Muslim Response to the

Spring 2017 McGinley Lecture

Professor Ebru Turan, Ph.D.

Assistant Professor of History, Fordham University

I thank Father Patrick Ryan for his informative and stimulating lecture. His exposition on the development of the idea of judgment in Muslim tradition demonstrated the intimate connection between the concepts of rulership and judgment in the history of Islam and traced the emergence and historical development of the office of qadi, the Muslim judge. In my presentation, I would like to first expand on Father Ryan’s introduction by giving a brief survey of the establishment and consolidation of the office of qadi in Islam and then discuss how Islamic administration of justice took shape over the course of Islamic history.

A qadi in Islamic tradition is an appointed official who executes justice at Islamic religious courts. As such, he is in charge of determining the application of Islamic law in individual cases brought to the courts of Islamic law and resolving the disputes by giving judgment in accordance with Islamic law and moral principles.

As noted by Father Ryan, the office of qadi was instituted by the Umayyad dynasty, which ruled the Islamic empire from 661 to 750. In part, the qadi was reminiscent of the position of arbitrator, or hakam, found in pre-Islamic Arabian society. Before the rise of Islam, disputes concerning rights of property, succession, and torts other than homicide were often resolved by the arbitration of a hakam, appointed by the consent of all the conflicting parties. The absence of an organized political authority in pre-Islamic Arabia, however, rendered the hakam’s decision an unenforceable judgment.

We know that before the start of his prophetic career, Muhammad would occasionally act in the function of a hakam in his community. Later, as Prophet, Muhammad continued to serve as an arbitrator in the settlement of disputes. However, backed by supreme religious, political, and military powers, Muhammad in his role as judge could claim an authority far greater than an arbitrator could ever have in traditional Arab society. As such, Muhammad’s position as the arbitrator became united with that of a lawgiver. The prophet’s adjudicative and legislative functions were continued by his immediate successors at Medina, namely the first four caliphs, during whose rule the Islamic Empire expanded greatly and came to dominate the lands stretching from North Africa in the west to Central Asia and India in the East.

The Umayyads, who supplanted the caliphs of Medina in 661, were pressed by concerns to establish an orderly and centralized regime to curb the anarchic individualism of Arab tribesmen so that further military expansion could be sustained. This new effort of state formation in the empire included, not surprisingly, the introduction of a number of bureaucratic innovations that aimed to enhance the administration of justice and public order. The most significant development in this regard was the creation of the office of judge, called qadi in Arabic, in the urban centers of the provinces. Appointed either by
the Umayyad caliphs or their governors, the *qadi*, differently from the *hakam*, was a
delegate of the ruler; and as such, his decisions were subject to enforcement by the state.
Furthermore, he could be dismissed at the caliph’s will at any time. In most cases, the
*qadi* was the provincial governor’s legal secretary, responsible for carrying out his
judicial functions. In the first century of Islam, Islamic jurisprudence was not yet
developed; so the *qadis* based their rulings on their own discretion and personal opinion
although their decisions were also informed by the prescriptions of the Quran, Arab
custom, and local legal practice.

When the Umayyads were overthrown by the Abbasid dynasty in 750, the Islamic
legal scholarship had by then flourished and become methodologically much more
systematized. The Abbasid rulers, eager to prove their superior commitment to Islamic
learning, invited specialists in Islamic law to their court, gave them patronage and
consulted them often to deal with complicated legal and juridical questions. In the
meantime, they began to appoint only those who had special training in religious
jurisprudence as judges. This, on the one hand, granted the *qadis* an independent space
commensurate with their legal expertise; but, on the other hand, the judge as a state
employee remained dependent on the political authority and thus ran the risk of being
dismissed if his rulings conflicted with the caliph’s political views or ideological
program. This tension inherent in the office of *qadi* posed several challenges for Muslim
intelligentsia in the classical period and gave rise to ambivalent reactions with respect to
the office of judge and act of judging. On the one hand, nobody could deny that the
position entailed an immense political significance in the life of the Muslim community;
yet on the other hand, judging was a morally risky business. Ignorance and venality,
common human flaws, might lead a judge to commit injustice. Even for a just judge,
there was always a constant threat of being tempted by the power granted by the office
and of abusing it for self-interest and enrichment. In the early centuries of Islam, in part
as a response to these conflicting feelings, Muslim intellectuals developed two ethnical
principals for *qadis*: learning and impartiality.

It is worth noting that the Islamic judge *qadi*’s legal authority was confined only
to a certain types of cases. For instance, he had no power to launch a criminal
investigation and bring an individual to trial by force. Such cases typically fell to the
jurisdiction of the police, who had their own court. Thus, the *qadi* adjudicated only
ordinary civil disputes brought to his attention by two or more parties who sought help in
the resolution of a question. In other words, the *qadi* could only attend legal issues
related to civil and religious law.

Furthermore, in the classical period, the jurisdiction of the *qadi* courts covered
Muslims only; the non-Muslim subject populations were subject to their own traditional
legal institutions, including the ecclesiastical and rabbinical tribunals. As long as a legal
incident did not concern directly a Muslim or a matter related to Islamic religion, non-
Muslims were given complete legal autonomy and freedom to follow the rules of their
own religions.

Until the twelveth century, *qadis* were usually expected to be mujtahids, or jurists.
This signified that they had the competence of drawing on the two fundamental scriptural
sources of Islam, namely the Quran and the reported teachings of the Prophet
Muhammad, to establish their verdicts. With the progress of time, however, opinions with respect to Muslim jurists’ ability to have independent legal interpretation changed. Several factors played a role in this process. First, there was a huge desire to ensure some form of uniformity and predictability in legal interpretations and rulings; and second, by the end of the eleventh century, a relatively stable and methodologically sophisticated body of jurisprudence had been formed and had become available to legal experts. As a result, *qadis* in general abandoned the practice of searching independent legal answers within Islamic sources of revelation and chose instead to rely on compilations summarizing the authoritative doctrines of the particular legal school they followed. Thus, put firmly under the control of individual jurists and the judges who followed their opinion in their rulings, the Islamic law in the pre-modern period maintained its independence from the interference of the state and remained uncodified. This, however, changed in the nineteenth century when the greatest and the longest lasting Islamic state in history, the Ottoman Empire, initiated a series of Europeanizing legal reforms. One important manifestation of this transformation was the displacement of uncodified Islamic law by the state-promulgated civil codes modeled on European legal principles.

The classical Islamic judiciary did not include a judicial hierarchy, nor did it feature a court of appeals. Yet, in the early ninth century, the office of chief judge was created for the capital city Baghdad. The chief judge held the authority to appoint judges to the provinces and dismiss them but he did not function in any way as a higher court to review lower court decisions. However, the *qadi* rulings could be overturned at the *mazalim*, or injustices, court. Also a product of the Abbasid era, the *mazalim* court served as a forum to which complaints of injustice or corruption, leveled against government officials, could be directly submitted for the caliph’s examination. Most importantly, *mazalim* courts did not operate by the prescriptions of the Islamic law. Instead, the caliphs drew on administrative and penal law in the formulation of their decisions. The very existence of *mazalim* tribunals, originally founded to supplement the deficiencies and injustices of the *qadi* courts, proves that the administration of justice in the Islamic world, from early on, ceased to be a monopoly of religious courts and judges. Instead, the execution of justice developed on a dual path basis, one religious and the other secular.

The emergence of *mazalim* courts must be examined in conjunction with the growing legal powers of the caliphs with the rise of the Abbasid caliphate. The Abbasid caliphs boasted the attributes of religious scholars and legal experts, and at the same time retained full judicial powers. The *qadis* were in fact merely their delegates and they possessed the same juristic right to the interpretation and the application of the Islamic law. Yet, despite that growth in their religious and legal powers, the Abbasid caliphs did not claim any rights to legislate. This was a new development because both Muhammad’s first successors ruling from Medina and their successors, the Umayyads, had exerted legislative powers and their legislations had been included into the fabric of Islamic law. That does not mean that the Abbasid caliphs and other Muslim rules did not enact any new rules; but it is true that they limited their legislative activity to administrative regulations as well as to matters which had remained outside the scope of Islamic law, such as police, taxation, and criminal justice. The most important examples
of this kind of secular law legislated by political authorities are the *kanunnames* of the
Ottoman sultans, in which matters related to military fiefs, position of non-Muslim
subjects, police and penal law, and land administration were treated.

Yet, it is important to note that this dichotomy did not undermine in Muslim
societies the idea that law must remain within the domain of religion and that the sacred
law represented the ultimate religious ideal. But the difference between the reality and
the ideal gave rise to reform movements that purported to abolish the double system of
administration of justice and outlaw administrative law. The most impressive effort in
this respect was undertaken in the sixteenth century Ottoman empire under Sultan
Süleyman I (r. 1520-1566), who launched a comprehensive reform program within the
state institution to base the whole administration of justice in the empire on the divinely
sanctioned religious law. The process, however, did not only aim to bring the standards
of the execution of justice in the Ottoman Empire into agreement with the sacred law,
*Shariʿa*, but also to harmonize the principles of the religious law with the administrative
practice of the Ottoman state and the decrees of the sultan.

The legal order in the Ottoman Empire in the sixteenth century projected strength
and uniformity. The subsequent decline of the empire in the following centuries however
had an adverse effect on the execution of justice as well. An important aspect of the
westernizing reforms undertaken by the empire in the nineteenth century involved the
promulgation of western style laws, especially in the area of regulating the status of non-
Muslims and the commercial relations. The sacred Islamic law, however, was not
officially abolished although a comprehensive attempt was made to codify and modernize
the religious law of Islam. This was promulgated as the Ottoman Civil Code in 1877.
With the dissolution of the empire in 1918 and the formation of modern Turkey, not only
the modernized Islamic civil code but the whole body of Islamic law and the qadi courts
came to be abolished and supplanted by codes adopted from Europe. With this radical
secularization reform, Turkey constitutes a unique case in the history of the Middle East
and Islam.
A native of Istanbul, Turkey, Professor Ebru Turan received her PhD in Near Eastern Languages and Civilizations from the University of Chicago. Dr. Turan specializes in 15th and 16th century Ottoman history with a special focus on Ottoman-Habsburg imperial rivalry for universal rule in the 16th century Mediterranean. Her other research interests include apocalyptic and messianic movements in the early modern world, the idea of Crusades in the Renaissance, and Muslim-Christian cross-cultural interactions in the early modern era. Currently, she is an assistant professor in the Department of History at Fordham University, where she teaches classes on cultural and political history of Islam, the Middle East, and Muslim-Christian relations in the Mediterranean from late antiquity to modern times.

Formerly a recipient of postdoctoral fellowship from the Historical Studies Institute at the University of Texas at Austin, Dr. Turan has published articles on early sixteenth century Ottoman History and written several entries for the Encyclopedia of Islam, 3rd edition. Currently, she is working on a book project entitled, *Last World Emperor: Ottoman-Habsburg Imperial in the Apocalyptic Mediterranean, 1516-1532.*