PUBLIC VIOLENCE IN
ISLAMIC SOCIETIES

Power, Discipline, and the Construction of the Public Sphere, 7th–19th Centuries CE

Edited by Christian Lange and Maribel Fierro
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Abbreviations

AESC Annales: Économies, Sociétés, Civilisations
AI Annales Islamologiques
BSOAS Bulletin of the School of Oriental and African Studies
EI3 The Encyclopaedia of Islam, 3rd edition, ed. G. Krämer et al. (Leiden: Brill, 2007–)
EQ The Encyclopaedia of the Qurʾān, ed. J. D. McAuliffe et al. (Leiden: Brill, 2001–6)
ILS Islamic Law and Society
IOS Israel Oriental Studies
JAOS Journal of the American Oriental Society
JRAS Journal of the Royal Asiatic Society
SI Studia Islamica
Initiated by sovereigns, the mazālim have often been analyzed exclusively in the context of caliphal court. In the same way, and in spite of the permeability pointed out by Tyan – that existed between the ordinary judgeship and the mazālim, there has been little research done on the role played by qādis in the mazālim, perhaps because the dividing line between the person of the qādi and the person of the gāhib al-mazālim is still considered as a general and necessary rule. The mazālim, however, were not at all confined to the capital city; they had been established in smaller towns or in provinces since the Abbāsid era. The link between the qādis and the mazālim’s jurisdictions remains a mystery. Re-exploring the institution’s central and provincial dealings will help us understand how the governing power managed to instrumentalize justice and impose or legalize certain forms of state violence.

**Provincial mazālim and political strategies**

**THE MAZĀLIM IN PROVINCIAL TOWNS**

In provincial towns, mazālim courts were held in different ways. The sovereign himself could act as a judge, but such cases occurred only under special circumstances. Most of the time, the sovereign would delegate his power to a third party, usually an officer specially appointed for this purpose or a qādi already in place. As we shall see further on, these options were anything but unbiased. The mazālim came across as the ultimate expression of sovereign justice, and, indeed the institution was often a major issue in the competition between contenders for legitimacy.

To the extent that they could be identified, the Table lists the names of judges sitting in mazālim courts in Iraq and Egypt and occasionally in Syria and Iran, and reveals the difficulty of establishing an uninterrupted list of incumbents. There is even some doubt that the institution was actually represented in provinces on a permanent basis. In addition, most ašhāb al-mazālim did not hold mazālim functions concurrently with their judicial functions. Some of them (such as al-Hasan b. ‘Umāra, al-Hasan b. ʿAbd Allāh b. al-Hasan al-ʿAnbari, or ʿAbd Allāh b. Muhāmmad b. Abī Yazid al-Khalanjī) were also qādis during their lifetimes, but at different points in time. Therefore, the mazālim appear, in most cases, as a separate judicial institution. In Iraq, some qādis were vested with mazālim powers, but only on a mission basis rather than as a permanent function. Ubayd Allāh b. al-Hasan was not assigned mazālim duties throughout the duration of his judicial duties in Baṣra: while prayers, or khutba, are mentioned as his official duty by biographers, mazālim are not. The only indication

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* I would like to thank Christian Lange, Maribel Fierro and Christopher Melchert for their comments and suggestions on the original version of this chapter.
### Judges sitting in maṣālim courts

<table>
<thead>
<tr>
<th>City or Province</th>
<th>Qādī</th>
<th>Not a Qādī</th>
<th>Appointed by</th>
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<tbody>
<tr>
<td>Başra</td>
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</table>
| Sometimes between 156/773 and 167/873–4 | "Ubayd Allāh b. al-Hasan al-ʿAbnari
| 202–10/817–25 | Ishāq b. Ismāʿil
| 223–39/837–53 | Ahmad b. Ṭabir
| 256/870 | Ibn Ḥṣayyba | Šāʾida b. Makhlaḍ
| Kūfa |          |            |              |
| 132/750 (? | Ibn Shubrana
| Under al-Manṣūr | al-Hasan b. ʿUmāra
| Fārs |          |            |              |
| Under al-Maʿmūn |          |            |              |
| Jabal | Before 228/842–3 | ʿAbd Allāh b. Muhammad b. Ṭabir al-Khalanjī
| Marw | Before 235/849–50 | Ahmad b. ʿUmar b. Ḥāfiẓ al-Wāḥi
| Damas | Under al-Muʿtaṣim | Abūl Ṣalāh al-Ẓāhirī
| 273/886 or 275/887 | Ibn Ḥṣayyba | Khamrāwāyih (governor)
| Fustāṭ | 211–12/826–7 | ʿAthāf b. Ghazzān
| 215/830 | Ishāq b. Ismāʿil

### The Maṣālim Jurisdiction Under the ʿAbbāsids (cont.)

<table>
<thead>
<tr>
<th>City or Province</th>
<th>Qādī</th>
<th>Not a Qādī</th>
<th>Appointed by</th>
</tr>
</thead>
</table>
| 215–16/830–1 | Muhammad b. ʿAbd Allāh b. Abū ʿAbd Allāh | Kaydār (governor)
| 235/850 | Ishāq b. Yahyā b. Maʿṣūd b. ʿAbd Allāh al-Dāhir | Khumrāwāyih (governor)
| 274–8/887–92 | Muhammad b. ʿAbd b. Ḥabīb | Khamrāwāyih (governor)
| 278–8/892–6 | Muhammad b. ʿAbd Allāh b. Ḥabīb | Khamrāwāyih (governor)
| 283/896 | Ibn Ṭughān | Muhammad b. Sulaymān (governor)
| 292/905 | Muhammad b. ʿAbd Allāh b. Ḥabīb | Muhammad b. Sulaymān (governor)
| 324–7/936–9 | Ibn al-Haddād | Al-Ikhshid (governor)
| 331/943 | Afīq b. al-Ḥasan (Bakrān) | Al-Ikhshid (governor)
| 340/951– | ʿAbd Allāh b. Muhammad b. al-Khaṭib | Kāfīr (governor)
| 362/973 | ʿAbd Allāh b. Muhammad b. Abū Thawbān | Al-Muʿizz (Fatimid caliph)

3. During this period, the governor of Başra was Muhammad b. Sulaymān. See Ch. Pellat, Le milieu byzantin et le formation de Gābiṣ (Paris: Adrien-Maisonneuve, 1951), 281.
8. (Notes continued overleaf)
Judges sitting in maqālim courts (cont.)

before Ibn Qatayba was born, but he probably means “[Dhīj]-Wizaratayn”, which was the nickname of the vizier Sā’d b. Makhlih. See al-Zirikli, al-A’lām (Beirut: Dār al-’Ilm li-Irāq, 1997), 3:187. See also EI2, s.v. Ibn Ktabay. 3:844–5 (G. Le Comte).


12. al-Khatīb, Ta’rīkh Bağhdād, 4:284.


14. ibid., 64:117.


23. ibid., 480–1.


comes from a dialogue between the qādī and the caliph al-Mahdi, pieced together by Wādi‘, in which the qādī explained, “I received a letter from the Commander of Believers, who ordered me to investigate unjust acts (maqālim) committed against the people of Baṣra, to listen to their trustees (nusqābāt) and to write him back to inform him of the facts I established. That is what I did.” After a few decades later, Āḥmad b. Rīyāh appears to be formally vested with the role, but once again, Wādi‘ says that it was entrusted to him only in the aftermath of his appointment as a qādī. His role in the maqālim also suggests that he was assigned the responsibility as a subsidiary duty. In the Iraqi ansār, at least, the maqālim probably did not constitute a permanent institution. They were not, they seem, full-time functions, but rather, temporary mandates, possibly assigned to qādis by the governing power, perhaps in the event of a crisis or particularly delicate matters. To entrust a qādī with the task of “redressing wrongs”, was indeed a way for the caliph to reinforce his delegate’s authority against high-ranking public figures who could not otherwise – under normal cir-

The maqālim jurisdiction under the ‘Abbāsid

In the early ‘Abbāsid era, the institution of maqālim was regularly used by the caliphate as a means to affirm (or reaffirm) authority. In the Iraqi ansār, ʾashāb al-maqālim were appointed mainly in times of crisis. Initially, the maqālim may have helped legitimize new powers. In southern Iraq, landed property seemed to be deeply affected by the revolution: the land of the Marwānids, in particular, was confiscated and redistributed to ‘Abbāsid family members. Land claims were countless in the following years – as some tried to take possession of land while others protested against expropriations that they considered to be unfair – and the establishment of local maqālim courts therefore likely gave the dynasty the means to control discontent and tensions which might fuel rebellion. According to Wādi‘, the governor of Kūfah, ʾĪsā b. Mūsā, appointed Ṭabṭabāb al-Muhammad b. Shubruma to the town maqālim court, while he assigned judicial responsibilities to Ibn Abī Laylā. According to Ibn Qatayba, however, Ibn Shubruma’s jurisdiction extended primarily to the sawād of this miṣr (i.e. the surrounding countryside), and he acted in al-Mansūr’s name. Yet, Ibn Sa’d considers that the governor entrusted him with qaḍā’ ʿard al-kharājī. Such a strange jurisdiction appears to be unique in the history of Iraq; it implies that Ibn Shubruma was in charge of dealing with specific rural conflicts at that time. A little later, in Baṣra, the caliph al-Mahdi assigned maqālim duties to the qādī ʿUbayd Allāh b. ʿAbd al-Hāsān al-Anbarī (in office from 156/773 to ca 166/782–3). This role is also mentioned in a rural context: under the caliph’s mandate, the qādī may have rendered several decisions on the status of nearby land parcels.

What is more, the appointment of a ʾāṣīb al-maṣālim made it possible for the caliphate to reinstall its authority when confronted with a qādī’s excessive autonomy or noncompliance with the official ideology of the ruling power. After defying al-Mahdi’s instructions, ʿUbayd Allāh b. ʿAbd al-Hāsān himself subjected to maqālim procedures. Summoned on appeal by a plaintiff, al-Mahdi ordered the ʿamīl of Baṣra to call a meeting of the local fuqahā’ to look into one of his decisions. The qādī’s excessive independence and charismatic personality left their mark on Baṣra’s memory, and it is no coincidence that a ʾāṣīb al-maṣālim was appointed

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at the end of his office or early during the next one. It was to replace the image of an uncooperative justice system with one that was more dependent on central power. His successor, Fazāra b. 'Imrān, is remembered as an idiot,\textsuperscript{21} which may reflect the fact that public opinion understood the political stakes of such a rearrangement and proceeded to discredit him.

This interpretation is confirmed by several events during the mīhna. The period of inquisition was particularly critical for qādīs, who had to adhere to the official dogma of the creation of the Qur'ān. The caliph, in an effort to restore his authority, weakened by the traditionalist movement, was determined to affirm his control over the judicial system and through it, over the whole of society.\textsuperscript{22} The mażālim played an important role in the struggle for authority. The judicial system in Damascus was at one time neglected, to the benefit of the mażālim institution. Under al-Mu'taṣīm (r. 218–27/833–42), the qādī Muḥammad b. Yahyā b. Ḥamza was dismissed, but he was not replaced by another qādī until the arrival of al-Mutawakkil. Instead, the chief qādī, Ahmad b. Abī Du'ād – head of the mīhna – appointed two sāhib al-mażālim successively, Abū Muslim al-Naʿīm and Yahyā b. al-Ḥasan al-Ṭabarānī.\textsuperscript{23} According to al-Dhahabī, al-Ma'mūn had ordered the governor of Damascus to impose the mīhna on the qādī Muḥammad b. Yahyā; the latter had acknowledged the dogma of the created Qur'ān and agreed to put his shuhūd to the test. But he was also actively involved in tribal rivalries between Yamanīs and Qaysīs in Damascus and surrounding areas, and was biased in his handling of justice.\textsuperscript{24} On the other hand, despite his acknowledgment of the created Qur'ān, there may be reason to believe that he was closer to traditionalist circles than it seemed. He was indeed known as a traditionalist and his father, who had long held judicial functions in Damascus before him, was also a well-known muhaddith, a disciple of al-Awzā'ī and Makhjūl.\textsuperscript{25} Indeed, the mīhna affected mostly scholars who were part of this movement. He may have acknowledged the doctrine in order to retain his dominant political position; since the civil war, the ashrāf in Damascus had reached a high level of local autonomy and, from 213/828, al-Mu'taṣīm (then apparent and later caliph) strove to restore central authority in the territory.\textsuperscript{27} Replacing a qādī suspected of disloyalty by a sāhib al-mażālim under the direct control of the caliphate was a convenient tool to implement his policy.

The mażālim institution also contributed to the restoration of central authority in Fustāt. It began to develop after the fourth fitna, when Egypt acquired de facto autonomy. In 211/826, the judicial system was first suspended for two years. The qādī 'Ībrāhīm b. al-Jarrāh, appointed in the midst of the civil war, aroused the wrath of the amīr 'Abd Allāh b. Tāhir, who had come to bring peace to Egypt on behalf of the caliph. The letter of surrender he had written on behalf the rebel governor 'Ubayd Allāh b. al-Sarī was too forceful for the Tāhirīs, whom the letter bade to swear that he would divorce his wife and free his slaves if he broke the safe conduct he had granted 'Ubayd Allāh. 'Ībrāhīm b. al-Jarrāh was dismissed, but not replaced: instead 'Abd Allāh b. Tāhir appointed a mażālim judge in the person of 'Attāf b. Ghazwān.\textsuperscript{28} As it had done in Damascus, the qādīs' justice system vanished, just before the beginning of the mīhna, in 215/830. Once again, the judicial system was a danger for the caliphate.

The qādī Ibn al-Munkadir, who was close to the aṣḥāb al-ḥadīth and early pietists, was indeed influenced by a group of “ṣāfiyya” who “commanded right and forbade wrong”, to the point that he dared to write al-Ma'mūn to protest against the appointment of Abū Ishaq al-Mu'taṣīm as governor of Egypt.\textsuperscript{29} It was more than the ruling power was willing to bear: Ibn al-Munkadir was dismissed, imprisoned and exiled to Iraq. Meanwhile, the judicial system – whose unreliability was gradually confirmed – was suspended, to be replaced by the sole mażālim – held on behalf of the governor by Muhammad b. 'Abbād. Evidently, such ‘political’ justice, symbolically orchestrated by the sovereign, was neither popular, nor universally considered as legitimate: when he took office in 217/832, Hārūn b. 'Abd Allāh al-Zuhrī revoked many of the judgments that Ibn 'Abbād had rendered.\textsuperscript{30}
caliphate, Bakkâr b. Qatayba, was already in power. The amîr imposed his autonomy de facto, but never attempted to dismiss him, even at the end of his reign, when it became obvious that the qâdî would not confer upon him the legitimacy that he needed. He had him imprisoned, but did not officially relieve him of his judicial duties; he simply ordered him to delegate his duties to a vicar. Justice was an essential component of the ruling power, and Ibn Ṭûlûn developed the maṭâlim into a competing judicial institution: he frequently presided over hearings, to the point where the people of Fustâṭ completely gave up on Bakkâr, who, they said, would doze off out of boredom during court sessions. In earlier times, the maṭâlim alternative had been a reminder of the primacy of the caliph’s justice; now the institution symbolized the supremacy of the amîr’s justice. Under Khumârawayh, who succeeded Ibn Ṭûlûn, it was no longer necessary for the ordinary judicial system to compete with the maṭâlim: for seven years, no qâdî was assigned by the caliphate in Egypt; only a sâhib al-maṭâlim (Muhammad b. ʿAbd) was appointed by Khumârawayh. When the war between the latter and al-Muwaqqaf came to an end, ordinary judgeship was given to Muhammad b. ʿAbd, whose position was officially recognized by the caliphate. Now in the hands of a single man, the ordinary judgeship and the maṭâlim became the expression of the autonomous Ṭûlûnîd power. The maṭâlim also contributed to maintaining their authority in Syria: a sâhib al-maṭâlim, ʿAbd (or ʿUbayd) Allâh b. al-Fath, was sent to Damascus following an episode of civil disorder. The city’s governor, Saʿd al-Aʿsar (or al-Aysar), winner of the Battle of the Mills, had been assassinated in 273/886–7 or 275/888–9 by Khumârawayh (personally, some say) for having criticized him. The population of Damascus, however, were very attached to their governor and they immediately responded by revolt. It was thought that the appointment of a sâhib al-maṭâlim alongside the qâdî Abû Zur’â – who was devoted to the Ṭûlûnîds – would help solve the crisis. Ultimately, the maṭâlim helped the Ṭûlûnîds maintain a semblance of justice while their power was failing. After Jaysh b. Khumârawayh was deposed in 283/896, a civil war forced the qâdî Muhammad b. ʿAbd to go into hiding and the judgeship was vacant for a few months. The Ṭûlûnîds therefore temporarily entrusted the maṭâlim to a Turk, Ibn Tughân.

The governor, Muhammad b. Sulaymân, reappointed Muhammad b. ʿAbd when the ʿAbbâsid power was restored in 292/905 in Egypt, possibly in an effort to facilitate the transition between the two regimes and allow defendants to be judged by someone they knew. But here sources cease to mention the maṭâlim, a sign that they no longer played an essential role. It was not until the Ikhsânîds came to power that the maṭâlim came back into the spotlight: from 324/936 to 327/939, al-Ikhsânî entrusted them to a renowned jurist, Ibn al-Ḥaddâd, while al-Ḥusayn b. Abî Zur’â was in charge of the ordinary judgeship. This twofold justice system was, in many respects, reminiscent of Ibn Ṭûlûn’s policy. The qâdî was formally appointed by one of the leading qâdis in Baghdad and he reported to the caliphate. By restoring the maṭâlim in his own name, al-Ikhsânî was preparing for new Egyptian autonomy. The following verse is part of a poem distributed with the plaintiffs’ petitions at Ibn al-Ḥaddâd’s hearing: “You exercised power without any official appointment, and you rendered your decision without any deed!” A number of people in Fustâṭ understood the scheme and blamed the jurist for his contribution to an illegitimate activity.

The two-party judicial scheme was subsequently repeated several times. In 331/943, “Aṭîq b. al-Ḥasan was entrusted with the maṭâlim, while al-Kishshâ was supposed to practice “ordinary justice”. Though the circumstances of their assignments remain rather obscure, it is likely that, once again, al-Ikhsânî tried to compete with a justice system reporting to a qâdî in Baghdad. Under Kâfûr, the relationship between the ordinary and maṭâlim courts seemed to function as it had under Khumârawayh nearly a century earlier: in 340/951, the governor became the only person able to appoint qâdis in Fustâṭ. He was therefore able to entrust the judgeship and the maṭâlim to a single man, “Abû Allâh b. Muhammad b. al-Khâṣîbî: from then on, justice came only from the amîr. When a few years later, Kâfûr began to render judgments on his own – thus taking away the maṭâlim duties from his qâdî, Abû Tâhir al-Dhuhi – the power struggle with Baghdad was no longer an issue: Abû Tâhir, a prominent jurist from Başra, had basically been imposed on the amîr by the notables in Fustâṭ. Just as Ibn Ṭûlûn had done, Kâfûr referred most plaintiffs to the maṭâlim and kept the upper hand on justice. When they arrived in Egypt, the Fâṭimîs did not change the system. They sensed that it would be dangerous to revoke the popular Abû Tâhir al-Dhuhi, but on the other hand, the Isâmî caliphate could not apply only Sunni justice; therefore, al-Muʾizz named a sâhib al-maṭâlim to practice justice according to the Isâmî doctrine. He competed so well with the qâdî that many professional witnesses left Abû Tâhir and joined him, and he soon pretended to the title of “qâdî of Miṣr and Alexandria.”

To the population, justice was the most concrete image of a regime that they usually had little contact with. As a result of their established knowledge and their role in the ‘Islamic’ management in the city, qâdis were a powerful instrument of political legitimization, but they were difficult to control. The freedom of practice claimed by some was a threat to
the interests and even to the authority of their principals. Furthermore, in the second half of the 3rd/9th century, following the development of provincial autonomy, the judiciary became subject to competition between the caliphate and the governors. Different powers used the mażālim to get around the ordinary judgship when they could not control it: sometimes entrusted to the qādī as lesser duties, the mażālim could become important when the rulers wanted to remind everyone that justice ultimately came from them – thus proclaiming their sovereignty. Despite the importance of the sāhib al-mażālim, sources are relatively silent on the subject: al-Kindī mentions them in his biographies of ordinary qādīs but never describes them individually. The few paragraphs dedicated to some sāhibs al-mażālim by Ibn Hajar are insignificant compared to those he wrote about qādīs. The authors’ deliberate oversight may reflect an intention to minimize the weight of a ‘political justice’ that biographers considered to be illegitimate.

Qādīs as instruments and victims of state violence

Judgeship as a political tool

Major political strategies hid behind both the exercise of appointing mażālim to provinces and the relationship they maintained with the ordinary judgship. The careers of individual qādīs and the importance given to them in the sovereign justice of mażālim are proof of the stakes at hand. In the aftermath of the ‘Abbāsid revolution, qādīs became privileged instruments of the regime. The popular recognition they enjoyed as scholars and judges helped strengthen the dynasty, especially at times when political affairs hurt the ideal of justice on which relied the dynasty’s legitimacy. A number of caliphs in the early ‘Abbāsid era presided over mażālim courts themselves and received their subjects’ complaints. Even if al-Rashīd delegated mażālim duties to the Barmakids Yahyā and Ja’far for a while, caliphal justice was generally entrusted to qādīs. Al-Hasan b. ‘Umar, qādī of Baghdad, also acted as a mażālim judge for al-Mansūr. Under al-Amin, Muḥammad b. ‘Abd Allāh al-Anṣāri was assigned to the position in 193/809, shortly after he had practiced as an ordinary judge in Basra. During the miḥāna, the chief qādī, Ahmad b. Abī Du‘ād, was also entrusted with the mażālim before his son Abū 1-Walid then Yaḥyā b. Aḥkām succeeded him. In the late 3rd and early 4th centuries, while mażālim were more and more in the hands of the vizierate, they were still entrusted to a number of qādīs: Yūsuf b. Ya‘qūb was appointed in 277/890–1, while practicing officially as a judge in Basra, and Abū ‘Umar, qādī of al-Sharqiyya and ‘Askar al-Mahdī, was appointed in 306/918–19. The sāhib al-mażālim’s role was more bureaucratic than the qādī’s. Differing from the rules of ordinary hearings, the presence of both parties was not required in the mażālim court, and the plaintiff generally handed in a written petition (ruq‘a or qiṣṣa) which had already been processed by the administration. This explains why many of the early mażālim judges had no other experience in law. Under al-Mahdī, some were administrators, such as the mawlā Sallām or ‘Umar b. Mutarrīf, who was also responsible for the diwan al-khairāt. They may even have written answers to petitions for minor cases. When cases were more serious however, they only examined them before handing them over to the caliph or a qādī for judgment. When an ordinary individual filed a complaint against one of al-Mahdī’s waqīls, Sallām did no more than bring the request to the caliph, who in turn handed it over to one of the two qādīs of ‘Askar al-Mahdī, ‘Āfiya b. Yazid and Ibn ‘Ulātha. Qādīs were the image of justice, and the caliphate therefore relied on them as much as possible.

The mere act of assigning qādīs to mażālim courts was a form of manipulation – showing that the sovereign’s justice and God’s “decree” (qadā’) were one and the same – yet some qādīs were used even without having been officially entrusted with mażālim duties. Many times, it was in the interests of the state to eliminate existing or potential opponents. While many of them spent their lives in the caliphs’ jails, without any form of trial, it was important that the law appear to be respected. It was therefore sometimes preferable to have opponents tried and convicted by regular qādīs. Al-Mansūr arrested large numbers of ‘Alids, whose rebellious intentions he feared, but things were more complicated when the suspect was a high-ranking official. In 155/772, suspecting the āsārī governor of Medina, al-Ḥasan b. Zayd, of preparing a riot, the caliph ordered ‘Ubayd Allāh b. Muhammad b. Šafwān al-Jumaḥ, qādī in Baghdad, to bring him to trial. The governor was accused of dualistic religious beliefs when a plaintiff claimed that he believed in “a heavenly god and an earthly one”, the latter of whom had vested him with the caliphate. Although it cannot be formally proven, the prosecution may have been entirely fabricated, since political trials were such common practice at that time. As an example, ‘Abd Allāh b. Marwān, one of the last heirs to the Umayyad dynasty, was in hiding in Yemen when governor Ṣābīr b. Muhammad b. Al-Sha‘ath had him captured and sent to al-Mansūr. Al-Mahdī first intended to bring him to Syria and force him to officially relinquish his position of heir apparent – and therefore his
claim to the caliphate – but it was feared that the local Syrian population would support him. Instead, he chose to eliminate him under the guise of legality. The caliph organized a trial presided over by the qaḍī ʿĀfiya b. Yaʿṣīm. An individual named ʿAmr b. Sahla al-Asḥāʾi accused ʿAbd Allāh b. Marwān of killing his father. Al-Mahdī had no doubt that the lex talionis would be applied against the culprit, in keeping with the law. But the trial took an unexpected turn when an ordinary citizen came at the last moment before the qaḍī and confessed the murder. ʿAbd Allāh b. Marwān could no longer be convicted, so Al-Mahdī had him bound and shackled and sent to the Muṭbah prison, where he eventually died. Justice was not the primary objective of this trial – the man whose confession should have resulted in a conviction was acquitted because, it was said, he had acted by order of Marwān II, the last Umayyad caliph. The trial had served as legal background to a political maneuver.

Assignments to the mazālim were also a way of organizing political trials. The best example is the complaint investigated by Ahmad b. Riyāḥ, qaḍī of Baṣra from 223/837 to 239/853, against the governor, Jaʿfar b. al-Qāsim. The people of Baṣra objected to his violent temper and numerous abuses. The qaḍī was entrusted with the mazālim and when the amir was relieved of his duties he had to stand trial. The qaḍī did not organize a big trial; he simply reopened the governor’s file each time a complaint was lodged against him in ordinary court. The governor was summoned to appear before the court on a daily basis, to avoid the trouble of having to be fetched at each accusation. In fact, the man ended up waiting in a corner of the mosque to be called to face his accusers. This type of trial was very humiliating. The deposed amir was permanently exposed to the public eye, including the lowest classes of society. Were Jaʿfar b. al-Qāsim’s crimes against his own people serious enough to warrant such a procedure? Possibly. But other governors were just as guilty, yet they were not forced to endure such disgrace. The caliph al-Wāthiq actually had other reasons to dismiss and humiliate the governor. Jaʿfar b. al-Qāsim was indeed guilty of a much more serious political crime: he had composed a hijāʿ about al-Wāthiq, in which he had actually claimed the caliphate for himself. Al-Wāthiq, who was perhaps the most zealous disciple of the mihna, could not let that go unpunished. It is no coincidence that the mazālim institution officially served that purpose: the qaḍī was used symbolically to remind everyone of the limits of the caliph’s tolerance.

Qādīs appearing before the mazālim courts

While qaḍīs were the instruments of justice justified by reason of state, their reliability and cooperation were becoming increasingly uncertain. At the beginning of the 3rd/9th century, the intellectual and religious authority claimed by the ahl al-hadīth, as well as the written law established by the emerging madhhabs, made it easier for many of them to claim more freedom from their principals. During the mihna, qaḍīs were both promoters of the official doctrine and prime suspects of insubordination. By establishing the judgeship as the crux of the caliphal policy, governing powers ran the risk of strengthening the qaḍīs’ authority at their own expense. Should the qaḍīs be given too much freedom with regard to the dogma, the fragile attempt to preserve the caliphate’s authority would be destroyed from within. The mazālim were therefore positioned as a competing institution, in an effort to isolate the qaḍīs when necessary (see above). Indeed, several people tried in mazālim courts were qaḍīs.

Qādīs usually went through special indictment procedures called iqāma li-l-nās, where individuals were ordered by the sovereign to appear before the crowd, even when no complaint had been lodged against them. In this way, their trial was made public – the sitting judge could be the sovereign, a governor, a delegate to the mazālim or a qaḍī – and anyone who wished to complain was invited to come forward and file suit against the accused. Although sources do not always clearly associate iqāma li-l-nās with mazālim courts, their common characteristics – ex officio actions, trials held by order of political authorities, formal accusations of high-ranking officials – clearly reveal that both were expressions of a single sovereign justice. The procedure was already in use at the end of the 2nd/8th century, when the qaḍī of Fustāṭ, ʿAbd al-Malik b. Muhammad al-Hazmī (170–74/786–91), was the object of a damning report from the local sāhib al-barrād, infuriated at the qaḍī’s refusal to let him intercede on behalf of a plaintiff. Hārūn al-Rashīd therefore ordered the Egyptian governor to have him publicly displayed to a vindictive crowd (an yāqīfa l-Hazmī li-l-nās). Saved by the favor of a cheering crowd, the qaḍī, however, was forced to resign. This type of public display was also used during the mihna and during the ‘purge’ that followed. As early as 214/829, the qaḍī of Fustāṭ, ʿĪsā b. al-Munkādir, was subjected to this type of procedure by order of the governor, Abī Išāq al-Muṭṭasim, who blamed him for his close contacts with traditionalist groups and his opposition to al-Maʿmūn’s policy. People came in great numbers to lodge complaints against the qaḍī, who was jailed and replaced by a sāhib al-mazālim – perhaps the very judge who sat at his trial. At the end of the
mihna, the qādi of al-Sharqiyya (al-Karkh district court in Baghdad), ʿAbd Allâh b. Muhammad al-Khalanji, was also forced to face the crowd by his successor. A disciple of Ibn Abî Duʿād, he had distinguished himself by his steadfastness during the mihna, going as far as to pronounce the divorce of a woman whose husband refused the doctrine of the created Qurān. This iqâma li-l-nâs aimed to help calm the crowds and symbolically marked the end of the inquisition.

Two examples show how qādīs’ trials at the mazālim could appear as a simulacrum of justice serving the state. At the beginning of al-Muʿtaṣim’s reign, an individual accused the qādi of Baṣra, ʿIsâ b. Abâın, of physically mistreating him during the hearing, to the point where he lost his eyesight. He appealed to the caliph, who ordered the faqīḥ ʿUbayd Allâh b. Muhammad b. ʿAṭîṣha to look into the complaint – and hold de facto a one-time mazālim court. The hearing took place at the Great Mosque, in front of a large crowd, and ʿIsâ b. Abâın succeeded in turning the situation to his advantage. He began by stating his requirements: he would only appear in the presence of both the governor and local sâhib al-barîd. Taking advantage of the crowd’s rush into the mosque, he made everyone wait and came in discreetly through the muezzins’ entrance, in an effort to set himself apart from ordinary defendants. Eventually, the presiding faqīḥ made the mistake of sitting on an ordinary seat in the mosque, instead of sitting next to the column (sâriya) traditionally reserved for qādīs; ʿIsâ b. Abâín did not miss the opportunity to declare ironically that he should change places if he had indeed been appointed as a judge. In short, the qādi demonstrated publicly that he was the only real judge, and the procedure came to a dead end. Was it a coincidence? ʿIsâ b. Abâín was a Ḥanafite, close to the ruling power and Muʿtazilite circles, and, with the mihna in progress, al-Muʿtaṣim was not really eager to see him convicted. Not only did the governor of Baṣra and the sâhib al-barîd come to the hearing, but their secretaries recorded all verbal exchanges: political pressure was such that the inexperienced faqīḥ temporarily appointed as a sâhib al-mazālim could not examine the case properly. The trial was staged to demonstrate the piousness and justice of the central power. The second example is that of Bakkâr b. Qutayba, qādi of Fustâṭ in the second half of the 3rd/9th century. Infuriated by the qādi’s refusal to lay a curse on the regent al-Muwaffaq as he had requested, Ibn ʿUṯlûn ordered him to appear before the mazālim (aqâmahu li-l-nâs), and offered the people of Fustâṭ an opportunity to challenge some of the qādī’s decisions. Although he defended himself admirably and no formal charges could be made against him, he was assigned to house arrest until the amîr’s death.

The qādī’s word

The iqâma li-l-nâs procedure used against dissent qādīs is reminiscent of the tashhîr used against people convicted of perjury. The main objective of these humiliating episodes of ignominious parading or public exposure to vindictive crowds was to ruin a person’s reputation. Such procedures may have echoed the warning attributed by Islamic tradition to the caliph ʿUmar in his famous letter to Abû Mūsâ al-Aswârî: “He who tries to embellish himself in the eyes of men, though Allâh knows he is not, Allâh shall tear his veil (hataka llâh sirâhu) and reveal his actions (abdâ fiʿluhâ).” These words may have been said with regards to a dishonest qâdi. His public exposure was specifically intended to “tear off his veil” and damage his status of “mastûr,” defined as a respectable man whose life is “hidden” from the public eye. The procedure took on a special meaning during the mihna, when qādīs themselves were used to harm the reputation of opponents to the doctrine of the created Qurân, who were excluded from adâla. The goal of the mihna was to discredit their word, and consequently weaken their influence. A qâdi’s words were very significant, due to the performative nature of his judgments. The iqâma li-l-nâs therefore publicly disallowed those qâdīs likely to openly oppose the regime. Bakkar b. Qutayba’s trial is a prime example. His opposition to Ibn ʿUṯlûn and his refusal to lay curse on al-Muwaffaq could only be curtailed by an episode of public humiliation that would symbolically discredit his statements.

The support of the qâdi was necessary, but it was a double-edged sword. The authority conferred upon him by the people could undermine the ruling power. The intimidating aspect of qâdis came from the performative and binding nature of their judgments, which were very difficult to reverse. Much diplomacy was needed to take advantage of the qâdīs’ position and, at the same time, remain flexible enough to prevent the negative effects of their authority and challenge or ignore it. The safest way to deal with qâdīs was to ask them for fatwâs – only advice – rather than final and binding judgments. The presence of qâdīs at mazālim hearings that they did not preside over goes back a long time. In the second half of the 2nd/8th century, al-Mahdi held court in the presence of qâdīs, supposedly conferring more legitimacy on his decisions. Al-Maʿmûn also sat in the presence of his chief qâdi, Yahyâ b. Aktham. But it was not until the beginning of the 4th/10th century that this – merely advisory – method of legitimizing decisions became widespread in mazâlim courts. Since the latter part of the 3rd/9th century, the mazâlim had been more and more entrusted to viziers. Qâdis, however,
never ceased to play a key role, as they were the only experts in law and justice who could confer some legitimacy on the viziers’ decisions. A qādī’s words were more flexible when he acted as a muftī in trials directly presided over by political authorities; when contrary to the interests of the ruling power, his advice was rejected; when favorable, it was regarded as decisive.

Such manipulative practices evolved as early as the 3rd/9th century. In 231/846, al-Wāthiq had the traditionalist al-Khuázīi executed, as advised by ‘Abd al-Raḥmān b. ʿIshāq al-Ḍabbi, qādī of West Baghdad, and in spite of the chief qādī ʿAḥmad b. Abī Duʿāʾ’s reservations. The best example, however, is that of al-Ḥallāj. Tried once for his religious views and his involvement with various dissident groups, his case was reopened in 309/922 by Ḥāmid b. ʿAbbās, vizier of al-Muqtadir. The second trial appeared in every way as a political trial. It was the result of a conflict, within the civil administration, between the current vizier and his predecessor, ‘Ali b. ʿĪsā, who opposed Ḥāmid b. ʿAbbās’ tax policies, among other things. Al-Ḥallāj’s conviction was a way to discredit ‘Ali b. ʿĪsā, a protector of the well-known mystic. Yet, to be seen as fair, the judgment had to be based on the counsel of a recognized qādī. At first, Abī Jaʿfar Ahmad b. ʿIshāq b. al-Buhālūl al-Tanṭūkhi (the Hanafi qādī of Madīnat al-Maṣfūr) was asked to cooperate: the vizier asked him to issue a fatwā against the accused but he refused to do so, on the grounds that no legal evidence of his guilt had been provided. So the vizier turned to the Maṭḥī Abī ʿUmar (qādī of al-Šarqiyah and East Baghdad), who agreed to speak in favor of al-Ḥallāj’s death sentence. By reducing the qādī to a mere adviser – whose opinion was easily manipulated – rulers again used the legal system to serve their policies.

During the reign of al-Muqtadir one more qādī, Abī ʿUmar, continued to practice mazālīm justice for a while, in 306/918–19. His role in the institution was limited, however, since that same year the qādī of Ṭahlam was also appointed to the mazālīm court and held hearings at al-Ruṣāfā. Like the viziers who were now frequently entrusted with such duties, she sat surrounded by fuqahāʾ and qādīs. The role of muftī played in the mazālīm courts by some qādīs may have increased their independence by lessening the influence of their dictates; since their individual opposition to ongoing political schemes was always subject to being offset by another fatwā, they incurred fewer sanctions than their predecessors. In 311/923 the vizier Abī ʿHasan b. al-Furāṭ summoned the qādīs Abī ʿUmar and Abī Jaʿfar al-Tanṭūkhi to attend the prosecution hearing against his predecessor, ʿAli b. ʿĪsā, whom he accused of conspiring with the Carmathians. But the vizier’s arguments were too weak and the two qādīs refused to write the requested fatwā. Despite such occasional setbacks, the ruling authorities never ceased to instrumentalize qādīs’ statements during political trials. In 326/938, the fatwā given by the chief qādī, Abī ʿUmar b. Abī ʿUmar, made it possible for the amīr al-umaraʾ, Ibn Rāʾiq, to eliminate Ibn Muqla, the last of the leading ʿAbbāsid viziers: the qādī’s legal opinion was enough to justify punishing the vizier-calligrapher, whose hand was cut off.

**Conclusion**

As the highest body representing sovereign justice, the mazālīm were intended as an essential tool for the legitimation of the ʿAbbāsid dynasty, whose “revolution” could only be justified by a concern for the restoration of justice, viewed as flouted by the Umayyads. It should not be doubted that they most often accomplished the purpose of “rectifying prejudices”. The institution’s ideological facade, however, also served to hide some forms of state violence. On the symbolic level, the institution contributed to an affirmation of a sovereign authority within provincial jurisdictions. The caliphate used the courts to resist the aspiration to independence of some qādīs, especially in the first half of the 3rd/9th century; controlled by the local authorities, the courts later contributed to the enfranchisement of autonomous dynasties such as those of the Tūlūnids or the Ikshshīdīs. Their role in the affirmation or maintenance of a political order made the mazālīm a privileged instrument of coercion and physical violence insofar as they represented a political justice guided by the immediate interests of the rulers or the state.

Such state violence takes on its full meaning only in light of the ʿAbbāsid court system as a whole, and the justice of the qādīs in particular. To consider mazālīm justice as ‘secular’ as opposed to the ‘religious’ justice of the qādīs would be inconsistent with that time. Not only did the caliph’s justice appear as religious, but the dialectical relationship between the regular judiciary and mazālīm reflects as much their complementarities as their interchangeability. For the authorities, only the close association of the qādīs with the mazālīm courts could remove suspicions of political bias and vest their judgments with legitimacy, which is why qādīs were repeatedly trusted with temporary or standing mazālīm mandates.

On the other hand, the qādīs’ submissiveness was sometimes disturbed by a sense of allegiance to higher values. If qādīs somehow failed to faithfully execute the sovereign will, the mazālīm could turn into a concurrent jurisdiction capable of circumventing or temporarily superseding the
normal judicial channels. The crisis of authority which shook the caliphate at the beginning of the 3rd/9th century and the ensuing mihna even over-turned the positions of several qādis, who appeared as defendants before such tribunals and whose credibility was publicly denounced through the iqāma li-l-nās procedure. The example of the Egyptian qādi Ibn al-Munkadir is perhaps the most significant: by joining a group of Sufis who claimed to “command right and forbid wrong”, exercise authority over the public domain and moralize the caliph, he agreed to challenge the state monopoly on coercive force. Exposure of the qādi to the crowd was not enough: a clear boundary between public and private spheres needed to be reasserted. This was done by temporarily substituting the mazālim for the judiciary. In the second half of the 3rd/9th century, in the context of a systematic codification of the fiqh and the emergence of madh-ḥabs, the instrumentalization of qādis by central authorities became too random to ensure that they should continue to administer the sovereign’s ultimate justice. The increased role played by the viziers with respect to the mazālim was thus linked to the more than a general strengthening of the vizierate: increased attention by Sunni lawyers to judicial procedures, the status of the qādis and their relationship to power consolidated the institution from within and made their instrumentalization much less predictable. As the qādis’ authority was necessary to legitimize a violence which was, in fact, nothing more than reasons of state, it was necessary to incorporate them in another way in mazālim justice: the mufīt function, which permitted the relativization of their authority, was the only one which offered the degree of flexibility sought by the “Abbāsid rulers. It is precisely because the qādis began at that time to administer justice “toward and against all” that the post of judge in the mazālim durably escaped them.

Notes

4. Tyan, Histoire, 441, 443.
5. Sourdrel, Le vizirat ‘abbāside, 2:640–8; Nielsen, Secular Justice, 1–11. The most important exception is Tyan (Histoire, 491 ff), who studied this institution in pre-Fātimid Egypt.
10. Ibid., 2:175.
11. Under al-Muqtadir, a budget of 439,000 dirhams allocated to the provincial mazālim leads us to believe that the institution was well established at that time. See Ibn al-Jawzī, al-Muntaẓam fi tawārīkh al-mulūk wa-l-umam, ed. Suhayl Zakkar (Beirut: Dār al-Fikr, 1995), 7:384.
19. Ibid., 2:96. The fuqahā’ finally supported the qādi. Under al-Mu'awakkil, a decision rendered by the Egyptian qādi al-Harīth b. Miskin was also looked into by a fuqahā’ commission ordered by the caliph. See Ibn Hujaj, Ra‘f al-‘isr, 124 (tr. Tillier, Vies des cadis, 50–1).
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In another version, they encouraged him to complain about the kharaj tax collectors. Cf. al-Qâdi 'Iyâd, Tarîth al-madârik, 2:583. See M. Cook, Commanding Right and Forbidding Wrong in Islamic Thought (Cambridge: Cambridge University Press, 2000), 384. Such was the attitude of traditionalists who protested against state authority and asserted their own authority in law enforcement. See Jadân, al-Mihna, 280–1. Cf. I. Lapidus, “The Separation of State and Religion in the Development of Early Islamic Society,” IJMES 6 (1975), 376ff. The šâfiyya mentioned here may have been members of the šâfiyyât al-mu'aţazâ, who considered that the function of Imam was not necessary to enforce the law. On this group, see Jadân, al-Mihna, 268–9; P. Crone, “Ninth-Century Muslim Anarchists,” Past and Present 167 (2000), 12ff.

30. Al-Kindi, Akhbâr qudvât Miṣr, 440–1; Ibn Hajar, Ra's al-îsîr, 299.
33. El2, s.v. al-Muwaftâfiq, 7:820 (H. Kennedy).
34. Ibn Hajar, Ra's al-îsîr, 107 (tr. Tîllier, Vies des cadis, 70).
36. Wiet, L'Égypte arabe, 104.
39. The battle, which took place in 271/885 between the armies of Kuhmârawayh and the future al-Mu'tâqî, made it possible for the Tûlûnids to recover a leading position in Syria. See Wiet, L'Égypte arabe, 103; El2, s.v. Kuhmârawayh, 5:49 (U. Haarmann).

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43. Justice was frequently a way to ensure a peaceful transition between two regimes. See Tîllier, Les cadis d'Iraq à l'époque 'abbâsid, 85ff.
47. Ibid., 24–5.
49. Ibn Hajar, Ra's al-îsîr, 199.
50. Ibid., 267, 360.
51. Sourdelle, Le vizirat 'abbâsid, 2:442.
52. Al-Khaṭīb, Ta'rîkh Baghdâd, 14:107; Ibn 'Asâkir, Ta'rîkh madînat Dimashq, 64:260.
61. Al-Khaṭīb, Ta'rîkh Baghdâd, 1:87; al-Jahshiyârî, K. al-Wuzûra wa-l-kutâb (Beirut: Dâr al-Fikr al-İhâdî, 1988), 106. Al-Mahdi also appointed as sâhib al-mazâlim 'Abd al-Râhîm b. Ṭâbit b. Thawbân, well known for his asceticism (see al-Khaṭīb, Ta'rîkh Baghdâd, 10:223; Ibn 'Asâkir, Ta'rîkh madînat Dimashq, 34:250). Among those who were not qâdis at the same time, we note the following: al-Husâyn b. al-Hasan b. 'Aţîya al-İlî, under al-Mahdi; he was qâdî in Baghdad but later, under al-Râshîd (al-Khaṭīb, Ta'rîkh Baghdâd, 8:30); Iṣmâ'il b. Ɨbrâhim b. Muqsim Abû Bishr al-Asadi, known as Ibn 'Aţîya, at the end of Hârîn al-Râshîd's reign (Ibn Sa'd, al-Tabaqût al-kabîr, 7:325; Ibn Quatayba, al-Ma'ârif, 520; al-Khaṭīb, Ta'rîkh Baghdâd, 6:229–30); Muhammad b. Ɨbrâhim b. al-Râbi' al-Anbârî, appointed in 237/851–2 (al-Khaṭīb, Ta'rîkh Baghdâd, 1:299); Muhammad b. 'Irmarâ al-Dâbî, under al-Mu'tazz (al-Tâbarî, Ta'rîkh,
85. The use of both terms in the same sentence reveals the close connection between the iqāma li-l-nās procedure and the mażālim institution.
88. At the end of the miḥna, al-Mutawakkil condemned the qaḍāt of Fustālī, Ibn Abī I-Layth to such ignominious parading. See al-Kindī, Akhkhār al-qadāt Miṣr, 465.
89. Al-Jāḥiẓ, al-Bayān wa-l-tabyīn, ed. ʿAbd al-Salām Hārūn (Tunis: Dār Saḥnīn, 1990), 2:49.
90. Cf. Y. Lev, Charity, Endowments, and Charitable Institutions (Gainesville: University Press of Florida, 2005), 10–11. “Tearing up the veil” of respectability was a very serious act, as al-Sarākhshī observed in al-Mabsūt (Beirut: Dār al-Maʾrīf, n.d.), 9:85 (I owe this reference to Ch. Lange); the defamatory accusation of fornication (qadāf) is a crime (jarrma) for “it tears up in vain min ḡaṣr faʾlāda” the veil of virtue (ṣīr al-tīfā).
96. Sourdel, Le vizirat ʾabbāsid, 2:641.
100. Ibn al-Jawzī, al-Muntazam, 8:12; al-Dhahabi, Siyār ʾaʾlām al-nubalāʾ,
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105. Tyan, Histoire, 493.

From revolutionary violence to state violence: the Fāṭimids (297–567/909–1171)

Yaacov Levy

Historiography of the Fāṭimid ascent to power

A Hebrew maxim which has its origin in the early modern European revolutionary tradition says: “The revolution kills its sons.” This certainly sums up the experience of countless 20th-century revolutionaries, among them many Jews, who massively and enthusiastically joined the Bolshevik revolution only to be confronted later with its ugly face: Stalin’s reign of terror and anti-semitism. Thus, while I was reading 1 Abbāsid history with Simha Sabri at Tel Aviv University (herself an ex-revolutionist in Mandatory Palestine and the Israel of the 1950s), the killing of the Abbāsid propagandist Abu Muslim was no great surprise. For her, however, the 1 Abbāsids, whatever their revolutionary origins, constituted the ruling power; she was less interested in rulers than in popular protest and violence demonstrated against the rulers’ oppressive economic policies and their attempts to impose a uniform dogma on their subjects. 1 Her teaching of the Abbāsid history was a good starting point for understanding Fāṭimid history, which offers some striking parallels to the Abbāsid rise to power.

The first stage of Fāṭimid history took place among the Berbers of the Kutāma in the Lesser Kabylia mountains, which were the geographical, cultural and ethnic fringe of the 4th/10th-century Muslim world and a region more backward than Khurāsān, the cradle of the Abbāsid revolution. For information about the activity of the Fāṭimid mission among the Kutāma, we are dependent on Qādī al-Nu‘mān’s Ifḥām al-da‘wa

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