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# Legal Knowledge and Local Practices under the Early ‘Abbāsids

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Islamic jurisprudence (*fiqh*) developed as a normative pluralism resulting in the formation and diffusion of several schools of law in the principal centres of Islam. The schools of law (*madhhab* pl. *madhāhib*,)—in particular the Ḥanafī, Mālikī, Shāfi‘ī, and Ḥanbalī, which are the main Sunnī schools that developed in the Islamic empire—reached their classical form only in the fourth/tenth century, with several features such as a common doctrine, institutionalized teaching, and authoritative leaders for each individual school.<sup>1</sup> This was the result of a long process that began in Iraq under the early ‘Abbāsids, between the late second/eighth and the early third/ninth century, when the eponyms of these schools lived and taught. The first ‘Abbāsīd caliphs played a considerable role in the promotion of several of these schools of law, as Nurit Tsafir has shown in respect to the spread of the Ḥanafī *madhhab*.<sup>2</sup>

According to Joseph Schacht, the development of the classical schools of law resulted in the transformation from ‘regional’ into ‘personal’ schools of law. The ancient Iraqi school, which united around a common ‘living tradition’, evolved in the third/ninth century into a new school associated with the authority of Abū Ḥanīfa and his most important students, Abū Yūsuf and al-Shaybānī.<sup>3</sup> This shift corresponded to a globalization of legal thought, in which law was no longer anchored within one specific province of the caliphate. This theory has been recently challenged by Nimrod Hurvitz and Wael Hallaq, who refute the reality of any ‘regional’ school of law. They doubt that a common doctrine existed before the establishment of the classical schools of law (which they prefer to call ‘doctrinal schools’ rather than ‘personal’), and they believe that no early legal doctrine had any potency beyond the small circle of students around a particular master.<sup>4</sup>

The latter theory, which is accurate from a purely legal point of view, does not take into account the subjective feelings of the people. I believe that the historian should pay more attention to how people who had a common way of life and a common way of thinking represented themselves when it came to legal matters. I will look specifically at what happened in certain cities in the early Islamic empire. Was there any sort of legal identity<sup>5</sup> evident between one place and another? To answer this question, we have to leave the above-mentioned theories and focus on the connection between the local urban elites and the government. I will seek to investigate the role that the urban elite in several

Iraqi cities—and, to a lesser extent, in Fustat—played in selecting and appointing the *qāḍīs* during the early ‘Abbāsīd period (132–218/750–833). I shall draw principally on the two sources for the history of the judiciary at that time: the *Akhbār al-quḍāt* of Wakī‘ (d. 306/918), a biographical dictionary of *qāḍīs* (mostly in Iraq), and the *Akhbār quḍāt Miṣr* of al-Kindī (d. 350/961), which focuses on Egyptian judges. Before discussing the essential issues, it is necessary to mention briefly certain legal problems in the middle of the second/eighth century, and to examine who the *qāḍīs* were and how they were appointed.

### **1. Unity and Diversity: Legal Issues under the Late Umayyads and Early ‘Abbāsīds**

The legal situation in Iraq in the middle of the second/eighth century appears clearly in one of the rare contemporary Arabic sources, the *Risāla fī al-ṣaḥāba* by the chancellery secretary Ibn al-Muqaffa‘ (d. c. 140/757).<sup>6</sup> In this famous epistle, the author warns the caliph al-Manṣūr (r. 136–58/754–75) about the legal diversity that is dividing the Islamic realm, including the province of Iraq itself. He cites as examples the cities of Ḥīra and Kufa, which, although situated near each other, applied different rules for similar crimes or offences. In fact, contradictory judgments could even be given in different parts of the same city.<sup>7</sup>

The contradictions emphasized by Ibn al-Muqaffā‘ are a reflection of a wider phenomenon on which Schacht based his theory of the ancient schools of law. In the middle of the second/eighth century, three principal regional schools of law divided the Islamic Middle East: there was an Iraqi school, based on the jurists of Kufa and Basra; a Ḥijāzī school, based on the jurists of Medina and Mecca; and a Syrian school.<sup>8</sup> These three schools represented divergent legal movements and proposed different solutions for the same problem. Ibn al-Muqaffa‘’s *Risāla fī al-ṣaḥāba* also shows that there were divisions within these regional schools. As Hallaq and Hurvitz suggested, it is probable that each circle of jurists had its own doctrines (as, for example, in Kufa, which was divided into several distinct schools of thought associated with particular parts of the city); nevertheless, it is also probable that, at a certain level, the people were aware of some kind of local ‘super-schools’, each one corresponding to a specific city. It is enough, for the time being, to emphasize the considerable legal diversity at that time, whether in Iraq or in Arabia (Medinese legal thought probably differed slightly from the Meccan).<sup>9</sup>

After the revolution that toppled the Umayyads in 132/750, the ‘Abbāsīd caliphs had to deal with this legal diversity. To overthrow the previous dynasty, the ‘Abbāsīds had relied on a broad political movement of Shī‘ī inspiration that supported the family of the Prophet. Once in power, the elected member of the family (*al-riḍā min āl*

*Muḥammad*) was supposed to restore justice and apply divine law.<sup>10</sup> It is probable that some sort of legal reform was expected from the new dynasty and that Ibn al-Muqaffā' 's epistle reflected these popular expectations. The multiplicity of rules for just one crime (even major ones such as murder or illegal sexual intercourse) suggested that some of them, at least, did not comply with divine law. The unification of the law could therefore be seen as a major way to restore justice. Ibn al-Muqaffā' proposed to al-Manṣūr a remedy for this legal diversity: the codification of Islamic law. The caliph would promulgate a unique legal code and would impose it on all the *qāḍīs* of the empire. This code would be updated by each subsequent caliph.<sup>11</sup> According to later Muslim sources, al-Manṣūr asked the Medinese jurist Mālik ibn Anas (the eponym of the Mālikī school, d. 179/795) to write such a code, but Mālik refused.<sup>12</sup> Benjamin Jokisch argues that codification was eventually enforced under Hārūn al-Rashīd (r. 170–193/786–809).<sup>13</sup> I will come back to this later. All in all, it seems that a legal unification was difficult to enforce, because the elaboration of law was already regarded, in the main cities of the empire, as the prerogative of private scholars.

## 2. The Judiciary in the Middle of the Second/Eighth Century

### 2.1. A local institution

During the late Umayyad and the early 'Abbāsīd periods, a single *qāḍī* was appointed in every large city, whose duties were both legal and administrative. From the early Umayyad period, if not earlier, his main task was to dispense justice between litigants who had filed complaints before him, most often in the city's great mosque.<sup>14</sup> From the early 'Abbāsīds onwards, the *qāḍī* became a major administrator of the city and was sometimes expected to intervene in private business, when people could no longer manage their own affairs. In Egypt, as Sobhi Bouderbala has shown, the tribal administrators known as *'arīfs* managed the property of orphans under the Umayyads, but this authority was transferred to the *qāḍī* under al-Manṣūr.<sup>15</sup> At the same time, the *qāḍī* of Basra began to manage the pious foundations (*waqfs*), the orphans' properties, and the inheritance of people dying without an heir (*ḥashriyyāt*).<sup>16</sup> These administrative tasks were subsequently upheld by legal theory.<sup>17</sup>

The origins of the rules applied by the *qāḍīs* are still little known. Judges apparently relied on the Qur'an and on normative practices (*sunan*) of exemplary men (including caliphs), and they contributed importantly to the drawing up of legal norms by the use of their personal opinion or *ra'y*.<sup>18</sup> There was no definitive or binding written legal corpus yet. As far as we can trace them, the first 'fixed' compendia of jurisprudence emerged in the late second/eighth and the early third/ninth century, with the formation of the proto-Ḥanafī and proto-Mālikī *madhhabs*.<sup>19</sup> Despite their adherence to legal trends, *qāḍīs* could still choose the most appropriate legal solution to a specific issue,<sup>20</sup> and it was not until

the late third/ninth or the early fourth/tenth century, with the formation of formal schools of law, that *qāḍīs* had to comply with the legal rules promoted by their own *madhhab*. The *qāḍīs* did not enjoy total freedom, because their rulings could be controlled by the government, which could easily dismiss them from their position.<sup>21</sup> Nevertheless, they could, in many cases, apply their personal understanding of legal and social order, and they played a leading part in the shaping of an 'Islamic' society. Two *qāḍīs* from the middle of the second/eighth century exemplify this ambiguous role: the famous jurist Ibn Abī Laylā (d. in office, in 148/765), who served as a judge in Kufa at the end of the Umayyad period and under the first 'Abbāsīd caliphs,<sup>22</sup> is well known for his contribution to the formulation of judiciary procedures based on his opinions and experience.<sup>23</sup> In Basra, the *qāḍī* 'Ubayd Allāh ibn al-Ḥasan al-'Anbarī (d. 168/785) contributed to the definition of the fiscal status of the regions near his city and refused to act on the legal and fiscal instructions of the caliph al-Mahdī (r. 158–69/775–85).<sup>24</sup>

Judgeship was a key institution for the people of a city. The resolution of many problems depended on the *qāḍī*—on his legal opinions and on his judgements. From the middle of the second/eighth century onwards, state administrators and scholars began to work out theories about the 'good' *qāḍī*—his qualities and his knowledge. Later reflections, within the classical schools of law, unsurprisingly attached importance to the judge's legal knowledge. In the second/eighth century, however, thinkers such as the chancellery secretary (*kātib*) 'Abd al-Ḥamīd ibn Yaḥyā (d. 132/750) or the *qāḍī* 'Ubayd Allāh ibn al-Ḥasan al-'Anbarī focused mainly on the social knowledge and experience of the judge: even though a legal background was required, such knowledge could be provided by counsellors whose advice the judge was supposed to seek. A lack of social knowledge, however, could not be counterbalanced: the *qāḍī* had to understand the urban society in which he was appointed, and figure out the complex familial and tribal relationships, such as, for example, in sharing out an inheritance between the legal beneficiaries.<sup>25</sup>

Despite many common features, the inhabitants of every large city developed their own original characteristics following the Islamic conquests. Although Basra and Kufa were founded at the same time and in the same region, different tribes had settled there, and they had developed their own urban models. The Yamanī tribes of Kufa, for example, maintained their ancient tradition of gathering in cemeteries, which resulted in urban structures unknown in Basra.<sup>26</sup> Each city had its own needs, and at the end of the Umayyad period, the judiciary was still seen as a local institution. This was possible largely because of the decentralized organization of the state.

Until the reign of al-Manṣūr, the second 'Abbāsīd caliph, the *qāḍīs* were usually appointed by the governors of the cities or provinces. The caliph rarely intervened in their appointments. The *qāḍī* appeared as a kind of 'legal secretary' of the governor, who was considered to be the actual holder of the judgeship, and delegated his judicial powers to the *qāḍī*.<sup>27</sup> The turnover of the governors was high, however, and most of them were sent

by the caliphate from outside the province or the city.<sup>28</sup> Therefore, the governor often relied on the advice of the local elite when appointing a *qāḍī*. If a *qāḍī* died or was dismissed, he consulted the notables to learn whom they wanted as a replacement. This system was still apparent in the early 'Abbāsīd period, under al-Saffāḥ and at the beginning of the reign of al-Manṣūr.<sup>29</sup>

Not only were the notables involved in the selection of the *qāḍī*, but the *qāḍī* was also generally chosen from amongst the local elite itself. In Umayyad Iraq, the judges were local scholars supported by notables. In Fustat, all *qāḍīs* belonged to the leading Yamanī clans of the city, such as Ḥaḍramawṭ, Khawlān, and Sakūn.<sup>30</sup> The judiciary was regarded as a local institution employing local inhabitants, and this local framework may well have contributed to a local or regional development of Islamic law.

## 2.2. 'Abbāsīd centralization

Almost two decades after the 'Abbāsīd revolution, the caliph initiated one of the most significant reforms of the dynasty, namely, the centralization of the state and judiciary. Al-Manṣūr and his successors decided that virtually all the judges in the empire should be appointed by the central government (the caliph, sometimes his chief judge, and later his vizier).<sup>31</sup> The first appointment by al-Manṣūr took place in Basra in 140/757,<sup>32</sup> and twenty years later all the *qāḍīs* of the central provinces of the empire (including Fustat, Damascus and Medina) were appointed by the caliphate.<sup>33</sup> The *qāḍī* was now dispensing justice in the name of the caliph. If we remember that the 'Abbāsīd revolution intended to restore justice on earth, after the allegedly illegitimate Umayyad dynasty, and that the first 'Abbāsīd caliphs claimed to be rightly guided rulers and deputies of God,<sup>34</sup> we realize that this reform was symbolically significant. Moreover, it helped the caliphs increase their power by restricting that of the provincial governors. The latter were no longer responsible for carrying out justice and were therefore significantly weakened. They had lost the privileged relationship they had had with local scholars and had to deal with *qāḍīs* who were now their equals—both now being appointed directly by the caliph—and whose administrative responsibilities in each city were increasing.

The centralization of the judiciary can also be interpreted as an attempt to unify legal practices and to reduce the heterogeneity denounced by Ibn al-Muqaffa'. If the caliphs could hardly codify Islamic law, which was already in the hands of private scholars, the centralization allowed them to select the *qāḍīs* and support one particular legal trend or another. As Nurit Tsafir has shown,<sup>35</sup> this was probably one of the main reasons for the centralization, and 'Abbāsīd legal policy is evident in the appointments of the *qāḍīs* in the capital, al-Hāshimiyya and later Baghdad.

During the 25 years that followed the 'Abbāsīd revolution, the caliphs favoured mainly the Medinese school of law: they chose their *qāḍīs* from amongst the scholars of Medina and persuaded them to come to Iraq.<sup>36</sup> Why did they choose to rely on this legal

trend? The sources are unfortunately silent about their motivation, but the following hypothesis can be made. The first 'Abbāsīd caliphs (al-Saffāḥ and al-Manṣūr) came from Syria, while their armies came from Khurāsān (an eastern province of Iran). When the new dynasty settled in Iraq, the political elite was not accustomed to Iraqi legal thought (founded on the practices and the traditions of the Companions and Successors who had settled in the main cities of southern Iraq),<sup>37</sup> nor did they know the leading local scholars. According to Ibn al-Muqaffa', Iraqi scholars had suffered from a poor reputation under the Umayyads, and the new power may have been hesitant to integrate them fully into their administration.<sup>38</sup> Moreover, many Iraqi scholars (especially the traditionists) were pro-'Alid and regarded the 'Abbāsīds as usurpers. The first 'Abbāsīd caliphs may therefore have been reluctant to employ them.<sup>39</sup> They could not rely on Syrian jurists such as al-Awzā'ī<sup>40</sup> without giving the impression that they were following Umayyad practices, thereby losing the support of the Khurāsānī army. They therefore had to find a legal tradition that would seem to comply with divine will. For many people, Medina probably appeared as the preserve of the *sunna* (tradition) inherited directly from the Prophet. The scholars of this city saw themselves as the heirs of the true practice ('amal) of the Prophet, unbroken in Medina since the time he preached there.<sup>41</sup> The caliphs may have hoped that these Medinese scholars would confer a wider legitimacy on the new dynasty, which would appear to be working for the restoration of the *sunna* of the Prophet.

From the reign of al-Mahdī (the third 'Abbāsīd caliph, r. 158–69/775–85) onwards, the *qāḍīs* of Baghdad were drawn mainly from amongst Iraqi scholars, especially from the followers of the Kufan jurist Abū Ḥanīfa (d. 150/767),<sup>42</sup> as was the case with Abū Yūsuf (d. 182/798), the first *qāḍī* to be given the title of 'chief *qāḍī*' (*qāḍī al-quḍāt*). According to Nurit Tsafrir, the main reason for this change of legal policy was theological. Like Abū Ḥanīfa, most of his students were apparently Murji'īs who believed that the status of a sinner was postponed until the Day of Resurrection. Therefore, they refused to question the ruler and were considered to be particularly loyal to the 'Abbāsīd dynasty.<sup>43</sup>

This interpretation does not, however, take into consideration the fact that early Murji'ism was a more revolutionary movement than it became in the third/ninth century,<sup>44</sup> and that Abū Ḥanīfa's attitude toward the 'Abbāsīds was ambiguous.<sup>45</sup> Other reasons—probably legal—might explain the 'Abbāsīds' support of proto-Ḥanafīs, and this issue needs further research that is beyond the scope of this chapter. Be that as it may, the 'Abbāsīds quickly extended their policy beyond Baghdad by the means of centralization and appointed members of Abū Ḥanīfa's circle as *qāḍīs* in other cities of Iraq and the Middle East, thus promoting what would eventually become the Ḥanafī school of law.<sup>46</sup>

### 3. The Resistance of Local Elites to 'Abbāsīd Centralization

#### 3.1. An 'Abbāsīd absolutism?

In spite of the centralization ordered by the 'Abbāsīd caliphs, the judiciary did not immediately lose its local characteristics, nor did urban elites forget their interest in the appointment of *qāḍīs*. This can be seen clearly in the city of Basra, where a new judge was appointed in 156/773. Wakī' relates the following story:

'Ubayd Allāh ibn al-Ḥasan al-Mu'addib reported from al-Numayrī, from 'Abd al-Wāḥid ibn Ghiyāth, from Jannāb al-Khashkhāsh, from Sallām ibn Abī Khayra:

After Sawwār's death,<sup>47</sup> we talked about him at 'Ubayd Allāh ibn al-Ḥasan's,<sup>48</sup> who implored God in his favour and praised him. We asked 'Ubayd Allāh:

'Who do you think would be suitable for the judgeship after him?'

'That is obvious', he replied. 'Abū Bakr ibn al-Faḍl al-'Atakī'.

Then we visited Abū Bakr and talked about Sawwār. He implored God in his favour and we asked him:

'Who do you think would be suitable for the judgeship after him?'

'Is there any doubt about that?' he replied. 'It can only be one man: 'Ubayd Allāh ibn al-Ḥasan'.

Sallām ibn Abī Khayra said:

We were surprised by their common agreement on the matter.

Even though this narrative is told to highlight the importance of these two scholars ('Ubayd Allāh ibn al-Ḥasan al-'Anbarī and Abū Bakr ibn al-Faḍl al-'Atakī) and their modesty, it may also show how discussions took place in the selection of new *qāḍīs*. In this story, the scholars do not suggest the candidate most likely to be selected by the caliph, but rather express their opinion on who deserved to become a *qāḍī*.

How did they dare speak out about this matter, when judges were now appointed by the central authority according to a wide political programme that promoted the standardization of legal practice? Some scholars believe that this programme was the result of an autocratic system, in which the arbitrary power of the caliph was absolute.<sup>49</sup> But centralization did not mean despotism, as Nurit Tsafir has clearly shown.<sup>50</sup> The legitimacy of the 'Abbāsīd dynasty was not well enough established to allow the caliphs to impose their legal and judicial policy by force. They could easily experiment with a new legal policy in Baghdad because it was a new city, built almost ex nihilo and without any local legal tradition.<sup>51</sup> But the situation was totally different in other Iraqi cities: the so-called 'Abbāsīd 'revolution' was regarded by many people as a usurpation of power, either at the expense of the Umayyads (according to the majority of Syrians)<sup>52</sup> or of the 'Alid family. The crystallization of the Shī'ī opposition around 'Alid leaders such as the Ḥasanid Ibrāhīm ibn 'Abd Allāh (d. 145/763), who revolted in Basra under al-Manṣūr,<sup>53</sup> jeopardized the caliphate in Iraq. The 'Abbāsīds could not afford to impose any legal



reform against the wishes of the local elites, lest opposition to their dynasty be strengthened.

### 3.2. *Dealing with local issues*

The centralization of the judiciary was a long process, and the method of selecting the *qāḍīs* did not change immediately. The first 'Abbāsīd caliphs still consulted local people before appointing a judge and summoned to Baghdad delegations (*wafd*, pl. *wufūd*) made up of notables. The sources give several examples of delegations coming from Basra to meet the caliphs al-Mahdī and al-Rashīd (r. 170–93/786–809). These delegations usually consisted of five or six notables and scholars from the city, representing different legal and theological trends.<sup>54</sup> The caliph received them and asked whom they wanted as *qāḍī*. In 167/783–4, the governor of Basra, Muḥammad ibn Sulaymān, chose a delegation of six local notables and sent them to the caliph al-Mahdī. The governor wanted them to insist that the caliph dismiss Khālīd ibn Ṭālīq, a *qāḍī* who was apparently hated by many Basrans. Although the delegation was used as a tool by the governor to obtain the dismissal of Khālīd ibn Ṭālīq, each member felt free to propose his own candidate to replace the dismissed judge, and it seems that the local elite could make themselves heard. Moreover, according to the list reported by Wakī', the members of this delegation were representatives of rival groups in Basra, such as partisans of *ra'y*, partisans of *ḥadīth*, proto-Ḥanafīs, members of the Basran legal trend, and Mu'tazilīs.<sup>55</sup> Although the delegation consisted of only six men, they represented a large section of the Basran elite. Such consultations of the local elite did not mean that the 'Abbāsīds renounced their programme of legal unification in favour of the proto-Ḥanafī trend, but it did mean that the enforcement of this programme was limited by local wishes<sup>56</sup>.

The consultation of the provincial elite had perhaps a symbolic meaning: the caliph had to show that he was not a tyrant. As a deputy of God, however, he could claim to have a better understanding of legal issues and to have the right to appoint whomever he wanted as *qāḍī*. The issue was therefore not merely symbolic. The caliph was ready to take the delegations' opinion into consideration, which means that the local wishes were seen as important. The city's notables insisted particularly on having a 'local' *qāḍī*. Émile Tyan has interpreted this request as a matter of 'national pride'.<sup>57</sup> Evidence shows that the reality was more complex. It seems that an ability to understand local practices was a key criterion in the selection of *qāḍīs*, a criterion that could be verified only by people who were familiar with local practices.

Two examples from Iraq can be cited to illustrate this hypothesis. Yaḥyā ibn Sa'īd al-Anṣārī (d. 143/760?), a Ḥijāzī jurist who had been a judge in Medina under the Umayyad caliph al-Walīd II (r. 125–6/743–4)<sup>58</sup>, was appointed *qāḍī* of al-Ḥāshimiyya by al-Saffāḥ or al-Manṣūr.<sup>59</sup> Just before leaving Medina for Iraq, Yaḥyā ibn Sa'īd prided himself on 'knowing everything' in the presence of Sulaymān ibn Bilāl al-Qurashī (d. c. 172/788–9), a Medinese scholar who had been in charge of land tax in his city.<sup>60</sup> Later,

however, Sulaymān ibn Bilāl received a letter in which Yaḥyā ibn Sa'īd complained that he could not understand some of the litigations brought before him in court and that, in such cases, he did not know which judgement to pass. He requested the secret assistance of another Medinese jurist, Rabī'a al-Ra'y (d. 136/753).<sup>61</sup> Although Wakī' is silent about the nature of these problematic cases, we can suppose that Yaḥyā ibn Sa'īd's Medinese legal training was inapplicable to many aspects of Iraqī society.

The second example is from about 145/762, when the Egyptian jurist and *qāḍī* Ghawth ibn Sulaymān (d. 168/785) went to Iraq and was asked by the caliph al-Manṣūr to arbitrate on a matrimonial conflict between him and his wife, Umm Mūsā. Subsequently, the caliph proposed to appoint him *qāḍī* of Kufa. Ghawth ibn Sulaymān protested that he was not from that city (*balad*) and that he knew nothing about its inhabitants. According to al-Kindī, Ghawth was appointed *qāḍī* of Kufa, but after a while people stopped attending his court, and he was dismissed.<sup>62</sup> According to Ibn 'Asākir, however, al-Manṣūr accepted his excuse of not being familiar with the city and never appointed him to Kufa; this is probably closer to the truth, because Ghawth ibn Sulaymān does not appear in Wakī''s list of Kufan judges.<sup>63</sup> The first 'Abbāsīd caliphs supported, to a certain extent, the ancient Egyptian school of law, and several leading Egyptian scholars were attracted to Baghdad.<sup>64</sup> However, even though al-Manṣūr appealed to an Egyptian jurist to arbitrate his personal litigations, he could hardly appoint such a 'stranger' as a *qāḍī* to a major Iraqī city. If he actually did, as al-Kindī maintains, the appointment failed, because the Kufans would not accept a judge who could not understand the particularities of their society.

### 3.3. A question of legal doctrine: central authority versus local interests

In several instances, the delegations sent to the caliph opposed the promotion of proto-Ḥanafī *qāḍīs*, not only because they were 'strangers' unable to understand local cases, but also because of their legal doctrine. The notables were attached to their local traditions and were not ready to accept a *qāḍī* belonging to a different legal trend. Some feared that such a judge would seriously disrupt the urban order and harm the people's material interests. When the caliph al-Mahdī consulted the delegation of Basrans in 167/783–4, one of them suggested the appointment of a local scholar, Muḥammad ibn 'Abd Allāh al-Anṣārī (d. 215/830),<sup>65</sup> and praised him for his qualities, but another member of the delegation contradicted him, saying:

'He spoke truly, and indeed he has all these qualities. However, this advice is not wise, because this man follows Abū Ḥanīfa and inclines towards his opinions (*ra'yū-hu*). Yet, we have in our city rules (*aḥkām*) that Abū Ḥanīfa considers invalid, but which are the only ones suitable for us. If he judged our litigations on the ground of rules other than our own, our rules would become void, and our goods would be lost'—he seemed to be alluding to the pious foundations.<sup>66</sup>

It was eventually another scholar, faithful to the Basran legal tradition, who was appointed by the caliph. This story shows that at the end of the eighth century CE, the representatives of the Basran people regarded the doctrine of the Kufan Abū Ḥanīfa as a foreign one.<sup>67</sup> Despite divergences between local circles of jurists, they were all more or less united around a local common practice, especially regarding the administration of pious foundations. Abū Ḥanīfa contested the validity of permanent pious foundations established for relatives (*waqf ahli*), which could be used to evade Islamic law on inheritance. According to him, a *waqf* was valid only if the founder established it as from the moment of his death;<sup>68</sup> moreover, only the descendants of the founder who had already been procreated by the time the founder died were entitled to a share in the revenues of the foundation. When these descendants died, their shares had to be transferred to indigent people, so that no more than two or three generations could benefit from the revenue of a pious foundation.<sup>69</sup> If such family foundations were a traditional practice in Basra, the prosperity and wealth of many Basrans would have been threatened by a proto-Ḥanafī *qāḍī*.<sup>70</sup>

The elite of Fustat also rejected a proto-Ḥanafī *qāḍī* coming from Iraq, Ismā'īl ibn Alīsa' (164–7/781–4). He wanted to apply the same rule in Egypt and was accused of trying to abrogate the pious foundations.<sup>71</sup> In addition, the people of Fustat reproached him for tolerating the insult *yā ma'būn*, *yā lūṭī* (an accusation of passive homosexuality), which he did not consider punishable by the prescribed sanction (*ḥadd*) for false accusation of fornication (*qadhf*).<sup>72</sup> Once more, he followed the teaching of Abū Ḥanīfa, who did not regard such an insult as a crime as long as it was vague enough, whereas Mālik ibn Anas assimilated it to *qadhf* and ordered the culprit to be punished harshly.<sup>73</sup> Like their principal jurist, al-Layth ibn Sa'd (d. 175/791), the inhabitants of Fustat were strongly opposed to homosexual behaviour and thus to false accusations of homosexual behaviour.<sup>74</sup> The Ḥanafī doctrine might have been seen to jeopardize public morality in Fustat.

In Egypt, as in the Iraqi *amṣār* (military settlements), the Ḥanafī doctrine promoted by the central government was not easily accepted. Until the reign of al-Rashīd, at the end of the second/eighth century, the Basran people prevented the caliph from appointing any *qāḍī* from amongst the followers of Abū Ḥanīfa and demanded that scholars be recruited from within the local legal tradition.<sup>75</sup> Even in Kufa, where the students of Abū Ḥanīfa were only one of the prominent circles of jurists, the government could not appoint scholars who can be safely identified as proto-Ḥanafīs until the reign of al-Amīn (r. 193–8/809–13). The judiciary remained in the hands of the followers of Ibn Abī Laylā, Abū Ḥanīfa's main rival.<sup>76</sup>

The wishes of notables were thus the principal obstacle to the 'Abbāsīd policy. Several times, the caliph appointed a *qāḍī* in Basra against the wishes of the inhabitants, but usually such a *qāḍī* stayed in office for no more than one or two years, whereas *qāḍīs* appointed in accordance with the wishes of the people stayed in office for an average of

five or six years.<sup>77</sup> The most striking example is that of 'Abd al-Raḥmān ibn Muḥammad al-Makhzūmī, a Ḥanafī *qādī* appointed in Basra in 172/788–9 against the wishes of the people: he was dismissed just four months later.<sup>78</sup> Wakī' explains that he could not resolve the litigations brought before him and that he hesitated before issuing a judgment diverging from local legal traditions:

Al-Aḥwaṣ ibn al-Mufaḍḍal ibn Ghassān reported from Ḥaḥṣ ibn 'Uthmān:

We saw a woman who had submitted a case before 'Abd al-Raḥmān ibn Muḥammad al-Makhzūmī, the *qādī* of Basra. When she became impatient to hear his judgment, he stood before her and said: 'I have difficulties with your case, even though I know what is right and not wrong according to my [own doctrine]. Be patient. If you want me to talk to the governor, so that he convenes the jurists of Basra for you, I can do that. And if you want, I shall write to the Commander of the Faithful and ask the jurists of the Muslims who sit next to him'.<sup>79</sup>

The *qādī* could not issue a judgement in conformity with local practices, perhaps because he did not understand these practices—or because he simply would not depart from his beliefs. On the other hand, he could not impose his own doctrine and bring upon himself the litigants' wrath. He therefore left the decision to the assembly of local scholars or to the jurists of the caliph's court (presumably Ḥanafīs like himself).

#### 3.4. *Towards a marginalisation of ancient provincial elites*

The centralization of the judiciary had long-term consequences for the provincial elite. Despite the role that the first 'Abbāsīd caliphs still accorded to local notables in the selection of *qādīs*, the reform initiated by al-Manṣūr can also be interpreted as an attempt to undermine their power. This attempt was eventually successful, as shown by the history of Egyptian *qādīs*.

The first *qādī* appointed by al-Manṣūr in Fustat, 'Abd Allāh ibn Lahī'a (d. 174/790), was still a representative of the old class of Egyptian notables (*wujūh*) who controlled the key institutions in Fustat, such as the position of *ṣāhib al-shurṭa* (chief of the police).<sup>80</sup> A few years later, however, the caliph al-Mahdī appointed, for the first time in the history of Egypt, a *qādī* who did not belong to the local elite, but came from Iraq (Ismā'īl ibn Alīsa', who was also a follower of Abū Ḥanīfa).<sup>81</sup> He was so unpopular that the caliph had no choice but to dismiss him and replace him with an Egyptian scholar (Ghawth ibn Sulaymān, and then al-Mufaḍḍal ibn Faḍāla). In 170/786, the caliph al-Hādī (r. 169–70/785–6) appointed a new 'outsider' in Fustat, the Medinese 'Abd al-Malik ibn Muḥammad al-Ḥazmī, followed a few years later by the Iraqi Muḥammad ibn Masrūq. At first, the caliphs sent *qādīs* from Yamanī tribes, because they probably believed that they would be more accepted in a predominantly Yamanī environment.<sup>82</sup> Hārūn al-Rashīd soon abandoned this precaution and appointed Qaysī *qādīs* such as al-'Umarī and al-Bakrī.

The centralization of the Egyptian judiciary has been interpreted as part of a wider programme of legal unification under the (proto-)Ḥanafī trend.<sup>83</sup> Not all the *qāḍīs* sent from Iraq were Ḥanafīs, however. Al-Ḥazmī belonged to the Medinese/proto-Mālikī school, as did al-ʿUmarī and, later, Muḥammad ibn ʿAbd Allāh al-Zuhrī (217–26/832–40).<sup>84</sup> In Egypt, at least, the centralization of the judiciary meant first and foremost a reinforcement of caliphal authority. The caliphs tried, as far as possible, to send *qāḍīs* belonging to the *madhhab* that they personally supported, which was not always the Ḥanafī school. Al-Rashīd probably sent al-ʿUmarī to Fustat when he turned to the Mālikīs, after the death of Abū Yūsuf, and appointed the Medinese Abū al-Bakhtarī as chief *qāḍī*.<sup>85</sup>

The fourth *fitna* (the war between al-Amīn and al-Maʿmūn and its aftermath) temporarily defeated the efforts of the caliphate to enhance its authority. Between 197/813 and 211/826, Egypt became virtually autonomous.<sup>86</sup> The *wujūh* were able to regain control of Fustat, and *qāḍīs* were appointed from within the old established families who had long monopolized the institution, but this reversal of affairs was short lived. In 211/826, the governor ʿAbd Allāh ibn Ṭāhir re-established ʿAbbāsīd authority in Egypt, and the traditional Yamanī *wujūh* disappeared from the political scene forever.<sup>87</sup> A new ruling elite came to power. Most of the *qāḍīs* were now outsiders and belonged to Qaysī tribes. Even though Muḥammad ibn Abī l-Layth (226–35/841–50) had lived in Fustat for twenty years when he was appointed *qāḍī*,<sup>88</sup> he was a Ḥanafī from a Qaysī tribe and, as the principal participant of the *miḥna*<sup>1</sup> in Fustat in the 840s,<sup>89</sup> he represented—more than anyone—the coercive power of the central government.<sup>90</sup>

In Iraq, the influence of the local elites was still evident at the beginning of the third/ninth century. The number of Ḥanafī *qāḍīs* increased in Basra and Kufa during the following decades. This does not mean that a central power was imposed on a reluctant people. The proto-Ḥanafī school had supposedly gained ground in these two cities, and the caliphate could more easily appoint *qāḍīs* belonging to this school of law.<sup>91</sup> Nevertheless, the influence of the local elite soon declined. As was the case in Egypt, the provincial elite of Kufa and Basra no longer played a part in the selection of their *qāḍīs*, and we do not hear about any delegation after the return of al-Maʿmūn (r. 198–218/813–33) to Baghdad in 204/819. Individual scholars were consulted before the appointment of a *qāḍī* under al-Mutawakkil (r. 232–47/847–61), but they were no longer representatives of the local peoples.<sup>92</sup> Between the fourth *fitna* and the second half of the third/ninth century, most of the *qāḍīs* in Kufa were still drawn from local scholars, but they no longer belonged to the dominant Yamanī clans (such as Nakhaʿ) from within which judges had usually been selected in the second/eighth century.<sup>93</sup> The spread of doctrinal schools of law caused a standardization of knowledge that was soon reinforced by a ‘traditionalization’ of law in which a ‘universal’ Muḥammad replaced the local

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<sup>1</sup> The *miḥna* is the ‘inquisition’ that al-Maʿmūn organized to impose the dogma of the creation of the Qurʾan.

Companions as the source of legal practice. This doctrinal standardisation no longer left a place for local legal practices as they had existed. Thereafter, local practices could be recognized only insofar as they were assimilated into the main *madhhabs*.<sup>94</sup>

### Conclusion

During the second half of the second/eighth century, appointments to the judiciary in Iraq and Egypt were the subject of strenuous competition between the local elite and the central government. Negotiations for the selection of appropriate candidates, which can be seen as evidence of the close collaboration between the local elite and the central government, do not conceal the issues at stake. The caliphate tried to increase its authority in the main provincial cities and reduce legal heterogeneity in the empire. The local learned elite resisted this policy in order to preserve its traditional power and local interests.

At first, the 'Abbāsids' lack of legitimacy required some concessions, and the provincial elite succeeded in keeping some of its special prerogatives in the selection of *qādīs* until the end of the second/eighth century. The first 'Abbāsīd caliphs had to take into account the interests and particularities of the local situation: they could not afford to muzzle local wishes without renouncing their claim to restore justice. Benjamin Jokisch argues that Ḥanafī law was imposed by the central power on the Islamic empire by the means of judges.<sup>95</sup> This theory is weakened by the fact that the central power and the local elite were at that time in a permanent negotiation. In the third/ninth century, however, the reinforcement of caliphal authority (particularly during the *miḥna*) and the evolution of political structures resulted in a definitive marginalisation of the local elite.

In the long run, the 'Abbāsids did not succeed by coercion but by negotiating with local communities and by supporting new legal trends. The promotion of Ḥanafism—and, to a lesser extent, Mālikism—as well as job opportunities offered to those who had reached a high position in the Ḥanafī school, encouraged scholars to adhere to this school. They hoped that it would allow them to find a position as a judge, scribe, or professional witness.

On the whole, the transition from the 'ancient' to the 'personal' (or 'doctrinal') schools of law can be seen as the tension between two forms of identity. At the local level, the Muslim people of the main cities defended their material and moral interests with their attachment to local customs, rooted in the traditions of the Companions and Successors. At the centre, the 'Abbāsīd state engaged in a programme of centralization and standardization that can be seen as an attempt to enhance an Islamic 'universalism'. At the same time, the development of Prophetic *ḥadīth*—which eventually replaced, to a large extent, the older traditions of the Companions and of the Successors—appears as the most important factor in the development of a universal Islamic model, that of the Prophet Muhammad. Relationships between religious scholars and the state have often been seen as antagonistic, each side trying to assert its authority over the other. From

another point of view—that of a struggle between local practices and Islamic universalism—both the state and the scholars were moving toward the same end. In two distinct ways, they promoted a comprehensive identity over and above local traditions. The support of doctrinal schools of law contributed greatly to the reshaping of urban self-definitions. Muslims identified more and more with this new universal concept of knowledge, and less and less with local trends of thought.

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### Notes

<sup>1</sup> G. Makdisi, 'Ṭabaqāt-Biography: Law and Orthodoxy in Classical Islam', *Islamic Studies* 32 (1993), 379, 390–1; C. Melchert, 'The Formation of the Sunnī Schools of Law', in W. B. Hallaq (ed.), *The Formation of Islamic Law* (Aldershot, 2004), 354–5.

<sup>2</sup> N. Tsafir, *The History of an Islamic School of Law. The Early Spread of Hanafism* (Cambridge MA, 2004).

<sup>3</sup> J. Schacht, *Introduction au droit musulman* (Paris, 1983), 55. Cf. Makdisi, 'Ṭabaqāt-Biography', 390–1; Melchert, *The Formation of the Sunni Schools of Law, 9th–10th Centuries C.E.* (Leiden, 1997), 35.

<sup>4</sup> N. Hurvitz, 'Schools of Law and Historical Context: Re-examining the Formation of the Ḥanbalī Madhhab', *Islamic Law and Society* 7 (2000), 42–6; W. B. Hallaq, 'From Regional to Personal Schools of Law? A Reevaluation', *Islamic Law and Society* 8 (2001); see also S. Judd, 'Al-Awzā'ī and Sufyān al-Thawrī: The Umayyad Madhhab?', in P. Bearman, R. Peters, and F. E. Vogel (ed.), *The Islamic School of Law. Evolution, Devolution, and Progress* (Cambridge, 2005), 11, 22.

<sup>5</sup> On the definition of 'identity', conceived in terms of boundaries between cultural models, see Philip Wood's introduction to the present volume.

<sup>6</sup> Ibn al-Muqaffa', *Risāla fī al-ṣaḥāba*, in C. Pellat, *Ibn al-Muqaffa' (mort vers 140/757) 'conseiller' du calife* (Paris, 1976). On this epistle, see, amongst other references, J. Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford, 1950), 102–3; S. D. Goitein, 'A Turning Point in the History of the Muslim State (Apropos of the Kitāb al-ṣaḥāba of Ibn al-Muqaffa')', in *Studies in Islamic History and Institutions* (Leiden, 1968); A. K. S. Lambton, *State and Government in Medieval Islam. An Introduction to the Study of Islamic Political Theory: The Jurists* (New York, 1981), 51; J. E. Lowry, 'The First Islamic Legal Theory: Ibn al-Muqaffa' on Interpretation, Authority, and the Structure of the Law', *Journal of the American Oriental Society* 128 (2008), 25–40.

<sup>7</sup> Ibn al-Muqaffa', *Risāla fī al-ṣaḥāba*, 40–2.

<sup>8</sup> Schacht, *Origins*, 21–35.

<sup>9</sup> On the Meccan legal trend, see H. Motzki, *The Origins of Islamic Jurisprudence: Meccan Fiqh before the Classical Schools* (Leiden, 2002).

<sup>10</sup> See M. Sharon, *Black Banners from the East*. Vol. 1, *The Establishment of the 'Abbāsīd State: Incubation of a Revolt* (Leiden, 1983), 147; M. Sharon, *Black Banners from the East*. Vol. 2, *Revolt. The Social and Military Aspects of The 'Abbāsīd Revolution* (Jerusalem, 1990), 250f.; P. Crone, 'On the Meaning of the 'Abbasid Call to *al-Riḍā'*, in C. E. Bosworth et al. (eds.), *The Islamic World From Classical to Modern Times* (Princeton, 1989), esp. 100–1.

<sup>11</sup> Ibn al-Muqaffa', *Risāla fī al-ṣaḥāba*, 42–3. See also Lambton, *State and Government*, 53; P. Crone and M. Hinds, *God's Caliph. Religious Authority in the First Centuries of Islam* (Cambridge, 1986), 86; Lowry, 'The First Islamic Legal Theory', 36.

<sup>12</sup> Y. Dutton, *The Origins of Islamic Law. The Qur'an, the Muwaṭṭa' and Madinan 'Amal* (London, 1999), 29. On Mālik, see J. Schacht, 'Mālik b. Anas', *EI2*.

<sup>13</sup> B. Jokisch, *Islamic Imperial Law. Harun-Al-Rashid's Codification Project* (Berlin, 2007), esp. 261–309.

<sup>14</sup> M. Tillier, 'Un espace judiciaire entre public et privé: Audiences de cadis à l'époque 'abbāsīde', *Annales Islamologiques* 38 (2004), 497f.

<sup>15</sup> S. Bouderbala, *Ġund Miṣr: Étude de l'administration militaire d'Égypte des débuts de l'Islam, 21/642–218/833* (PhD diss., Université Paris 1 Panthéon-Sorbonne, 2008), 267.

<sup>16</sup> Wakī', *Akhbār al-quḍāt*, 2:58, 70.

<sup>17</sup> E. Tyan, *Histoire de l'organisation judiciaire en pays d'Islam* (Leiden, 1960), 363, 369, 375f.

<sup>18</sup> Schacht, *Origins*, 100; W. B. Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge, 2005), 44f.

<sup>19</sup> See al-Jāhīz, *Kitāb al-ḥayawān*, 1:87; on the development of early Mālikī texts, see J. E. Brockopp, *Early Mālikī Law. Ibn 'Abd al-Hakam and his Major Compendium of Jurisprudence* (Leiden, 2000), 66, 73, 89, 111.

<sup>20</sup> In the early third/ninth century, the *qāḍī* Ibrāhīm ibn al-Jarrāḥ usually chose for each case among the legal views of Abū Ḥanīfa, Abū Yūsuf, Mālik ibn Anas, and Ibn Abī Laylā. Al-Kindī, *Akhbār quḍāt Miṣr*, 432.

<sup>21</sup> M. Tillier, *Les cadis d'Iraq et l'État abbasside (132/750–334/945)* (Damascus, 2009), 240f., 578f.

<sup>22</sup> J. Schacht, 'Ibn Abī Laylā', *EI2*; Tillier, *Les cadis d'Iraq*, 99.

<sup>23</sup> See, e.g., Wakī', *Akhbār al-quḍāt*, 3:133–4.

<sup>24</sup> M. Tillier, 'Un traité politique du II<sup>e</sup>/VIII<sup>e</sup> siècle: L'épître de 'Ubayd Allāh b. al-Hasan al-'Anbarī au calife al-Mahdī', *Annales Islamologiques* 40 (2006), 142–4.

<sup>25</sup> Tillier, *Les cadis d'Iraq*, 187–94.

<sup>26</sup> H. Djaït, *al-Kūfa. Naissance de la ville islamique* (Paris, 1986), 287f.

<sup>27</sup> Schacht, *Introduction*, 32.



<sup>28</sup> J. Lassner, *The Shaping of 'Abbāsīd Rule* (Princeton, 1980), 58. For the governors of Fustat, see H. Kennedy, 'Central Government and Provincial Elites in the Early 'Abbāsīd Caliphate', *Bulletin of the School of Oriental and African Studies* 44 (1981), 26–38.

<sup>29</sup> Tsafir, *The History*, 30; Tillier, *Les cadis d'Iraq*, 146–7.

<sup>30</sup> Kennedy, 'Central Government and Provincial Elites', 37; M. Tillier, in al-Kindī, *Histoire des cadis égyptiens* (Cairo: 2012), 34. On the *qāḍīs* of al-Mawṣil under the early 'Abbāsīd caliphate, see Kennedy, 'Central Government', 30.

<sup>31</sup> Tillier, *Les cadis d'Iraq*, 101–1.

<sup>32</sup> Wakī', *Akhhbār al-quḍāt*, 2:57.

<sup>33</sup> B. Johansen, 'Wahrheit und Geltungsanspruch: Zur Begründung und Begrenzung der Autorität des Qadi-Urteils im islamischen Recht', in O. Capitani et al., *La Giustizia nell' alto medioevo (secoli IX–XI)* (Spoleto, 1997), 994; Tillier, *Les cadis d'Iraq*, 104.

<sup>34</sup> Crone and Hinds, *God's Caliph*, 80–2.

<sup>35</sup> Tsafir, *The History*, 40f.

<sup>36</sup> Tsafir, *The History*, 40; Tillier, *Les cadis d'Iraq*, 148f.

<sup>37</sup> Hallaq, *The Origins and Evolution*, 106–7. Cf. Schacht, *Origins*, 231.

<sup>38</sup> The reason of this bad reputation is unclear. One would expect that Iraqi scholars had a bad reputation in Syria because of their opposition to the Umayyads. Ibn al-Muqaffa's text suggests, however, that these scholars had suffered from a bad reputation in Iraq itself because of their collaboration with unjust rulers. In his *Risāla*, Ibn al-Muqaffa encourages the caliph to rely more on Iraqi people. Ibn al-Muqaffa, *Risāla fī al-ṣaḥāba*, 39.

<sup>39</sup> See Tsafir, *The History*, 24–6; M. Q. Zaman, *Religion and Politics under the Early 'Abbāsids: The Emergence of the Proto-Sunnī Elite* (Leiden, 1997), 78–9.

<sup>40</sup> See Judd, 'al-Awzā'ī and Sufyān al-Thawrī', 22.

<sup>41</sup> Schacht, *Origins*, 61; Dutton, *The Origins of Islamic Law*, 31f.

<sup>42</sup> Tsafir, *The History*, 40–1; Tillier, *Les cadis d'Iraq*, 151f.

<sup>43</sup> Tsafir, *The History*, 25–7.

<sup>44</sup> See W. Madelung, 'The Early Murji'a in Khurāsān and Transoxania and the Spread of Ḥanafism', *Der Islam* 59 (1982), 32–9.

<sup>45</sup> He was suspected of supporting the Shī'ī rebel Muḥammad ibn 'Abd Allāh al-Nafs al-Zakiyya in 145/762, and he was supposedly imprisoned after he refused to be appointed as a *qāḍī* by al-Mansūr. See Zaman, *Religion and Politics*, 73; J. Schacht, 'Abū Ḥanīfa al-Nu'mān', *EI2*.

<sup>46</sup> Tsafir, *The History*, passim.

<sup>47</sup> Sawwār ibn 'Abd Allāh (d. 156/773), *qāḍī* of Basra from 140/757-8 until his death. See Wakī', *Akhhbār al-quḍāt*, 2:57f.; Ibn Qutayba, *Kitāb al-ma'ārif*, 590; al-Balādhurī, *Ansāb al-ashrāf*, 3:257.

<sup>48</sup> On this scholar, see *supra*, footnote 24.

- <sup>49</sup> See, e.g., Jokisch, *Islamic Imperial Law*, 251, 264, 274, 280.
- <sup>50</sup> Tsafir, *The History*, 36.
- <sup>51</sup> Tsafir, *The History*, 40; Tillier, *Les cadis d'Iraq*, 148.
- <sup>52</sup> See P. M. Cobb, *White Banners. Contention in 'Abbasid Syria, 750–880* (Albany, 2001), 43f.
- <sup>53</sup> See H. Kennedy, *The Early Abbasid Caliphate. A Political History* (London and Sydney, 1981), 67–70; L. Veccia Vaglieri, 'Ibrāhīm b. 'Abd Allāh', *EI2*.
- <sup>54</sup> Tillier, *Les cadis d'Iraq*, 167.
- <sup>55</sup> Wakī', *Akhbār al-quḍāt*, 2:128.
- <sup>56</sup> For consultations of local elites in Egypt, see al-Kindī, *Akhbār quḍāt Miṣr*, 369, 370.
- <sup>57</sup> Tyan, *Histoire de l'organisation judiciaire*, 171.
- <sup>58</sup> Wakī', *Akhbār al-quḍāt*, 3:241. See also Ibn al-Athīr, *al-Kāmil fī al-ta'rīkh* (Beirut, 1982), 5:274.
- <sup>59</sup> Wakī', *Akhbār al-quḍāt*, 3:243; al-Khaṭīb, *Ta'rīkh Madīnat al-Salām* (Beirut, 2001), 16:156.
- <sup>60</sup> On this scholar, see Ibn Sa'd, *al-Ṭabaqāt al-kubrā* (Beirut, 1968), 5:420; al-Mizzī, *Tahdhīb al-kamāl* (Beirut, 1980), 11:372–5; al-Dhahabī, *Siyar a'lām al-nubalā'* (Beirut, 1981–1988), 7:425–7.
- <sup>61</sup> Wakī', *Akhbār al-quḍāt*, 3:242; al-Khaṭīb, *Ta'rīkh Madīnat al-Salām*, 16:158. See also al-Nubāhī, *Ta'rīkh quḍāt al-Andalus* (Beirut, 1983), 10. On Rabī'a al-Ra'y, see al-Ziriklī, *al-A'lām* (Beirut, 1997), 3:17; Ibn Khallikān, *Wafayāt al-a'yān* (Beirut, 1994), 2:288.
- <sup>62</sup> Al-Kindī, *Akhbār quḍāt Miṣr*, 376.
- <sup>63</sup> Ibn 'Asākir, *Ta'rīkh Madīnat Dimashq* (Beirut, 1995), 48:101.
- <sup>64</sup> See M. Tillier, 'Les 'premiers' cadis de Fustāt et les dynamiques régionales de l'innovation judiciaire (750-833),' *Annales Islamologiques* 45 (2011), 218-20.
- <sup>65</sup> On this proto-Ḥanafī scholar, who became *qāḍī* in Basra in 191–2/806–7 and from 198/813 until 202/817-8, see Wakī', *Akhbār al-quḍāt*, 2:151, 157; al-Ṣaymarī, *Akhbār Abī Ḥanīfa* (Beirut, 1985), 164; al-Khaṭīb, *Ta'rīkh Madīnat al-Salām*, 3:405–10; Ibn Abī l-Wafā', *al-Jawāhir al-muḍiyya*, ed. 'Abd al-Fattāḥ Muḥammad al-Ḥulw (Cairo, 1993), 3:99–203.
- <sup>66</sup> Wakī', *Akhbār al-quḍāt*, 2:131. Cf. Ibn Ḥajar, *Tahdhīb al-tahdhīb* (Beirut, 1984), 7:424.
- <sup>67</sup> See Tsafir, *The History*, 34; see also Melchert, 'The Formation of the Sunnī Schools', 363.
- <sup>68</sup> R. Peters, 'Wakf', *EI2*.
- <sup>69</sup> Al-Khaṣṣāf, *Aḥkām al-awqāf* (Beirut, 1999), 94.
- <sup>70</sup> Tsafir, *The History*, 34. On Abū Ḥanīfa's opposition to *waqfs*, see also P. Hennigan, *The Birth of a Legal Institution: The Formation of the Waqf in Third-Century A.H. Ḥanafī Legal Discourse* (Leiden, 2004), xix.

<sup>71</sup> Al-Kindī, *Akhbār quḍāt Miṣr*, 372–3. Cf. Ibn al-Mulaqqin, *Nuzhat al-nuẓẓār*, 116–7; al-Qalqashandī, *Ṣubḥ al-a'shā* (Cairo: 1913–22), 1:418. On this *qāḍī*, see Tyan, *Histoire de l'organisation judiciaire*, 156.

<sup>72</sup> Al-Kindī, *Akhbār quḍāt Miṣr*, 371–2.

<sup>73</sup> On the Ḥanafī position, see al-Ṭahāwī, *Ikhtilāf al-fuqahā'* (Islamabad, 1971), 169; al-Sarakhsī, *al-Mabsūṭ* (Beirut, 1406/1986), 9:102. On the Mālikī position, see Saḥnūn, *al-Mudawwana l-kubrā* (Beirut, n.d.), 6:214; Ibn Farḥūn, *Tabṣīrat al-ḥukkām* (Beirut, 1995), 2:201–2.

<sup>74</sup> Al-Ṭahāwī, *Ikhtilāf al-fuqahā'*, 158.

<sup>75</sup> Tsafirir, *The History*, 36; Tillier, *Les cadis d'Iraq*, 179.

<sup>76</sup> Tsafirir, *The History*, 24; Tillier, *Les cadis d'Iraq*, 176–7.

<sup>77</sup> Tillier, *Les cadis d'Iraq*, 180.

<sup>78</sup> Wakī', *Akhbār al-quḍāt*, 2:140. See Tillier, *Les cadis d'Iraq*, 178.

<sup>79</sup> Wakī', *Akhbār al-quḍāt*, 2:142.

<sup>80</sup> Kennedy, 'Central Government', 34–5.

<sup>81</sup> See *supra*.

<sup>82</sup> Tsafirir, *The History*, 96.

<sup>83</sup> Tsafirir, *The History*, 27.

<sup>84</sup> See the list of the Egyptian *qāḍīs* in M. Tillier, 'Introduction', in al-Kindī, *Histoire des cadis égyptiens*, 28-30.

<sup>85</sup> Al-Kindī, *Akhbār quḍāt Miṣr*, 392. On Abū al-Bakhtarī, see Tillier, *Les cadis d'Iraq*, 154 and index.

<sup>86</sup> G. Wiet, *L'Égypte arabe de la conquête arabe à la conquête ottomane* (Paris, 1937), 71.

<sup>87</sup> Kennedy, 'Egypt as a Province of the Islamic Caliphate', in C. F. Petry, *The Cambridge History of Egypt* (Cambridge, 1998), 82.

<sup>88</sup> Al-Kindī, *Akhbār quḍāt Miṣr*, 449.

<sup>89</sup> Al-Kindī, *Akhbār quḍāt Miṣr*, 447, 451f. On this *qāḍī*, see also M. Hinds, 'Miḥna', *EI2*. The *miḥna* is the 'inquisition' that al-Ma'mūn organized to impose the dogma of the creation of the Qur'an.

<sup>90</sup> See Tillier, in al-Kindī, *Histoire des cadis égyptiens*, 37.

<sup>91</sup> Tsafirir, *The History*, 27, 35.

<sup>92</sup> Tsafirir, *The History*, 37; Tillier, *Les cadis d'Iraq*, 171–2.

<sup>93</sup> Tillier, *Les cadis d'Iraq*, 697.

<sup>94</sup> On the persistence of regional trends within the classical *madhhabs*, see W. B. Hallaq, 'From Regional to Personal Schools', 18.

<sup>95</sup> Jokisch, *Islamic Imperial Law*, 287f.