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The *Qāḍī* Before the Judge: The Social Use of Eschatology in Muslim Courts

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It was [also] said that the reason why Iblīs perished was that before Adam, the jinn were on earth. God sent Iblīs to act among them as judge (*qāḍī*). He did so with fairness (*bi-l-ḥaqq*) for a thousand years, so that he eventually was called “arbiter” (*ḥakam*). God called him thus and revealed to him his name. At that, he became filled with haughtiness. He became self-important and caused terror, hostility, and hatred among those to whom God had sent him as arbiter. This is assumed to have caused them to fight so bitterly on earth for two thousand years that their horses waded in the blood of [those killed].¹

The imagery of Muslim eschatology has long been neglected by historians, who regarded it as folkloric and without historical significance. Scholars have recently begun to take a renewed interest in eschatological thought. The Muslim conception of the hereafter is now better understood thanks to Christian Lange’s study of punishment in the Muslim imagination. In describing the map of hell, its creatures and the tortures they inflicted to the condemned,² Lange followed the footsteps of major contributions to the history of Occidental representations, such as Le Goff’s original history of the Purgatory in the 1980s.³ Le Goff argued that the imagery of the afterlife was closely linked to terrestrial judicial realities. “The other world was supposed to correct the inequalities and injustices of this one.”⁴ Similarly, Lange highlights the importance of high-ranking Muslims, whether they be religious scholars or rulers, who appear in the eschatological *ḥadīth* related to hell. The interpretation of such traditions, however, is problematic. Lange suggests that traditions promising punishment of unjust rulers in the hereafter can be interpreted as encouraging an attitude of political quietism in this world. On the other hand, he also shows that eschatological traditions express anger

¹ Al-Ṭabarī, *Ta’rīkh al-rusul wa-l-mulūk* (éd. M.J. de Goeje; Leiden: Brill, 1879–1901), 1:85. Trans. F. Rosenthal, in *The History of al-Ṭabarī, Volume 1: General Introduction and From the Creation to the Flood* (Albany: SUNY Press, 1989), 256–57 (with adaptations).

² C. Lange, *Justice, Punishment and the Medieval Muslim Imagination* (Cambridge: Cambridge University Press, 2008), part. II.

³ J. Le Goff, *La naissance du Purgatoire* (Paris: Gallimard, 1980).

⁴ *Ibid.*, 284.

and resentment against the state apparatus, and that they potentially embody criticisms against the social and political *status quo*.⁵ I have elsewhere argued that traditions describing *qāḍīs* in hell were put into circulation by traditionalists insisting on the personal responsibility of judges, and that they had to be interpreted within the framework of a broader discourse that highlighted the necessity of judicial independence of *qāḍīs*.⁶

Literature depicting *qāḍīs* in the afterlife is of particular interest, for they represent one of the main categories of officials described as appearing before God on Judgment Day. In a striking reversal of fortune, the earthly judge becomes the defendant before the supreme Judge. In this paper, I will mainly draw on biographical dictionaries and chronicles referring to Muslim courts of the ninth and tenth centuries C.E. to cast a question on the social use of this image. Whereas Le Goff argues that justice in the hereafter largely mirrors the model of earthly justice,⁷ I shall attempt to show that the representation of God's justice was in fact used as a religious expedient to reform the behavior of the judiciary and of the judicial organization. My argument is that allusions to eschatological indictments of Muslim judges went beyond literary and theoretical dimensions; they also had direct impact on judicial practices. Incessant reminder of how judges will themselves be judged on Judgment Day played an important role on the shaping and re-shaping of Islamic courtrooms.

1. Introductory Remarks: Courtrooms as Gateways to Hell

Since early Islam, Muslim jurists regarded courts as more than just a place where earthly disputes were resolved. They were a place where the spiritual destiny of people appearing before the *qāḍī* was also at stake. According to certain jurists, litigants should not comply with wrongfully entered verdicts by a judge. For example, if a divorced woman failed to prove her case against her husband and the *qāḍī* judged that she was still married to the man who had divorced her, the husband would be committing fornication (*zinā*) if he continued having sexual intercourse with her. He would therefore have to answer to God for his crime.⁸

Moreover, the judicial procedure relied to a large extent on the fear of hell. If a claimant could not prove his right by testimonies (*bayyina*), the judge would ask the defendant to take oath. If he swore that he was innocent, the judge passed a decision in his favor. If the defendant refused to take oath, the judge could either pass judgment against him or defer the oath to the claimant. Either way, taking oath was a dangerous thing to do, since it potentially exposed the swearer to God's wrath; the perjurer would have to answer to God in the hereafter.⁹ Narratives describe early *qāḍīs* as semi-legendary Shurayḥ, reminding defendants

⁵ Lange, *Justice*, 161.

⁶ M. Tillier, *Les cadis d'Iraq et l'État abbasside (132/750-334/945)* (Damascus: Ifpo, 2009), 625–31.

⁷ Le Goff, *La naissance du Purgatoire*, 297–98.

⁸ Al-Shāfi'ī, *Kitāb al-umm* (ed. Rif'at Fawzī 'Abd al-Muṭṭalib; 11 vols.; al-Manṣūra: Dār al-wafā', 2001), 8:97–98. Al-Shāfi'ī mentions however that other unnamed jurists disagree with this position and consider that the *qāḍī*'s decision can allow what in truth should be forbidden and forbid what in truth should be allowed. Al-Shāfi'ī, *Kitāb al-umm*, 8:101–2.

⁹ J. Pedersen and Y. Linant de Bellefonds, "Ḳasam," *Encyclopaedia of Islam* (2d ed.), 4:687.

that they would go to hell if they committed perjury.¹⁰ Fear of involuntary perjury was a major reason for litigants' refusal to take oath.¹¹

Likewise, testimony was the most powerful type of evidence. *Qādīs* relied largely on the words of witnesses to pass judgment. Witnesses testified before the court without swearing to tell the truth, and, until late eighth century C.E., judges had few means of verifying their reliability. It was therefore only natural for *qādīs* to repeatedly admonish witnesses, reminding them that they were the actual judges in the case.¹² In Kūfa, around the year 105/723, Muḥārib b. Dithār once warned dubious witnesses by citing prophetic *ḥadīths* stating that false witnesses were destined for hell.¹³ Unlike those under oath, witnesses were not always conscious of the danger of their position, and such admonitions were apparently successful in early Muslim society sensitive to eschatological expectations. In Muḥārib b. Dithār's case for example, witnesses retracted their testimony. In a society where institutional means were scarce, it is likely that arousing eschatological fear was one of the only means of maintaining order and imposing compliance with law.

What is striking is that eschatological fear was not only instilled from above by state institutions, but also manipulated by its subjects. In Islamic sources mainly written by religious scholars who did not immediately belong to the ruling class, *qādīs* appear as the main target of God's wrath on Judgment Day.

2. *Qādīs* Before God: *Ḥadīth* and Its Interpretation

2.1. *Non-Muslim Antecedents*

Dispensing justice gives the judge an enormous power over society; this authority can sometimes lead to great temptations. It is no wonder, therefore, that different civilizations shared the motif of judges being themselves accountable before divine forces. In late antique Christianity, canon laws already insisted on the ecclesiastical judge's responsibility in the hereafter. In the *Didascalia apostolorum*, a pseudo-apostolic text written in Greek in the third century C.E. and translated into Syriac in the early fourth century, deacons and bishops who were asked to arbitrate disputes between Christians are repeatedly warned against the temptation of partiality: "You shall render an account in the day of the Lord,"¹⁴ "Let them be judged before you as you also are surely to be judged,"¹⁵ "Thus judge as you also are surely to be judged."¹⁶ If a judge only listens to one party in the absence of the other and condemns the defendant on the basis of false testimonies, the judge "shall be partner before God of him that

¹⁰ Wakī', *Akhbār al-quḍāt* (ed. 'Abd al-'Azīz Muṣṭafā al-Marāghī; 3 vols.; Cairo: Maṭba'at al-sa'āda, 1947–1950), 2:318.

¹¹ See for example Wakī', *Akhbār al-quḍāt*, 3:10.

¹² Ibn Sa'd, *al-Ṭabaqāt al-kubrā* (8 vols.; Beirut: Dār Ṣādir, 1968), 6:133, 136; Wakī', *Akhbār al-quḍāt*, 2:354–55. Cf. R. Brunschvig, "Le système de la preuve en droit musulman," in *Études d'islamologie* (2 vols.; Paris: Maisonneuve et Larose, 1976), 2:207.

¹³ Wakī', *Akhbār al-quḍāt*, 3:34.

¹⁴ A. Vööbus, ed. and trans., *The Didascalia Apostolorum in Syriac* (2 vols.; Louvain: CSCO, 1979), 1:122/2:115.

¹⁵ *Ibid.*, 1:130/2:121.

¹⁶ *Ibid.*, 1:132/2:122. See also A. Vööbus, ed. and trans., *The Synodicon in the West Syrian Tradition* (2 vols.; Louvain: CSCO, 1976), 2:156.

brought the false witness and with him [he] shall be tormented by God.”¹⁷ “And if you have justly judged, you shall receive the reward of justice from God, both now and in that [world] to come. But if you have judged unjustly, so also shall you receive of God a retribution.”¹⁸ The idea of permanent divine surveillance of the judge and of his accountability before God was already nascent in the Gospel of Matthew quoted in the *Didascalia*: “With what judgment you judge, you shall be judged” (Matt 7: 2).¹⁹ A few centuries later, East-Syriac canon law developed the same idea, drawing explicit parallels between the earthly judge and the divine One.²⁰ The synod of the catholicos Ezechiel in 576²¹ demanded that priests remain incorruptible when dispensing justice, for “their judgment is the judgment of God”; for a judge, accepting a gift within a lawsuit would signify “his own condemnation” and “would provoke the ire of God” (*n’ayar ‘alaw l-rūgzō alōhōyō*).²²

2.2. Muslim Ḥadīths and Non-Prophetic Reports

In Islam, a series of *ḥadīths* (prophetic reports) depicting Muslim judges on Judgment Day were probably put into circulation during the course of the eighth century C.E. and collected systematically by authors of biographic works on *qāḍīs* in the ninth and early tenth centuries.²³ Inclusion of these reports in biographies or books dedicated to *qāḍīs* is of particular significance; such books cannot be read as simple “histories” of Muslim judgeship as they reformulate their history in order to reshape the judicial institution according to the prevailing ideologies and representations of their authors’ time. From this perspective, insistence on trial of *qāḍīs* in the hereafter is particularly striking in Wakī’s *Akhbār al-quḍāt*, a three-volume history of judges from several provinces (especially Medina, Baṣra and Kūfa) up until the third/ninth century. Here we shall examine these reports.

1. Under the authority of a long chain of transmitters ending with al-Sha‘bī < Masrūq < Ibn Mas‘ūd < Prophet: “Any judge who has dispensed justice among people will be brought by an angel holding him by his neck on the Day of resurrection. [The angel] will secure him on the edge of hell (*jahannam*), and will then raise his head. If he is told “throw him!,” he will throw him in an abyss in which [the judge] will be falling down during? forty springs.”²⁴

¹⁷ Vööbus, *Didascalia Apostolorum*, 1:135/2:124.

¹⁸ Vööbus, *Didascalia Apostolorum*, 1:138/2:126. See also Vööbus, *Synodicon*, 2:157/159.

¹⁹ Vööbus, *Didascalia Apostolorum*, 1:133/2:123; Vööbus, *Synodicon*, 2:165/170.

²⁰ ܩܘܕܝܫܐ ܕܥܙܝܚܐ ܕܥܙܝܚܐ ܕܥܙܝܚܐ J.-B. Chabot, ed. and trans., *Synodicon Orientale ou Recueil de synodes nestoriens* (Paris: Librairie C. Klincksieck, 1902), 123/382.

²¹ See J. Dauvillier, “Chaldéen (droit),” in *Dictionnaire du droit canonique* (ed. R. Naz ; Paris: Librairie Letouzey et Ané, 1942), 3:320–21. On the catholicos Ezechiel, see ‘Amr b. Mattā, *Akhbār faṭārika kursī al-mashriq min Kitāb al-majdal*, in Maris Amri et Slibae, *De Patriarchis Nestorianorum Commentaria* (ed. H. Gismondi; 2 vols.; Rome: F. de Luigi, 1896), 2:43–44.

²² Chabot, *Synodicon Orientale*, 123/382. It is noteworthy that a similar theme was later developed in a thirteen-century Coptic legal manual in which Ibn al-‘Assāl (d. before 658/1260) threatens the bad ecclesiastical judge with God’s wrath and reminds him that God will ask him about his judicial practice on the Last Day [Ibn al-‘Assāl, *Kitāb al-qawānīn* (ed. Jirjīs Filūthā’ūs ‘Awd; Cairo: Maṭba‘at al-tawfiq, n.d.), 363].

²³ Tillier, *Les cadis d’Iraq*, 627–28.

²⁴ Wakī, *Akhbār al-quḍāt*, 1:19. *Ḥadīths* depicting similar situations do not usually mention *qāḍīs*, but rather “men (presumably *amīrs*) in charge of ten people [or more].” See for example al-Ṭabarānī, *al-Mu‘jam al-kabīr* (20 vols.; Mosul: Maktabat al-zahrā’, 1983), 12:135.

2. Shurayḥ b. ‘Ubayd < [Anonymous] b. Masrūq < Mu‘ādh b. Jabal < Prophet: “Let the *qāḍī* slip in hell on a sledge longer than the way to Aden.”²⁵

3. Şafwān b. Sulaym < al-A‘raj < Abū Hurayra < Prophet: “Any of God’s creatures who dispenses justice among three [people] will be brought on the Day of Judgment with his hands tied up to his neck. Justice (*al-‘adl*) will either unfasten his bounds or give him up [to hell].”²⁶

4. Şālih b. Sarḥ < ‘Imrān b. Ḥiṭṭān < ‘Ā’isha < Prophet: “The just *qāḍī* will be brought on the Day of Judgment and he will receive such a punishment that he will wish he had never judged between two litigants.”²⁷

Wakī‘ quotes non-prophetic reports that follow the same idea. Muḥammad b. Wāsi‘ (a famous Baṣrian ascetic, d. 123 or 127/740–41 or 744–45)²⁸ is supposed to have heard from an anonymous source: “The first to be called for judgment (*ḥisāb*) on the Day of Resurrection will be the *qāḍīs*.”²⁹ This reports is modeled on prophetic traditions in which the first to be judged are Adam,³⁰ the angel Isrāfīl³¹ or even the Prophet Muḥammad himself.³² Some reports mention that the punishment of bad *qāḍīs* will even begin before the Last Judgment, while the judge is still in his tomb. “When the arbiter (*ḥakam*) dies, every judgment he passed will be presented before him in his tomb. If there is any disagreement about one of his decisions, he will be beaten so hard with an iron rod (*mirzaba min al-ḥadīd*) that his tomb will cough.”³³

Muslim traditions depicting *qāḍīs* on Judgment Day do not describe physical confrontation with God. Moreover, these judges/defendants have no adversary in the form of claimants. The reader infers God’s presence in the passages, but His presence is only represented by His servants, who execute His silent decision. The divine courtroom is not the mere reproduction of an earthly one. Beyond the theological reasons which could explain the absence of God’s physical representation in these reports, procedures followed at the divine court are ontologically different to those prescribed by earthly courts. Whereas a Muslim judge must

²⁵ Wakī‘, *Akhbār al-quḍāt*, 1:20.

²⁶ Wakī‘, *Akhbār al-quḍāt*, 1:20. Cf. Ibn Ḥanbal, *Musnad Aḥmad b. Ḥanbal* (ed. Shu‘ayb al-Arna’ūt and ‘Ādil Murshid; 52 vols.; Beirut: Mu’assasat al-risāla, 1995), 36:635; 37:444; al-Dārimī, *Sunan al-Dārimī*, (Beirut: Dār al-kitāb al-‘arabī, 1407 H.), 2:313. In these books, the *ḥadīth* does not deal with *qāḍīs* but with *amīrs*.

²⁷ Wakī‘, *Akhbār al-quḍāt*, 1:21. Cf. Ibn Ḥibbān, *Ṣaḥīḥ Ibn Ḥibbān* (ed. Shu‘ayb al-Arna’ūt; 18 vols.; Beirut: Mu’assasat al-risāla, 1993), 11:439; al-Bayḥaqī, *Sunan al-Bayḥaqī al-kubrā* (ed. Muḥammad ‘Abd al-Qādir ‘Aṭā; 10 vols.; Mecca: Dār al-bāz, 1994), 10:96.

²⁸ Ibn Ḥibbān, *al-Thiqāt* (ed. al-Sayyid Sharaf al-Dīn Aḥmad; 9 vols.; Beirut: Dār al-fikr, 1975), 7:366; idem, *Mashāḥir ‘ulamā’ al-amṣār* (ed. Majdī b. Mansūr b. Sayyid al-Shūrā; Beirut: Dār al-kutub al-‘ilmiyya, 1995), 180; al-Dhahabī, *Siyar a‘lām al-nubalā’* (ed. Shu‘ayb al-Arnā’ūt and Muḥammad Nu‘aym al-‘Araqsūsī; 23 vols.; Beirut: Mu’assasat al-risāla, 1413 H.), 6:119; Ibn Ḥajar, *Tahdhīb al-tahdhīb* (14 vols.; Beirut: Dār al-fikr, 1984), 9:441. According to Ibn Ḥajar, Muḥammad b. Wāsi‘ served as a chief of the police (*ṣāḥib al-shurṭa*) in Baṣra, but always refused to become a *qāḍī*.

²⁹ Wakī‘, *Akhbār al-quḍāt*, 1:22.

³⁰ Al-Bukhārī, *al-Ṣaḥīḥ* (ed. Muṣṭafā Dīb al-Bughā; 6 vols.; al-Yamāma-Beirut: Dār Ibn Kathīr, 1987), 5:2392; Ibn Ḥanbal, *Musnad Aḥmad b. Ḥanbal*, 14:488.

³¹ Ibn al-Mubārak, *Kitāb al-zuhd* (ed. Ḥabīb al-Raḥmān al-A‘zamī; Beirut: Dār al-kutub al-‘ilmiyya, 2004), 433. On this angel, see A.J. Wensinck, “Isrāfīl,” *Encyclopaedia of Islam* (2d ed.), 4:211.

³² Al-Ḥakīm al-Tirmidhī, *Nawādir al-uṣūl fī ma‘rifat aḥādīth al-rasūl* (2 vols.; Beirut: Dār al-jīl, 1992), 2:57.

³³ Wakī‘, *Akhbār al-quḍāt*, 1:32.

rely on external evidence such as testimonies and oaths that can be misleading, God's all-embracing knowledge allows him to judge rightly and immediately, without need for any further evidence.

2.3. Traditions and Their Historical Context

Parallels between Christian and Muslim traditions do not mean that the Islamic imagery of *qāḍīs* appearing before God on the Last Day is necessarily influenced by Christian (or other religious) representations. Both Christians and Muslims shared eschatological expectations in which God's judgment (the etymological meaning of the word "*dīn*") was a major component. It is possible that both legal systems reached the logical conclusion that judges, more than anyone else, should be accountable for their individual choices and decisions before God's celestial court. Islamic traditions must therefore be read in the historical context of their production.

These *ḥadīths* can be interpreted in two complementary ways. On the one hand, Joseph van Ess suggests that these traditions were put into circulation by legal experts belonging to the class of *mawālī* (clients, i.e., non-Arab Muslims). They were meant to be warnings against Arab judges who usually monopolized judgeship in the Umayyad and early Abbasid period. These legal experts considered many of the early *qāḍīs* to be incompetent, and as a kind of social revenge, they tried to frighten them by insisting on their personal responsibility before God.³⁴

In turn, these traditions also served the *qāḍīs* themselves. I have argued elsewhere that such reports should be read in the context of repeated attempts by the *qāḍīs* to detach themselves from political rulers and to gain more autonomy in their judgments. The participation of several *qāḍīs* from the late Umayyad and early Abbasid period in the transmission of similar *ḥadīths* suggests that they were interested in highlighting the eschatological dangers faced by judges.³⁵ By insisting on personal responsibility of judges before God, both theoreticians and practitioners of Islamic law may have attempted to undermine the authority of political rulers (governors, caliphs) over judges. This was the first step on a long path which eventually led to the first formulation of a theory of judicial autonomy of judgeship in the fourth/tenth century.³⁶

3. Anticipating the Divine Judgment: A Social Means of Pressure?

3.1. The Qāḍīs' Receptivity to Eschatological Threats

According to narrative sources, the idea that serving as a judge would jeopardize the soul in the hereafter spread at an early date in the milieu of legal scholars. Did Muslim judges believe these sayings that threatened them with God's wrath—be it in the form of popular sayings or, later, as more formal *ḥadīths*? A few historical reports suggest that the fear of divine punishment at times instilled real fear in the minds of *qāḍīs*. According to Ibn 'Asākir, the Companion Abū l-Dardā' (d. 32/652?), who became one of the first *qāḍīs* of Damascus,

³⁴ J. van Ess, "La liberté du juge dans le milieu basrien du VIII^e siècle," in *La notion de liberté au Moyen Age: Islam, Byzance, Occident* (Paris: Les Belles Lettres, 1985), 27.

³⁵ Tillier, *Les cadis d'Iraq*, 628.

³⁶ *Ibid.*, 633ff.

asked his camel not to sue him before God on the Last Judgment, for he had never maltreated it.³⁷ When ‘Abd al-Raḥmān b. Ḥujayra (69–83/688–89–702) was appointed as *qāḍī* of Fustāṭ, in Egypt, his father is reported to have said: “We belong to God and to Him we will return (Qur’ān, 2:156)! This man is lost!”³⁸ In the late seventh century, the Kūfan judge ‘Abd Allāh b. ‘Utba (65–67/684–85–686–87?) is supposed to have refused a favor that someone, presumably a litigant, had asked him in secret, arguing that he would be condemned to burn in hell if he accepted.³⁹ According to Wakī‘, the Baṣran judge Iyās b. Mu‘āwiya (95–101/713–720?) wept when he learnt of a report—not yet attributed to the Prophet—informing that only one *qāḍī* out of three would go to paradise.⁴⁰ A little later, the *qāḍī* of Damascus, Yazīd b. Abī Mālīk (d. 130/747–48?), stated that any man who believes in God and in the Last Judgment shall see God’s face on the Day of resurrection, except the arbiter (*ḥakam*) who is unjust in his rulings due to his blindness.⁴¹

3.2. Eschatology as a Means of Pressure

Religious, pious opposition was especially keen to spread eschatological threats about *qāḍīs*. Scholars reproached them for being too close to the government (*al-sultān*); they claimed the *qāḍīs* had betrayed their knowledge by accepting to serve the ruler as judges. Pious men began threatening *qāḍīs* with hell as early as the Umayyad period. Wakī‘ relates how the Baṣran ascetic (*zāhid*) Muḥammad b. Wāsi‘ al-Azdī (d. 123/741 or 127/744–45)⁴² went to the *qāḍī* Bilāl b. Abī Burda (110–20/728–38) to warn him that the judge’s own father, Abū Burda,⁴³ had accordingly transmitted a prophetic *ḥadīth*: “There is in hell a valley called Habhab,⁴⁴ where God could place any tyrant (*jabbār*).” Then he told him: “Beware, Bilāl, not to be one of those whom He will place there!”⁴⁵ In the third/ninth century, the preacher Ghulām Khalīl (d. 275/888)⁴⁶ belonged to those who “insulted judges and testified against them that they would go to hell.”⁴⁷ The verb “to testify” (*shahida*), a judicial term, suggests that pious scholars like Ghulām Khalīl regarded judges’ trials before God as inevitable conclusions already underway.

In Oriental Christianity as well as in Islamic *ḥadīth*, the image of judges being judged by God was used first and foremost by the highest authorities (bishops/‘*ulamā*’) in order to

³⁷ Ibn ‘Asākir, *Ta’rīkh Madīnat Dimashq* (ed. ‘Umar b. Gharāma al-‘Amrawī; 80 vols.; Beirut: Dār al-fikr, 1995), 47:185.

³⁸ Al-Kindī, *Akhbār quḍāt Miṣr*, in *Kitāb al-wulāt wa-kitāb al-quḍāt* (ed. R. Guest; Leiden: Brill, 1912), 315. French translation by M. Tillier, *Histoire des cadis égyptiens* (Cairo: Institut français d’archéologie orientale, 2012), 66.

³⁹ Wakī‘, *Akhbār al-quḍāt*, 2:406.

⁴⁰ Ibid., 1:313. Cf. al-Balādhurī, *Ansāb al-ashraf* (ed. Suhayl Zakkār and Riyāḍ Zirīklī; 13 vols.; Beirut: Dār al-fikr, 1996), 11:339.

⁴¹ Ibn ‘Asākir, *Ta’rīkh Madīnat Dimashq*, 65:293.

⁴² On this scholar, see *supra*, footnote 28.

⁴³ On this follower, see J. Schacht, “al-Ash‘arī, Abū Burda,” *Encyclopaedia of Islam* (2d ed.), 1:693.

⁴⁴ On this valley, see Lange, *Justice*, 160.

⁴⁵ Wakī‘, *Akhbār al-quḍāt*, 2:25.

⁴⁶ On this scholar, see C. Melchert, “The Transition from Asceticism to Mysticism at the Middle of the Ninth Century C.E.,” *Studia Islamica* 83 (1996): 65–66.

⁴⁷ Al-Qāḍī ‘Iyād, *Tarīb al-madārik wa-taqrīb al-masālik li-ma‘rifat a‘lām madhhab Mālīk* (ed. Aḥmad Bakīr Maḥmūd; 4 vols.; Beirut-Tripoli: Dār maktabat al-ḥayāt-Dār maktabat al-fikr, 1967), 3:172.

develop a judicial system that respected the very laws they were trying to impose on society. Islamic sources, however, show that this image did not necessarily emanate from the top. At the level of the ordinary people, litigants also appropriated the idea that *qāḍīs* were accountable for their decisions before God. Several reports dating from the first centuries of Islam illustrate the practical use of this eschatological responsibility in Islamic courts.

In the early second/eighth century, the Medinese judge Saʿd b. Ibrāhīm al-Zuhrī (appointed in 104/722-23?) warned a poet called Qind/Find that he would punish him severely if he carried on leading a dissolute life. One day, the *qāḍī* heard Qind singing (which could already be regarded as reprehensible) and discovered that he was also drinking. Without any lawsuit or other evidence, the judge immediately ordered to seize him and to inflict upon him a harsh punishment. The poet tried to provoke the judge's mercy and compassion by appealing to the example of some of his illustrious ancestors. When he saw that his appeal produced no effect, the poet changed his strategy and pleaded: "I beg you, for the sake of these young men who will go to hell, and to whom you belong yourself!" He even called him "scorpions' tails," an insult which referred literally to the long and curved moustaches of the *qāḍī*, but which could also be interpreted as a curse, his moustaches foreshadowing the scorpions that are supposed to pullulate in hell.⁴⁸ We do not know if this appeal was successful – a certain doubt lingers that it was not. In Egypt too, during the same 720s, a litigant dissatisfied with a judge's handling of his complaint, reminded him that the just God was looking at him while he dispensed justice. Here again the strategy failed and the *qāḍī* threw the insolent litigant in jail.⁴⁹

A few decades later, a poet played upon the judge's fear of damnation in a more successful way. The growing influence of traditionalism, in the second part of the second/eighth century,⁵⁰ had probably led to a larger dissemination of threatening *ḥadīths* against rulers in general or *qāḍīs* in particular. As a result, judges sometimes became more receptive to such pleas. In Mecca, around 170/786, judge Muḥammad b. ʿAbd al-Raḥmān al-Awqaṣ al-Makhzūmī prayed one day in the mosque and begged (*daʿā*) God to release him from the punishment of hell. A poet called al-Dārimī had previously brought a case before the judge, but the latter was reluctant to give a decision. When he heard the judge's prayer, the poet exclaimed: "Do you deserve to be absolved? No, by God! May God not give you this favor, praise be upon Him!" He then identified himself and reproached the judge for his injustice. "Do not say that!" the *qāḍī* said immediately. "I decide in your favor!"⁵¹ Playing with the judge's fear of divine punishment helped the poet obtain the judgment that he had been seeking without success.

In late eighth-century Egypt, a poet (called Ishāq b. Muʿādh b. Mujāhid b. Khayr) went to judge al-Mufaḍḍal b. Faḍāla for a lawsuit. Instead of taking out from his sleeve the petition which he had prepared for the *qāḍī*, he took out a satiric poem in which he was threatening al-Mufaḍḍal: "Fear God and listen to me, Mufaḍḍal, for you will have to answer for your

⁴⁸ Wakīʿ, *Akḥbār al-quḍāt*, 1:165. On scorpions in hell, see Lange, *Justice*, 128, 129, 135, 141.

⁴⁹ Al-Kindī, *Akḥbār quḍāt Miṣr*, 341 / trans. 96.

⁵⁰ "Traditionalism" refers here to the trend of *aṣḥāb al-ḥadīth*, in which scholars would found their jurisprudence exclusively on *ḥadīth*. See C. Melchert, *The Formation of the Sunni Schools of Law, 9th-10th Centuries C.E.* (Leiden: Brill, 1997), 1.

⁵¹ Wakīʿ, *Akḥbār al-quḍāt*, 1:264.

judgments (*'an faṣl al-qadā' sa-tus'al*)!"⁵² Was it really a mistake, or did the poet do it on purpose? Be that as it may, it did not work this time: the *qādī* became angry when he read those lines and expelled the poet from the courtroom.⁵³ In another poem, Ishāq b. Mu'adh attacked again the same *qādī*: "You will have to stand [before God] (*mawqūf*) and to give an account [of your deeds] (*muḥāsab*)!"⁵⁴ Subsequent verses directly accused the *qādī* of acting unjustly when the poet lodged a complaint before him.⁵⁵ Later, another poet composed a satirical piece about the *qādī* al-'Umarī (185–94/801–10) in which he reproached him for his injustice and added: "Do not be in a hurry, O Abū l-Nadā,⁵⁶ for you are running to your death. Certainly, hooked sticks sent from hell will catch you when you die."⁵⁷

Poets did not only threaten *qādīs* with divine punishment. By spreading satirical verses directed against judges, they could sully their reputations and cast doubt on their ability to render justice. In other words, they could transform a *qādī*'s life into a social hell on earth. It is probably not by chance, therefore, that poets figure prominently in such reports. For a renowned poet, announcing the judge's trial in the hereafter was part of a wider rhetorical strategy with which he could put pressure on *qādīs* and obtain, at least, a just ruling. More than anyone else, poets could translate eschatological threats into social ones.

It is remarkable, however, that external pressure and recalls of divine punishment were not always necessary. If we believe certain narrative sources that insist on exemplary behavior and piety of exceptional judges, the idea that they would be put on trial for their judicial practice was deeply rooted in some *qādīs*' minds. According to al-Subkī, in early tenth-century Egypt, two litigants came one day to the Shāfi'ī judge Abū 'Ubayd 'Alī b. al-Ḥusayn b. Ḥarb (293–311/906–24) disputing about a debt. One of them, called Ibrāhīm, had borrowed five dinars from a friend but could not repay him. When they entered the courtroom, however, Ibrāhīm spoke faster than his creditor and claimed that the latter actually owed him some money. The creditor was so surprised that he burst into laughter. The judge got angry at this reaction and shouted: "What are you laughing at? May God end your joy forever, for heaven's sake! How do you dare laugh in a court (*majlis*) in which God is looking at you? You are laughing while your judge is between paradise and hell!" The judge decided to pay the reclaimed debt to Ibrāhīm out of his own money and ordered both litigants to leave the court.⁵⁸

The Islamic judicial system and its theoretically definitive decisions, with no formal system of appeal,⁵⁹ gave judges an important power over society. Litigants who feared injustice could sometimes bring their complaints directly before political authorities (during *mazālim* hearings), but most of the time the main means of pressure to obtain a just ruling was

⁵² Al-Kindī, *Akhbār quḍāt Miṣr*, 379 / trans. 143.

⁵³ Ibid., 380 / trans. 143.

⁵⁴ Ibid., 380 / trans. 144.

⁵⁵ Ibid., 380–81 / trans. 144.

⁵⁶ A nickname which referred to a famous thief at that time. Ibid., 401 / trans. 168.

⁵⁷ Ibid.

⁵⁸ Al-Subkī, *Ṭabaqāt al-shāfi'īyya al-kubrā* (ed. Maḥmūd Muḥammad al-Tanāḥī and 'Abd al-Fattāḥ Muḥammad al-Ḥulw; 10 vols.; Cairo: Dār iḥyā' al-kutub al-'arabiyya, n.d.), 3:453. On Abū 'Ubayd, see also M. Tillier, *Vies des cadis de Miṣr* (Cairo: Institut français d'archéologie orientale, 2002), 85–97.

⁵⁹ B. Johansen, "Le jugement comme preuve : preuve juridique et vérité religieuse dans le droit islamique hanéfite," *Studia Islamica* 72 (1990): 13–15.

to appeal to the judge's personal responsibility before God. If we believe the last narrative by al-Subkī, common efforts of pious men and litigants (especially those who had poetical skills) brought about some results, and some *qāḍīs* preferred paying out of their own pocket rather than running the risk of rendering a wrong decision.

4. *Qāḍīs'* Piety: When God Attends the Earthly Court

Muslim judges' sense of responsibility before God carried wide implications for the court in terms of its organization. From the early Abbasid period (second half of the eighth century C.E.), textual evidence suggests that some *qāḍīs* were explicitly placing themselves under God's supervision when dispensing justice—usually in the mosque. The judge of Kūfa Sharīk b. 'Abd Allāh (153–69 or 170/770–785-6 or 786-7) used to read in silence a petition (*ruq'a*) that he took from his archive-box (*qimaṭr*) at the beginning of every hearing. The petition, which may have been sent by a litigant, carried an admonition to the judge, urging him to follow the right path and to fear the Last Judgment.⁶⁰ Sharīk's successor in Kūfa, al-Qāsim b. Ma'n, referred to a petition he kept in his *qimaṭr*, upon which were written three poetic verses asking him to show respect to morality and religion.⁶¹ In Arabic sources, those verses are alternatively attributed to the *qāḍī* himself or to the poet Sa'īd b. Ḥamīd (d. 250/864?).⁶² Even if it had been initially sent by a litigant, the fact that the judge read the petition every day suggests that the idea of his own judgment in the hereafter served as a guide or governing principle to his presiding over the court. Such behavior at the beginning of hearings was later theorized in Islamic law. In his *Adab al-qāḍī*—the first surviving handbook on judicial administration—the Ḥanafī jurist al-Khaṣṣāf (d. 261/874) recommended that *qāḍīs* open judicial hearings by a ritual prayer of two *rak'as*. He should then ask (*yad'ū*) God to assist him (*an yuwaffiqa-hu*), to guide him toward what is right, and to prevent him from disobeying his commands.⁶³

Qāḍīs were only human beings, prone to committing mistakes and therefore susceptible to being judged for such lapses. This idea penetrated the Islamic conception of justice to the extent that the whole material organization of the court was affected. Generally speaking, judicial administration was reinforced under the Abbasids. Centralization of appointments, salary increases, and professionalization of judgeship gradually gave the *qāḍīs* a high standing. This had an impact on the way they held their hearings. As important rulers, judges came to abandon simple furniture made of rush mats upon which Umayyad *qāḍīs* usually sat. Instead, they adopted more luxurious carpets and cushions which allowed them to sit in a higher and more visible position. This pomp was representative of their belonging to the high-

⁶⁰ Al-Khaṭīb, *Ta'rīkh Madīnat al-Salām* (ed. Bashshār 'Awwād Ma'rūf; 17 vols.; Beirut: Dār al-gharb al-islāmī, 2001), 10:399. Cf. Ibn al-Jawzī, *al-Muntaẓam fī tawārīkh al-mulūk wa-l-umam* (ed. Suhayl Zakkār; 13 vols.; Beirut: Dār al-fikr, 1995), 5:419.

⁶¹ Wakī', *Akhbār al-quḍāt*, 3:178.

⁶² Al-Marzubānī, *Nūr al-qabas al-mukhtaṣar min al-muqtabas* (ed. R. Sellheim; Wiesbaden: Franz Steiner, 1964), 280; al-Māwardī, *Adab al-dunyā wa-l-dīn* (Beirut: Dār al-kutub al-'ilmiyya, 1987), 111. On this poet, see Kh.-D. al-Ziriklī, *al-A'lām: Qāmūs tarājīm li-ashhar al-rijāl wa-l-nisā' min al-'arab wa-l-musta'ribīn wa-l-mustashriqīn* (8 vols.; Beirut: Dār al-'ilm li-l-malāyīn, 1997), 3:93.

⁶³ Al-Khaṣṣāf, *Kitāb adab al-qāḍī* (ed. F. Ziyāda; Cairo: The American University in Cairo Press, 1978), 85–86.

standing state apparatus, and, on a symbolic level, established them as equals to other state appointees such as financial or military governors.⁶⁴

There was, however, resistance to this evolution. For some reason, certain *qādīs* rejected such secular symbols of their office. In the early ninth century, the Baghdadi judge ‘Alī b. Zabyān refused the comfortable carpets used by his predecessors and seated himself on a simple mat of reeds (*bāriya*).⁶⁵ A few decades later, ‘Abd Allāh b. Muḥammad al-Khalanjī (*qādī* of al-Sharqiyya, a quarter of Baghdad, 228–237/842–3–851–2) also created an ascetic judicial theatre, as if he wanted to magnify the religious nature of his office. Wakī‘, and later Ibn ‘Asākir, describe how this judge sat in the mosque at the foot of a column. Between two lawsuits, he relaxed his back on the column and remained totally motionless until the next litigants arrived.⁶⁶

Through such ascetic attitude, the *qādī* showed how his personal piety guided his judicial practice: he would be able to stand before God without fear on the Day of Judgment. There was, however, a discrepancy between this pious attitude and the political reality of judgeship. Al-Khalanjī was *qādī* at a time when judges’ authority over Muslim society was reinforced by their role in the *miḥna* (inquisition): they were asked by the caliphate to examine witnesses (*shuhūd*) and to reject testimony of those who did not believe in the theological dogma of creation of the Qur’ān. Their role in this inquisition, which had important economic and social consequences, was bitterly resented by many Muslims. Al-Khalanjī’s attitude could therefore appear to be hypocritical. Some people, at least, did not take him seriously and took revenge by making fun of him. One day, jokers put some glue on the part of the column where the judge used to lay his head between two trials. When al-Khalanjī sat up, his turban stuck to the column and the *qādī* remained bare-headed—a most degrading humiliation.⁶⁷ The ascetic attitude of some judges was criticized in an ironic manner, in the same period, by al-Jāḥiẓ (d. 255/868–69) in his famous depiction of the *qādī* of Baṣra ‘Abd Allāh b. Sawwār (192–98/807–8–813–14). According to al-Jāḥiẓ, this pious judge could sit all day long, straight and motionless, without moving a muscle and talking as little as possible.⁶⁸ By not moving, the *qādī* probably wished to meet the requirements of Islamic law by avoiding any ambiguous movement that could otherwise have been interpreted as his preference for one litigant over another.⁶⁹ With his ascetic posture, he embodied righteousness and justice before God and the Muslim people. However, al-Jāḥiẓ suggests that his exaggerated attitude was actually a sign of megalomania and could even appear as blasphemous: what human being could pretend to command such full control of his body? The *qādī* had to acknowledge his weakness when, one day, a simple fly landed on his nose and annoyed him to such an extent that he eventually lost his temper. The almighty God had recalled him to more humility.⁷⁰

⁶⁴ See my forthcoming book, *Rendre la justice aux deux premiers siècles de l’Islam*.

⁶⁵ Wakī‘, *Akhbār al-quḍāt*, 3:286; Ibn al-Jawzī, *al-Muntaẓam*, 5:562.

⁶⁶ Ibn ‘Asākir, *Ta’rīkh Dimashq*, 32:379–80. Cf. Wakī‘, *Akhbār al-quḍāt*, 3:290.

⁶⁷ Ibn ‘Asākir, *Ta’rīkh Dimashq*, 32:379–80. Cf. Wakī‘, *Akhbār al-quḍāt*, 3:290.

⁶⁸ Al-Jāḥiẓ, *Kitāb al-ḥayawān* (ed. ‘Abd al-Salām Muḥammad Hārūn; 8 vols.; Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1965), 3:343–44.

⁶⁹ M. Tillier, “La société abbasside au miroir du tribunal : égalité juridique et hiérarchie sociale,” *Annales Islamologiques* 42 (2008): 158.

⁷⁰ Al-Jāḥiẓ, *Kitāb al-ḥayawān*, 3:344–45.

Conclusion

God was the lawgiver in early Islam. Implementation of His law, however, was in the hands of human beings who were prone to occasional mistakes, and easily influenced by passions and wayward social and political networks that could lead them astray. *Qādīs* were appointed by political rulers (i.e., provincial governors and caliphs), and in practice Muslim subjects had very few means of exerting pressure against an unjust judge. If they could not easily appeal to the ruler, they could at least appeal to the judge's sense of responsibility. Muslims drew on eschatological thinking, which expanded the Qur'ānic idea of divine judgment on the Day of Resurrection. The divine courtroom reflected the earthly one; however, by a mirror effect, roles were reversed in the afterlife. Judges would be judged, and victims of judges would testify against them. God's court was the last and definitive court of appeal.

This image, which has parallels in Syrian canon law, spread probably as early as the Umayyad period in the form of sayings or/and prophetic traditions. Pious scholars who opposed corrupted practices of judges and their commitment with secular authorities were especially keen to promulgate these sayings and to emphasize the spiritual dangers that threatened *qādīs*. Examples from the late eighth and ninth centuries C.E. suggest that judges were (or became) receptive to these threats. Litigants fearing an unjust ruling reminded their judges of their fate, and some judges would apparently pay from their own monies rather than take the risk of rendering a wrong decision. Avoiding judgment through fear of God's wrath developed simultaneously in Jewish courts, where amicable settlements became the rule.⁷¹ This practice remained probably an exception in Islamic courts. Some jurists argued that judges who always relied on appearances to give their judgment had nothing to fear: they would be rewarded by God for their effort (*ijtihād*) even if they had pronounced a wrong decision.⁷² It is clear, however, that this image of a Muslim judge appearing before God had a certain impact on the organization of the courts. Whereas there was general tendency, under the Abbasids, to highlight the judges' authority over the community, some *qādīs* adopted an ascetic behavior and rejected secular signs of their authority. Fear, modesty, and humility would not save them from committing any mistake, but it would, at least, save them from God's wrath.

⁷¹ S. D. Goitein, *A Mediterranean Society: The Jewish Communities of the Arab World as Portrayed in the Documents of the Cairo Geniza: Volume II, The Community* (Berkeley: University of California Press, 1971), 334–35.

⁷² Al-Shāfi'ī, *al-Risāla* (ed. Aḥmad Muḥammad Shākir; n.p.: Dār al-fikr, n.d.), 494, 496–97.