Tillier Mathieu
L'invention du cadi.
La justice des musulmans,
des juifs et des chrétiens
aux premiers siècles de l'Islam

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Mathieu Tillier here addresses the earliest hiss tory of the Islamic judgeship, under the Umayyad dynasty and before. Like others at the leading edge of scholarship, he recognizes that the Muslims were long just a small minority in the new Islamic empire. A salient question is of course the extent to which Islamic institutions were alternative developments of the institutions the Muslims encountered when they burst out of Arabia in the 630s and '40s. Unfortunately, little evidence of judicial or other state institutions survives from the seventh century itself, either from Islamic or non-Islamic sources. One reason is that the seventh century was one of deep crisis for the Byzantine and Sasanian empires themselves (the latter even disappeared), so Byzantine and Sasanian records of their administrative practices are scant to non-existent. Another reason is that narrative histories on the Islamic side are from much later, plainly rife with back projection of current norms, uninterested in the administrative practice of the subject peoples, and actively hostile to the idea that early Islamic institutions had been radically different from theirs. Determined to do the best he can, Tillier starts with the region where there does survive a substantial amount of evidence directly from the early period, mainly Egypt. Thanks to a peculiar juxtaposition of dry desert with a rich agricultural zone, a substantial number of documents on papyrus have survived there by accident; that is, without any long-term institutional effort to preserve them. At that, there is much the *papyri* do not tell us. They document judicial practice in Upper Egypt but not in the Delta. They are difficult to interpret, naturally presuming judicial procedures and official hierarchies rather than describing them for us. In the second half of the seventh century, it appears that an Arab governor gave commands at the pinnacle of authority with a duke below him and a pagarch at the bottom. From the 710s, it appears that the governor commanded the pagarch (always still a Christian) directly; from the 730s, that the governor commanded a lieutenant governor or a pagarch who in turn instructed local judges. The term *qāḍī* does not appear in the *papyri* until the Abbasid period. Is this because the term was coined only later and projected backwards in the interest of disguising a more inclusive early tradition, as Fred Donner has maintained, or because the earliest qadis did not communicate by writing, as Tillier proposes? It seems impossible to decide with certainty. There are also some *papyri* from Khurasan, but Tillier is able to conclude even less about the early evolution of judicial procedure there.

Turning to the biographical literature in Arabic, Tillier detects back projection. For example, he proposes that what al-Ša`bī (d. 104/722-3?) is quoted as relating of Šurayḥ (d. ca. 80/699-700) is congruent with the doctrine of the later Kufan qadi ʿAbd Allāh b. Šubruma (d. 144/761-2), suggesting that it was projected back from his time and place. On the other hand, Tillier observes that Ibn ʿAsākir's long biography of Abū l-Dardā' (d. 32/652-3?) says much of his piety, little of his practice as a judge. He infers that biographers did not freely invent material to fill gaps in preserved knowledge. More tentatively, he also infers from lack of information about qadis in the second half of the seventh century (even of accurate lists) that they were either too low in the administrative hierarchy to merit keeping information about or too peripheral to the Muslims' conception of their state.

Drawing mainly on biographical literature, Tillier surveys the qadis' customs and procedures, especially in the eighth century. For example, he finds that qadis usually judged in mosques from the ʿAbbāsid period in Basra, from around 140/757 in Medina, from 120/738 in Old Cairo. Perhaps, he suggests, the retreat to the mosques was part of the increasing independence of the judiciary from the rulers. He reviews two early references to a *qiṣṣa*, a petition of sorts: Ibn Sīrīn (Basran, d. 110/729) reports that Šurayḥ accepted one, Wakī` b. al-Ǧarrāḥ (Kufan, d. 196/812?) that he refused one. If there was any regional character to disagreement on this point, he says, it must go back to the time of Ibn Sīrīn, the first quarter of the eighth century. Regarding the number of witnesses who constitute proof (*al-bayyina*), Tillier identifies the oldest Basran practice as a simple matter of deciding for whichever side has more. This gave way, he says, when Iyās b. Mu`āwiya (d. 122/739-40) restricted it to two witnesses or one plus the plaintiff. Tillier thinks the alternative of one plus the plaintiff was more firmly established in Medina than Basra, but this depends on taking Mālik's word for it as to local practice, of which I have become wary (in agreement with al-Šāfi`ī, by the way). Tillier goes on to review disagreements over who may testify (minors, women, slaves, and non-Muslims) and the system of selecting qualified witnesses (effectually notaries) in advance.

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A major part of the book then surveys the justice of non-Muslims before and after the conquests. It appears that the Eastern churches had some *ad hoc* involvement in justice beyond canon law governing religious (i.e. monks, nuns, priests, and so on). The new Islamic régime forced them to develop more comprehensive procedures. Unfortunately, as observed before, our documentation for their institutions across the seventh century is as poor as for the Muslims', so little can be said with certainty. Surprisingly to me, Tillier reports much the same of the Rabbinic Jewish sources. It seems that Jewish courts were not necessarily staffed by rabbis, which may account for the surviving sources' lack of interest in them. There are no strong geographical differences to earliest documentable Islamic practice, anyway, such as would reflect strong Arabian, Byzantine, or Sasanian substrates. Governors were expected to dispense justice, so it was natural for them to appoint qadis if they did not directly decide cases themselves. The earliest qadis were not indigenous to their territories but a temporary élite appointed by the central power, hence considerable uniformity of practice across the empire. This said, Iraq seems to have been the main centre of innovation in the historical period, with notable rivalry between Basra and Kufa. Law in the Hijaz seems to have been mainly reactive to Iraqi developments (confirming what Schacht and Brunschvig made out).

With *L'invention du cadi*, Tillier confirms himself as the premier historian of Islamic judgeship in the early medieval period, following on *Les cadis d'Iraq et l'État abbasside (132/750-334/945)*, Publications de l'IFEAD 235 (Damascus: IFPO, 2009). Errors of transliteration are rare; e.g. '*mudda`ī* et un *mudda`ī `alay-hi*' (512n.) for *mudda`ā `alay-hi*. Tillier's appendix listing appointed qadis to the ninth century are for now definitive, although not expressly acknowledging contrary reports that (I take it) Tillier does not credit; e.g. that Ismā`īl b. Ḥammād b. Abī Ḥanīfa (d. 212/827-8) succeeded al-Qāsim b. Ma`n as qadi for Kufa, asserted by the Ḥanafi biographer al-Ṣaymarī (*Aḫbār*, 140). His case for the importance of the caliphs in shaping Islamic law seems to me as strong as the evidence allows, which is to say not ideally strong but preferable to available alternatives (notably, as Tillier stresses, simple adaptation of whatever local practices the Muslims encountered). There are still some puzzling discrepancies between the Qur'an and classical Islamic judicial practice, such as stress on written documents in the former, on oral testimony in the latter. There is certainly evidence enough to say that the classical system was unknown in Arabia before the conquests. If Tillier's careful survey leaves us in the dark about much of where the classical system came from, it probably means that historians will remain in the dark for a long time. He tells us a great deal about its development across the first half of the eighth century.

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