

TILLIER Mathieu (dir.)

*Le pluralisme judiciaire dans l'Islam prémoderne*,

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This volume of the *BEO* begins with an appreciation by Mathieu Tillier and Abbès Zouache of Thierry Bianquis (1935-2014), for whom *Le pluralisme judiciaire* constitutes a memorial volume. Tillier's introduction to the volume itself is unusually successful in reading like an article, combining a history of the problem of multiple, overlapping judicial authorities with original observations, not just a futile attempt to identify common themes in a collection of articles that actually go off in many different directions. The first article to follow is by Steven Judd, "The jurisdictional limits of *qāḍī* courts during the Umayyad period" (p. 43-56). Judd finds that biographical dictionaries of the 'Abbāsīd period celebrate qadis for their independence, resisting pressure from governors and powerful families, but examples cited tend to concern family law. Qadis of the period apparently deferred to other authorities when it came to challenges to state power from rebels and heretics, murder, and the division of spoils, among other cases. Nejmeddine Hentati, "Le pluralisme judiciaire en Occident musulman médiéval et la place du cadi dans l'organisation judiciaire" (p. 57-78), stresses divisions of labour between qadis and market inspectors, qadis with wide and narrow jurisdictions, qadis and muftis, and so on. He gives the overwhelming impression of variation from century to century and place to place, even within the Islamic West.

Phillip I. Ackerman-Lieberman, "Legal pluralism among the court records of medieval Egypt" (p. 79-112), is based on Geniza documents, hence the relations of Jewish and Islamic courts in the Fāṭimid and Ayyūbid periods. Ackerman-Lieberman proposes that Jews fitted into the Fāṭimid judicial system almost as another school of law. By contrast, he infers from a dwindling of Judeo-Arabic documents admissible in both Jewish and Islamic courts from the early 1200s that both Muslim and Jewish élites increasingly resisted Jews's using Islamic courts in the Ayyūbid period. Élise Voguet, "De la justice institutionnelle au tribunal informel: le pouvoir judiciaire dans la *bādiya* au Maghreb médiéval" (p. 113-24), examines adjudication outside the cities by various persons (qadis, of course, but also muftis, governors' agents, tribal leaders, and various sorts of local arbitrators) in the 14th and 15th centuries. Mostly summarizing earlier work by herself, she finds like Hentati much

overlap and fluidity, adding that the muftis seem to have contributed an Islamizing theory to it all. Lucian Reinfandt, "Local judicial authorities in Umayyad Egypt (41-132/661-750)" (p. 127-46), draws on papyri to supply a serious lack in earlier studies of Islamic law, mainly documentation of ad hoc and customary procedures of conflict resolution. Literary sources depict early qadis as provincial administrators, not solely concerned with juridical matters. The term *qāḍī* does not even appear in Egyptian papyri before the 'Abbāsīd revolution, while extant papyri include appeals for adjudication to various officials who seem to have been equally responsible for taxation and infrastructure. They supervise both Muslims and non-Muslims, apparently in some independence of the governor in Fustat, never mind the caliph in Damascus.

Mathieu Tillier, "Califes, émirs et cadis: le droit califal et l'articulation de l'autorité judiciaire à l'époque umayyade" (p. 147-90), makes heavy use of 'Abd al-Razzāq, *al-Muṣannaf*, as well as the familiar judicial histories of Waki' and al-Kindī, Ibn 'Abd al-Ḥakam's biography of 'Umar ibn 'Abd al-'Azīz, and al-Balāḍurī, *Ansāb al-aṣrāf*, to document caliphal pretensions to juridical authority. He tends to vindicate Schacht's thesis that Umayyad administrative practice was a major early source of Islamic law. Crone and Hinds put their own spin on Schacht's thesis in the 1980s, making out that the caliphs enjoyed independent religious authority. Tillier does not contradict them, but finds that the overwhelming majority of interventions from caliphs reported by 'Abd al-Razzāq have a clear judicial connection, especially penal, also that they never appear to be more than one source among several. The record of caliphal letters also confirms the centrality of governors to judicial procedure in the Umayyad period.

Qāḍir Muḥammad Ḥasan, "*Al-ḥisba ḥilāl al-'ahd al-ayyūbī: dirāsa fī mahāmm al-muḥtasib al-siyāsiyya*" (p. 191-204), detects an expansion of the prerogatives of the *muḥtasib* in legal literature of the Ayyūbid period, such that he acquired authority to inflict *ḥadd* punishments as well as *ta'zīr*, especially in the service of suppressing heresy. I wish Ḥasan offered a complementary survey of references to *muḥtasibs'* activities in the chronicles (he does have a few references to persons apparently appointed simultaneously to the judgeship and *ḥisba*), also that he were a little more careful about the evolution of school positions over time and disagreement within schools. Talal Al-Azem, "A Mamluk handbook for judges and the doctrine of legal consequences (*al-muḡāb*)" (p. 205-26), provides a close reading of part of a book by the prominent Egyptian Ḥanafī Ibn Quṭlūbugā (d. 879/1474), explaining the limits of judicial authority, particularly

such as prevent the qadi of one school from overturning the legitimate ruling of the qadi of another school. Maaïke van Berkel, “Abbasid *mazālim* between theory and practice” (p. 229-42), reviews three *mazālim*-court cases of the late ninth and early tenth centuries with stress on how they do or do not conform to the model laid down by al-Māwardī in the eleventh century. Unsurprisingly (especially in light of a comprehensive survey by Mathieu Tillier in 2009), she finds that no such court sat continuously or was characterized by continuity of formal procedures.

Delfina Serrano, “Judicial pluralism under the ‘Berber empires’ (last quarter of the 11<sup>th</sup> century C.E. – first half of the 13<sup>th</sup> century C.E.)” (p. 243-74) begins with Andalusian judicial institutions in theory and practice before the Almoravids. To strengthen their support from Māliki jurists, these incoming Berber dynasts simplified the division of responsibilities in favour of qadis. However, they also used some other judicial officers, notably *ṣāhib al-aḥkām*, to keep the qadis in line. The Almohads ran a stronger state and reduced the power of qadis and legal writers as well. Serrano points to subtle omissions and inclusions in legal works of the time to demonstrate Māliki resistance to the ruler’s control. This seems a useful synthesis of recent scholarship deeply informed by knowledge of the sources. Finally, Zahir Bhalloo, “Judging the judge: judicial, competence in 19<sup>th</sup> century Iran” (p. 275-93), reviews a long-running property dispute in Qajar Persia, 1835-50. In theory, the authorities were supposed to enforce the opinions of *muḡtahids*. “In reality”, says Bhalloo, “there were many Qāḡār authorities whose *ḥukm*-s were regularly enforced by the Qāḡār authorities who certainly did not possess the qualities of a qualified jurist. At the same time there were other scholars ... whose *ḥukm*-s were not enforced by the authorities who were qualified jurists” (p. 290). Bhalloo finds recognition of the political realities in legal works that justify reliance on lesser jurists in some cases, but the theoretical interest looks scant to me — better one investigate why the state did enforce some judgments but not others.

To conclude, I think I should say that Tillier’s contribution strikes me as the most significant, combining extensive research with relevance to an on-going scholarly debate. Serrano’s, meanwhile, is the most pleasing example of tracing continuity and discontinuity across time. If this volume is greater than the sum of its parts, I suppose its added value comes in piling up so much evidence of discontinuity across time and space. Of course, this suggests the further question of whether the judiciary in the premodern Islamic world is a useful field of study. Most of these essays treat jurisprudence, but they

continually find that competing jurisdictions were under-theorized and that theory did not determine the jurisdictional hierarchy. It is evidently useful to read the theoretical literature known in the time and place one is studying; however, I tend to think in the end that the judiciaries of particular states are more fruitfully studied alongside other aspects of those states than alongside the judiciaries of distant other states. I also suspect that the theme of the legal scholars’ resistance to rulers is overemphasized (most conspicuously by Hentati), partly because the sources mostly come from those legal scholars, partly because we scholars today easily recognize them as kindred spirits and reflexively sympathize.

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