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**Title:** The rise of a capital : on the development of al-Fustāt’s relationship with its hinterland, 18/639-132/750  
**Issue Date:** 2014-04-02
CHAPTER 4

AL-FUSTĀṬ AND THE LEGAL ADMINISTRATION OF UPPER EGYPT

‘[A]cts of punishment and mercy by kings are performed purely as manifestations of power and capacity.’

This thesis’s last study on al-Fustāṭ’s relationship with its hinterland concentrates on the town’s involvement in the administration of law in Upper Egypt. In contrast with that of the preceding chapters, sources for the legal administration in the Nile valley during the first century of Arab rule are numerous. The legal contents or aspects of commercial and fiscal documents, personal letters, and petitions beside juridical documents have long been known to modern scholars. Two corpora of documents have received most scholarly attention: the early-second/eighth-century archive of Basileios, pagarch of Išqūh, and documents generally dating from first half of the second/eighth century and found in or near the Theban village of Šīma. In addition to these, a number of studies deal with the

so-called ‘archive of Philēmōn and Thekla’ from al-Bahnašā (Oxyrhynchus), dating from the late-00s/620s until the mid-20s/640s. Further, the importance of the late-first/seventh-century archive of Papas, pagarch of Udfū, for scholarship on Egypt’s legal administration has long been recognized, but a thorough examination of the relevant material is still lacking.

In spite of the availability of sources that span almost the entire first century after the establishment of Arab rule, diachronic studies into Upper Egypt’s legal administration in that century are rare. The present chapter takes this diachronic approach and studies the extent to which the establishment of Arab rule affected legal practices in Upper Egypt. This chapter’s analysis and contextualization of documents from the entire century reveals a development in al-Fustāṭ’s involvement in the administration of law in Upper Egypt which coincided with the same dynastic changes and/or political reforms that shaped the development of the subjects treated in the previous chapters. In other words, al-Fustāṭ’s relationship with Upper Egypt at a legal level developed along the same three-stepped chronology that we encountered most visibly in chapters 1 and 3. This chapter’s diachronic approach also allows to set developments in Upper Egypt’s administration of law against changes in the legal administration of the Arab community in al-Fustāṭ. Modern scholarship predominantly considers the latter without reference to legal practices current among Egypt’s indigenous


7 Again, see now Tillier, “Du pagarque au cadi”, who proposes a development of Egypt’s legal administration from around the 50s/670s on.
As we will see, also the Arabs’ legal administration followed the just-mentioned chronology – a fact that reveals a relationship that has hitherto remained invisible.

1. Before 40/660: separated legal practices

When the Arabs established their rule in Upper Egypt, legal disputes were generally settled semiprivately. Adjudicators were chosen on the basis of their social standing, relationship to the dispute, judicial capabilities, and personal network beside financial and time-related factors. They could be administrative officials, but equally family members, clergy men, or others. These adjudicators derived their legal authority from their social power (be that based on their possession of wealth or land, or religious status), means of enforcement, and tasks delegated to them by the imperial authorities. Imperial legislation continued to influence the outcome of dispute settlements, but in late-antique Egypt the relationship between the plaintiff and the defendant on the one hand and the adjudicating party on the other had become more private and less institutionalized than that it had been in Roman times. As a result, there was not one way of legal procedure. Rather, the form of procedure and who presided over it depended to a large extent on the disputants’ social and economic capital and, as

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one legal scholar put it, their ‘criteria to determine the meaningful details and the relevant features of the [impugned] activity’.\textsuperscript{12} Pluriformity remained characteristic of Egypt’s legal administration well after the establishment of Arab rule.\textsuperscript{13} But as we will see on the following pages, structural changes do appear in our documentation soon after the conquests.

Within a few years after the conquest,\textsuperscript{14} it is in the formulae of legal documents with an administrative context that the Arab government first appears. In SB Kopt. I 242 (Udfū), an official acknowledgement of the distribution of pepper dated to Ṣafar 11, 29/October 24, 649,\textsuperscript{15} we find an oath ‘by God Almighty and the salvation [C. ΟΥΓΧΧΙ]\textsuperscript{16} of the all-praiseworthy Abdelas [i.e., ‘Abd Allāh b. Sa’d b. Abī Sarḥ], the great governor, and the salvation of Damianos, the most glorious dux’ (lines 27–9). Parallels are known from Greek and other Coptic documents. A small corpus of Greek declarations (Gr. sg. καταγραφή) of the payment of tax money contain an oath by the ‘salvation’ (Gr. σωτηρία) of ‘the amīrs’ (Gr. τῶν ἀμιράτων),\textsuperscript{17} Arab officials subordinate to the governor.\textsuperscript{18} The provenance of these documents is confined to the district of al-Ūsmūn (Hermopolis); their date is estimated to the second half of the first/seventh


\textsuperscript{14} The early SB VI 8987 (Udfū: 23/644-24/645) has the seemingly carelessly phrased oath by ‘the salvation of any authority that has power over us’ and may attest to a period of transition between the effective end of Byzantine rule and the acknowledgement of Arab rule. See the document’s interpretation interpretation in J. Gascou, “Edfou au Bas-Empire d’après les trouvailles de l’IFAO”, in [no ed.] Tell-Edfou soixante ans après: actes du colloque franco-polonais, Le Caire – 15 octobre 1996, Cairo: IFAO, 1999, p. 20 (after Papaconstantinou, “‘What remains behind’”, p. 456). See also p. 95 above.

\textsuperscript{15} Gascou & Worp, “Problèmes”, p. 94.


\textsuperscript{17} See Bagnall & Worp, Chronological systems, p. 289 [appendix G.1].

Two Coptic declarations (both edited as *P.Lond.Copt.* 1079 [21/641-25/645 or 38/658-43/664]), attached to a Greek list related to the fiscal administration and similarly from the region of al-Uşmūn, contain an oath by the salvation of the governor ʿAmr b. al-ʿĀṣ. These Greek and Coptic declarations sometimes concern considerable sums of money and give the impression to have been made by local authorities such as pagarchs or landowners (e.g., *P.Laur.* III 121 is a declaration of the payment of tax money for al-Uşmūn’s pagarchy and a near-by *epoikion* and *chōrion*; the second list of *P.Lond.Copt.* 1079 concerns taxes of *geōrgoi*, ‘agricultural workers’). The change in the oath formula indicates that the Arab authorities first penetrated existing legal practices in matters related to the collection of taxes.

A change soon after the Arabs came to power that must have been more noticeable was that affiliation with the Arab authorities became a basis for legal authority. This is attested in a document dating from the first years after the conquest. It is in this context that references to al-Fuṣṭāṭ in the well-known document *SB Kopt.* I 36 (Udfū), also known as the ‘Budge Papyrus’, dating from 25-6/646, must be understood. This document records the proceeding of two parties before arbitrators in al-Bahnasā in order to settle a dispute over the ownership of a house. It records that in a previous attempt to settle the dispute one of the parties, a woman living in a village located to the north of al-Bahnasā, contacted several men travelling to or from al-Fuṣṭāṭ and asked them to help the parties come to an agreement. The reasons for these men’s travelling (lines 154-5: bringing a tax assessment (Gr. διανομή) to al-Fuṣṭāṭ; line 158: travelling from al-Fuṣṭāṭ with the post (Gr. ἀλλαγή); see also lines 149-50) suggests that they had contact with the Arab administration. Despite the fact that the other party lived in far-away Udfū, the woman in question is likely to have had the possibility of

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20 For recent studies on the legal procedure documented in this and three related documents, see the references in note 5 above.
21 For the use of ἀλλαγή in the Arab period, see *CPR* XXII 6, comm. at line 3.
travelling to Udfū. The woman’s choice for men with contacts in al-Fusṭāṭ is striking.

The Arabs themselves, concentrated in Egypt’s few garrison towns and mostly in al-Fusṭāṭ, had legal practices different from those of the country’s indigenous people. If we are to believe medieval historiographical sources, the young Arab administration in al-Fusṭāṭ soon, if not immediately, came to include an administration of law (Ar. ṣaḍāʾ), headed by an administrative official (Ar. qāḍī) who was directly subordinate to the provincial governor. As is typical of the source material for the pre-Umayyad ṣaḍāʾ in general, the sources for the qāḍāʾ in Egypt disagree on the person who was the first to hold the office. Some say that

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25 There is, for this reason, disagreement among modern scholars on the historical validity of such information. Influential scholars such as É. Tyan (Histoire de l’organisation judiciaire en pays d’Islam, 2nd ed., Leiden: E.J. Brill, 1960, e.g. pp. 92-3 and 123) and J. Schacht (An introduction to Islamic law, Oxford: Clarendon Press, 1964, pp. 16 and 24) denied the existence of the qāḍāʾ during the first thirty or so years after the death of Muḥammad on the basis of the contradictory nature of our sources for that period and that these sources assert a highly centralized appointment of the first qāḍīs. More recently, scholars have argued that weaknesses in the source material not necessarily imply that the qāḍāʾ did not exist (e.g. Tillier, *Les cadis*, esp. pp. 72-4; W.B. Hallaq, *The origins and evolution of Islamic law*, Cambridge: Cambridge University Press, 2005, esp. pp. 34-40; M.K. Masud, “Procedural law between traditionists, jurists and judges: the problem of *yanīn maʾ al-shahīd*”, *Al-Qantara* 20/2 (1999), pp. 398-9). Cf. G. Conrad, *Die Qudāṭ Dimāṣq und der Maḏḥab al-Auzāʾ*: Materialien zur syrischen Rechtsgeschichte,
one Qays b. Abī al-ʿĀṣ was the province’s first qaḍī whereas others claim this to have been a certain Ka’b b. Yaṣār b. Ḍinna.27

But whoever headed the office in the first decades after the Arab conquest, the sources agree that the qaḍā’ was still rudimentary and allowed for the continuation of pre-Islamic judicial practices among the Arabs. By and large, there is little information on the actual functions of the early qaḍā’;28 for Egypt such information is lacking entirely. However, the sources do record that certain types of dispute came to fall under the jurisdiction of the qaḍā’ at a later time and, thus, indicate that they did not belong to the jurisdiction of the qaḍā’ of the first decades after the conquest.29 The lack of information on Egypt’s initial qaḍā’ makes it is hard to distinguish it from continued pre-Islamic judicial practices. Arbitration (Ar. taḥkīm),30 for example, continued throughout the first/seventh century and even thereafter and is known to have existed beside the qaḍā’.31 Ibn Yūnus, for instance, writes that one As’ad b. Lahī’a al-Ḥimyarī, who belonged to the first generation of Arabs in Egypt, was an arbitrator (Ar. ḥakam) for the tribe of

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Stuttgart: Franz Steiner Verlag, 1994, pp. 587-94, where it is argued that the sources primarily show a second/eighth-century discussion on the early qaḍā’, that already at that time conflicting information circulated, and, hence, that it is hardly possibly to clarify the situation under the Rightly-Guided caliphs.


27 Waki, Ṣīrār, III, p. 221; Ibn Yūnus, Taʾrīḫ, I, p. 414 [no. 1108].

28 See Hallaq, Origins and evolution, pp. 34-5 for an example of the functions the early qaḍā’ of al-Baṣra.

29 Hallaq, Origins and evolution, pp. 59-62. The qaḍī Tawba b. Namir (in office 115/733-735 or 120/737, cf. Waki, Ṣīrār, III, p. 231), for example, is supposed to have been the first qaḍī who dealt with endowments (Ar. ʾaḥbāʾ). Before his judgeship, the sources explicitly state, the administration of endowments was ‘in the hands of their proprietors [Ar. ʾaḥl] or the latter’s trustees [Ar. sg. wasī]’ (al-Kindī, al-Wulā wa-l-qaḍā, p. 346; Ibn Ḥaḡar al-ʿAsqalānī, Raʾf al-ʾiṣr, p. 110 [no. 48]; cf. al-Qalqašandī, Ṣubḥ al-ʾaṣāʾ, I, p. 418). For more and earlier examples, see section 2 below.

30 For arbitration in pre-Islamic Arabia, see Tyan, Organisation, pp. 29-61.

31 Pace Schacht, Introduction, p. 24. It is in this context that we should understand Ibn Ḥakam’s (Futūḥ, p. 104, lines 12-3) report that in a dispute between al-ʾAṣbaḡ b. ʿAbd al-ʿĀzīz (d. 86/705) and ar-Rabī’ b. Ḥārīqa concerning certain urban property ‘Ibn Ṣīḥāb was his [i.e. al-ʾAṣbaḡ’s] qaḍī on that day [Ar. yawmaʾiʿdīn]. The last words, ‘on that day’, indicate that the “qaḍī” was temporarily chosen to adjudicate between the two parties. The term qaḍī in this instance must be understood as an arbitrator rather than a qaḍī appointed by the authorities. With Ibn Ṣīḥāb the well-known and highly respected Medinan traditionist Muḥammad b. Muṣlim az-Zuḥrī (d. 124/742) is meant. He is not known to have been a qaḍī (on him, see M. Lecker, “Al-Zuḥrī”, EF, XI, pp. 565-6).
A late-first/seventh-century document confirms the consultation of such arbitrators with regard to conflicts in marital spheres. And some of the first qādīs, such as the above-mentioned Kaʿb b. Yasār b. Ḍinna, were drawn from among those who had been an arbitrator before the coming of Islam. As we will see in what follows, Egypt’s qaḍāʾ gradually encroached upon, or more clearly distinguished itself from, arbitrative jurisdiction among the Arabs from the Sufyanid period onwards.

2. Changes under the Sufyanids

Changes in the Arabs’ judicial system and its relationship with the Upper Egyptian countryside are first visible in the early-Umayyad period. Medieval historiographical sources relate that Egypt’s first Umayyad qāḍī, Sulaym b. ʿItr (in office 40/660-60/680), initiated the issuing of documents stating the qāḍī’s verdict. Interestingly, he reportedly also was the first to deal with bodily injury and started to do so at the orders of the caliph Muʿāwiya b. Abī Sufyān. The same caliph is recorded to have introduced new procedures regarding the taking of oaths as well. It is tempting to see these changes in the qaḍāʾ as a result of the first civil war and the change of the caliphate. In the course of the war it had been, and after the war it remained, necessary to establish and legitimize Sufyanid rule. Chapters 1 and 3 showed that many changes aiming at establishing or increasing Umayyad power followed the end of the first civil war. A redefinition of the qaḍāʾ, that is to say a redefinition of the relationship between the Arab

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32 Ibn Yūnus, Taʾrīḫ, I, p. 41 [no. 120].
33 Younes, Joy and sorrow, no. 2 (prov. unknown). An arbitrator may similarly have been involved in the failed settlement of a dispute on an inheritance recorded in CPR XVI 3 (prov. unknown; second/eighth c. or later). This petition to an unnamed qāḍī informs us that the parties involved had not been able to come to an agreement after hearing witnesses. Through this letter, they ask for the qāḍī’s help after having tried to solve the dispute without his involvement.
37 Masud, “Procedural law”, p. 399.
populace and the Arab administration on a judicial level, during the reign of Mu‘āwiya b. Abī Sufyān fits this pattern well.

It is similarly in the early-Umayyad period that the qaḍāʾ appears in our documentary source material. Two recently published documents recording debts between Arabs, dating from 42/663 and 57/677, refer in their formulary to the sunna, ‘normative precedent’, of the qaḍāʾ al-muʾminīn, ‘jurisdiction of the believers’.

That the expression occurs in a fixed formulary signifies its official character. The documents are not only valuable as proof for the early existence of qaḍāʾ. At the time the documents were composed, the word qaḍāʾ had strong Qur’ānic connotations. In combination with the explicit socio-religious setting of the documents’ qaḍāʾ (the community of ‘the believers’), the documents are early examples of the authorities’ giving judicial practices a religious context. What is more, the documents show that already early during Mu‘āwiya b. Abī Sufyān’s caliphate forms of jurisdiction endorsed by the central Arab authorities were applied in every-day legal transactions.

Although it is not recorded where these documents have been found, their most likely provenance is not al-Fuṣṭāṭ but rather Upper Egypt. As such, the documents indicate that Arab forms of private legal transaction, i.e. legal practices beyond the fiscal realm, were no longer restricted to the Arab garrisons after the 40s/660s. They had found their way into Upper Egypt, probably via Arab merchants or through Arabs settling there. In a similar vein, other documents


43 The documents are presently kept in the Louvre and the Österreichische Nationalbibliothek. For the mostly Upper Egyptian provenance of the documents kept in these two libraries (in the early-1950s), see Grohmann, Einführung, pp. 48 and 54-6.
show that in the course of the second half of the first/seventh century legal contact existed between Arab individuals and the indigenous population and that this contact was not confined to al-Fustāt. For example, a probably Upper Egyptian document, dated on palaeographical grounds to the first twenty-five years after the conquest, records a legal transaction in Arab fashion (it starts with the usual ḥāḍa mā) involving at least one Arab party named Ibn Āzād/Āzāḏ. At the end of the only line preserved, it is stated that the transaction involved wheat (Ar. qamḥ), possibly confirming the document’s rural context. Another first/seventh-century document that follows Arabic legal conventions, Christ.Khoury I 48 (prov. unknown), records one ‘Abd Allāh b. ‘Umayṣ’s payment to the native Egyptian Isidurah for, or of, probably twenty-three buckets of something no longer legible on the document. Isidurah is said to come from Qahqawh, near modern Abūtīḡ.

44 A. Grohmann, “Zum Papyrusprotokoll in früharabischer Zeit”, Jahrbuch der Österreichischen byzantinischen Gesellschaft 9 (1960), no. 1. For the mostly Upper Egyptian provenance of documents kept in the University Library in Ann Arbor, see Grohmann, Einführung, pp. 41-2. For a digital image, see <http://quod.lib.umich.edu/a/apis/x-2927/6714r.tif> [July 2012]. The commentary in the following notes is based on this image.

45 Grohmann’s reading of aṯā cannot be confirmed. I was unable to find this verb in medieval formulations as following ḥāḍa mā. The formula ḥāḍa mā aṯā does occur in a number of letters allegedly documenting legal transactions of the prophet Muḥammad and in the text of a number of conquest treaties. See M. Lecker, “A pre-Islamic endowment deed in Arabic regarding al-Wahīda in the Hijāz”, in M. Lecker, People, tribes and society in Arabia around the time of Muḥammad, Aldershot: Ashgate, 2005, pp. 6-8.

46 The edition’s reading of the patronymic, ‘ibn Īḏād’, is incorrect. The rasms of the ḍāl and ḍāl are very distinct. And since the ḍāl is so characteristically written with its top bending to the right (P.Khalīlī I, pp. 29-30; B. Gruendler, The development of the Arabic scripts: from the Nabatean era to the first Islamic century according to dated texts, Atlanta, Ga.: Scholars Press, 1993, charts on pp. 55 and 59), we cannot but read the presumed ḍāl as a zā’ (already noted by Gruendler, The development, p. 34, n. 45). This gives the Arab name Āzād or Āzāḏ (for which, see al-Buḥārī, at-Ta’rīf al-kabīr, 4 vols, Ḥaydarābād: Dār al-maʿārif al-ʿUṭmānīyya, 1361/1942-3, 1/2, p. 202 [no. 2197] and Ibn Ḥaḡar al-ʿAsqalānī, Ṭaf al-ʾiṣr, p. 36 [no. 9]). The word ibn (intended in the edition, cf. the translation) is written with an alif, contrary to proper classical Arabic usage in patronymics following someone’s ism (see W. Wright, Arabic grammar, 2 vols, Cambridge: Cambridge University press, 1896-8, I, p. 23 [§ 21.b]). Although not uncommon in Arabic papyri (see S. Hopkins, Studies in the grammar of early Arabic: based upon papyri datable to before 300 A.H./912 A.D., Oxford: Oxford University Press, 1984, p. 50 [§ 49.b.vii]), it leaves us with the possibility that Ibn Āzād/Āzāḏ is the object of the verbal clause and that the name preceding it is its subject. In theory, too, the possibility exists that ibn Āzād specifies the ism in a more general way and means ‘a member of the Banū Āzād’, to whom belonged a number of medieval scholars living in northwestern Persia (ar-Rāfīʾ al-Qazwīnī, at-Tadwīn fi ṣubḥār Qazwīn, 4 vols, ed. A.A. al-ʿĀṭṭārīḏī, Ḥaydarābād: al-Ḥaṣbāʾa al-ʿAzīziyya, 1984, II, pp. 229-30). As to the name that precedes ‘Ibn Āzād/Āzāḏ’, Grohmann reads ʿāl. The papyrus has clearly ʿāl, with possibly traces of a preceding ḥā visible, suggesting a name such as Ḥayawīl.
Thus, *Chrest.Khoury* 1 48 establishes a (documentary) reach of the Arabs’ legal system into the far south of Egypt.

3. Changes after c. 80/700

But despite the fact that the Egyptian countryside was introduced to the Arabs’ legal system in the course of the first/seventh century through its inhabitants’ commercial interaction with Arabs, Greek and Coptic documents show that indigenous legal practices did not change until the turn of the second/eighth century and continued to dominate the form of legal administration among the local population. The archive of Papas, pagarch of Udfū around the third quarter of the first/seventh century, contains a considerable number of documents dealing with legal disputes. As had been the case before the Arab conquest, the highest legal authority in Egypt mentioned in this archive is the dux or his administration in Anṣinā (Antinoopolis).47 The pagarch continued to deal with disputes that rose in his district and could not be settled through the arbitration of village chiefs or so-called ‘great men’.48 We also have records for the continued jurisdiction of clergy men.49 The high social standing of such authorities formed their main base of judicial power.

Changes in al-Fuṣṭāṭ’s role in the judicial system of Upper Egypt are documented from the very end of Sufyanid rule onwards. But by and large, the major changes coincide with the great Marwanid reforms and, as we shall see below, may well have been part of them. Two partially distinct developments can be discerned.

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47 *E.g.* *P.Apol* 7 (Udfū; late-first/seventh or early-second/eighth c. [see Gascou & Worp, “Problèmes”, p. 91]). For the judicial authority of the *dux* in pre-Islamic times, see Simon, “Zum Zivilgerichtsbarkeit”, pp. 639-45.

48 *E.g.*, *P.Apol* 37 and 61 (Udfū; late-first/seventh or early-second/eighth c. [see Gascou & Worp, “Problèmes”, p. 89])

49 *P.Berl.Zill.* 8 (Fayyūm; 43/663), *P.CLT* 1 (Theban area; 79/698), *P.Apol* 41, 46 (Udfū; late-first/seventh c. [see Gascou & Worp, “Problèmes”, p. 89]), and *P.CLT* 5 (Theban area; 93/711-2). See also *P.Lond.* III 1081 (poss. al-Ušmūn; second half of the first/seventh c.).
3.1. **The appearance of the governor and qādi as legal authorities outside al-Fustāṭ**

First, it is from the Marwanid period onwards that our sources record people from Upper Egypt petitioning the Arab governor, seated in al-Fustāṭ, and asking him to settle their disputes. An Arabic document from 65/684-5 is the first record for the direct involvement of an Arab administrative official in the settlement of disputes in the Egyptian countryside. This document gives no information on the administrative position of the administrator. The fragmentary state of the document removes the nature of the dispute from our sight. Moreover, it is uncertain to what extent this one document is representative for the general situation in the mid-60s/680s. From the early-90s/710s onwards, however, our source material systematically shows that the top of the Arab administration, and especially the Arab governor, dealt with legal disputes outside al-Fustāṭ and among Egypt’s non-Arab population.

50 Diem, “Der Gouverneur an den Pagarchen” (poss. al-Ušmūn; 65/684-5), an official Arabic document ordering the addressee to look into a dispute. The names and functions of the sender and addressee are not preserved; the formulary indicates that the document stems from administration circles, but precisely which level of the administration remains unknown (pace Diem, “Der Gouverneur an den Pagarchen”, p. 107).

51 He is first fully identifiable as the Arab governor in the well-known documents from the archive of Basileios, e.g. *P.Cair.Arab.* III 150 (90/709), 151 (91/710), 154 (91/709), 155 (91/709-10), all documents are from Išqūh; Becker, “Arabische Papyri des Aphroditofundes”, nos. 1 and 2 (Išqūh; 91/709), no. 3 (prov. unknown; n.d.); *P.Heid.Arab.* I 10 and 11 (Išqūh; 91/710); *P.Quarra* 3 (Išqūh; 91/709). On these documents, see also W. Diem, “Philologisches zu den arabischen Aphrodito papyri”, *Der Islam* 61 (1984), pp. 254-5, 257 and 259. See also Younes, *Joy and sorrow*, no. 3 (prov. unknown; second/eighth c.), with comm. to line 6.

The *dux* still appears as a legal authority in the first decades of the second/eighth century (e.g., *P.KRU* 10 [Theban region; 104/722]; see also *O.CrumVC* 9 [Theban region; 78/698 or 109/728]). Grohmann, “Der Beamtenstab”, p. 123.

52 E.g., *P.World*, pp. 130-1 (Išqūh; 91/709), with corrections in Diem, “Philologisches zu den arabischen Aphrodito Papyri”, pp. 261-4 (see also Cadell, “Nouveau fragments”, pp. 155-7): a letter through which Qurra b. Šarīk fines one Buṭrus, a tax collector (Ar. qabbāl ad-dahab), for improperly surveying agricultural land or for the unjust collection of tax money (Ar. ḥibāya) in the year 88/706-7. Other documents dealing with disputes concerning the relationship between the government and the populace are, e.g., *P.Apoll.* 41 (Udfū; late-first/seventh c. [see Gascou & Worp, “Problèmes”, p. 89]), *CPR* XVI 7 (prov. unknown; first/seventh-second/eighth c.), *P.Berl.Arab.* II 26 (prov. Fayūm; second/eighth c.), and *P.Heid.Arab.* II 6 (prov. unknown; second/eighth or third/ninth c.). See also *P.Cair.Arab.* III 167, discussed in detail below. Other documents, such as *P.Ross.Georg.* IV 15 (Išqūh; 91/710) and *P.Heid.Arab.* I
Documents that show the first involvement of the Arab governor in the settlement of legal disputes also show that it was the Arab element in the administration at which judicial authority concentrated. This sharply contrasts the period of the Rightly-Guided and Sufyanid caliphs during which, as we saw above, local non-Arab administrators enjoyed judicial authority. In some documents, for example, the governor Qurra b. Šarīk orders the non-Arab pagarch Basileios to judge the veracity of a complaint brought before him by hearing the plaintiff or by investigating the plaintiff’s and defendant’s evidence. Significantly, Qurra writes in many of his letters that the pagarch is to procure the plaintiff his rights ‘if the evidence concords with what he told me [i.e. the governor]’ (Ar. in aqāma al-bayyina ʿalā mā aḥbarani). If not, the pagarch has not to pronounce a verdict but rather to inform the governor of the results of his investigation (e.g., P.Cair.Arab. III 154, lines 17-9: ʿillā an yakūna šaʾnuhu ǧayra ǧalika fa-taktubu ilayya bihi). In other words, in the case of Qurra’s correspondences with Basileios, the pagarch has no authority to formulate a verdict on his own account. Rather, the governor prescribes a verdict on the basis of the information at hand. When during the conduct of a case information is brought to light that conflicts with the plaintiff’s contentions, it is the governor who needs to reformulate the verdict. The advanced position of Arab officials in the administration of law vis-à-vis the...
non-Arab nobility finds close parallels in the Marwanids’ preference for Arabs, instead of indigenous notables, at influential administrative positions. Arab pagarchs, gradually introduced into the Egyptian countryside from around the 80s/700s as part of the Marwanids’ fiscal-administrative reforms, had more administrative responsibilities, and were closer connected with the top of Egypt’s administration, than their non-Arab predecessors.\(^\text{57}\) Indeed, in contrast to non-Arab pagarchs such as the just-mentioned Basileios, also Arab pagarchs are recorded to have enjoyed legal authority.\(^\text{58}\) In other words, not only do we see the introduction of the governor as a legal authority in the Egyptian countryside and Arab pagarchs enjoying the same authority as their non-Arab predecessors, we even see that Arab segments of the administration arrogated this legal authority.\(^\text{59}\)

We will come back to this below.

Second, it is in this period too that we hear for the first time of qāḍīs outside al-Fustât. Documentary sources are of little use for this period. Documents found outside al-Fustât contain references to qāḍīs as early as the first half of the second/eighth century. They show the involvement of the qaḍāʾ in the settlement of disputes related to financial transactions, ownership, inheritances, and, once, imprisonment outside Egypt.\(^\text{60}\) In these papyri, the identity and whereabouts of

\(^{57}\) See the elaborate discussion in Sijpesteijn, *Shaping a Muslim state*, pp. 102-5.

\(^{58}\) For Arab pagarchs ordering subordinate officials to investigate complaints directed to the pagarch and to inform the latter of their findings, see *P.Ber.Arab*. II 23 (prob. Fayyûm; mid-second/eighth c.) with commentary to lines 9-10; Rägib, ”Lettres arabes”, I, no. 1 (Fayyûm; 130s/750s) with the discussion in CPR XXII 7, comm. to line 2; and Sijpesteijn, *Shaping a Muslim state*, no. 6 (Fayyûm; first half of the second/eighth c.). The same situation is probably also referred to in lines 1-2 of Jahn, ”Vom fruhiislamischen Briefwesen”, no. 4 (prov. unknown; 127/745); but cf. N. Gonis, ”Another look at some officials in early ‘Abbāsid Egypt”, ZE 149 (2004), pp. 189-92 for this document and the pagarch involved. In Sijpesteijn, *Shaping Muslim state*, no. 21 (Fayyûm; first half second/eighth c.), an Arab pagarch orders the head of an administrative district (Ar. ḥayyīz) to bring to him the two defendants in a case so that the plaintiff ‘receives the right he is entitled to from them’ (Ar. yatasallamu min al-ḥaqq allâqī ʿalayhimā). P.KRU 25 (Šīma; 104/722-105/723) even suggests that while the litigants proceeded before the Arab pagarch’s deputy (Gr. προσωπος) it is the pagarch who formulates the verdict.

\(^{59}\) Pace Tillier, ”Du pagarque au cadi”, p. 29.

\(^{60}\) The earliest known documentary reference to a qāḍī appears in Sijpesteijn, *Shaping a Muslim state*, no. 26 (Fayyûm; first half of the second/eighth c.). For other references, see CPR XVI 3 (prov. unknown; second/eighth or early third/ninth c.), Hinds & Sakkout, ”A letter” (Qaṣr Ḳibrīm; 141/758), *P.Cair.Arab*. I 51 (prov. unknown; 195/811), CPR XXI 66 (prov. unknown; c. 257/870-270/884), and David-Weill et al., ”Papyrus arabes du Louvre”, no. 22 (prov. unknown; third/ninth c.). For possible implicit references to
the mentioned qādī are mostly not given. Therefore, the possibility that he has his seat in al-Fustāṭ can in most cases not be excluded. The first indisputable reference to a provincial qādī is given in P.Cair.Arab. I 51 (prov. unknown; ša'bān 195/May 811). It mentions a certain qādī named 'Amr b. Abī Bakr who is not known to have headed the qaḍā in al-Fustāṭ.61 Literary sources tell us that in the year this document was composed, one Hāšim b. 'Abd ar-Raḥmān al-Bakrī was qādī there.62 The office of the qādī 'Amr b. Abī Bakr of P.Cair.Arab. I 51 apparently existed beside that of Hāšim b. 'Abd ar-Raḥmān. The document has a relatively late date. It is unlikely to stem from a period of change in the administration of law outside the Arab capital, all the more because qādīs outside al-Fustāṭ are encountered about a century earlier in medieval historiographical literature. P.Cair.Arab. I 51 gives us a terminus ante quem for the introduction of qādīs in the Egyptian countryside.

The first qādī outside al-Fustāṭ mentioned in the chronicles is one Maṛṭād b. 'Abd Allāh al-Yazānī (d. 90/708-9), who adjudicated in Alexandria.63 This appearance of a qādī outside the province’s capital in the early-Marwanid period coincides with similar developments in Syria where the appearance of qādīs

61 Although it is tempting to identify 'Amr b. Abī Bakr with the prominent qādī 'Amr b. Abī Bakr b. Muhammad al-'Adawī, who originally came from al-Mawṣil and was qādī of Damascus under Hārūn ar-Raṣīd (r. 170/786-193/809), we lack information on the whereabouts, origins, tribal affiliation etcetera of the qādī of P.Cair.Arab. I 51 that might identify the former with the latter. For 'Amr b. Abī Bakr b. Muhammad al-'Adawī, see az-Zubayrī, Kitāb nasab Qurayš, ed. E. Lévi-Provençal, Cairo: Dār al-ma‘ārif, 1953, p. 368; Ibn Ḥaḡar al-'Asqalānī, Lisān al-mīzān, 6 vols, Haydarabad: Maǧlis dāʾirat al-ma‘ārif an-nizāmiyya, 1329/1911-1331/1913, IV, p. 287; Ibn 'Asākir, Ta'rīh Dimaṣq, XLIII, p. 550 [no. 5182] (lege "Amr" instead of "Umar" in line 2; cf. lines 5 and 13 where 'Amr’s brother 'Umar is called qādī of al-Urdunn whereas 'Amr himself was qaḍī of Damascus). We also lack biographical information that links 'Amr b. Abī Bakr b. Muhammad al-'Adawī with Egypt. There is, therefore, no solid base for identifying him with the qaḍī of P.Cair.Arab. I 51.


outside the main places of Arab settlement and administration can be dated to the caliphate of ‘Abd al-Malik b. Marwān (r. 65/685-86/705).\textsuperscript{64}

Marṭad b. ‘Abd Allāh al-Yazānī is primarily remembered as a traditionist.\textsuperscript{65} Much information on his background cannot be found beside the names of his teachers and pupils.\textsuperscript{66} The scant source material indicates, though, that throughout his career he held several high administrative positions and that, towards the end of his career, his authority was province-wide. His occupations before his judgeship in Alexandria are obscure and possible references to them are of dubious quality. Marṭad was most probably not the high administrative official in Anṭābulus as an account preserved by Ḥalīfa b. Ḥayyāṭ suggests.\textsuperscript{67} What we know of his career with more certainty is that Marṭad, having gained much legal experience as a qaḍī in Alexandria, was summoned to al-Fusṭāṭ in order to advise in

\textsuperscript{64} Conrad, Qudāt Dimšaq, esp. pp. 712-6. See also Hallaq, Origins and evolution, p. 58.

\textsuperscript{65} Aṣ-Ṣīrāzī, Ṭabaqāt al-fuqahā’i, p. 78 mentions him among Egypt’s five prominent faqīhs of the first two Muslim centuries.


\textsuperscript{67} In this account, Ḥalīfa b. al-Ḥayyāṭ (Ṭaʾrīḥ, I, p. 138) reports ‘[...] on the authority of Ibn Lahī’a, on the authority of Marṭad b. ‘Abd Allāh al-Ḥadrāmī, that he, when he was appointed governor over Anṭābulus, went to the inhabitants of Anṭābulus with the document stating their pact’ (Ar. [...] ‘an Ibn Lahī’a an Marṭad b. ‘Abd Allāh al-Ḥadrāmī annahu atā ahī Anṭābulus hīna wuliyya Anṭābulus bi-kitāb ‘ahdihim). Note that in this account Marṭad has the incorrect nisba ‘al-Ḥadrāmī’. (The nisba ‘al-Yazānī’ refers to Dū Ṭu Yazan, a sub-tribe (Ar. ḏāt) of Ḥimyar. See ‘U.R. Kaḥṭāḥa, Muʿjam qabāʾīl al-ʿarab al-ḍīmāma wa-l-ḥadīṯa, Damascus: al-Maktaba al-Ḥāṣimiyya, 3 vols, 1368/1949, III, p. 1268b and A.F.L. Beeston, “Yazan”, EI II, XI, p. 302a.) A medieval copyist of the manuscript corrects Marṭad’s tribal affiliation to the Dū Ṭu Yazan in the margin (Ḥalīfa b. Ḥayyāṭ, Ṭaʾrīḥ, I, p. 138, n. 1). Elsewhere, Ḥalīfa b. Ḥayyāṭ lists Marṭad among the first class of North African traditionists (Ḥalīfa b. Ḥayyāṭ, Kitāb at-ṭabaqāt, ed. A.D. al-ʿUmārī, Baghdad: Matba’at al-Ānī, 1387/1967, p. 293). Now, Ibn ‘Abd al-Ḥakam (Futūḥ, p. 170) gives a much similar account in which he writes that ‘[...] Ibn Lahī’a transmitted on the authority of Yazīd b. ‘Abd Allāh al-Ḥadrāmī that Ibn Dayyāṣ, when he was appointed governor over Anṭābulus, went there [or, to him] with the document stating their pact’ (Ar. [...] ḫadd qaḏāna’ Ibn Lahī’a an Yazīd b. ‘Abd Allāh al-Ḥadrāmī anna Ibn Dayyāṣ hīna wuliya Anṭābulus atā hu bi-kitāb ‘ahdihim; see also Abū ʿUbayd, al-Amwāl, p. 208 [no. 401]). In Arabic script, the names Marṭad and Yazīd are easily confused. The name Marṭad may, therefore, have been written in place of the name Yazīd. Hence, it cannot be excluded that Marṭad is not at all meant as the transmitter in Ḥalīfa b. Ḥayyāṭ’s account let alone that he is the account’s subject. However, there is no Yazīd b. ‘Abd Allāh al-Ḥadrāmī known to have been a traditionist and the name occurs not among ‘Abd Allāh b. Lahī’a’s informants (for whom, see e.g. al-Mizzī, Taḥdīb, XV, pp. 488-9 [no. 3513] and R.G. Khoury, ‘Abd Allāh ibn Lahī’a (97-174/715-790): juge et grand maître de l’école égyptienne, Wiesbaden: Otto Harrassowitz, 1986, pp. 87-117). The context of both accounts – whether or not Anṭābulus had a treaty with Amr b. al-ʿĀṣ – may be taken in favour of that of Ibn ‘Abd al-Ḥakam. On the basis of this source material, one can only speculate on Marṭad’s relationship with North Africa.
the legal matters of no one less than the governor ʿAbd al-ʿAzīz b. Marwān.68 Instead of a qāḍī whose jurisdiction was limited to Alexandria and possibly the city’s direct hinterland, Marṭād was now, in Ibn Yūnus’ words, muftī ahl Miṣr, that is, the highest legal consultant of the ǧund of Egypt.69 Al-Maqrīzī writes that Marṭād succeeded ʿAbd ar-Raḥmān b. Ḥuḡayra al-Ḥawlānī as chief of the qaṣṣ, probably in al-Fuṣṭāṭ, after he had been qāḍī in Alexandria.70 Although the functions of a muftī and qaṣṣ may partially have overlapped, the historicity of this report cannot be ascertained; it contradicts other reports on the succession of those who headed the qaṣṣ during Marṭād’s lifetime.71 Nonetheless, al-Maqrīzī’s report may very well be indicative of Marṭād’s considerable socio-religious authority near the end of his career. After all, both a muftī and a qaṣṣ advised in religious matters and other sources remember Marṭād as an imām, ‘religious leader’.72 Despite the scantiness of this information, it suggests a close relationship between the qaḍāʾ of Alexandria and the top of the juridico-administrative hierarchy seated in al-Fuṣṭāṭ. Marṭād’s appointment coincided with that of other officials in Alexandria who had close connections with al-Fuṣṭāṭ. As we already saw at the end of chapter 1, his appointment was part of a larger development that strengthened al-Fuṣṭāṭ’s ties with Alexandria.73 Marṭād’s career and shift from


70 Al-Maqrīzī, Ḥīṣāt, IV/1, p. 31.

71 If the report is true, Marṭād is likely to have held the office for a short time after ʿAbd ar-Raḥmān b. Ḥuḡayra was deposed in 83/702 (Ibn Yūnus, Taʾrīḫ, I, p. 299 [no. 811] with n. 8.). However, Ibn Yūnus (Taʾrīḫ, I, p. 424 [no. 1128]) reports that ʿAbd al-ʿAzīz b. Marwān appointed one Mālik b. Šarāḥīl al-Ḥawlānī over the qaṣṣ in 83/702.


73 See pp. 56-9 above.
Alexandria to al-Fustat not necessarily qualifies the hierarchical and social relationship between the qadi in al-Fustat and that in other places. For this, we need to turn to another qadi holding office outside al-Fustat.

Beside one Humayr b. Malik al-Himyarī, a hardly documented qadi in Alexandria during the caliphate of Hišām b. Abd al-Malik (105/724-125/743), historiographical sources mention by name one other second/eighth-century qadi having had his seat outside al-Fustat. Yazid b. Abd Allāh al-Ḥadramī is said to have been qadi in Iḥmīm (Panopolis) prior to his appointment as the deputy of the qadi Ġawt b. Sulaymān in al-Fustat four months before his death in Di al-Qa’da 140/March 758. In contrast with that of Marṭad b. Abd Allāh al-Yazanī, the career of Yazīd b. Abd Allāh al-Ḥadramī is known in more detail.

Ibn Yūnus writes that Yazīd b. Abd Allāh was a secretary (Ar. kāṭib) of the qadi Ġawt b. Sulaymān (at some time) before he became qadi of Iḥmīm and then Ġawt b. Sulaymān’s deputy in al-Fustat. Al-Kindī claims Yazīd b. Abd Allāh to have been ‘governor’ (Ar. wāli) of Iḥmīm, that is, its chief administrator, when he was asked to become Ġawt b. Sulaymān’s deputy. Although Yazīd b. Abd Allāh may have held both posts of qadi and wāli separately (in which case he must first have been qadi and then wāli), the possibility that he was the highest administrative official in Iḥmīm and at the same time held judicial authority

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26 Ibn ʿAbd al-Ḥakam (Futūḥ, p. 243) reports that Ġawt b. Sulaymān confirmed (Ar. aqarra) Yazīd b. Abd Allāh as his deputy after he saw him holding sessions (Ar. wa-kāna yağlisu li-n-nās) in the White Mosque in the quarter of the tribe of Ḥadramawt in al-Fustat (see also al-Kindī, al-Wulā wa-l-quḍā, p. 360 and Ibn Ḥaḍar al-ʿAsqalānī, Rafʿ al-ʿīṣr, p. 467 [no. 251]). It is most likely that this occurred at the beginning of the month between Ġawt b. Sulaymān’s return from the summer raid (Ramāḍān 140/January-February 758 [al-Kindī, al-Wulā wa-l-quḍā, p. 359; Ibn Yūnus, Taʾrīḥ, I, p. 392 [no. 1064]; Ibn Ḥaḍar al-ʿAsqalānī, Rafʿ al-ʿīṣr, p. 467 [no. 251]]) and Yazīd b. Abd Allāh’s sudden death in Di al-Qa’da 140/March 758.
28 Al-Kindī, al-Wulā wa-l-quḍā, pp. 359-60.
cannot be excluded. Whatever the case, Yazīd b. ʿAbd Allāh was an administrative official in Iḥmīm during the judgeship of Ġawṭ b. Sulaymān. Ġawṭ b. Sulaymān himself was appointed as head of the qaḍāʾ by the governor ʿAbd al-Malik b. Yazīd in Ramaḍān 135/March 753 and continued his judgeship until Ǧumāda II 140/October 757; no interruption is mentioned to have been caused by the accession of Ǧāliḥ b. ʿAlī to the governorate in 136/753 and the reinstallation of ʿAbd al-Malik b. Yazīd in Ramaḍān 137/February 755 (who headed the governorate until Rabīʿ II 141/August 757). Interestingly, Yazīd b. ʿAbd Allāh rose from being a qāḍī’s secretary, via some administrative posts in the countryside, to being a qāḍī’s deputy in al-Fuṣṭāṭ in half a decade. He made a judicial career. After having obtained the prestigious position of secretary to a qāḍī seated in al-Fuṣṭāṭ probably through his and Ġawṭ b. Sulaymān’s shared affiliation with the tribe of Ḥaḍramawt, Yazīd b. ʿAbd Allāh became an official with judicial authority in the provincial town of Iḥmīm. This position gave him access to the most influential levels of the (legal) administration. Such details on the chronology of Yazīd b. ʿAbd Allāh’s career show a close relationship with the (provincial and local) administration on the one hand and the qaḍāʾ in al-Fuṣṭāṭ as well as in Iḥmīm on the other.

Fortunately, the trilingual document *P.Cair.Arab. III 167* (second/eighth c.) adds to our knowledge of Yazīd b. ʿAbd Allāh’s career. This document, found in Iḥmīm, contains an official declaration on the soundness of a local fiscal administrator’s conduct. The declaration is made by a governor’s ‘overseer [Ar.

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28 Although literary sources predominantly use the word wālī for a provincial governor, a second/eighth-century document, *P.Khalili I 14* (prov. unknown), mentions a wālī of a village in the Nile delta with judicial powers (line 11).
30 For possible but uncertain documentary information on the career of other Abbasid officials who held offices in the Egyptian countryside before they served at the top of the administration in al-Fuṣṭāṭ, see Gonis, “Another look”, pp. 193-5 (see also CPR XXII 35, comm. to line 1).
\(\text{ḥāfiz}\)\(^{83}\) over the [combined] district of Ḫmīm and Ṭaḥtā' (lines 95-6) named Yazīd b. ʿAbd Allāh. This Yazīd b. ʿAbd Allāh has long been identified with Yazīd b. ʿAbd Allāh al-Ḥadrāmī.\(^{84}\) The Coptic part of the document calls him \(\text{dēmosios logos}\) (line 2), 'public authority'.\(^{85}\) Village communities are known to have used this term to address the governor in official deeds.\(^{86}\) The term is also found used by such communities to address pagarchs in documents dealing with tax-related matters.\(^{87}\) What \(P.Cair.Arab.\) III 167 tells us on Yazīd b. ʿAbd Allāh’s career heavily depends on our dating of the document. Palaeography and the beginning of a governor's name in line 4 (\(\text{abd} = ʿ\text{Abd}\)) securely assign the document to the second/eighth century.\(^{88}\) The identification of the document’s overseer with Yazīd b. ʿAbd Allāh al-Ḥadrāmī, further, only allows for a date before Ḫū al-Qa’dā 140/March 758, the month in which the latter died. For unknown reasons, A. Grohmann has dated the document to the period 137/754-140/757.\(^{89}\) A close examination of the document makes a slightly earlier date more probable.

The document contains at two places (the remains of) a date: the possibly partially broken off \(\chi\alpha\alpha\chi\gamma\) \(\gamma\iota\) \(\varepsilon\) [ in line 1 (\(\text{lege} \) thus, see \(P.Cair.Arab.\) III, plate 8) and the fully readable \(\gamma\chi\gamma\iota\) \(\gamma\iota\) in line 82. The interpretation of these dates remains uncertain.\(^{90}\) The \(\text{gamma}\) in both the Coptic and Greek date can stand for the day of the month, the indiction year, or both at the same time. Considering the fact that in line 82 the date is fully preserved and probably intentionally written as it is, the

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\(^{83}\) The word \(\text{ḥāfiz}\) occurs nowhere else in the papyrological record of the first Muslim centuries except in reference to God (e.g., \(P.Marchands\) II 10 (Fayyūm; third/ninth c.)).

\(^{84}\) A.R. Guest, “An Arabic papyrus of the 8th century”, \(JAOS\) 43 (1923), p. 247. See also \(P.Cair.Arab.\) III 167, lines 2-3 (+ comm.) of which the extant parts establish a connection between ‘our lord’ (\(C.\text{tp} \text{polis} \text{é} \text{m} \text{in}\)) Yazīd b. ʿAbd Allāh and ‘the city of Ḫmīm’ (\(C.\text{tp} \text{polis} \text{é} \text{m} \text{in}\)) alone and do not mention Ṭaḥtā.

\(^{85}\) See \(P.Mert.\) I 49, comm. to line 8. As the governor’s \(\text{ḥāfiz}\), it is unlikely that Yazīd b. ʿAbd Allāh was an employee of a local financial bureau and that he was subordinate to the pagarch (cf. \(P.Apoll.\) 47, intr.; \(P.Würzb.\) 19, comm.).


\(^{87}\) E.g., \(P.Bal.\) 122 (Dāyr al-Balāʾizza; prob. 105/724), \(P.Ryl.Copt.\) 115 (al-ʿUshmūn; first/seventh or second/eighth c.), and \(P.Ryl.Copt.\) 116 (al-ʿUshmūn; first half of the second/eighth c.).

\(^{88}\) \(P.Cair.Arab.\) III 167, comm. to lines 4-5.

\(^{89}\) Grohmann, “Der Beamtenstab”, p. 132. See also n. 94 below.

\(^{90}\) The editors understood the Coptic as ‘(On) the third of Choiak, [d]indiction ...’ and the Greek as ‘Month of Choiak, third’ (neglecting the abbreviation \(\iota\)).
most likely interpretation is that the *gamma* stands at least for the indiction year, making it a third. A month Choiak in relevant indiction years 3 before 140/758 ran approximately as follows:91 Ĝumādā I 101/December 719, Šawwāl-Ḍū al-Qa‘da 115/December 733 and Rabī‘ II 132/December 749. These are not dates in which a governor whose name starts with “ʿAbd” is known to have ruled. The governor who comes closest to one of these dates is ‘Abd al-Malik b. Marwān, whose governorate is said to have started in Ĝumādā II 132/January 750, *i.e.* one month later than the month Choiak in 132/749.92 Most probably, *P.Cair.Arab. III* 167 evidences that ʿAbd al-Malik b. Marwān had become governor at least one month before the start of his governorate recorded in literary sources. Other papyri testify, indeed, to inaccuracies in the medieval historical tradition as to the dates of governorates of the mid-second/eighth century.93 If ʿAbd al-Malik b. Marwān ruled one month earlier than recorded in the literary sources, *P.Cair.Arab. III* 167 dates from between Rabī‘ II 11/November 27 and Ĝumādā I 11/December 26 of the year 132/749.94

Yazīd b. ‘Abd Allāh, then, was ʿAbd al-Malik b. Marwān’s overseer in Iḫmīm and Ṭaḥtā before he became secretary of Ġawṭ b. Sulaymān. Within about

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91 The month Choiak runs from November 27 to December 26.
92 Al-Kindī, *al-Wulā wa-l-ṣuqā*, p. 93. The current but faulty edition of *P.Ryl.Arab. I* § IV 5 suggests that ʿAbd al-Malik b. Marwān was governor as early as 131/749. The name of the governor mentioned in this document should be read as ʿAbd Allāh b. Yazīd. The date of the document, which depends on the reading of the governor’s name, should be corrected to 133/751.
93 ʿAbd al-Malik b. Marwān’s second successor, the above-mentioned ʿAbd al-Malik b. Yazīd (in office for the first time in 133/751-136/754), is known from two documents to have been governor at least two months before the beginning of his governorate recorded in literary sources. See Y. Rāġib, “Lettres du service au maître de poste d’Ašmūn”, *Archéologie islamique* 3 (1992), p. 5, n. 2.
94 I thank L. Berkes for discussing this with me. An alternative but much less secure way to precise the date of the document rests on three rather weak assumptions: first, that Yazīd b. ‘Abd Allāh climbed the hierarchal ladder throughout his career; second, that for this reason his post as ḥāfiḍ in *P.Cair.Arab. III* 167 must be identical to his post as wālī of the literary sources; and third, that the number of the indiction year in line 82 is mistakenly left out. In combination with the details of his career outlined above and the fact that the governor’s name in line 4 starts with ʿAbd, these assumptions lead to the conclusion that *P.Cair.Arab. III* 167 stems from the time of Ġawṭ b. Sulaymān’s judgeship under ‘Abd al-Malik b. Yazīd, *i.e.* between Ramaḍān 135/March 753 and Rabī‘ II 136/October 753 or between Ramaḍān 137/February 755 and Ĝumādā II 140/October 757. More precisely, the document dates to a month of Choiak in one of these years, that is, between Ĝumādā II 17/November 27 and Raḡāb 17/December 26 of the year 138/755 or between Ĝumādā II 28/November 27 and Raḡāb 28/December 26 of the year 139/756. Such an argument may have led A. Grohmann to his further unfounded dating of the document to the period 137/754-140/757 (see above).
five years, he became kātib of Ġawṭ b. Sulaymān in al-Fustṭāt, then qāḍī and/or wālī back in Iḥmīm, and finally deputy-qāḍī in al-Fustṭāt. Even though it remains uncertain whether Yazīd b. ‘Abd Allāh actually was qāḍī in Iḥmīm, the proposed date of P.Cair.Arab. III 167, in combination with our detailed knowledge of Yazīd b. ‘Abd Allāh’s career outlined above, indicates that administrators with official authority to adjudicate outside al-Fustṭāt were (at least at times) appointed to where they had served the government before and, thereby, had gained social standing. This added to his authority as an adjudicator and, hence, closely tied the local administration of law to that of the authorities in al-Fustṭāt.

3.2. Related changes in the Arab and non-Arab communities
Reference has been made above to the appearance of qāḍīs outside al-Fustṭāt during the Marwanid period. As has been noted by W.B. Hallaq, this appearance ‘mirrored a collateral demographic movement that saw the Arabs relocate from the chief garrison towns to the smaller cities and towns previously inhabited exclusively by non-Muslims’.95 Indeed, papyrological studies show that from the end of the first/seventh century onwards Arabs increasingly settled in the Egyptian countryside, amongst others for financial reasons.96 This movement and the correlated increase of financial transactions involving Arabs outside al-Fustṭāt naturally brought along legal practices current among the new settlers. But there were more forces behind the spread of the use of the qaḍāʾ than changes in demography alone. Among others, these forces must be sought in the reception of official Arab administration of law among Egypt’s countryside population and a growth of the complexity of the qaḍī’s office.

First, through the settlement of Arabs outside al-Fustṭāt and, additionally, conversion to Islam among the Egyptian population,97 local Egyptian society came

95 Hallaq, Origins and evolution, p. 58.
96 E.g., Sijpesteijn, “Landholding patterns”, pp. 124-5. See also the discussions on pp. 68-9 and 135-7 above.
97 On conversion to Islam in the period under discussion, see especially G. Frantz-Murphy, “Conversion in early Islamic Egypt: the economic factor”, in Y. Rāġib (ed.), Documents de l’Islam médiéval: nouvelles perspectives de recherche, Cairo: Institut français d’archéologie orientale, 1991, pp. 11-17; C. Décobert, Le
to stand in direct contact with a minority but dominant Arab/Muslim segment of society. As we saw above, legal interaction between Arabs and native Egyptians followed Arab legal prescriptions and, thus, diffused Arab legal concepts among the native population.98 The intensified contact between the Arabs’ legal system and the native Egyptian population from the early-second/eighth century onwards caused the Arabs’ legal system to slowly find acknowledgement among non-converted Egyptians. Transcribed Arabic legal terminology in Coptic documents (such as παρα for barā’ā, ‘quittance’,99 or οἶνος for dayn, ‘debt of money’100), for example, appears in documents dated to the late-first/seventh and second/eighth centuries, coinciding with the settlement of Arabs outside al-Fustat.101 Although most of the indigenous population stuck to existing legal practices, a small number of Coptic documents, further, record legal transactions involving native Egyptians that observe practices acceptable before Arab legal authorities. The documents P.Mich. inv. A 930 (prov. unknown; prob. before 108/727),102 involving both Arab and non-Arab parties, and CPR II 151 (prob. Fayyūm; second/eighth c.), of which the section describing the parties is lost, for

98 For early legal interaction between Arabs and non-Arabs (all following Arab legal prescriptions), see Chrest.Khoury I 48 (prov. unknown; first/seventh c.); Liebrenz, “Eine frühe arabische Quittung” (Šīma; late-first/seventh or early-second/eighth c.); Chrest.Khoury II 17 = P.Vente 14 (Fayyūm; first/seventh or second/eighth c.). See also CPR XXVI 36 (prov. n.i.; second/eighth c.); Diem, “Einige frühe amtliche Urkunden”, no. 3 (Fayyūm; 162/779); CPR XXI 1 (Fayyūm; 169/785); Chrest.Khoury I 64 (Fayyūm; 180/796); CPR XXVI 37 (prov. unknown; second/eighth or third/ninth c.); P.Terminkauf 1 (poss. Fayyūm; 200/816).
99 P.Bal. 291 (Dayr al-Balā‘iza; early-second/eighth c.), see comm. to line 5 for more references. See also T.S. Richter, “O.Crum ad. 15 and the emergence of Arabic words”, p. 108, n. 45.
100 P.Bal. 102 (Dayr al-Balā‘iza; late-first/seventh or early-second/eighth c.).
102 An Arabic document which mentions the governor al-Ḥurr b. Yūsuf (in office 105/724-108/727) and which, for this reason, can be dated approximately reuses the papyrus on which the Coptic is written. For the Arabic, see Younes, Joy and sorrow, no. 21. The Coptic part was presented by A. Delattre during the Fifth ISAP conference (Tunis) on 30.3.2012.
instance, record legal transactions to which two Arabs bore testimony.\textsuperscript{103} From the mid-second/eighth century there is evidence that commercial transactions between non-Arabs or non-Muslims were recorded in Arabic.\textsuperscript{104} Indeed, in two Coptic legal documents from Śīmā and dated to 115/733 appears for the first time a formula explicitly stating that these documents were composed ‘in the Egyptian language’, suggesting that documentary practices in another language (Arabic being the most likely candidate\textsuperscript{105}) had recently entered local legal administration.\textsuperscript{106} Similarly, changes in the stipulation clause in Coptic legal documents in the first half of the second/eighth century have been interpreted as the result of the presence of Arab legal authorities outside al-Fustāṭ. Instead of agreeing to the transaction recorded in the document, the new stipulation clause records that one of the contracting parties ‘will testify that he agreed’, \textit{i.e.} stipulating that he will provide (oral) evidence before adjudicators. Thereby, the change in the stipulation clause is thought to have brought Coptic evidentiary practices in accordance with legal practices to which the Arab authorities adhered.\textsuperscript{107}

By the second/eighth century, these authorities may well have been the Arab or Muslim fiscal administrators discussed in the previous section (who, as we saw, arrogated legal authority). We may also expect them to have been locally-appointed qāḍīs, especially in those areas where substantial Muslim communities lived. That qāḍīs began to enjoy legal authority among Egypt’s indigenous population around this time is clearly stated by al-Kindī. He mentions Christian Egyptians proceeding before the qāḍī in al-Fustāṭ for the first time in his entry on

\textsuperscript{103} See also CPR IV 58 (prob. Fayyūm; second/eighth c.), of which the only preserved party seems to have been Egyptian (line 1: ‘... son of Kōsma’), for a legal transaction witnessed over by one Arab. In CPR XXXI 1 (al-Ušmūn; second/eighth c.), one of the three witnesses to the recorded payment has an Arabic patronymic: Papnoute son of Ziyād.
\textsuperscript{105} See now the Arabic legal document published by B. Liebrenz (“Eine frühe arabisch Quittung”, pp. 300-1 with p. 298 on the date of the document) which not only comes from Śīmā and dates to the late first/seventh or second/eighth century but also testifies to the presence of detailed knowledge on the Arab authorities’ official administration of law (see the commentary to lines 5–6).
\textsuperscript{106} Frantz-Murphy, “Settlement of property disputes”, p. 99.
\textsuperscript{107} Frantz-Murphy, “Settlement of property disputes”, pp. 98–100.
Ḫayr b. Nuʿaym’s first office as ṣāḥī (120/738-128/745), i.e. shortly after (legal) contact between Arabs and non-Arabs had intensified.

Second and related to the above, it is around the same time that the the Arab legal administration itself enlarged and specialized. Around the turn of the second/eighth century, literary sources mention for the first time assistants, such as a secretary (Ar. kātib), at the ṣāḥī’s court or its involvement of legal specialists. The growing number of types of legal dispute covered by the ṣāḥā in the course of the first/seventh and second/eighth centuries doubtlessly contributed to this development. This increased complexity of the ṣāḥā is likely to be one of the reasons for the disassociation of the administration of law from other civil offices during the first half of the second/eighth century. Combined with the demand for official Arab adjudication from among an ever-growing Arab/Muslim population living outside al-Fustāṭ as well as from part of Egypt’s indigenous population, the complexity of the ṣāḥā necessitated the presence of other, i.e. provincial, ṣāḥīs who were subordinate to their colleague in al-Fustāṭ. Their position discussed above suggests, indeed, that they were appointed to meet local demands rather than to replace the ṣāḥī in al-Fustāṭ. In light of the early and substantial Arab presence in Alexandria in the second half of the first/seventh century, the city’s strategic location, and, hence, the continuous need for Arab authorities to maintain their rule there, it is not at all surprising that the first ṣāḥī outside al-Fustāṭ mentioned in our literary source material, the above-mentioned Marṭad b. ʿAbd Allāh al-Yazanī, held office in this city: outside al-Fustāṭ, control over the administration of law was most pertinent there.

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109 Ḥallaq, Origins and evolution, pp. 60-1. In source material related to Egypt, a ṣāḥī’s secretary appears in 97/716 (Tillier, “Scribes et enquêteurs”, pp. 373 and 378-9).
111 The most obvious material presented throughout the literary sources on the development of the ṣāḥī’s office is collected by al-Ḳalqašandī, Ṣubḥ al-ʿaṣā, I, pp. 418-9. See also Hallaq, Origins and evolution, pp. 59-62.
4. Concluding remarks

The changes in al-Fustat’s involvement in the legal administration of Upper Egypt, discussed in this chapter, responded to several social and political developments. The different stages of the involvement of Arab authorities seated in their new capital coincided with major political changes and followed the same chronology we established in earlier chapters. The last stage, which included the acknowledgement of Arab legal authority and practices by non-Arabs/Muslims and the appointment of Arab legal personnel outside al-Fustat, firmly established al-Fustat’s involvement in the province’s legal administration. Well-known for their efforts at centralizing the administration in order to increase their control over both the Arab and non-Arab populace, it comes as no surprise that the developments during this last stage were the (indirect) result of the imperial policies of the Marwanid caliphs.

Before the Marwanids came to rule, Umayyad provincial governors had appointed qadis in al-Fustat from among the local Arab nobility. Because of their local background, qadis formed, in legal spheres at least, an important bridge between the regularly foreign governors and the local Arab populace. Via the social and religious authority of the qadāʾ, the Arab authorities used qadis for influencing the religious and political direction of the young Arab community in order to unite them under their rule. Also the Marwanids used the Arabs’ legal administration as a political instrument. Compared to the policies of their predecessors, control over the legal administration and, hence, the population under the Marwanids was in the hands of higher political authorities. Instead of the provincial governor, the caliph is recorded to have been directly involved in

the appointment of the head of Egypt’s qaḍāʾ in al-Fuṣṭāṭ from 98/717 onwards.\textsuperscript{115} The discussions above show that Marwanid policies not only affected the administration of law of Egypt’s Arab community but indirectly, via the settlement of Arabs outside al-Fuṣṭāṭ which they encouraged, also that of the indigenous population.

\textsuperscript{115} ‘Iyāḍ b. ‘Ubayd Allāh al-Azdī (qaḍī in al-Fuṣṭāṭ for a second time in 98/717-100/719; cf. Ibn Ḥaǧar al-‘Asqalānī, Rafʾ al-īṣr, p. 293 [no. 157] for this date) and his three immediate successors were all appointed by caliphs or by the governor on the caliph’s orders (see al-Kindī, al-Wulā wa-l-qāḍā, pp. 337 and 340 (for ʿAbd Allāh b. Yazīd b. Ḥuḍāmir and Yahyā b. Maymūn al-Ḥaḍramī; al-Kindī does not mention the latter’s successor (al-)Ḫiyār b. Ḥālid al-Mudlijī, qaḍī for about two months in 114/732 [see Ibn Ḥaḡar al-‘Asqalānī, Rafʾ al-īṣr, p. 152 [no. 70]; cf. Ibn ʿAbd al-Ḥakam, Futūḥ, p. 240]).