

## Book Review

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**Mathieu Tillier, *L'invention du cadī: La justice des Musulmans, des Juifs et des Chrétiens aux premiers siècles de l'Islam*. Bibliothèque historique des pays d'Islam, 10 (Paris: Sorbonne, 2017), 704 pp. ISBN 979-10-351-0000-1. Price: €45 (cloth).**

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In this substantial tome, Mathieu Tillier provides an exhaustively researched, carefully argued discussion of the origins of the Islamic office of *qāḍī*. His earlier work, *Les cadis d'Iraq et l'État abbasside*, focused exclusively on Abbasid *qāḍīs*. Here, Tillier delves into the more ambiguous and less well-documented Rashidun and Umayyad periods, on which, as he acknowledges, the available sources are few and (at best) problematic. Tillier eschews discussion of the political aspects of the *qāḍī*ship, about which anecdotes are more abundant, choosing instead to focus on judicial procedures and institutional structures, such as they were. As Tillier notes, details about these more mundane but ultimately important matters appear rarely in the narrative and biographical sources. Although later legal manuals discuss legal procedures more extensively (some might say ad nauseam), these are plagued by back-projections, creating illusions of continuity between later Abbasid practice and early Islamic

precedents. Tillier is quite aware of the hazards and is generally cautious in his reading of the sources, inserting all of the necessary caveats along the way.

In an effort to elude the pitfalls the sources impose, Tillier augments the narrative and legal sources with a careful study of legal papyri, arguably the only truly primary source available. Tillier was able to identify thirty-eight papyri dealing with legal procedures in the collections catalogued in the Arabic Papyrology Database (<https://www.apd.gwi.uni-muenchen.de/apd/project.jsp>). Of these, thirty-five originate from Egypt, while the remaining three are from Palestine. The small number and limited geographic distribution of the papyri are problematic, as Tillier acknowledges. Moreover, their usefulness for verifying or challenging later narrative sources is diminished by the fact that they originate in places about which written sources are largely silent. Despite these difficulties, Tillier carefully avoids reading too much

into limited, sometimes cryptic documents but is still able to glean a surprising amount of useful data from the papyri.

Tillier presents evidence of at least a rudimentary legal structure in which the governor is the ultimate legal authority. He also shows that local Christian authorities played a central role in dispensing justice, but that their role diminished over time. He also notes that later papyri included more Islamic vocabulary, though references to the Quran were only implicit. While a hierarchy of authority is evident in the papyri, they reveal less about actual procedures. Letters from governors to local authorities do not include details of the cases being litigated or even indicate whether the governor's involvement took place at an early stage or was the result of protests or appeals against local rulings. Even letters commanding witnesses to appear offer no clear indication of the witnesses' role in the proceedings, nor do they specify whether the summoned individuals were in fact witnesses or the actual litigants. Given the brevity of the documents and their lack of context, none of this is surprising. The most curious finding, which adds support to Tillier's overall thesis, is that the title of *qāḍī* does not appear in pre-Abbasid papyri.

In the second part of the work, having extracted as much evidence as possible from the papyri, Tillier turns to the literary/narrative sources with which most specialists are more familiar. He acknowledges and discusses the limitations from which such sources suffer, particularly their tendency toward legendary accretions about particular *qāḍīs* and back-projection of later practices. His focus on procedures makes the former

issue less prevalent, though it perhaps exacerbates the latter.

Tillier addresses a variety of aspects of legal procedure, focusing primarily on the functioning of judicial audiences or hearings. He offers descriptions of the location, spatial dynamics, and staffing of the *qāḍī*'s tribunals, noting how these aspects appear to have evolved over time. Tillier uncovers a surprising array of details about the treatment and scrutiny of various types of evidence and legal proofs. Specifically, he describes procedures related to witness testimony, the scrutiny of witnesses' veracity, and the number of witnesses required (or allowed) to testify. He describes the various uses to which oaths were put and the many combinations of witness testimony and oaths noted in the sources. Tillier also addresses the occasional appearance of "expert" testimony and its significance, as well as the uneven admission of written material. He notes differences in local practice and a long-term trend toward stricter, more formal rules of evidence. His analysis draws heavily on biographical anecdotes and *akhbār al-qāḍī* works, as well as on later legal manuals, especially that of the Ḥanafī scholar al-Khaṣṣāf (d. 261/874).

The third part of the work examines other legal institutions with which early Islamic justice coexisted and which, to an extent, shaped the context of its evolution. Tillier begins with a general explanation of the prevailing legal systems in pre-Islamic times, contrasting the Sasanian and Eastern Roman legal landscapes while also describing the rudimentary system of justice in the Arabian Peninsula. He then turns to the impact Islamic expansion had on non-Muslim communities' systems

of justice. Although minority religious communities had a degree of legal authority under both the Sasanians and Byzantines, the Islamic empire granted them a higher degree of judicial autonomy and eventually formalized *dhimmī* communities' spheres of influence. Tillier describes the minimal impact the change of regime had on Jewish law, arguing that the community already had a sophisticated legal system and was accustomed to functioning as a relatively isolated, autonomous minority community. For Christians, the impact was more substantial and was marked by distinctions between the Eastern and Western Syriac communities that resulted from their contrasting imperial status before Islam. Tillier describes how each of these communities handled judicial hearings, witnesses, and other procedures, illustrating similarities to and differences from the emerging Islamic system while also underscoring the subtle changes these communities implemented in response to their new circumstances.

Based on his analysis, Tillier draws a number of significant conclusions. He argues persuasively that the office of *qāḍī*, its procedures, and the parameters of its authority developed later than the narrative sources suggest and that the *qāḍī*ship was not particularly relevant or defined until the Marwānīd period. He also emphasizes that early Islamic society accommodated multiple dispensers of justice, including especially governors and existing Christian arbiters. Tillier convincingly refutes the theory advanced by Hallaq, Simonsohn, and others that the *qāḍī*ship had its origins in the vaguely defined pre-Islamic Arabian office of *ḥākim*, emphasizing the distinction between the *ḥākim*'s role as a mediator

and the *qāḍī*'s ability to declare judgment. He also rejects Schacht's widely accepted regional-school paradigm, pointing to more localized distinctions and correctly noting that any image of unity in places such as Iraq, or even more narrowly in Kufa or Basra, is a later myth. Tillier takes a cautious stand regarding the influence of earlier legal practices on emerging Islamic justice. He notes similarities between some Islamic and Byzantine practices and evidence of interaction and perhaps influence between Islamic, Christian, and Jewish legal procedures, but does not go so far as to suggest direct borrowing. Tillier's cautious approach is to be appreciated. Where he does make bold conclusions, they are defensible. Where he hesitates, he demonstrates recognition of the limitations the evidence imposes.

In this work, Tillier has examined copious sources and has gleaned a surprising level of detail from sources that tend to resist such harvesting. At times he has cast his net a bit broadly. For instance, although it is interesting to explore Zaydī and Shī'ī literature on the *qāḍī*ship, these communities' procedures must be seen as purely hypothetical, even speculative, given their inability to appoint *qāḍīs* during the period in question. While Tillier is careful in his use of sources, nagging questions remain. The papyri are few and have narrow geographical origins, raising questions about whether they can be considered representative and precluding their use for larger regional comparative analysis. Tillier notes the possibility that many of the anecdotes about certain *qāḍīs*, such as Shurayḥ b. al-Ḥārith and Iyās b. Mu'āwiya, are exaggerated or legendary, yet they still form the basis for significant parts of his analysis. The image

of earlier times presented in the later Ḥanafī legal works Tillier cites also merits skepticism. Tillier generally includes the necessary caveats and approaches these sources with caution. However, the difficulties the sources present remain. Perhaps they are ultimately intractable.

Tillier's focus on the Umayyad era as a crucial phase of legal and institutional development is welcome, as is his recognition of continuities between the Umayyad and Abbasid eras. However, his decision to focus exclusively on procedure and institutional developments and to largely ignore the political environment, while understandable, is also potentially limiting. Tillier argues that the second half of the Umayyad period and the transition to Abbasid rule saw substantial procedural and institutional development and standardization. Such transformations require a high degree of political stability and rulers' support. Unfortunately, the lack of any significant evidence (papyrological, narrative, or otherwise) on the functioning of the judiciary in the Umayyad imperial capital of Damascus makes it especially difficult to determine the extent of caliphal involvement. However, it is clear that at times the Umayyads could provide support, but often they could not. The turmoil of the last decade of Umayyad rule cannot have been conducive to bureaucratic and institutional advances.

This reality should not be ignored. It is quite possible that the growing importance of the *qāḍī* reflected his status as the last bastion of stability in a polity crumbling into factions. Political turmoil might also suggest alternative explanations for some of the changes Tillier documents. For instance, the growing importance of the mosque as the *qāḍī*'s venue, which Tillier attributes principally to a growing separation between Islam and other faiths, may also reflect the status of the mosque as a refuge from the chaos in the streets. Similarly, the more frequent mention of guards accompanying the *qāḍī* may reflect considerations that are less ceremonial than pragmatic in troubled times.

The questions raised here should not detract from Tillier's achievement. Indeed, they may be impossible to answer, barring the appearance of additional sources. Tillier has examined a great deal of material carefully and cautiously and has made great strides in explaining the emergence of the office of *qāḍī*. Unfortunately, this review cannot touch on all of the many interesting and important details he includes in this comprehensive work. Combined with his earlier work on Abbasid *qāḍīs*, *L'invention du cadi* clearly establishes Tillier as the leading contemporary scholar on Islamic *qāḍīs* and as a worthy successor to Emile Tyan in this regard.