

ROBERT IRWIN
LONDON, ENGLAND

The Privatization of "Justice" under the Circassian Mamluks

The failure of military and palace entitulation to match the actual functions of those who bore the titles was a fairly pervasive aspect of Mamluk rule. Thus, for example, the *dawādār*, or Bearer of the Sultan's Inkwell, exercised much wider powers than his ceremonial title might suggest. Under the Bahri Mamluk sultans, the *dawādār* was not only in charge of the chancery, but also controlled, or at least exercised responsibilities for, foreign affairs, the *barīd* (state postal service), and espionage.¹ Similarly, the chief duty of the *mihmāndār* (the officer in charge of receiving guests) seems to have been to liaise with powerful Arab tribal shaykhs, particularly the Banū Faḍl, the paramount Arab tribe in the Syrian desert.²

Ḥājib may be translated literally as "doorkeeper" or "chamberlain" and *ḥājib al-ḥujjāb* as "chief doorkeeper." However, it is questionable whether the *ḥājib al-ḥujjāb*, a senior officer in the Mamluk regime, actually spent much of his time in opening and closing the sultan's door, or in screening petitioners and others who sought audience with the sultan. In "Studies in the Structure of the Mamluk Army," David Ayalon described the function of the *ḥājib al-ḥujjāb* as follows: "The main function of the *ḥājib al-ḥujjāb* was the administration of justice among the mamluks of the amirs according to the laws of *Yāsa*. His authority was independent, but during the time that the office of *nā'ib al-saltāna* was in existence he was sometimes obliged to consult with the holder of that office. It was also his duty to present guests and envoys to the sultan and he was in charge of organizing military parades." Ayalon additionally noted that originally there were three *ḥājibs*, but Barqūq increased their number to five.³ Ayalon's description of the *ḥājibs* as enforcers of the Mongol law code of the *Yāsa* echoed the views previously put forward by A. N. Poliak.⁴ However, Ayalon later came to reconsider the matter

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¹Robert Irwin, *The Middle East in the Middle Ages: The Early Mamluk Sultanate 1250–1382* (Beckenham, Kent, 1986), 39.

²*Ibid.*, 115 and n.

³David Ayalon, "Studies in the Structure of the Mamluk Army III," *Bulletin of the School of Oriental and African Studies* 16 (1954): 60.

⁴A. N. Poliak, *Feudalism in Egypt, Syria, Palestine, and the Lebanon, 1250–1900* (London, 1939), 14 f., 65; *idem*, "Le Caractère colonial de l'État Mamelouk dans ses Rapports avec la

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and, in a series of carefully researched and cogently argued articles, he demonstrated that the *ḥājibs* did not administer justice according to the Mongol *Yāsa*.⁵ Since Ayalon discussed the matter, others have gone further and doubted the very existence of Chingiz Khan's *Yāsa* in the sense of a written code of Mongol law and custom.⁶ Even so, according to Ibn 'Arabshāh, there was some kind of written code called the *Yāsa*, which was produced and read out every time a new Great Khan was chosen.⁷

Be that as it may, if the *ḥājibs* were not administering justice according to the Mongol *Yāsa*, what were they doing? The role of *ḥājibs* in the Bahri Mamluk period has been discussed by Jørgen Nielsen in a monograph devoted to *mazālim*, or "secular royal jurisdiction."⁸ As he notes, *mazālim* literally means 'wrongful exactions.'⁹ However, the word was commonly used to refer to the discretionary jurisdiction of rulers and governors to settle grievances and respond to petitions without directly basing themselves on the shari'ah. *Mazālim* overlapped with *siyāsah* and "the *mazālim* under the Mamlūks in practice became involved in a particular form of *siyāsa*."¹⁰ This last "is the prerogative of the head of state—whether caliph or sultan—to set aside the Sharī'a, to supplement it, and to influence its interpretation and application."¹¹ Nielsen has noted the claims advanced by al-Subkī, al-Maqrīzī, and al-Qalqashandī that *ḥājibs* took over the administration of *mazālim* ("secular" or "political justice") and in doing so usurped much of the authority of the qadis.¹² The three authors cited seem to be implying that the *ḥājibs* exercised some kind of judicial authority not just over members of the Turkish mamluk military caste, but also over the population at large. Nielsen, basing himself on detailed chronicle references to the exercise of *mazālim* or *siyāsah* justice by the

Horde d'Or," *Revue des études islamiques* 9 (1935): 235–36; idem, "The Influence of Chingiz-Khan's *Yāsa* upon the General Organisation of the Mamluk State," *BSOAS* 10 (1940–42): 862 ff.

⁵Ayalon, "The Great *Yāsa* of Chingiz Khan: A Re-examination," *Studia Islamica* 33 (1977): 97–140; 34 (1971): 151–80; 36 (1972): 113–58; 38 (1973): 107–56.

⁶See, for example, David O. Morgan, "'The Great *Yāsa* of Chingiz Khan' and Mongol Law in the Ilkhanate," *BSOAS* 49 (1986): 163–76; idem, *Medieval Persia, 1040–1797* (London, 1988), 55.

⁷Irwin, "What the Partridge Told the Eagle: A Neglected Arabic Source on Chinggis Khan and the Early History of the Mongols," in *The Mongol Empire and its Legacy*, ed. Reuven Amitai-Preiss and David O. Morgan (Leiden, 1999), 5–11.

⁸Jørgen S. Nielsen, *Secular Justice in an Islamic State: Mazālim Under the Bahri Mamlūks, 662/1264–789/1387* (Istanbul, 1985); cf. idem, "Mazālim and *Dār al-'Adl* Under the Early Mamluks," *Muslim World* 66 (1976): 114–32.

⁹Nielsen, "Mazālim," 114–15.

¹⁰Nielsen, *Secular Justice*, 32.

¹¹Nielsen, "Mazālim," 123.

¹²Nielsen, *Secular Justice*, 83–85, 107–9.

sultan and his officials in the Bahri period, is inclined to the view that the accusations made by al-Subkī, al-Maqrīzī, and al-Qalqashandī were unfounded. Those accusations are of a piece with more general complaints by civilian and religious writers about the various ways in which the Mamluk elite allegedly infringed the provisions of the shari‘ah. Nielsen’s overall conclusion was that “the *mazālim* was primarily occupied with considering the oppression, arrogance, mistakes or plain inefficiency of officialdom.”¹³

There is no reason to doubt the correctness of Nielsen’s conclusion insofar as the administration of *mazālim* justice in the Bahri period is concerned. However, of the authors cited on the *ḥājib* and his usurpation of judicial authority, Tāj al-Dīn al-Subkī wrote his curious treatise on the importance of good intentions in all walks of life, the *Kitāb Mu‘īd al-Ni‘am wa-Mubīd al-Niqam*, quite late in the Bahri period (in the early 760s) and al-Qalqashandī and al-Maqrīzī wrote in the Circassian period. Al-Subkī was already uneasy that the Turks had made the *ḥājib* a judge and that he tended to follow the authority of *siyāsah*, rather than shari‘ah.¹⁴ In chronicles written in the Circassian period, we find reports of incidents that tend to support the generalized accusations made in al-Subkī’s *Mu‘īd al-Ni‘am* and in al-Maqrīzī’s *Khiṭaṭ*. Indeed, not only did the *ḥājibs* usurp judicial powers that were formerly exercised by the qadis, but other military officers also did the same.

However, the military usurpation of judicial powers only seems to have become flagrant and pervasive in the opening decades of the fifteenth century. Al-Qalqashandī finished compiling his chancery encyclopedia, the *Ṣubḥ al-A‘shā*, in 814/1412. According to al-Qalqashandī, under the Mamluk sultans, *ḥājibs* had acquired a jurisdiction over cases not suitable for the courts, such as ones relating to the *dīwāns* (financial offices).¹⁵ In a separate section of the encyclopedia al-Qalqashandī dealt with *mazālim* and the various forms that *mazālim* petitions took depending on what officer or official they were presented to.¹⁶ It would appear then that by al-Qalqashandī’s time *mazālim* cases were not the exclusive prerogative of the sultan and the *ḥājib*.

Al-Maqrīzī’s *Khiṭaṭ*, a topographical work that ranged more widely than merely topographical issues, was written ca. 827/1424. In it, in the section devoted to the office of *ḥājib*, he complained that, whereas in the early Mamluk period the

¹³Ibid., 133.

¹⁴Tāj al-Dīn ‘Abd al-Wahhāb ibn ‘Alī al-Subkī, *Kitāb Mu‘īd al-Ni‘am wa-Mubīd al-Niqam* (Cairo, 1948), 40.

¹⁵Aḥmad ibn ‘Alī al-Qalqashandī, *Ṣubḥ al-A‘shā fī Kitābat al-Inshā’* (Cairo, 1913–18), 3:277; 5:450.

¹⁶Ibid., 6: 204–10.

jurisdiction of *ḥājibs* did not extend beyond dealing with military matters, such as disputes between *jundīs* (soldiers) concerning *iqṭā'*s and so forth, in his own time the *ḥājibs* had taken upon themselves to arbitrate on matters that had been previously dealt with by qadis according to the shari'ah. "Nowadays *ḥājib* is the term applied to the various amirs who give judgement over the *nās*." Although "*nās*" here may be translated simply as "people," it is possible that al-Maqrīzī intended the term to refer only to members of the military elite. (However, the case of the Persian merchants cited below suggests that he may after all have been using *nās* in the first and more general sense.) He went on to claim that the *ḥājibs* tended to be swayed in their judgements by bribes that were handed to the *ra's nawbat al-nuqabā'* and "today the *ḥājib* judges over everything great and small regarding the *nās*, whether it be a matter of shari'ah or *siyāsah* jurisdiction." "*Siyāsah*" was a Satanic word in al-Maqrīzī's eyes.¹⁷

In a subsequent section devoted to *siyāsah* jurisdiction, al-Maqrīzī denounced the corruption and arbitrary proceedings of the *ḥājibs*. They did what they wished and they proliferated to such an extent that in one year there were 86 *ḥājibs*. According to al-Maqrīzī, the rot began with the case of a group of Persian merchants whom the Hanafi chief qadi had put in prison for failing to pay import dues in 753/1352 during the reign of al-Ṣāliḥ ibn Muḥammad ibn Qalāwūn. The chief *ḥājib*, Sayf al-Dīn Jurjī, exercised his authority, based on *siyāsah*, in order to set those merchants free and exact the dues demanded by the merchants' creditors. "From then on the *ḥājib* did what he wished in judging over the people (*nās*)."¹⁸

According to Ibn Ḥajar, in 823/1420 (only a few years before the *Khiṭaṭ* was compiled) the sultan al-Mu'ayyad Shaykh (who was then very ill and approaching death) had decreed that *ḥājibs* should exercise no jurisdiction in shari'ah matters. However, the sultan's decree remained in force for only a couple of days, as the mamluk amirs campaigned so vigorously against it that the sultan was compelled to rescind his decree and proclaim that they could indeed exercise jurisdiction in shari'ah affairs. Immediately following this royal volte-face, the Hanafi chief qadi and the senior *ḥājib* clashed. Though it is not entirely clear what the clash was about, it seems that the *ḥājib* refused to hand over an accused man to the qadi's jurisdiction and had his messenger flogged. The sultan, when he heard of the matter, was enraged and told the *ḥājib* that if he, the sultan, had been enjoined to conform to the jurisdiction of shari'ah law, he would have done so immediately. He then reissued the decree that only qadis could exercise jurisdiction in shari'ah

¹⁷ Aḥmad ibn 'Alī al-Maqrīzī, *Al-Mawā'iz wa-al-I'tibār bi-Dhikr al-Khiṭaṭ wa-al-Āthār [Khiṭaṭ]* (Cairo, 1959), 3:145.

¹⁸ *Ibid.*, 148f.; c.f. Joseph Escovitz, *The Office of Qādī al-Quḍāt in Cairo under the Bahrī Mamlūks*, *Islamkundliche Untersuchungen*, vol. 100 (Berlin, 1984), 159; Nielsen, "*Mazālim*," 127.

matters and the *mashā'ilīs* (urban dogsbodies who functioned as lamplighters, removers of night-soil, and police constables, as well as town-criers) went round the city proclaiming this. The *ḥājib*, enraged by this, had one of the *mashā'ilīs* flogged, but when the Hanafī qadī complained, the *ḥājib* excused himself by claiming that he had had the *mashā'ilī* flogged for a different matter altogether. After that things quietened down for a bit.¹⁹

Ibn Taghrībirdī, in his account of the reign of al-Mu'ayyad Shaykh (815/1412–824/1421), under the year 819/1416, states that the deputy *dawādār* did not at that time exercise justice among people (*nās*) nor were orderlies (*nuqabā'*) stationed at his door. The same applied to the deputy head of guards (*ra's nawbah thānī*).²⁰ Ibn Taghrībirdī continues that the first deputy *dawādār* to exercise those prerogatives was Qurqmās al-Sha'bānī, while the first deputy *dawādār* was Aqbīrdī al-Minqār. Qurqmās was appointed deputy *dawādār* in 824/1421 or in 825/1422. (Ibn Taghrībirdī is inconsistent on the chronology of Qurqmās's career).²¹ The chronicler also gives inconsistent information about Aqbīrdī's career, but evidently he became deputy head of guards during the sultanate of al-Mu'ayyad Shaykh, since he died before the sultan did.²²

A few decades later there was a renewed clash over the respective spheres of influence of the qadī and the *ḥājib*, when the Sultan Jaqmaq clashed with the Maliki qadī in 856/1452. In this case a Muslim had successfully brought a case against a Jewish trader dealing in Circassian mamluks and had had it judged according to shari'ah law. However, the Jew refused to accept shari'ah jurisdiction and threatened to take the case elsewhere, whereupon the qadī had him flogged. Then the Jew appealed to Jaqmaq, who summoned the qadī and rebuked him for encroaching on what properly belonged to *siyāsah* jurisdiction and told him that he had given judgement in error. The qadī was then briefly deposed.²³

¹⁹ Aḥmad ibn 'Alī ibn Ḥajar al-'Asqalānī, *Inbā' al-Ghumr bi-Anbā' al-'Umr*, ed. Ḥasan Ḥabashī (Cairo, 1972), 3:219.

²⁰ Abū al-Maḥāsīn Yūsuf Ibn Taghrībirdī, *Al-Nujūm al-Zāhirah fī Mulūk Miṣr wa-al-Qāhirah* (Berkeley, 1909-36), 6:356; translated by William Popper as *History of Egypt, 1382-1469 A.D. Translated from the Arabic Annals of Abu l-Maḥasin ibn Taghrī Birdī by William Popper*, University of California Publications in Semitic Philology, vols. 13-14, 17-19, 22-24 (Berkeley, Los Angeles, 1954-), 3:38.

²¹ Ibn Taghrībirdī, *Nujūm*, 6:356, 7:255f.; Popper, *History*, 3:38; 5:168f.

²² Ibn Taghrībirdī, *Nujūm*, 6:347, 458; Popper, *History*, 3:32, 108. The (intrinsically trivial) problem here is that Ibn Taghrībirdī describes Aqbīrdī as having exercised justice among the people with orderlies at his gate before being promoted to the governorship of Alexandria in 818/1415, and this is at least a year before the he says the deputy head of guards began to exercise the new prerogatives.

²³ Ibn Taghrībirdī, *Ḥawādith al-Duhūr fī Madá al-Ayyām wa-al-Shuhūr*, ed. William Popper (Berkeley, 1930), 1:129f.

Ibn Taghrībirdī reported the above incident in his chronicle *Hawādith al-Duhūr*. In his other chronicle, *Al-Nujūm al-Zāhirah* (which is more closely focused on the character and deeds of the Mamluk sultans), he spells out how arbitrary and widespread the administration of “justice” had become by mid-fifteenth century. At the end of his annal for year 861 (1456–57) he observed that the “year ended with the authority of the judges (*ḥukkām*) of shari‘ah and *siyāsah* set at naught by the power of the purchased mamluks (*julbān*) of the Sultan Inal. Anyone from the people (*nās*) with a claim against anyone whomsoever went to one of these mamluks to secure his claim and no sooner had he informed the mamluk of what he wished than he secured what he wished from his opponent in the case. For at the gates of the most important of these mamluks a sort of head of guards (*ra’s nawbah*) and military police (*nuqabā’*) were stationed, while some had a *dawādār*. The mamluk would then send for the other man in the case and, after threatening him with a beating and other punishment, he would command the man to satisfy the plaintiff’s claim, whether that claim was true or false. If he did not pay he would immediately be beaten and thrashed. Everyone learned about this and went to them to have their affairs settled and people (*nās*) deserted the judges (*ḥukkām*). So the purchased mamluks became very powerful and the judges’ authority reached a nadir.”²⁴

Ibn Taghrībirdī returned to the theme in his account of the events of 863/1458–59. At this time, “the power of the purchased mamluks exceeded all limits, while the authority of the judges of Egypt was absolutely null. Anyone who had a just claim, or the semblance of such a claim brought his charge against his opponent only before the purchased mamluks, and immediately he would secure what he claimed from his opponent, justly or otherwise. So everyone, especially merchants and sellers of any kind of wares, feared the mamluks and most men gave up their businesses, fearing the loss of their capital . . .”²⁵

Despite the efforts of various scholars to assign a precise meaning and function to the *naqīb* (pl. *nuqabā’*), the term does not seem to have been used very precisely. According to Ayalon, the *naqīb al-jaysh* was a sort of chief of military police with responsibility for arrests and escorting the condemned to execution. He also had responsibilities for mustering and parading troops. The *nuqabā’ al-ḥalqah* were his deputies in Cairo. There was also a *naqīb al-mamālīk* who may have had similar duties, but only with respect to mamluks and not the rest of the army.²⁶ Popper also gave the *naqīb al-jaysh* a role as military policeman and adds that he

²⁴Ibn Taghrībirdī, *Nujūm*, 7:494; Popper, *History*, part 6:72.

²⁵Ibn Taghrībirdī, *Nujūm*, 7:516f.; Popper, *History*, 6:84–85.

²⁶Ayalon, “Studies in the Structure,” 64–65.

had many opportunities for collecting bribes.²⁷ However, from the passage in the *Nujūm al-Zāhirah* just cited above, it would appear that the term *naqīb* was used in a general sense to refer to the junior officers employed to guard the ad hoc courts of the mamluks and to enforce their decisions. Al-Maqrīzī also notes that the *naqībs*, like the *ḥājibs*, were especially associated with *mazālim* sessions, which they attended as court officers.²⁸

The administration of *mazālim* was also associated with the platforms (*dikak*, s. *dikkah*) from which the mamluk officials gave their verdicts. The *dikak* were sited at the gates of the mamluk amirs' houses. In 910/1505 the sultan al-Ashraf Qānṣawh al-Ghawrī, moved by piety, banned the great officials among the amirs from stationing *nuqabā'* at their gates and he banned all trials except those that were conducted according to the shari'ah.²⁹ Something similar happened in 919/1513–14, when Qānṣawh, under the impetus of a sudden surge of piety brought on by the outbreak of plague in Egypt, again issued a decree abolishing the "platforms" and their attendant officers (*nuqabā'*) and messengers (*rusul*). It is clear from the context of this decree that he was attempting to abolish the practice of mamluk officers selling justice to all and sundry. However, like al-Mu'ayyad Shaykh, Qānṣawh faced pressures from his officers to have their profitable jurisdiction restored to them. They argued that since they were no longer able to give justice, the people (*nās*) have no way of securing their rights (*ḥuqūq*). Whereupon Qānṣawh partially backed down and allowed the platforms to be re-established, but he decreed that the *nuqabā'* and messengers should henceforth be debarred from taking too large a percentage from plaintiffs in order to advance their cases.³⁰

The usurpation by amirs and mamluks of some of the judicial functions of the qadis may explain why some mamluks studied shari'ah law. It is a notable feature of the Circassian period that a number of mamluk officers were well versed in Hanafi jurisprudence. The amir Ṭāṭār (later the sultan al-Zāhir Ṭāṭār) is probably the most famous example. According to Ibn Taghrībirdī, during the short reign of al-Muẓaffar Aḥmad (824/1421), Ṭāṭār presided and delivered judgements in the stables of the Cairo Citadel. He "decided cases between the people and settled the affairs most judiciously, for he was a man of outstanding ability, alert and intelligent, and had a good knowledge of jurisprudence and other subjects; he loved to study

²⁷ Popper, *Egypt and Syria under the Circassian Sultans, 1382-1468 A.D.: Systematic Notes to Ibn Taghrī Birdī's Chronicles of Egypt*, University of California Publications in Semitic Philology, vols. 15–16 (Berkeley, 1955-57), 1:94.

²⁸ Al-Maqrīzī, *Khiṭaṭ*, 2:245.

²⁹ Ibn Iyās, *Badā'i' al-Zuhūr fī Waqā'i' al-Duhūr* (Istanbul, 1931), 4:76; translated by Gaston Wiet as *Journal d'un bourgeois du Caire* (Paris, 1955), 1:73.

³⁰ Ibn Iyās, *Badā'i' i'*, 4:312, 320; Wiet, *Journal*, 1:283, 292f.

especially the teachings of the Ḥanafite masters, for he held them in high honour.³¹ There are, however, other examples. Tamurbughā, who also rose to be sultan (872/1467–8), had an excellent knowledge of Hanafi jurisprudence.³² The amir Sayf al-Dīn Sūdūn al-Maghribī (d. 843/1439–40), who rose to be a deputy *ḥājib* before being politically disgraced, is a particularly interesting example. According to Ibn Taghrībirdī, Sūdūn was obsessive in his study of jurisprudence and invariably supported the case of the weak against the strong. This meant that if he heard a case between a trooper and a peasant, he would always give judgement in favor of the peasant, even if the trooper was actually in the right.³³

It is quite likely that there were other amirs and mamluks who tried to deliver justice according to the precepts of the shari‘ah, or at least according to a sense of equity, but evidently other mamluks were selling verdicts for money and receiving petitions in order to exercise patronage and develop local clienteles. The “justice” and “protection” that these officers offered will not have differed very much from that offered by Don Corleone in Mario Puzio’s novel *The Godfather*. We are dealing here with a mostly subterranean history. At first the *ḥājibs*, acting as delegates of the sultan, exercised a kind of administrative jurisdiction over matters relating to the army and the *dīwāns*. Then they took to hearing cases presented by merchants and other civilians and thereby encroached on the jurisdiction of the qadis, at which point judicial and executive powers became utterly confounded. Then other quite junior officers, such as the deputy *dawādār*, arrogated the same jurisdiction to themselves. Then even purchased mamluks took to receiving petitions from all and sundry and using their muscles to enforce their ad hoc jurisdiction. However, the fragmentary and somewhat speculative nature of the evidence of abuses in *maẓālim* jurisdiction described above is obvious. Pious chroniclers complained repeatedly about the way that the provisions of the shari‘ah were being breached, but they did not actually dwell upon the matter, nor did they systematically record the way in which *maẓālim* justice was delegated and diffused to such an extent that justice shaded into racketeering and any mamluk with a sword could pose as an officer of the law. It was hardly a matter for celebration.

³¹Ibn Taghrībirdī, *Nujūm*, 6:484; Popper, *History*, 3:126.

³²Ibn Taghrībirdī, *Nujūm*, 7:843f.; Popper, *History*, 7:140.

³³Ibn Taghrībirdī, *Nujūm*, 7:267f.; Popper, *History*, 5:176. On learned mamluks more generally, see Jonathan Berkey, *The Transmission of Knowledge in Medieval Cairo: A Social History of Islamic Education* (Princeton, 1992), 128–60; idem, “Silver Threads Among the Coal’: A Well-Educated Mamluk of the Ninth/Fifteenth Century,” *Studia Islamica* 73 (1991): 109–25.