

A Comparative Genealogy of Public Office and Its Reflection in the Principle of Competence in Modern Public Law

*Mahdi Moradi Berelian**

DOI: <https://doi.org/10.22096/law.2026.2088842.2371>

Received Date: 16/05/2026 - Accepted Date: 16/06/2026

Abstract

In modern public law, a public authority may act only within the powers conferred by the legal order; any decision or action exceeding those limits is invalid or voidable. Competence is not merely a technical rule for limiting administrative authority. It is the legal form of a transformation from personal power to official power: a transformation through which authority is detached from the body, will, status, or privilege of the power-holder and attached to a legal, limited, attributable, and accountable office. The central question is how public office, in both the Latin-ecclesiastical and Islamic traditions of political law, provided the ground for distinguishing between the person who holds power and the office that bears it, and how this distinction was reflected in the theory of competence in modern public law. Using a descriptive-analytical, historical-conceptual, and comparative method, the article argues that competence in modern public law is the institutionalized form of a historical effort to restrain the personalization of public power, separate office from person, transform command into legal authority, and condition the validity of public action upon the limits of office. The article concludes that rereading competence through the genealogy of public office offers a deeper understanding of the rule of law, prohibition of arbitrariness, public responsibility, and judicial review of administrative action.

Keywords: public office; public competence; modern public law; rule of law; Wilāya; public stewardship.

* Assistant Professor, Faculty of Law and Political Science, University of Mazandaran, Babolsar, Iran.
Email: moradiberelian@gmail.com



Bibliography

- Allen, Jason Grant. *Non-Statutory Executive Powers and Judicial Review*. Cambridge: Cambridge University Press, 2022.
- Al-Māwardī, Abū al-Ḥasan. *Al-Aḥkām al-Sulṭāniyyah: The Laws of Islamic Governance*. Translated by Asadullah Yate. London: Ta-Ha Publishers, 1996.
- al-Najafi, Muhammad Hasan. *Jawahir al-Kalam fi Sharh Shara'i' al-Islam*. Edited by Abbas al-Quchani and Ali al-Akhundi. volume 40, Beirut: Dar Ihya' al-Turath al-Arabi, 1984. [In Arabic]
- Berman, Harold J. *Law and Revolution: The Formation of the Western Legal Tradition*. Cambridge, MA: Harvard University Press, 1983.
- Bovens, Mark. “Analysing and Assessing Accountability: A Conceptual Framework.” *European Law Journal* 13, no. 4 (July 2007): 447-468. <https://doi.org/10.1111/j.1468-0386.2007.00378.x>.
- Canning, John. *A History of Medieval Political Thought, 300–1450*. London: Routledge, 1996.
- Cook, Michael. *Commanding Right and Forbidding Wrong in Islamic Thought*. Cambridge: Cambridge University Press, 2000.
- Costa Lopez, Julia. “Political Authority in International Relations: Revisiting the Medieval Debate.” *International Organization* 74, no. 2 (2020): 222-252. <https://doi.org/10.1017/S0020818319000390>.
- Craig, Paul. “Ultra Vires and the Foundations of Judicial Review.” *The Cambridge Law Journal* 57, no. 1 (1998): 63-90. <https://doi.org/10.1017/S0008197300134397>.
- Crone, Patricia. *God's Rule: Government and Islam; Six Centuries of Medieval Islamic Political Thought*. New York: Columbia University Press, 2004.
- Dyzenhaus, David. *The Constitution of Law: Legality in a Time of Emergency*. Cambridge: Cambridge University Press, 2006.
- Fuller, Lon L. *The Morality of Law*. Rev. ed. New Haven: Yale University Press, 1969.
- Gierke, Otto von. *Political Theories of the Middle Age*. Translated by Frederic William Maitland. Cambridge: Cambridge University Press, 1900.
- Hallaq, Wael B. *Authority, Continuity and Change in Islamic Law*. Cambridge: Cambridge University Press, 2004.
- Hallaq, Wael B. *Sharī'a: Theory, Practice, Transformations*. Cambridge: Cambridge University Press, 2009.

- Hallaq, Wael B. *The Impossible State: Islam, Politics, and Modernity's Moral Predicament*. New York: Columbia University Press, 2013.
- Ibn Jama'ah, Badr al-Din. *Tahrir al-Ahkam fi Tadbir Ahl al-Islam*. Edited and Annotated by Fuad Abd al-Mun'im Ahmad. 3rd edition, Doha: Dar al-Thaqafah, 1988. [In Arabic]
- Ibn Taymiyyah, Ahmad ibn Abd al-Halim. *Al-Siyasah al-Shar'iyah fi Islah al-Ra'i wa-al-Ra'iyah*. Edited by Ali ibn Muhammad al-Umran. Reviewed by Sulayman ibn Abd Allah al-Umayr and Juday ibn Muhammad al-Juday. 4th edition. Riyadh: Dar Ata'at al-Ilm; Beirut: Dar Ibn Hazm, 2019. [In Arabic]
- Ibn Taymiyyah. *Public Duties in Islam: The Institution of the Hisba*. Translated by Muhtar Holland. Leicester: The Islamic Foundation, 1982.
- Jackson, Sherman A. *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb al-Dīn al-Qarāfī*. Leiden: Brill, 1996.
- John of Salisbury. *Policraticus: Of the Frivolities of Courtiers and the Footprints of Philosophers*. Edited and Translated by Cary J. Nederman. Cambridge: Cambridge University Press, 1990.
- Kantorowicz, Ernst H. *The King's Two Bodies: A Study in Medieval Political Theology*. Princeton: Princeton University Press, 1957.
- Loughlin, Martin. *The Idea of Public Law*. Oxford: Oxford University Press, 2003.
- Nasouri, Mazdak, and Ali Akbar Gorji Azandariani. "Analysis of the Concept of Jurisdiction and Its Scope in Light of the General Assembly Rulings of the Administrative Justice Court: Another Reflection." *Comparative Studies on Jurisprudence, Law, and Politics* 5, no. 1 (2023): 102-129. <https://doi.org/10.61838/csjpg.5.1.9>. [In Persian]
- Pennington, Kenneth. *The Prince and the Law, 1200–1600: Sovereignty and Rights in the Western Legal Tradition*. Berkeley: University of California Press, 1993.
- Raz, Joseph. *The Authority of Law: Essays on Law and Morality*. Oxford: Oxford University Press, 1979.
- Rostami, Vali, and Hamidreza Salimi. "Judicial Review over Exercising Discretionary Power in Iranian Administrative Law." *Quarterly Journal of Administrative Law* 7, no. 22 (Spring 2020): 105-123. <http://qjal.smtc.ac.ir/article-1-585-fa.html> [In Persian]
- Sluijs, Gijs. "Jurisdiction and Its Attribution in the Works of Diodorus Tuldenus and Matthaeus Wesenbecius." *Tijdschrift voor*

- Rechtsgeschiedenis / Revue d'Histoire du Droit / The Legal History Review* 90, no. 1-2 (2022): 222-249.
- Stilt, Kristen. *Islamic Law in Action: Authority, Discretion, and Everyday Experiences in Mamluk Egypt*. Oxford: Oxford University Press, 2011.
- Taylor, Quentin. "John of Salisbury, the Policraticus, and Political Thought." *Humanitas* 19, no. 1-2 (2006): 133-157.
- Tierney, Brian. *Religion, Law, and the Growth of Constitutional Thought, 1150–1650*. Cambridge: Cambridge University Press, 1982.
- Tyan, Emile. *Histoire de l'organisation judiciaire en pays d'Islam*. 2nd edition, Leiden: Brill, 1960. [In French]
- Ullmann, Walter. *Principles of Government and Politics in the Middle Ages*. 4th edition, London: Methuen, 1974.
- Vaezi, Mojtaba. "The Concept and Function of 'Competence' in Administrative Law." *Public Law Research* 25, no. 80 (2023): 207-238. <https://doi.org/10.22054/qjpl.2023.66576.2744>. [In Persian]
- Vaezi, Seyed Mojtaba. "A Comparative Study of the Criteria of the Competence of Administrative Judge in Iran and France." *Journal of Comparative Law* 0, no. 24 (July 2013): 25-46. [In Persian]
- Venice Commission. *Rule of Law Checklist*. Strasbourg: Council of Europe, 2016.
- Wade, H. W. R., and C. F. Forsyth. *Administrative Law*. 11th edition, Oxford: Oxford University Press, 2014.