



THE LEGAL MAXIMS OF PUBLIC FINANCE: A HISTORICAL AND COMPARATIVE PERSPECTIVE

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ABSTRACT

In pursuit of curating the optimal version of a public finance system, governments often rely on a set of maxims that act as a guideline on how they should execute the elements of public finance. In Islamic economics, legal maxims (al-qawa'id al-fiqhiyyah) are very present in public finance as the Islamic legality of government actions must be taken into consideration before any execution. Muslim scholars often propose and create new economic maxims or principles attached to their new economic systems but generally hold the same principles, purposes, and especially sources of Shari'ah in curating the maxims. This is distinct from western maxims as no dogmatic or religious text bind them. Thus, allowing western maxims to be premised on their society's principles. In the modern context, these two differing systems have been unable to reconcile leading to the inability to practice both western and Islamic systems harmoniously. This paper seeks to propose an integrated approach to both systems through contrasting the maxims of both and identifying the harmonizing elements between the two. Reviewing the prominent ideologies and maxims that have been historically used under these two contexts, i.e., Abu Yusuf, Abu Ubayd, and Adam Smith, David Hume, the work dissects the maxims by discussing the primary sources of these maxims, what they intend to achieve, and how this translates to the systems of public finance suggested by the scholars of both worlds. With the analysis of these maxims, the study expects to trace the beginning of where a public finance system comes from, which translates to applications such as the role of the state, the revenue collections system, and the allocation of these funds. The research concludes with a proposal of an integrated system that leans on the overlapping maxims held by the two public finance systems – a system that assumes a secular government which applies a public finance system that prioritizes public welfare.

Keywords: Public Finance, Legal Maxims, Abu Ubaid, Adam Smith

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INTRODUCTION

The application of public finance, by way of revenue collection such as taxation and the distribution strategies of each government, stems from a process of thorough decision-making. In pursuit of curating the optimal version of a public finance system, each government often





relies on a set of maxims that act as a guideline for executing the elements of public finance. In Islamic economics, legal maxims (*al-qawa'id al-fiqhiyyah*) are very present in public finance as the Islamic legality of government actions must be taken into consideration before any execution. Islamic legal maxims are crucial in constructing Islamic Law as it behaves as principles used to obtain the legality of an action (Laldin, 2014 as cited in Saiti and Abdullah, 2016). However, Muslim scholars often propose and create new economic maxims or principles attached to their new economic systems beyond the usage of legal maxims. Despite the distinctions in applying legal maxims from one madhab to another in Islamic Law, they generally hold the same principles, purposes, and especially sources in curating the maxims. This is distinct from western maxims as they are not bound by scripture such as the Qur'an. Thus, allowing western maxims to be premised on their society's principles; this might be socialism or capitalism depending on what they deem is important and a priority at the time. Despite this, crucially, both systems of public finance, be it Islamic or western, can never be simplified to homogenous maxims as each scholar may present or interpret their maxims uniquely.

This paper simply looks at the prominent ideologies and maxims that have been historically used under these two contexts and delves into the distinctions between the legal maxims of Islamic public finance and western public finance by analyzing the maxims introduced and practiced by historical scholars, i.e., Abu Yusuf, Abu Ubayd from Muslim world, and Adam Smith, David Hume from the western world. The study examines the maxims by discussing what the primary sources of these maxims are, what they intend to achieve, and how this translates to the systems of public finance suggested by the scholars. With the analysis of these maxims, we can expect to trace the beginning of a public finance system, which translates to applications such as the role of the state, the revenue collections system, and the allocation of these funds. Hence, evaluating whom it serves and where its priorities lie in order to finally decide whether it ought to be praised and emulated by the current society or deterred from practice.

METHODOLOGY

The research for this paper was conducted through reviewing previously written literature on public finance which focused on a more historical context. The paper targets literature on maxims and ideologies forwarded by renowned economists from both the Western and Islamic world to be able to have a better reflection of each system. From reviewing all the collated literature, the maxims between the two public finance systems were derived and contrasted to curate a visualization of an integrated public finance system.

SOURCES OF MUSLIM SCHOLARSHIP

The origins of Islamic Economics will and have always been the Qur'an and Sunnah. These sources play a significant role in identifying the legality of public finance systems, translating into many Muslim scholars having a comprehensive mastery of Islamic jurisprudence. We see this in Abu Ubayd when his book *Kitab al-Amwal* was associated as a book of Fiqh despite the preceding discussion of public finance; *Kitab al-Amwal* heavily showcases his knowledge in *Gharib al-Hadith* through dissection of Qur'anic semantics and also a thorough evaluation of a Hadith's authenticity in building Abu Ubayd's public finance maxims. Suharto (2000) dedicates a chapter in his dissertation on *Kitab al-Amwal* to analyze Abu Ubayd's interpretation of Qur'anic terms, including *anfal* by looking into the context of the war of Badr and also the contents of *Surah al-Anfal* to attain his conclusions on the dispute of the legal





injunctions with regards to the spoils of war. This proves the significance of the Qur'an and Sunnah in legal maxims of Islamic Economics.

Aside from Abu Ubayd's reference to the Qur'an and Sunnah, other scholars such as Abu Yusuf, al-Ghazali, and Ibn Khaldun source their maxims of public finance similarly. Abu Yusuf's economic concepts hold a strong relationship with the science of tafseer. This is given the context that Abu Ubayd lived through the age of development in the study of Islamic sciences. It was a time of emergence for the commentary of the Holy Qur'an (tafseer), the compilation of the Prophet's Hadith, and most importantly, of Islamic jurisprudence (Azmi, 1995). The qawa'id al-fiqhiyyah introduced at the time became tools that shaped the way Abu Ubayd built his maxims of public finance; this spans from his contribution in the classification for the source of revenue being sadaqah, ghanimah, and fay' to the taxation tools such as jizyah and kharaj.

Maxims in the Role of State

Abu Ubayd contributes to the discussion regarding the role of the state in economics with a concise definition of public finance; Abu Ubayd defines it as "various groups of public property (amwal) that are administered (wilayah) by the government (imamah) in the interest of the public (ra'iyyah)" (Suharto, 2000). This explicitly positions the state as an administer of public finance. This is an integral part of analyzing maxims to understand the extent of the state's power of public funds. In Islam, the position of the state is one with significant obligations. Islahi (2005) cites al-Mawardi (1975) in listing the role of a state which is "to guard the faith, execute and preserve justice, protect the life and property, establish peace and security, defend the country, manage financial affairs and to give personal supervision to public affairs." Al-Ghazali labels the state a necessary institution for socioeconomic affairs as well as a religious affair as "the state and religion are inseparable pillars of an elderly society" (al-Ghazali as cited in Islahi, 2005)

Maxims in Public Revenue

The functionality of a public finance system relies on a just and effective revenue stream to finance state activities. In Islamic economics, most of the discussion on public revenue assumes an Islamic state which places Shariah as the primary guideline and, consequently, distinct taxpayers through their religious beliefs. In addition to that, the practice of many public revenue schemes are rare outcomes of independent innovations through maxims; they are often inherited revenue schemes by the Prophet (PBUH) or often practiced by Caliph Umar (RA) during his rule.

Given the contexts mentioned above, Abu Yusuf categorizes the sources of revenue into three (3) based on the Quran. The categories being (i) zakat revenue (ii) booty revenue (ghanimah) and (iii) taxation revenue (fay') (Azmi, 1995). As mentioned, the study of public revenue is very centric to practices of the Prophet (PBUH), which makes more extensive discussion lie in the technicality of the taxation schemes such as the rates that ought to be charged or whether a specific plot of land should be considered kharaj (land tax) or ushr land (agriculture income tax). A prime example of this is cited in Azmi (1995), where Abu Yusuf's opinion differs from that of Abu Hanifah on ushr exemptions. Abu Yusuf believes that ushr should only be charged onto preservable crops and not perishable crops such as yields and how ushr should only be collected if the produce reaches five wasaq (5 times 130.56 kg) whereby Abu Hanifah believes there should be no exemptions for agricultural taxation.





However, al-Ghazali proposes a unique principle of guiding additional taxes beyond that which was practiced by the Prophet (PBUH) and the rule of the Sahabah the companions. Al-Ghazali believes that the imposition of additional taxation schemes beyond that which is Shariah mandated should only be allowed if there are insufficient funds for the defense and security of the state (Ghazanfar, 1990). He poses two principal guidelines to make the decision of new impositions of taxes (i) for the defense of the Islamic state and (ii) to protect and improve the property of the orphan. Al-Ghazali, however, heavily notices how these principles were not practiced during the Seljuq dynasty where he opines their revenue collection to be invalid and premised on culture as opposed to the Shari'ah; this had birthed taxation systems that confiscated property and involved themselves with bribery and neglected the Shari'ah mandated forms of taxation as mentioned in the previous paragraph.

With that being said, taxation is not the only form of public revenue allowed in Islam. Khan (2000) lists that an Islamic government also finds revenue through investment dividends, fees, and fines, leasing of government assets, and even public debt; public debt was even practiced by the Prophet (PBUH) for the purpose of jihad or need fulfillment (Siddiqi as cited in Khan, 2000).

Maxims in Public Expenditure

According to Khan (2001), public interest (maslahah) remains the primary pursuit of the theory of public finance in Islam. Under this principle of maslahah, other more nuanced maxims are encompassed, including "removal of hardship should take precedence over the provision of ease", "the interest of the majority should take precedence over the interest in the minority" and "whoever receives a benefit should also pay the cost". Khan (2001) further recognizes that these maxims then translate to guidelines suggested by many economists in government expenditure, such as the adherence to the hierarchy of needs in spending, the avoidance of spending on luxuries and wasting as well the avoidance of nepotistic behaviors by the state. To achieve an Islamic state that maintains social welfare or masalih, al-Ghazali goes to the extent of curating a hierarchy of human needs to identify the Shari'ah mandated foundations of adequate life. The order of priorities being (i) religion (din), (ii) life or soul (nafs), (iii) family (nasl), (iv) property or wealth (mal) and (v) intellect (aql) (Ghazanfar, 1990). The protection of these elements all amounts to the preservation of the masalih.

In the submaxim of avoidance of extravagance, Ibn Khaldun's ideas are a testament to this maxim when he claims that extravagance in state spending would be detrimental. When the state expands its circle of nepotism, it will need to find larger pools of revenue which result in illegitimate taxations to the public and, finally, the disengagement of individuals from public activities and the potential dissolution of the state (Islahi, 2015). Despite it seeming like a slippery slope, modern contexts prove this true even in Malaysia, where extravagant spending in favor of the government members forces the people into an unjust taxation scheme which ultimately leads to distrust in the state by the people. Similarly, Al-Ghazali is against extravagance expenditure and has broadly defined extravagance as whatever spending that contradicts the Shari'ah and the spending that goes beyond sufficiency (kifayah) (Ghazanfar, 1990). This represents how avoidance of extravagance is a maxim in expenditure held by many Islamic economists.

Given the general objective of maslahah, it is crucial to note there are still Qur'anic mandated allocations of government expenditure, and the maxims above are used when there are no specifications of recipients in Qur'an or Sunnah. Abu Ubayd recognizes this through his two (2) categories of public expenditure: fay' and zakat whereby zakat is bound to a list of eight (8) specific beneficiaries, all of which are Muslims. Thus, fay' expenditure is what





encompasses the finances utilized in pursuit of *maslahah* as discussed earlier. This includes expenditures on defense, education, infrastructure, and other civil services.

SOURCES OF WESTERN SCHOLARSHIP

Western economics can be considered a secular thought or ideology as no dogmatic or religious texts bind it, and most economists theorize based on observations and personal thinking. This is presumably why the economic theories of the west can be characterized as polarizing; some of them believe in socialism and heavy state intervention, such as Karl Marx, and some of which swear by market mechanisms such as Murray Rothbard. Given that, most of their maxims originate from a particular worldview they hold or from a hypothetical point of view that inherits economic theories that are often premised on assumptions in the economy. Shoup (1959) suggests that “the theory of public finance is a familiar mixture of logic and introspection, grounded on assumptions that seem reasonably in accord with the economic life around us” (p.1020).

Aside from utilizing the logic of the mind, western economists often attempt to create economic theories from an impartial standpoint. Hope (1989), as cited in Kuehn (n.d.), has labeled the economic accounts of David Hume, Adam Smith, and Francis Hutcheson as that of a “disinterested and impartial spectator”. From positioning themselves into roles such as that, they curate ideologies on rights warranted by individuals, how the state ought to behave and attempt to decide whom the economy ought to serve. Presumably, without doctrine to guide the ethics or maxims legal in their economic study, an unbiased and ethical economic system must be born from a hypothetical position of impartiality. This point of view of the ‘observer’ also allows them to create their own sets of ethics and morality based on their rationale. This has birthed a historical group of western economists that are also renowned as thought philosophers.

Maxims in the Role of State

For economists such as Adam Smith, who weighs more favorably towards the *laissez-faire* economy, the role of the state should be one that was limited and concise. Smith was able to list multiple dysfunctionalities of a state, such as its partial interests, its redundantly large network of salaried officials, and the state’s often wasteful spending behaviors (Reisman, 1998). These observed behaviors led to the curation of Adam Smith’s maxims in the role of the state. Smith believed that the state should hold only two prominent roles: a productive state and a protective state. In terms of a productive state, Smith assigns the state the duty of setting up public institutions in favor of public welfare, especially those that give services in which an individual may not be able to undertake himself. Under the protective state, Smith argues that the state holds a duty to ensure natural liberty prevails by maintaining a strong defense of the state and a sound justice system (Reisman, 1998).

However, most of the ideologies on the necessity of state intervention were historical to the west. Under the post-war context of the 1970s, the west began a heavy shift that the state’s role was no longer necessary (Backhouse, 2015). Friedman (1968) argued that state intervention in recorrecting unemployment is short-term and would simply lead to future inflation issues. Economists such as Edmund Phelps (1967) and Robert Lucas (1976) echoed the same concerns of state intervention and similarly suggested the role of the state should be constrained (Backhouse, 2015). This goes to show the evolution of western economics and how in their current system, the private sector has little to no regulation by the state; this is especially





seen in the United States of America, which has birthed many monopolies alongside being notorious for corporate exploitation due to their lack of state intervention.

Maxims in Public Revenue

Consistent with the preliminary analysis on western economics not having a consistent source, the systems of public revenue echo this with a diverse set of maxims applied in many contexts of the west in many decades of existence. Beckett (1985) tells the evolution of tax in seventeenth and eighteenth-century England, where the primary form of public revenue was land tax. At the time, England required significant public funds, by order of the King, in order to finance their wars against France and other nations; this led to tax innovations to ensure a higher collection of public revenue. The forms of tax that were imposed were a land tax, excise tax, and poll tax, which often differed in rates depending on how much funds were required at that point in time.

However, some economists hold clear maxims and principles on accumulating public revenue, such as Adam Smith. According to Reisman (1998), Smith introduced four (4) central maxims of public revenue. The first is equality; this maxim holds the principle that every citizen has to contribute to the state in proportion to how much revenue they have enjoyed under the protection of the state. The second maxim is a certainty which suggests that the tax rate that ought to be borne by an individual cannot be random and must be a certain percentage. This is primarily a maxim to circumvent corrupted authorities that exploit state revenue. The third maxim was convenience; this is to say that the time and manner of the collection must be one that is convenient for the payer. It should never be the case that tax collectors simply demand collection at ridiculous times when one person finds it impossible to pay. The final maxim is economy in the collection. This maxim encompasses the principle that the amount to be taxed must be as little as possible (Resiman, 1998). Unfortunately, these maxims found much disagreement and dissatisfaction from other western economists, including Murray Rothbard, who claims that ‘taxation is robbery’ (Rothbard, 1973 as cited in Reisman, 1998. p. 379).

In terms of debt, despite public credit practices, such as in the context of 18th century England, some western economists were against the notion of public credit as a form of financing expenditure. Paganelli (2012) writes on David Hume’s stance on public credit, which suggests that a nation must stay away from public debt in order to ensure the nation is undestroyed. However, this ideology holds the assumption of the worst case of governance, meaning a biased and corrupted government. Even with this belief, Hume (1752), as cited in Paganelli (2012), recognizes that public debt should be allowed as a form of financing in times of necessity, such as wars.

Maxims on Public Expenditure

Eckstein (1961) claims that in curating an economic model for public expenditure, the general objective is often to maximize economic welfare. As a counter opinion, Simon (1957), as cited in Eckstein (1961) mentions that ‘maximizing’ might not be accurate as most individuals or corporations merely intend to achieve a satisfactory state of living or affairs. Regardless of the semantics, both opinions are similar in the sense that their objective is to ensure the public’s state of affairs is maintained through state funds. To specify what aspects of life the state ought to protect, we can utilize Adam Smith’s role of the state to identify what the state has to spend on. In fulfilling the first role of the state, which is to be a protective state, Smith claims that the duty of the state is twofold, defense and justice (Resiman, 1998). This implies that state expenditure should be spent on building a strong army and other defense technologies to ensure





that the state is able to protect its sovereignty if in danger. In terms of justice expenditure, the state has to ensure allocations towards the justice system, be it in law enforcement or the criminal courts themselves. To a large extent, this is also practiced in the real-world context, such as in 17th and 18th century England which spent a large portion of its public funds on wars (Beckett, 1985). However, the state should be wary of falling into the trap of redundantly partaking in warfare and colonization as that no longer acts as defense nor happens in the pursuit of sovereignty.

In addition to the role of protector, the state should also spend in pursuit of becoming a productive actor. In this regard, it is more explicitly in line with the idea of a 'welfare state' in the sense that the projects spent on by the government should be in the public's interest. Spending in this regard involves building national infrastructures that the public could utilize, such as bridges, roads, and harbors (Smith, 1776 as cited in Reisman, 1998). Even so, this could include services such as the postal service. Some of these expenditures become an obligation for the state because of certain scenarios in which the market has proven failure to provide these services elements.

TOWARDS AN INTEGRATED APPROACH

The Contrast between the Islamic and Western Economy

From the prior literature we have analyzed, it is not difficult to notice similarities and distinctions between Islamic and western public finance. Before reaching our version of an integrated approach, we will compare the two in general terms. The first is in terms of sources; it is pretty apparent that the legal maxims in Islamic public finance hold the Qur'an and Sunnah as its primary source of reference. The Muslim scholars do not freely think and innovate maxims without referencing the nas (religious text); Muslim scholars are often experts in jurisprudence, which gives them high authority to suggest and decide on the legality of certain economic decisions. On the other hand, we have western economists who also use ethics and philosophy as guidance but do not have any dogmatic or religious text to bind them. This forces innovation in their thinking, where they often analyze behavioral trends around them or use tools such as assuming hypothetical scenarios to arrive at a conclusion on what the public finance system should look like.

With this glaring distinction aside, there are actually minimal fundamental differences between the two contexts. If we excuse some extreme beliefs from both Islamic and western economists such as Murray Rothbard, who believes the economy should function exclusively by market mechanisms, we can see that they take inspiration from each other. The most fundamental similarity is in the idea of public expenditure; both worlds seem to have a clear view that public finance is intended to serve the public. In Islam, we see *maslahah* as the goal of public finance, while the west suggests a pursuit of the 'welfare state'. To extend on this, both worlds find grave importance in defense of a nation as well as the importance of civil services. In the ideal, both Islamic and western economics can satisfy their people's needs through public finance. Of course, some economists have more nuanced specifications on how to reach an adequate standard of living, such as al-Ghazali's hierarchy of needs; however, generally speaking, the two contexts are in line with the pursuit of public benefit.

To further prove how both ideologies are in tandem, neither believe in state supremacy either. They believe that the state exists out of necessity and ought to fulfill its duties and responsibilities to the people. Adam Smith was clear that overt state intervention should be deterred and limits its role to two entire scopes; a productive state and a protective state. This is also echoed through Abu Ubayd's definition of public finance, where the state (*imamah*) is





merely the administration (wilayah) of public funds. Looking at this, it is clear that an integrated system is not too far from reach.

The Harmonious Integration of Islamic and Western Economy

In order to achieve this, the model has to forgo discriminating factors and function under the modern context. This integrated approach, visualized in Table 1, has to assume a secular or non-religious actor as the state, as assuming an Islamic state will exclude a large portion of the contemporary governments from practicing Islamic public finance. Given this context, we must first recognize how much power must be given to the state. In this regard, it should be clear that the state has to be benevolent and void of corrupt behaviors. This is to ensure that the maxims suggested can function. With the context of a corrupt state, any effective economic model will fail as there will be acts of siphoning money and *maslahah* is never their priority of public finance. Note, however, that a benevolent state is not exclusive to one that is democratic; democracy has been a form of checks and balances to ensure corruption is avoided. With that being said, the Islamic governments of the past often inherited their authority but still practiced *syura'* (consultative council) and were not necessarily dictatorial by any means of the world.

Under those assumptions, the state must acknowledge that its authority is bound by duties and responsibilities to ensure the safety and well-being of the people. We can use Smith's characterizations of the state in which they ought to be the protectors and those that initiate production when the market fails. Next, when it comes to public revenue, the state may impose taxation on the people. If they are a Muslim state, they can utilize the *zakat* and *fay'* system. However, if they are not, provincial or community leaders may administer *zakat* amongst the Muslims. Beyond that, the state can tax based on the *maslahah* system of progressive taxation. This is also in line with Smith's suggestion of proportionality in income in his maxims of public revenue. Governments can also widen their revenue stream through land tax, import duties, and certain forms of excise tax. All of which should not be charged to the extent of troubling the taxpayers. The tax-paying system should also be considerate of the financial conditions of the taxpayer. In addition to taxation, the government should be wary of public credit. Despite it being practiced and allowed in times of necessity, we should not rely on it as a sustainable revenue stream as it may lead to further issues such as inflation or adverse effects on the valuation of a currency.

Finally, in public expenditure, the state must be clear of its objectives to maintain public welfare. This means to fair away from extravagance and luxuries, especially when people's basic needs are unmet. It is crucial to note that the government should not burden the people with taxation for the sake of extravagant spending by the state, as this is counterproductive to the purpose of public finance. The state should aid and assist in developmental projects, as Abu Ubayd categorizes the *fay'*s expenditure. The state has to recognize the community's needs and be able to fill in the gap, be it by providing infrastructures such as irrigation systems or roads or even services such as the postal service. In addition to this, it can be practiced that the state should be the provider of safety, which means allocations should be made to defense and justice alongside development expenditure.





Table 1: Contrasting Maxims between Islamic and Western Economy and the Elements of an Integrated System

ISLAMIC ECONOMY		WESTERN ECONOMY
Quran and Sunnah <i>Nas</i> (religious text) Islamic Jurisprudence	SOURCES OF LEGAL MAXIMS	Ethics and Philosophies
<i>Maslahah</i> (public interest) State Defense	OBJECTIVES OF PUBLIC FINANCE	Welfare state State Defense
State (<i>imamah</i>) acts as the administer (<i>wilayah</i>) of public funds	ROLE OF THE STATE	Productive state Protective state
Taxation mechanism such as <i>zakat</i> and <i>fay'</i>	PUBLIC REVENUE	Taxation based proportionally on income (progressive taxation)
Fulfill community needs including developmental projects Defense and Justice	PUBLIC EXPENDITURE	Fulfill community needs including developmental projects Defense and Justice
INTEGRATED SYSTEM		
Assumes secular or non-religious state that is void of corruption. Pursues public interest and creating a welfare state. Applies progressive taxation that does not burden its people. Expenditure is concentrated on matters to increase productivity (including developmental projects) and safety (including defense and justice).		

CONCLUSION

As Islamic economics struggle to reconcile itself with Western maxims and assimilate into the modern economic system, this paper has been able to visualize an integrated system which is backed by the shared maxims by both systems. After analyzing the ideologies brought forward by prominent historical economists from both the Islamic and Western world, it is evident the two systems, in theory have large similarities with one other, barring the distinction of the sources of maxims. Acknowledging that Islamic economy derives its maxims from Quranic text and Sunnah while Western economics is a very secular system, in application and theory, both systems seek a public finance system that fulfills societal needs and collect public revenue in the most benevolent and efficient way. Although further discussions can be had on how the integration is likely to happen in the modern economy, this paper has been able to reconcile the maxims and principles of Islamic and Western public finance systems - which allows the reimagining of a prospective harmonious system.

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