Judicial Practice in Umayyad Egypt (661-750 AD)

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The first two centuries of Muslim rule over Egypt form a key period of what was to become Islamic courts under the Abbasids. It witnessed the gradual emancipation of a specialised judiciary from a jurisdiction that fell more or less under the responsibility of Umayyad administrators, among them the pagarchs. The following study builds on previous research by Jairus Banaji, Petra Sijpesteijn and Mathieu Tillier that have dealt with the pagarch’s jurisdiction and the emergence of Islamic courts on an institutional basis. It addresses a different aspect, however, and aims at clarifying the actual practice of conflict solution, including more covert processes that lay beyond official rules and institutions. Arabic and Greek papyri abound in documents produced on behalf of and addressed to pagarchs in their function of administrators of justice. The narrative parts of these documents reveal a handling of grievance that was heavily reliant on elaborated modes of communication. The documents similarly show a high acceptance among the population – both literate officials and by trend illiterate subjects – of the role of written documents in the settlement of legal conflicts.

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The first two centuries of Muslim rule over Egypt form a key period of what was to become Islamic courts under the Abbasids. It witnessed the gradual emancipation of a specialised judiciary from a jurisdiction that had fallen more or less under the responsibility of Umayyad administrators, among them middle-ranking heads of districts (pagarchs, gr. pagarchós, ar. ṣāhib al-kūra). In this study is argued that middle- and even low-ranking administrators were exercising justice more independently from the provincial centre than was hitherto assumed, an assumption made possible only by a careful re-reading of documentary sources on papyrus. Moreover, a comparison of the Egyptian material with coeval papyri from Umayyad Palestine reveals a development starting from Syria and spreading to Egypt and perhaps other parts of the empire with some delay. It was characterised by a gradual delegation of judicial competences from higher to lower levels of administrative hierarchy, which in Egypt resulted in an emancipation of the Muslim middle- and even low-ranking administration from the caliphal centre since around 700 AD. The development came to a halt only after concerted efforts of centralisation under the Abbasids around 800 AD. The emancipation apparently came along with increased Arab settlement outside the garrison towns and the presence of Arab-Muslim officials in the provincial peripheries after Umayyad administrative reforms beginning under ʿAbdalmalik (r. 685-705).\(^2\)

Last but not least the sources manifest the important role of written documents in administrative practice and the high degree of acceptance by the population of written documents as a means of settlement of legal conflicts already at an early stage of Islamic civilisation.

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\(^2\) About the administrative reforms attested to ʿAbdalmalik b. Marwān and his successors, that were involving the substitution of Greek by Arabic as language of bureaus and documents, the issuing of a new coinage, and the carrying out of cadastral surveys cf. SIPESTEIJN 2007, p. 449-450.
1. Sources

Émile Tyan’s *Histoire de l’organisation judiciaire* (1960) is still the standard reference for the early judicial administration of Islamic lands. The author’s restriction to literary sources has produced a depiction, however, that is static and by tendency ahistorical in character. This was somehow unavoidable, though, given the source situation in É. Tyan’s day when many of the documentary texts on papyrus, that are available in good editions nowadays, had not been published yet. He drew on what was available to him, namely the correspondence of the Umayyad governor Qurra b. Šarīk (r. 709-714 AD) and the material from the Cairo collection. He also made use of Maghrebian documents from the 12th c AD and consulted papyrological research on Arabic legal deeds on papyrus available to him. Moreover did he integrate the copies of documents cited in Arabic chancery manuals like Qalqašandī’s and also kept an eye on documentary material on durable support, namely Arabic monumental inscriptions. Apparently, he was well aware of the essential role of documents when dealing with early Islamic administration. However, the state of the art in Arabic documentary studies had not progressed far enough to support his studies on the early Muslim judiciary effectively. He perhaps also lacked access to text editions or even a good card file. Irritating remarks, like the designation of Abū Yūsuf’s *Kitāb al-Ḥarāq* as a ‘historical document’, do not hide the

3 In fact, É. Tyan was more interested in the institution of the magistrate itself than in historical developments and operating procedures. “Tyan’s book, although an indispensable guide for the rules and regulations regarding the mażālim court system, lacks a thorough historical survey of these courts” (VAN BERKEL 2011, p. 714 n. 8). Similarly Gustav von Grunebaum, who in a review of an earlier version of the book points to a tendency of overemphasising the relatively few cases that have been preserved in literary sources at the disadvantage to the many more that got missing together with the lost documentary sources (in: *Journal of the American Oriental Society* 59, 1939, p. 520).


fact that É. Tyan’s book is still of high value for any research on early Islamic judicial institutions.7

The following study attempts to contrast the Tyanian depiction with the documentary, here: papyrological, evidence from recent editions. By this is possible a review and at best a more nuanced understanding of judicial institutions and their practice in an emerging Islamic society. The study is in a way complementary to M. Tillier’s research on the Abbasid judiciary in regards of chronology and subject matter. While the latter concentrates mainly on the period after 750 AD and the formation of the qāḍī proper, the following discussion will address the pre-Abbasid period and the judicial practice before and beyond the emergence of a specific qāḍī jurisdiction.8 Moreover, it will be based on papyrological sources as a compensation for literary sources that are of problematic historicity when it comes to the Umayyad period. It focuses on three central questions: What authority was charged with the judiciary in the pre-Abbasid period? How was the judicial machinery set in motion? And what does the evidence reveal about the character of Umayyad rule in the provinces?

2. Competences

Independent qāḍī-s, or Islamic magistrates, were a belated achievement in the societies of Islam and came into being not before the early ‘Abbāsid period, that is the second half of the 8th c AD. Arabic literary sources from the 9th c AD spot them already in the Umayyad and even pre-Umayyad eras, but this seem to be projections from the well-established ‘Abbāsid institution back to earlier times.9 The Islamic tradition claims that the prophet Muḥammad himself sent qāḍī-s to conquered lands. It becomes clear from the same sources, however, that these qāḍī-s were in fact provincial administrators.10 Documentary sources never mention qāḍī-s earlier than the middle of the 8th c AD but confirm that under Umayyad rule judicial

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7 Tyan 1960, p. 95. Tillier 2011, p. 213 n. 1 cites Tyan 1960 and Hallaq 2005 as fundamental reference works for the history of Islamic magistrates, but one certainly has to add now Tillier 2009 as well.
8 Tillier 2009; Tillier 2011a; Tillier 2011b. But see his discussion of the pre-Abbasid judiciary in Tillier 2009, p. 63-95; and his remarks about an Umayyad ‘jurisprudence califienne’ in his contribution to this volume.
tasks and practical legal matters were resolved by state authorities and members of the public executive, such as provincial governors, heads of districts, or village headmen. These matters included disputes among private parties as well as criminal offences. It is manifest that the literary sources, with good reason perhaps, apparently disseminate a more or less ahistorical perspective. Also apparent is an inconsequent apportionment of judicial competences in the early period.\(^{11}\)

“In the first Islamic century the provincial governor was judge.”\(^{12}\) Cases were disposed of by members of the executive on the basis of pre-Islamic customary law together with personal discretion and borrowings from Qur’anic stipulations. The corpus of legal texts developed for a specific Islamic form of law and being the nucleus of what was later to become the šarīʿa was not elaborated before the second and third centuries of the Hijra. But the practical needs of a growing Muslim community inside the garrison towns led to the appearance of an official, the qāḍī, who was specialising in judicial matters. According to the tradition the first qāḍī appointed in Egypt was ‘Amr b. al-‘As. In the following decades, qāḍī-s continued to

\(^{11}\) TILLIER 2009, p. 63; 75–78, 84. REINFANDT 2010, p. 663 with reference to DONNER 1986, p. 288, suggesting that qāḍī-s are not mentioned in Egyptian papyri from before the 4\(^{th}\)/10\(^{th}\) c, has to be corrected. Thus the earliest dated explicit mentioning of a qāḍī in Arabic papyri is an inheritance deed from the year 195/811 published by A. Grohmann as P.Cair. Arab. 51 (ibid., l. 12 qadār al-qāḍī `āmr [b. `abī bakr], “the decision of the Qāḍī `Āmr b. Abī Bakr”). The next datable one is an unpublished letter from the Vienna collection, P.Vind.inv. A.P. 2090 (212–215/827–830), mentioning a certain Hasan b. Ya‘qūb hālīfat Yahyā b. Sa‘īd hālīfat al-qāḍī ʿĪsā b. al-Munkadār in the Fayyūm. Another papyrus mentioning the office of qāḍī, CPR XVI 3 (2\(^{nd}\)/8\(^{th}\) c or later, according to the editor) seems older but is not datable with certainty. P. David-WeillLouve 25 (2\(^{nd}\)/8\(^{th}\) c), a letter about a lawsuit concerning a slave girl, on the other hand does not mention a qāḍī but shows the governor of Alexandria filing the suit (ibid., l. 2–4 fa-l-yaktub ʿilā saʿīd in `amāri l-`iskandariyyati bi-qaḍāhu fa-yuqḍi baynī wa-bayna ʿaddādi bni saʿīd fi ḍālika “that he may write to Saʿīd the governor of Alexandria concerning his judicial decision. He will decide between myself and Šaddād b. Saʿīd in this matter”). Even P.Utah inv. 341 (254–272/868–885), currently prepared for publication by Ahmad Nabil (Minufiya University, Egypt) and containing the minutes of cases that had been brought before an early mazālim court, does not explicitly mention the office of a qāḍī. Later examples of papyri that indeed mention qāḍī-s are P.David-WeillLouve 22 (3\(^{rd}\)/9\(^{th}\) c) and Chrest.Khoury I 81 (4\(^{th}\)/10\(^{th}\) c).

\(^{12}\) NIELSEN 1985, p. 3 with reference to TYAN 1960, p. 95. Similarly SUPSTEIJN 2004, p. 102: “Legal decisions and the solution of legal conflicts thus fell under the responsibility of Umayyad administrators”. J. Schacht characterised early qāḍī-s as “a sort of legal secretaries”; cf. TILLIER 2009, p. 84. According to COULSON 1964, p. 28 the Umayyad Muslim market inspector (ʿāmil as-stūq), himself a subordinate of the governor, “possessed limited powers of jurisdiction concerning such things as weights and measures used in the market and petty offences committed there” and was exercising a “market-place jurisdiction”.

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being mostly appointed by the governors in al-Fusṭāṭ or the caliphs in Medina and later Damascus.\textsuperscript{13} Umayyad qāḍī-s were the governors’ deputies and were appointed by them and as such members of the state bureaucracy. “The qāḍī as a deputy of the governor in legal matters dealt with legal issues of a public nature, legal religious issues on the other hand were rather dealt with by religious scholars.”\textsuperscript{14} It was not before the Abbasids that public qāḍī-s coalesced with nascent šarīʿa circles of a more private background and formed an alliance that was to become an organized and specific Islamic judicial system.\textsuperscript{15}

Early qāḍī-s, very much in the pre-Islamic Arab tradition of arbitration (\textit{tahkīm}),\textsuperscript{16} were entrusted with inner-Muslim conflicts among the Arab army inside the garrison towns. From the reign of Muʿāwiya I (r. 661-680 AD) on they were also charged with criminal jurisdiction.\textsuperscript{17} Most of these were cases applicable to the norms of Qur’anic offenses (ḥudūd, sg. ḥadd).\textsuperscript{18} Additionally to matters of jurisdiction, early qāḍī-s were responsible for other tasks, such as the superintendence of the police or the control of the treasury.\textsuperscript{19} Umayyad governors, on the other hand, still were responsible for the judiciary as well, but in addition to that had other matters in their portfolio, namely the collection of taxes and the care for the local, especially agricultural, infrastructure. It was É. Tyan who already observed that there was in fact no difference between the qāḍī-s and the governors in regards of their competence.\textsuperscript{20} Rather were the geographical and social scope of the offices the real

\textsuperscript{13} \textsc{Stupperich} 2004, p. 444; \textsc{Tillier} 2009, p. 83-84.
\textsuperscript{15} \textsc{Nielsen} 1985, p. 3 with reference to \textsc{Tyan} 1960, p. 120-134, here especially p. 121.
\textsuperscript{16} \textsc{Tyan} 1960, p. 64. Cf. however the contribution of S. Judd in this volume.
\textsuperscript{17} \textsc{Hallaq} 2005, p. 38.
\textsuperscript{18} \textsc{Tyan} 1978, p. 373. Similarly \textsc{Hallaq} 2005, p. 38: “But since these soldiers inhabited the garrison towns together with their families and fellow tribesmen, the problems that they encountered would most often have related to family status, inheritance and crime – all of which areas were fairly well regulated either by Quranic legislation or tribal customary law” (with reference to Wākī’, \textit{Aḥbār al-qudāt}).
\textsuperscript{19} \textsc{Tyan} 1960, p. 123; \textsc{Tillier} 2009, p. 84. According to \textsc{Hallaq} 2005, p. 36 early appointees to the judicial office were state officials with a whole range of administrative responsibilities such as policing and financial administration. This is especially well testified for Egypt where several qāḍī-s appointed in al-Fusṭāṭ were charged not only with the task of adjudicating conflicts – the original meaning of qadāʾ – but also with heading the police section. According to him, the situation seems to have been similar in other parts of the empire (with the exception of Syria). See also the contribution of M. van Berkel in this volume.
\textsuperscript{20} \textsc{Tyan} 1960, p. 95: “la confusion entre les fonctions administratives de gouverneur et les fonctions judiciaires”. Cf. also ibid., p. 64 for inconsequent apportionment already in the days of the prophet Muḥammad.
distinguishing marks: the more in the periphery of the province and the more non-Muslims were included, the less were the qāḍī-s involved. These seem to have been, until the time of Hārūn ar-Rašīd (r. 786-809 AD), solitary officials and bound to, and concentrating their awareness more or less on, the imperial capitals (Damascus, Bagdad) and the provincial centres (in Egypt: al-Fustāṭ, Alexandria, Assuan). It was not until the Fatimid Caliphate (969-1171 AD) that a hierarchical apparatus of qāḍī-s was established in Egypt, thus spreading their presence throughout the country. As long as qāḍī-s were concentrated on the provincial centres, administrators other than the qāḍī (governors, heads of districts) continued “to have played at least as important a role in the examination and solving of claims and conflicts”.

Inconsequent apportionments of judicial competences in the early period should not be understood as indifference, though. For quite the reverse had Muslim authorities given priority to judicial matters early on. “The fact that the earliest designation for the Islamic era seems to have been qaḍāʾ al-muʾminīn (“jurisdiction of the Believers”) strongly suggests that the establishment of an overarching system of justice was in fact a key goal of the new Believers’ regime, as the traditional Islamic sources suggest, as has been argued by Fred Donner. What seems to be a lack of specialisation and professionalisation at first sight turns out to be good sense and pragmatism of Arab administration. The majority population was still non-Muslim. Also, early Muslim rulers, as the new owners of lands formerly dominated

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21 HALLAQ 2005, p. 37-38: (Early; L.R.) qaḍāʾ was limited in nature, in terms of both geography and jurisdiction. Geographically, it was restricted to the garrison towns and their inhabitants, and jurisdictionally, to disputes and conflicts that arose among tribal groups whose main occupation was soldiering”. The remark of FOSS 2010, p. 91 stating that Egypt under Muʾāwiya’s ‘state’ “had a judiciary headed by the qadis for Muslims, while the Egyptian documents make manifest the judicial powers of amirs and pagarchs for the Christian population” should not be understood in regards of a systematic division of competences but rather as a characterisation of the specific situation of Muslims bound to garrison towns in the first decades of the empire. Early qāḍī-s were also not restricted to inner-Muslim matters but could be in charge of conflicts among non-Muslims as well. Cf., moreover, the remark by DONNER 2012, p. xxix: “The adjudication seems to have been carried out by provincial governors or their subordinates (village headmen, for example), not by individuals specially appointed as magistrates”.

22 TYAN 1978, p. 373.


24 DONNER 2012, p. xxix. For an in-depth discussion of the terms qaḍā and ḥakam see TILLIER 2009, p. 79-82.

25 SIJPESTEIJN 2007, p. 455.
by Byzantium and the Sasanians, were looking back on long traditions of rulers as guarantors of justice and in which non-Muslim subjects were used to appeal to rulers directly through petitions. It was only natural to continue this established culture and to appeal to the Muslim rulers as one had appealed to other rulers. They could also be a welcome alternative to the own established communal magistrates. Muslim rulers, in turn, became more and more involved in appeals and, as an answer to that, increasingly had to delegate the cases to their judges that on their part became more and more in accordance with the equally evolving private šarīʿa circles. Governors, and later even the caliphs, increasingly drew back from the tasks of judiciary and contented themselves with mere appointments, a development that culminated under Hārūn ar-Rašīd’s appointment of Abū Yūsuf to the new office of grand judge (qāḍī al-quḍāt).26

3. Procedures

Up to this point, the issue of the emergence of magistrates as an institution, the common opinion in the field is more or less based on, and predominantly in accordance with, É. Tyan’s work. The situation is different with administrative procedures, that is: who set the machinery in motion, and how.27 Considering that literary sources are silent on that aspect or are at best historically problematic, administrative writings preserved on papyrus take on a greater significance. They provide the procedural details necessary to overcome the largely hypothetical character of the accounts of Arab historians.

From the official correspondence related to legal procedures is documented that the administrative apparatus started working on request, either by appeals from inside the apparatus or from among the city and rural population. Reports and complaints were submitted in written form to higher authorities, many of them fulfilling the features of petitions. Muslim petitioning, although rudimentary in the beginnings, was looking back on long continuities from Ancient Near Eastern Mesopotamia to Greek and Roman to Byzantine

26 Tyan 1960, p. 120-129; Coulson 1964, p. 28; Nielsen 1985, p. 3; Tillier 2009, p. 75.

27 Cf. the remark of Tillier 2011b, p. 213 that both Tyan 1960 and Hallaq 2005 keep the reader in ignorance of the actual practice of the institution. About the question of whether Muslim judicature, and even the office of the qāḍī proper, had been taken over from preceding Byzantine and Sasanian models, as has been suspected by J. Schacht, É. Tyan and N. Coulson, cf. the discussion and by tendency negative conclusion by Tillier 2009, p. 68-73. Khaleel Mohammed, « Revisiting Émile Tyan on the Issue of the Early Islamic Judicature », Islamic Studies 43 (2004), p. 447-455 came too late to my knowledge and could not be consulted for this study.
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and Sasanian societies and had been fully re-established under the Abbasids at the latest. If we can believe the Egyptian historian al-Kindī (d. 961 AD), appeals were submitted already to Umayyad governors. The earliest known Arabic petitions preserved on papyrus in fact date back to the Umayyad period, and numerous administrative writings that display proceedings of Umayyad authorities in consequence of petitions have been preserved as well.

Judging from the papyri at least it was more often than not the governor in al-Fustāt to whom appeals were directed. The governor, without local knowledge but loaded with an increasing number of cases, delegated them back to middle-level heads of districts, his pagarchs, as heads of the actual areas of responsibility.

Pagarchs, on their part, pursued investigation, normally with the help of subaltern village headmen, procured rights and reported the outcome back to the governor. The procedure is described in narrative sources and seems confirmed by standard papyrus editions. But already E. Tyan has pointed to the fact that it where not only Umayyad governors but also their pagarchs who were in fact addressees of appeals. According to him pagarchs were, up to the end of the first century of the Hiğra, initiating proceedings and exercising jurisdiction independently from the governors when receiving appeals. Only in cases of unsatisfactory outcomes did the complainants appeal once


29 The earliest preserved Arabic petitions on papyrus and parchment are P.Kratchkovski (100/718-719, Central Asia); P.Heid.Arab. II 1 (1st-2nd/7th-8th c, Egypt); P.World p. 186 (169-171/786-787, Egypt); CPR XVI 3 (2nd/8th c or later, Egypt). Well-known reactions to petitions are to be found among the Greek and Arabic letters of Qurra b. Šarīk (cf. n. 30 below). The classical source of information about the petitioning system under the Abbasids is Tyan 1960, p. 433-521, which should now be read together with Van Berkel 2011 and her contribution to this volume.

30 Supesteijn 2004, p. 444-445: “Governors ordered their pagarchs to look into and take care of a claim brought before the former” (with reference to DIEM 1983b; DIEM 1989).

31 Grohmann 1963, p. 18; DIEM 1989, p. 149. The documentary sources available to Tyan comprise mainly the letters (Arabic only) sent by the Umayyad governor Qurra b. Šarīk to his pagarch Basilius in Middle Egyptian Aphroditto from around 710 AD, such as P.BeckerPAF 1; 2; P.Cair.Arab. 154; 155; P.Heid.Arab. 1 10; 11; P.Qurra 3; P.GrohmannQorra-Brief. More recent editions confirming this view of the procedure are P.DiemGouverneur (684-685 AD, Middle Egypt); P.Mird 19 (7th c AD, Southern Palestine); P.Mird 31 (7th-8th c AD, Southern Palestine); P.RagibLettres 1 (750-753 AD, Fayyūm); P.DiemAmtliche Schreiben 1 (750-754 AD, Egypt); all cited in DIEM 1989, p. 148. There is also the example of the amīr of Alexandria who was asked to judge in a matter in the 2nd/8th c AD: P.David-WeillLouvre 25 (8th c AD, Egypt), cited in Supesteijn 2004, p. 445.)
more and to authorities superior to the pagarchs, i.e. the governors. Unknowingly, Tyan’s statement goes conform with legal historian A. Steinwenter’s observations on the basis of Coptic documents from early Islamic Egypt. According to Steinwenter pagarchs were the addressees of petitions from the population. They initiated proceedings and exercised jurisdiction in their own regional courts of undoubtedly rudimentary look and feel. Appeals to supra-regional authorities (the governor), on the other hand, were mere exceptional devices in those cases where regional authorities (pagarchs) proved not cooperating.

Arabic papyri from the Umayyad period confirm this view. The dossier of an early 2nd/8th c Muslim official in the Fayyūm district shows a pagarch who was not only responsible for implementing orders of the governor in al-Fusṭāt on the district level, but was practicing jurisdiction in consequence of legal and other conflicts reported to him by his own subordinate personnel. The reports by subordinate officials, presumably administrators on the village level, imply that even the latter could have been, informally at least, addressees of appeals. More often they were the cause of complaints, though. In a concrete example a group of villagers was petitioning before the pagarch against one of his low-ranking officials. After having appealed to the pagarch two times in vain, the villagers submitted the same complaint once more, but now to the governor in al-Fusṭāt, who promptly initiated proceedings. It becomes apparent that administrative proceedings in this period were not always top down but also in reverse direction and were reaching their terminal point on the middle rank of pagarch. The latter, unlike the governor in al-Fusṭāt, was close enough to matters on the spot but more powerful than village headmen to effectively restore public order. Direct appeals to the governors continued to be in use, but pagarchs were addressees of appeals as well. They may have even been so in the majority of cases, if we leave for a while the exceptional Qurra-

32 Tyan 1960, p. 124.
33 Steinwenter 1920, p. 15; Steinwenter 1955, p. 53. Apparently, Émile Tyan was not aware of Steinwenter’s research.
34 Sijpesteijn 2004, p. 46: “While part of Nājid’s (i.e. the pagarch of the Fayyūm; L.R.) responsibility lay in the transferring of orders from the amīr (i.e. the governor in al-Fusṭāt; L.R.) concerning taxes and other matters of administration, the pagarch also responded to questions and problems presented to him by his subordinates and colleagues”.
36 Sijpesteijn 2004, p. 48: “While these papyri show that the pagarch played a much more important role in local management and judicature than has previously been assigned to him, our corpus also contains evidence that claims from locals could be brought before the highest central authority” (i.e. the governor in al-Fusṭāt; L.R.).
letter archive from Aphrodito and turn our attention to other material instead. In all bottom up proceedings Umayyad pagarchs acted as proto- qāḍī-s (to use Wael Hallaq’s expression). And since it was them who were appealed to, and who initiated lawsuits themselves and without involvement of the governor level, they were acting rather independently. In the following, three cases will be discussed that all seem provide evidence for an emancipation of middle-level administration in regards of judicial matters under Umayyad rule.

3.1 Revolting peasants in 1st/7th c Egypt

The papyrus is not dated but is ascribed by the editor to the 1st/7th c on grounds of its script. The story is about complaining Muslim tax farmers presumably in the Fayyūm. Non-Muslim peasants had refused to pay their taxes. The complaint had been presented to the writer of the actual letter in the form of a written petition. The writer, a certain Yahyā b. al-Ḥaǧǧāǧ, had a Muslim background, as is evident from his name and the specific Islamic formulary used in the letter. Less clear is whether he was a local official or not, but it seems so, for he forwarded the case to yet another Muslim official who was in charge of these affairs. He forwarded the official letter together with the tax farmers’ original petition. About the addressee nothing is known except his name ʿAbdallāh b. Qays. From the context seems clear that he must have been some kind of middle-ranking official and in charge of dealing with cases like the one at hand. Was he the head of a district, that is a pagarch? The editor leaves this question unanswered.

37 HALLAQ 2005, p. 34.

38 The papyrus is now in Berlin and has been published in 1997 by W. Diem as P.Berl.Arab. II 23. Cf. also SIPESTEIJN 2004, p. 102 n. 207.


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Formal aspects of the letter provide indication of a bottom-up direction in hierarchy, though. Thus, the address line mentions the addressee before the sender.\(^{41}\) Also, an elaborate blessing follows after the transitional formula (‘ammā ba’dū).\(^{42}\) Both indicate the addressee’s higher social standing in relation to the sender. Moreover, the request of the letter is put into a phrase of humble politeness instead of the simple imperative that is more common in letters of a downward hierarchical direction.\(^{43}\) Also, there are possible forms of *pluralis modestiae*.\(^{44}\) Finally, an important detail is given with regards to the letter courier. He was ordered to wait in the proximity of the addressee until the necessary investigations were pursued and the rights to the complaining tax farmers procured. The outcome of the lawsuit was then written down in a report that was thereupon sent back to the sender by means of the same courier.\(^{45}\) It seems rather unlikely that a courier in the service of a high ranking official had to await the outcome of a lawsuit, for this may have comfortably taken up some days. This would be a task more likely for lower-ranking officials, which is once more strong evidence for the letter’s bottom-up direction in hierarchy.

Both the sender and the addressee are not known from other papyri or the literary sources, which is another hint at the positioning of the case in the middle to low ranks of administration. Perhaps the addressee was a pagarch, and the lawsuit was initiated and executed on the district level. But even if the addressee was not a civilian pagarch but an Arab-Muslim military commander, which is also possible given the alleged early date of this letter, it was obviously a district affair. Neither the governor nor any other high-ranking official from the central administration in al-Fustat was involved in the procedure. Most striking is the fact that it was a subaltern official, Yahyā b. al-Ḥaggāg, who had been the recipient of a complaint from among the population and who had set the judicial apparatus in motion.

\(^{41}\) Ibid., r2 and v1: *li-ʿabdi llāhi bni qaysin min yahyā bni l-ḥaggāgī* “An ṣ Abdallāh b. Qays von Yahyā b. al-Ḥaggāg”.

\(^{42}\) Ibid., r4–5: ‘ammā ba’dū ʾaṣlaḥanā ʾllāhu wa-ʾiyyāka ʾaṣlaḥanā ʾllāhu wa-ʾiyyāka li-mā naksību bihi riḍwānahu wa-l-Ǧannata “Aber danach – Gott schenke uns und Dir Gedeihen im Diesseits und Jenseits und ermögliche uns ein Verhalten, durch das wir sein Wohlgefallen und das Paradies erwerben”.

\(^{43}\) Ibid., r9: fa-ʿ in raʾayta “Sei also so freundlich (und verschaffe ihnen ihr Recht)”.

\(^{44}\) Ibid., r4: ʾaṣlaḥanā ʾllāhu wa-ʾiyyāka “Gott schenke uns und Dir Gedeihen”; r9: ʾyarḥamunā ʾllāhu wa-ʾiyyāka “Gott erbarme sich unser und Deiner”; r11: wa-richāna ʾllāhu wa-ʾiyyāka “Gott ermögliche es uns und Dir”.

\(^{45}\) Ibid., r9–10: fa-ʿ in raʾayta … [ an tataḥṛīqa lahahm ḥaqqahum wa-taktuba] k[i]lā[yyāka] maʾa l-rasūli ʾin šāʾ aʾllāhu “Sei also so freundlich …, ihnen ihr Recht zu verschaffen und uns durch den Boten schriftlich Bescheid zu geben, so Gott will!”.
3.2 A case of tax evasion from 2nd/8th c Fayyūm

The second papyrus is about uncooperative subjects who were unwilling to pay their taxes. In the case at hand, a group of merchants had gone into hiding in the Fayyūm and had taken with them five local peasants. Authorities were concerned about this loss of control over taxpayers and the expected loss of poll-tax income for the state treasury. The writer of the letter may have been a higher tax-official. He had been sent by the central authorities in al-Fusṭāṭ to the Fayyūm to conduct regular investigation on site and had, in the course of his inspection, had become aware of the grievance and promptly had started administrative measures. These were the following: a report of the matter to a Fayyūm official but not to the central authorities in al-Fusṭāṭ; and the order to start investigation, namely by consultation of the local archive in Madīnat al-Fayyūm, and to find out about the justification of the complaint.

Who were the officials involved? Apparently, the addressee was a local district official, presumably the pagarch of the Fayyūm, because he was entitled to start investigation on a district level and in the same time was in charge of the local archive in the district capital. But who was the controlling official and sender of the present letter? The editor implicitly assumes a top-down direction of the letter, meaning that the sender was superior to the addressee, but this is not evident from the text itself. The politeness formula after the transitional formula (ʾammā ba ḏu) is more likely an indication for the reverse direction. Correspondingly, the address line is arranged in the polite order, which is the addressee before the sender. Most striking is the fact that the sender openly admits that he may be wrong in his accusation, which has a smell of modesty uncommon for a superior. On the other hand, there are indicators for a superior position of the sender: the outspoken imperative for the
formulation of the request, which seems a manifestation of superiority;\textsuperscript{52} and the professional chancery script and the layout of the writing on recto, which stands in marked contrast with the clumsy writing on verso. While the letter on recto is definitely the work of a skilled scribe from the centre of the province, the annotation on the back side of the letter is of inferior quality and apparently written by some kind of pagarchial office in the periphery of the Fayyūm, with the Arabisation of scribes and the professionalisation of documentary practice still in the early stages.\textsuperscript{53}

The letter on recto was definitely a product of a higher level of hierarchy than that on verso. But what appears as a letter from the governor’s chancery in al-Fusṭāṭ turns out, by closer examination of its text with its inherent features of formal politeness, as a product of middle-level administration. Corroborated is the evidence by the fact that neither of the officials mentioned by name can be identified in other papyri or the narrative sources. They were not high-ranking administrators but members of middle- to low-ranking offices. It looks very much as if the sender of the letter had been a travelling controller and a tax official of the central authorities who had in his entourage one of the skilful scribes from the chancery in al-Fusṭāṭ, while the local pagarch was the addressee of the letter. The travelling controller may have been superior in rank but was a stranger in the Fayyūm and in need of the pagarch’s compliance and therefore had to resort to politeness in his letter. Both had in fact become equal in rank. What is of particular interest here is the fact that he had sent the order to investigate the case directly to the local pagarch rather than reporting back to the central administration in al-Fusṭāṭ.

3.3 Marital strife in 1\textsuperscript{st}/7\textsuperscript{th} c Palestine

The papyrus was found in the ruins of the settlement of Ḫirbat al-Mird in Southern Palestine near the Dead Sea.\textsuperscript{54} The story is about a dispute among private parties from that place: a Muslim husband had unlawfully deprived his Muslim wife of her property and her marital maintenance.\textsuperscript{55} Reacting to the woman’s complaint, the authorities had induced

\textsuperscript{52} Ibid., r8–9: fa-nẓur fī l-kutubi ʿindaka “Consulte donc les documents chez toi”.

\textsuperscript{53} See plates VII A–B adjoined to the edition.

\textsuperscript{54} The papyrus is now in Jerusalem and has been published in 1963 by A. Grohmann as P. Mird 18.

\textsuperscript{55} P. Mird 18, r5–7: fa-ʾinnaka katabta ʾilayya maʿa ʿummi ʾiyāsa bnati muʾārikīn fīmā ḍakarat laka min ʿaḍḍī [za]vğihā matā ʾaḥā wa-nafaqatāhā wa-ʾinnī ǧamā tu baynahumā fa-saʿaltuhu ʿani ḍakarta fa-ṭaraṭa bi-matā ʾihā fa-рададtuḥu ʿalayhā “Verily, you have written to me with Umm Iyās, daughter of Muʾārik, about that
investigations. The writer of the present letter, who had been in charge of investigation and the settling of the conflict, is reporting the outcome of the lawsuit, according to which the woman’s claim was valid and the husband had to hand back to his wife her property. But who did the writer report to? The editor understood the letter having had a top-down direction.\(^{56}\) In his view, the woman had sent her complaint to the highest official available, in this case the sub-governor of Gaza and head of district ’Umar b. ’Ubaydallāh. The head of district had subsequently delegated the case for investigation down to the headman of the village of the woman, a certain Dir’ b. ’Abdallāh. The village headman initiated proceedings by giving audience to the woman’s complaint and perhaps consulting additional local witnesses. Thereupon he reported back the matter to his superior, the head of district ’Umar b. ’Ubaydallāh, with the request of confronting the conflicting parties (woman and husband). The head of district accordingly procured the rights to the woman. After that, he sent a report of the outcome, which is the letter at hand, back to the village headman together with the woman and her husband.

The procedure seems odd, however, the matter going back and forth. Moreover, it seems unlikely that a superior official had to report back to his own subordinate. Apparently the editor has confused names or facts. Rather must the sender have been subaltern to the addressee. In this case the letter had a bottom-up direction rather than the reverse.\(^{57}\) Such a setting would also be in accordance with the formulary of the letter that displays, again, features of politeness.\(^{58}\) Moreover, there is a polite phrase of considerable length following the transitional formula (’amā ba dir).\(^{59}\) And last but not least the sender had received an order by the addressee before starting proceedings.\(^{60}\) Thus Dir’ b. ’Abdallāh was the head of district and ’Umar b. ’Ubaydallāh was the subaltern village headman. Initially, the deprived woman had complained before the head of district, who had delegated the case for further which she has mentioned unto you concerning her husband’s taking away her property and her maintenance. And I have confronted them both. I, then, asked him about that which you had mentioned. So he acknowledged her property. Therefore I handed it back to her” (with emendations by DiEM 2012, p. 33).

\(^{56}\) Grohmann 1963, p. 17: “’Umar b. ’Ubaiddallāh seems to be the superior of Dir’.”

\(^{57}\) DiEM 1983a, p. 254; 1989, p. 161; 2012, p. 33 with regard to the arrangement of the address line and the imperative used in line 9.

\(^{58}\) In the address line the addressee’s name is mentioned before that of the sender. P.Mird 18, r2 and v1: li-dir’i bni ’abdi llāhi min ’umara bni ’ubaydi llāhi “To Dir’ b. ’Abdallāh from ’Umar b. ’Ubaydallāh”.

\(^{59}\) Ibid., r4: ’amā ba ’du ’atamma llāhu ’alayka ’aḏdala ’aḏiyatihi fi l-dunyā wa-l- ’āḫirati “What follows – may God fulfil in you His best integrity in this world and the world to come”.

\(^{60}\) Ibid., r9: wa-katabta ta’ mursūr ’an ’uqīma “You have written ordering me that I may execute”.

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investigation to the headman of the woman’s village. The village headman confronted the conflicting parties and procured the rights to the woman, then reported back to his superior about the outcome, which is our letter at hand. But the conflict had not yet come to an end, for it seems that the husband had given back only the woman’s property (matāʿ) but refused to keep paying her maintenance (nafaqa). At the woman’s request, the village headman handed over the case to his superior, who had better judicial knowledge to solve intricate issues, or at least had better means to get things done.

4. Administrative structures and the character of Umayyad rule

Progress in Arabic papyrology, here: editions of new texts and corrections of older readings, allows for a better view on administrative proceedings than was hitherto possible. The situation is still tricky, though, because not a few texts leave ambivalent important details about the institutional background of persons involved, or even about basic matters like the functionary background of writings and their hierarchical direction. They beguile into disagreement and debate. The three cases presented before exhibit a Muslim administration on peripheral middle to low levels that was regularly, and independently, in charge of adjudicating conflicts among Muslims and non-Muslims alike, be it offences or matters of arbitration. M. Tillier’s maintains the authenticity of early qāḍī-s already in the pre-Umayyad era and questions the predominant role of the caliph and his provincial governors. Arabic papyri do not openly contradict this assertion but emphasise the differential of provincial centres and peripheries as well as the degree of Arabisation among the population as necessary for a proper understanding of the matter. In addition, É. Tyan’s dictum that up to the end of the first century of the Hiğra it was not only the governors’ offices but also the middle-ranking pagarchs that were exercising jurisdiction seems confirmed by Arabic papyri. The evidence, tentative as it is at the moment, is significant for a better

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61 P.Mird 18, r7–8: fa-ʾtarafa bi-matāʾih āh ā-radadahu ʿalayhā wa-ʾankara nafaqatahā fa-saʾ alatnī l-marʾatu ʾan ʿağliba ʿilayka maʾāhā fa-faʾalṭu ʾamartuhumū ġaniʾan ʾan ʿan yalḥaqiyāka (sic) “So he acknowledged her property. Therefore I handed it back to her, while he disputed her maintenance. So the wife asked me that I might bring him with her unto you. So I did it. I ordered them both together that they both should reach you”. Grohmann translates wa-ʾankara nafaqatahā perhaps a little bit vaguely as “while he disowned her maintenance”.


63 Cf. n. 32 and 33 above.
understanding of the character of Muslim domination in the large territories of Umayyad and early Abbasid rule.

There has been much debate about the extent of centralisation and control in the provincial administration of the Umayyad caliphate. Egypt is generally seen as a centralised province with governors tightly controlling the provincial districts from al-Fusṭāṭ. But a recent revision on the basis of new documentary sources has argued for a decentralised system that entrusted a significant portion of competences to lower ranks of administrators. The three documents discussed in this study indeed support the latter opinion, for they show a rather autonomous middle- to low-ranking administration that, once Muslim, acted fairly independently in judicial matters as well. Umayyad provincial governors could act more autonomously than their Abbasid successors, and appointed local officials as their personal delegates independently from the caliphs in Damascus. But the autonomy of officials was a characteristic of Umayyad provincial administration also on levels below the governor. This was changing with Abbasid rule after 750 AD and the caliphs’ increasing attempts to centralise the control over provincial officials.

There has also been debate about the time of occurrence of state structures under the Umayyads and the question of whether already the Sufyanids had a bureaucratic rather than a tribal rule. Ultimate proof for the one or the other position has not been found yet, but it seems that the judicial practice under the Umayyads serves an indicator at least. The emergence of a judiciary, and the shouldering of judicial responsibility, is nothing less than a resolution of creating state structures. Taken the case that the Arabic rescript of the governor ʿAbdalʿazīz b. Marwān to his pagarch can indeed be dated as early as 65/685, this would be a considerable argument for an early presence of the Muslim high state in middle level

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64 Bell 1910; Becker 1924; Bell 1928, Abbott 1938; Banaji 2001.
65 Sijspesteijn 2004, p. 29-32; 113-114.
66 Sijspesteijn 2004, p. 117: “The key contrast, therefore, is not between the Byzantine and the Islamic pagarchy, a decentralized versus a centralized state, but between Christian versus Muslim pagarchs.” In the portfolio of local administrators fiscal responsibilities had been augmented with legal competences as well, as has been observed by ibid., p. 100.
68 Tyān 1960, p. 124.
69 The debate and ist positions are summarised in Foss 2010, p. 75-76.
70 Tillier 2009, p. 75.
structures by then of Christian background. This would go conform, as it seems, with repeated efforts on the part of Umayyad caliphs to directly control provincial politics during the first half of the 2nd/8th c.

The three documents discussed before are instructive also in regards of a diachronic view on institutions. The papyrus from Palestine shows an administrative procedure that was in conformity with the Egyptian one, but with differing titles and competences of officials. While in Middle Egyptian Aphroditio the Greek title of dioikētēs is used for the middle-ranking pagarch, the same title is used in Palestine in the early 8th c AD for the low-ranking village headman. Both had the same duties and competences, as it seems, namely the collection of taxes, the care for the local infrastructure, and the administration of justice. One level up the situation was similar. Here the Egyptian provincial governor (gr. sýmboulos) had his counterpart in the Palestinian head of district with residence in the city of Gaza. Both were addressed with petitions and both initiated judicial procedures on their behalf. A. Grohmann mentioned this phenomenon in his commentary to the edition and has gone into some detail. The evidence can be interpreted as a general tendency in Umayyad administration of handing down judicial authority to middle- and even low-ranking administrators. The development began in the Umayyad core province of Syria and quickly reached Palestine, where Arabisation had started early and where officials with Arabic background were available in larger numbers. From there it spread to Egypt with some delay, leaving its marks in the administrative structures of the Delta region and subsequently working its way forward to more remote areas up the Nile. The handing down of competences went along with a gradual replacement of local personnel in the offices with Arabic speaking Muslims. As long as local personnel consisted exclusively or predominantly of non-Muslims, as was the case before the reforms attributed to ʿAbdalmalik, the higher authorities on the governor’s level had to be

71 P.DiemGouverneur. According to the editor, the governor was presumably ʿAbdarraḥmān b. ʿUtba or ʿAbdalʿaẓīz b. Marwān and the pagarch perhaps a Christian official in al-Uṣmānayn.
73 GROHMANN 1963, p. 18. Grohmann, in his argumentation, is referring to titles mentioned in the texts of P.Nessana from about the same time. This seems reasonable, for even if the place of Nessana (Awǧā’ al-Ḥafīr) is situated to the south of Ḥirbat al-Mird and things have been slightly different there, both places were part of the same province of Gaza.
appealed. But after Muslim officials appeared on the district and village levels, they became the addressees of appeals instead.

Last but not least, the three documents discussed in this study attest a key role of the written word in administrative procedures already at an early stage. In the first case, tax farmers had submitted their complaint in form of a written petition. This written petition was sent together with the administrative letter to the next higher authority, while the outcome was reported back by means of yet another written letter. Similar was the second case. Here a local archive with lists of tax-payers served as reference tool, while the administrative letter was forwarded to a third person for further investigation, as is evident from the endorsement on the verso. Also in the third case, both middle- and low-ranking officials were reliant on written documents. In all three cases, letters were transported from one office to the other to keep the administrative procedure going on. Archives were consulted for the resolution of conflicts. Also the population trusted in the written word already at an early stage of Muslim rule by presenting their complaints in the form of written petitions to the authorities. All this shows that written documents were in use at every level of society in Umayyad Egypt. They represented Muslim rule in peripheral parts of the empire and served both an administrative and propagandistic purpose. From the papyri becomes evident that the handing down of competences went along with a handing down of the use of written documents and an increase of literacy on middle and lower levels of administrative procedures. Judicial practice played an important part in this process.

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74 DIEM 1983b, p. 108 with the remark that appeals to the governors and the governors’s subsequent orders to pagarchs appear only in papyri from the earlier period, i.e. when pagarchs were not yet Muslims. For ‘Abdalmalik’s reforms see n. 2 above.

75 Similarly to the evidence discussed here, SIJPESTEIJN 2004, p. 101, on the basis of papyri as well, has observed that Muslim pagarchs towards the end of Umayyad rule (ca. 730-750 AD) had gained more power in regards of fiscal and legal responsibilities than had been the case before. Even levels below the pagarchs seem to have been delegated fiscal and legal responsibilities unknown before (ibid., p. 100).

76 For the role of written documents as a means for conflict resolution in Byzantine and Islamic Egypt cf. VAN BERKEL 2007; SIJPESTEIJN 2004, p. 227-239; 228 n. 93.

77 VAN BERKEL 2007, p. 1667.
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