

2.2.3.1 The Case of İyâs b. Mu'âwiya

If the *qāḍī* was not selected from among the “pious experts”, this also meant that the categories of his administration of justice did not necessarily correspond to theirs. During the sixties of the first century a settled Bedouin (*ʿarābī madarī*) was a – successful, we are told – judge in Egypt, although he was unable to write and had not mastered the Quran.¹

Even in the second half of the second century, during the time of the caliph al-Mahdī, the *qāḍī* Khālīd b. Ṭalīq was accused of being ignorant in his own field: he did not even know the name of Muḥammad's mother.² He was, however, an educated man – but a genealogist and historian (*akhbārī*), not a jurist.³ Half a century earlier, he would probably not have shocked anyone.

The tribes in which these men had gathered their experience followed a different legal tradition. Differences would have been settled by the *ʿarīf*, on the basis of *ʿurf*.⁴ The *qāḍī* would have been approached only in exceptional cases, and if he was consulted, his function would have been like that of the *ḥakam*, the arbitrator who would have been the expert in pre-Islamic times.⁵ The institution of the *ḥakam* had by no means vanished among the settled tribes; after all, the office of *qāḍī* evolved out of it.⁶ When we occasionally read of a tribal *qāḍī*,⁷ this is probably exactly what the author meant. Not even members of religious groups who ought to have been committed to the new ideal always turned to the superior public authority. The Ibāḍites had their own authorities,⁸ and Jaʿfar al-Ṣādiq appears to have been put out when two

1 Kindī, *Quḍāt Miṣr* 312, 9ff.

2 Wakīʿ, *Akhbār* II 127, 12, and 130, 12f.

3 Ibn al-Nadīm, *Fihrist* 107, 9ff.

4 Cf. EI² I 629f. s. v. *ʿArīf*, and Serjeant in: JSS 29/1984/73.

5 Thus e.g. Ḥasan al-Baṣrī (cf. Wakīʿ I 309, 8ff.) or a generation later Sawwār b. ʿAbdallāh al-Anbarī (Fasawī II 247, 1; regarding him see p. 178 below).

6 As Kindī puts it, ʿAmr b. al-ʿĀṣ was said to have appointed a former *ḥakam qāḍī* in Egypt (*Quḍāt Miṣr* 305, 2ff.). Concerning the *ḥakam* in general cf. E. Tyan in EI² III 72 s. v.; also G. Jacob, *Beduinenleben* 217f.; Schacht, *Introduction* 8; Muh. Ibrahim el-Shoush, *The Nature of Authority in Arabia at the Advent of Islam* (PhD thesis, London 1959), p. 214ff.; W. Reiner, *Das Recht in der altarabischen Poesie* (PhD thesis Cologne 1963), p. 42ff.; Dannhauer, *Qāḍī-Amt* 12ff.; Ph. Rancillac in: MIDEO 13/1977/147ff.; Morony, *Iraq* 440; Chelhod in: SI 64/1986/22ff. and 31f.; also my own thoughts in: *La notion de liberté au Moyen Age* 25ff. Concerning the continued existence of the *ḥakam* in present-day Yemen cf. Chelhod, *L'Arabie du Sud* III 149ff.

7 Thus said of a “*qāḍī* of the Tamīm” in Abū Nuʿaym, *Ḥilya* III 110, 12.

8 See p. 529 below.