Abu Hasan Maliqî, who was the Moroccan qadi at the time of Sultan Abu Said, by transfer from his Master Abu Abdullah Âbili of the Maghreb; after experiencing embarrassment for a while, he tells us that he wants his salary to be paid from taxes on wine. He says that when those around first laughed and then asked for his wisdom, they received the following answer: "When all taxes are forbidden, I may prefer to be paid my salary in a type of tax that does not leave the payer's eyes behind. This could be a tax on wine. Because, with the exception of very rare cases, everyone who buys a drink spends money for him in a conscientious relaxed, pleasant and cheerful way, does not feel sorry for his expenses, does not stay behind, does not go after his life."<sup>37</sup> Ibn Khaldûn uses these words of the qadi to highlight the errors related to excessive taxation. However, it is also important in terms of showing a qadi's ethical concern.<sup>38</sup>

He lists the basic tasks of the qadi as follows;

- To settle disputes between adversaries,
- To look after the confiscated property of the insane, orphans, bankrupts and miserable,
- Testament and waqf affairs of Muslims,
- Marriage of widows in case there are no parents to marry them,
- Rehabilitation of roads and buildings,

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University Press, 2011, p.169; Bruce B. Lawrence, "Ibn Khaldûn & Islamic Reform", *Journal of Asian and African Studies* (Leiden), vol. 18, no. 3-4, 1983, pp. 221-40.

<sup>35</sup> Ibn Haldûn, *Muqaddimah*, vol.2, p. 817

<sup>36</sup> See; Lenn E. Goodman, "Ibn Khaldûn and the Immanence of Judgment." *Philosophy East & West*, vol. 69, no. 3, 2019, pp. 737-58.

<sup>37</sup> Ibn Khaldûn, *Muqaddimah*, vol.2, p. 824, 825

<sup>38</sup> Also see; Machouche Salah Bentahar/Benaouda Bensaid, "Ethics in Muslim Writing and Research Methodology: The Case of Ibn Khaldûn's Scholarly Writing", *Journal of Al-Tamaddun*, vol. 17, no. 2, 2022, pp. 39-52.

- Investigating the situation of witnesses, officers and deputies in terms of knowledge, experience and justice in order to gain confidence in them,

- The works related to the general welfare of Muslims.<sup>39</sup> He states that this last duty is a mixed duty, especially in which the state administration and the judicial mechanism are intertwined, and that it is a deterrent from the oppression of the oppressor. It is seen here that the municipal, local and judicial duties mentioned above are together.

According to this, the qadis "take clear evidence and confession, rely on signs and presumptions, postpone the sentencing for a clear truth to be revealed, lead the parties to an agreement, and make witnesses swear an oath."<sup>40</sup> The qadis of the period were also assigned with the jihadi command.<sup>41</sup>

## V. HIS PRINCIPLES IN THE FIELD OF JURISDICTION (QADI AND FAQIH)

Ibn Khaldūn, who himself fulfilled his duty as a qadi many times, gives many experiences and criticisms about the ethical rules of the profession and the functioning of the judicial system in *et-Ta'rif bi-Ibn Khaldūn and Rihletuhu Garben and Şarkan*. He mentions that another qadi Ebu Merzuk constantly complained about him during the reign of Abu Salim, when he was a qadi, because of his jealousy. He explains that he, too, was affected by the conflicts between the vizier Omar bin Abdullah and the administration, and that he set higher goals despite the wages and power given by the youth, and that this was due to his trust in his friendship with the Governor of Bijaya, Amir Abu Abdilli. However, he adds that this situation angers Vizier Omar.<sup>42</sup> In this regard, we see that he does not hesitate to convey the error of youth in the ethical sense as it is.

Ibn Khaldūn, who also describes other experiences in the following periods, tells that when he was a teacher at the Al-Kamhiyya Madrasah in Egypt, the Sultan of the time was angry with the Maliki qadi of the state and dismissed him, and because of his competence, he appointed himself to the duty of qadi. In his information on the offices of the Qadis, he states that the qadi, who each of the four sects serves as a higher authority separate from the judges who serve for themselves, is called qadiq-qud'at (chief judge).<sup>43</sup> He emphasizes that there is a Shafi'i chief judge at the highest level. He explains that the Shafi'i chief justice independently performs his duties in relation to orphan property and wills. So much so that as a general acceptance of the

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<sup>39</sup> Ibn Khaldūn, Muqaddimah, vol.1, p. 469.

<sup>40</sup> Ibid.

<sup>41</sup> Ibn Khaldūn, Muqaddimah, vol.1, p. 469.; Also see; Malik Mufti, "Jihad as Statecraft: Ibn Khaldūn on the Conduct of War and Empire", History of Political Thought, vol. 30, no. 3, 2009, pp. 385–410.

<sup>42</sup> Ibn Khaldūn, et-Ta'rif bi-İbn Haldun ve Rihletuhu Garben ve Şarkan, p. 69, 70.

<sup>43</sup> Also see; Mohammad Fadel, "Al-Qadi", The Oxford Handbook of Islamic Law, Oxford University Press, 2018.

period, he explains that this duty, which used to be the sultan's, was undertaken by the Shafi'i chief judge. It is noteworthy that after being appointed instead of the Maliki judge, he made the following remarks on what we might call the ethics of qadi;

*“No condemnation of rights can stop me. No position or wealth can deter me. In this matter, I equate both sides, and I take the right of the weaker of the parties. I do not accept the intercessors and occasions of both sides. By listening to the evidence, I try to determine the truth. I look to the justice of those who are elected for the responsibility of witnessing. The good mixed with the bad. Beauty was indistinguishable from the ugly. The judges could not criticize them: because of their deception of relying on the powerful, they would not dwell on those whose wickedness they knew. Because the majority of the witnesses were involved with the Emirs. Some were teachers of the Qur'an; others were imams of mosques. They were misleading justice. People had good feelings about these witnesses. They gave themselves a share of office in their good deeds about the judges and in intercession for them. For that reason, their illnesses had progressed well. Among the people, the evils arising from the lies and mischief-making became widespread. I've heard about some of that. I gave the harshest punishment and the most painful response. My knowledge led me to see some of them as unsafe. So, I prevented them from testifying. Among them were the scribes of the qadi councils and the tughra bearers of their assemblies. They were accustomed to writing cases and registering decisions. Because they knew about the printing and stipulated the conditions, they were used for the contracts made by the Emirs. Therefore, they had a superiority over their own strata, a situation in which they misled the judges because of their position. In this way, they protected them against the condemnation they expected because they had undertaken certain actions. In countless foundations, when the opportunity for an office or an award arose among them, they immediately resorted to this way. As a result, due to the difference in the sects determined for the judges in the town, the disreputableness of the name was hidden, the notables became unknown and allowed to deviate from the wrong. They would set the terms and respond to the person who made a sale or assignment by slandering the judges who had drawn a wall of prohibition and prevention in front of him to protect him from making a game. That is why the damage in foundations has become widespread. Warning bells also started to ring for the contracts and real estate. I promised Allah, even if it was in such a way as to make them worry and resent me.”<sup>44</sup>*

Especially in this section, we think that the following reminder should be made about Ibn Khaldūn. When it comes to Ibn Khaldūn's political experiences and his experiences as a qadi, his behavior is different. In his political activities, Ibn Khaldūn, who behaves in accordance with the requirements of the empirical and factual reality field and mental politics, and who engages in political intrigues, does not have any concern for office by not complying with the immoral practices he has determined in his office of qadi.

Another example is that in the part about his memoirs in which he describes his ethical concerns after he was appointed to the office of qadis, he expresses with all the clarity of the situation he lived in about the sectarian muftis and fatwas.

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<sup>44</sup> Ibn Khaldūn, et-Ta'rif bi-İbn Haldun ve Rihletuhu Garben ve Şarkan, pp. 158, 159.

(...) I turned to the muftis of the sects. Because of their extreme opposition, their indoctrination of the adversaries, their fatwas after the execution of the verdict, some of those who dominated them were extremely expert. I also saw that there are vile ones among them. (...) No one condemns, criticizes, or filters their licenses. Because their number is very large and it is due to the large number of the population. The fatwa pen is unlimited and unbridled in this region (referring to Egypt). All the adversaries make a fuss about it. It takes a side from the edge to the edge. With this, he desires victory over his opponent and tries to use it to impose it on him. The Mufti gives him exactly what he wants and expects, following his narrow passages with different views. Thus, fatwas contradict and conflict. Especially if the verdict is after it is executed, the turmoil will grow. There are many different opinions in denominations. Mercy is hard to find. The authority of the mufti and the fame of the fatwa cannot be distinguished by a commoner. So, there's almost no end to this road, and the turmoil isn't over. On this subject, I shouted the truth in all its nakedness.<sup>45</sup>

He emphasizes that the period he describes in almost all its details, that there were snatchers among them, that they did not have any adaptations to any teacher, and that they did not have a book in science. He tells them how they ridicule people, even holding meetings to play with people's honor and talk against their families. For this reason, he states that they are disturbed by Ibn Khaldūn and that they are filled with envy and hatred. He tells these people whom they have persecuted, that is, violated their fundamental rights and freedoms, that Allah has made their decrees valid and that they have dried up the wells in which they are fed. He says that because he did all this, they fabricated a thousand kinds of slanders, spread lies and set traps in order to tarnish Ibn Khaldūn's honor. He adds that he expects recompense from Allah alone for his deeds and that he pays no attention to the ignorant. He explains that they don't like him because he doesn't behave like other qadis, and that they try to adapt him to the path they are used to.<sup>46</sup>

We can list the ones he prioritizes in his own ethical attitude as follows;

- To be uncompromising about the truth,
- To make a decision by seeking equanimity,
- To recover and surrender the violated rights,
- To avoid superstition when called to office,
- Not to give in to the ambitions of grabbing office and shares,
- To give the right to the responsibility of qadi,
- To be loyal to the appointee of the post of qadi.

He says that he says that the state power as a price for not complying with the existing practices due to this attitude and the sultan have made accusations against their friends that will make them feel hatred and hatred about him and that they have managed to open a gap with the state

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<sup>45</sup> Ibn Khaldūn, et-Ta'rīf bi-İbn Haldun ve Rihletuhu Garben ve Şarkan, p. 159.

<sup>46</sup> Ibid.

officials.<sup>47</sup> Thus, she was removed from her first duty as a qadi in Egypt. He devotes himself to dealing with science and knowledge again.

He also states that during the period when he was a qadi during the rule of Sultan Berkuk in Egypt, he had a grudge against Sûdûn for not complying with the practices of being a qadi and that he took out his resentment from the faqîhs because of the fatwas that Mintaş forced him to write. He emphasizes that they wrote these fatwas not willingly, but because of the difficult situations they were in, but that they stated their situation in the fatwa by implication. The Sultan explains that he realized these deeds and dismissed him.<sup>48</sup>

In our opinion, Ibn Khaldûn observes firstly because politics is in every field of social life, and secondly, because society has a hierarchical structure within itself and the fact that in some of its institutions it still has characteristics that tend to human nature to evil, and he observes these and makes decisions that may be the necessary consequence of that nature. But his attitude in law turns into a struggle for what should be, not a treatment with the principles of the existing order in the factual reality since the office of qadi is one that should have the highest values in terms of moral and sharia principles. In this respect, to call Ibn Khaldûn a thinker with only an empiricist attitude would be failing to realize the idealistic direction of thought. He interprets the data of experiential life and factual realities and the normative data of the field of religion and morality in a very powerful way.

Until the end of his life, he was re-appointed as a qadi on various occasions and his dismissal took place six times. In fact, during one of these periods of impeachment, he met with the Tatar Sultan Emir Timur and persuaded him not to touch the Egyptian people.<sup>49</sup> Although the sultan of the period, Faraj, who fought Timur had dismissed him, the fact that he took Ibn Khaldûn to the Damascus expedition to meet Timur together with other qadis and faqîhs is probably due to the fact that Ibn Khaldûn had a higher political experience than other qadis and faqîhs.<sup>50</sup>

## CONCLUSION

Ibn Khaldûn, who took part in the Maliki tradition in Islamic fiqh, examined the institutions of faqîh and qadi with both the knowledge of tajurubi (practical) and the systematic thought method he called the science of Umrân. Since he was a personality who displayed significant existence in the relationships with the authorities and administrative authorities in the

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<sup>47</sup> Ibn Khaldûn, *et-Ta'rîf bi-İbn Haldun ve Rihletuhu Garben ve Şarkan*, pp. 160, 161.

<sup>48</sup> Ibn Khaldûn, *et-Ta'rîf bi-İbn Haldun ve Rihletuhu Garben ve Şarkan*, p. 208.; also see; Tamara Albertini, "Special Issue: Politics, Nature, And Society-The Actuality Of North African Philosopher Ibn Khaldûn: Ibn Khaldûn: A Philosopher for Times of Crisis", *Philosophy East & West*, vol. 69, no. 3, 2019, p. 651.

<sup>49</sup> Ibn Khaldûn, *et-Ta'rîf bi-İbn Haldun ve Rihletuhu Garben and Şarkan*, pp. 242, 243

<sup>50</sup> Ron Sela/ Scott C. Levi, "Ibn Khaldûn: Personal Narrative of a Meeting with Timur", *Islamic Central Asia*, Indiana University Press, 2009, p. 171.

societies of Islamic Civilization in the 14.th century throughout his life and he participated some determinant activities of politics of the period, his works are important sources. In other words, his arguments in his best-known work, the *Muqaddimah*, are constructed not only as an abstract theoretical and philosophical theory, but also with the data of the practical and experimental field. He not only conveyed his experiences on some issues related to the authorities but also evidenced different disputes and ethical problems.

In this article, we examined his ideas about the errors he identified in the conduct of the cases in the context of the relationship between the judiciary and politics from the work of *Muqaddimah* is emphasized primarily, then his thoughts on the problems of judicial ethics regarding the qadis and faqihs are emphasized, and the ethical reasons and the interpretations of the institution of Qadi are focused finally.

Additonaly, we have seen at the heart of the conflict of law and politics that the concern for the continuity and protection of property and power was similarly located although there was no statehood in the present sense of his time. Such a concern for power, where normative law practically clashes with politics, cannot be denied to be linked to the life concerns of those who practice the profession of law, which causes deterioration in its normative structure, which is determined by morality. There is no doubt that it has caused deterioration in legal ethics for every geography and civilization.

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