**Fatimid’s legal system**

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**Introduction**

This paper provides a bird's eye look of the legal system in Fatimid community with particular focus on the old government that came into power in 909 after a military victory in North Africa after conquering the Aghlabid capital, Raqqada. According to Walker (2002), the Fatimid Caliphate was an Ismaili Shia Islamic caliphate that covered a large area of North Africa, from the Atlantic Ocean in the west to the Red Sea in the east. The dynasty ruled across the Mediterranean region of Africa and ultimately made Egypt the center of the Fatimid caliphate. At its height, the Fatimid caliphate included in addition to Egypt varying areas of the Levant, Hijaz, the Maghreb, Sudan, and Sicily. The Fatimids claimed to descent from the daughter of Islamic prophet Muhammad, Fatima Muhammad (Walker, 2002). The Fatimids conquered North Africa early in 908, and their Fatimid state took shape among the Kutama Berbers, in the West countries of the North African littoral, particularly Algeria, in 909 conquering the Aghlabid capital, Raqqada. The Fatimids later established the Tunisian city of Mahdia in 921 as their new capital town. They shifted their capital to Al-Mansuriya, in Tunisia in 948. In 969 the Fatimids conquered Egypt and made Cairo as the capital city of their caliphate; hence Egypt became the religious, political, and cultural center of their empire.

The ruling class descended from the Ismaili branch of Shi'ism, as did the leaders of the dynasty. The presence of the caliphate marked the only time the descendants of Ali through Fatimah were united to any degree, and the name "Fatimid" refers to Fatimah (Walker, 2002). The different term Fatimite is sometimes used interchangeably to refer to the caliphate's subjects. After the initial conquests, the caliphate often gave way a degree of religious tolerance towards non-Ismaili branches of Islam, as well as to Egyptian Coptic Christians, Jews, and Maltese Christians. The Fatimid caliphate was also recognized by the central role of Berbers in its initial establishment and in aiding its development, especially on the political and military levels. During the twelfth century the Fatimid caliphate declined dramatically, and in 1171 Saladin invaded their territory. He formed the Ayyubid dynasty and later incorporated the Fatimid state into the Abbasid Caliphate (Walker, 2002). The Fatimid regime lasted until the late twelfth and early thirteenth centuries, though its leaders made no headway in persuading the Egyptian population. Therefore, the paper looks at the Fatimid legal system, how their government was organized to support the legal system, the dispute resolution courts and mechanisms among the jurist and the citizens, how their culture supported their legal system, and the independence of their legal institutions within the community.

**The Legal System among the Fatimids**

The integration of Sunni judges into the Fatimid judiciary shows the negotiation between maintaining the legal validity of other Muslim schools of law and upholding their own Universalist claim (Dodge, 2013). Al-Mu‘izz retained the Maliki Qadi Abu Tahir as his Chief Justice upon his accession over Egypt, a role which the latter had occupied before in the Ikhshidid administration. Reminiscent of the co-existence policy of al-Mansur, Al-Mu‘izz also appointed Ali b. al-Nu‘man, a son of Qadi al-Nu‘man, alongside the Sunni Qadi, an arrangement that went on under al-Aziz, until paralysis caused the Sunni Qadi to present his resignation in 976 CE. Of the total years, Abu Tahir served as chief Qadi of Egypt; seven years were thus in the service of the Fatimid caliphate. References to several judges from various Sunni and Shi‘i madhhabs being appointed to the Fatimid judiciary are fairly commonplace in the following Fatimid reigns.

**Toward a Fatimid Model of Governance**

The Universalist nature of the Fatimid model of legal authority led to two important challenges following their assumption of political power (Dodge, 2013). The first challenge was the exclusivist and messianic demands of the segments of the Fatimid da‘wa that brought them to power. The second challenge was the expectations of inclusion demanded by the religiously and multi-ethnic diverse populace over whom the Fatimids community came to rule in North Africa. The messianic demands came from within the movement that had resulted in the establishment of the Fatimid state. The Ismaili da‘wa aimed at replacing the Abbasids by promising an era of the just legal framework under the sole legitimate Imam. In the 10th century, the Fatimid state gained particular momentum across various regions of the Muslim world. Its founding was realized by the Kutama Berbers, whom there had been a presence of Shi‘ism and who, after 902 CE, sporadically began in increasing numbers to follow the Ismaili da‘wa led by the pioneering da‘i Abu Abd Allah al-Shi‘i.

The second challenge that pressed upon Fatimid governance framework was the demographic facts of North Africa (Allouche, 2009). At the inception of the Fatimid rule in the region, the major ethnic groups were the mainly the native Kutama Berbers and the urban Arabs. The majority were Muslim community, with Sunni Malikism dominant amongst the urban Arabs and their ulama unrivaled in influence, followed by a small but distinct grouping of Shi‘a and a notable community of Hanafis. While many of the Kutama Berbers had embraced either Shi‘i or Sunni Islam, a good number of them were Kharijis, especially amongst the rural inhabitants of North Africa (Gleave, 2009). Jewish and Christian communities were also present. Fractiousness between religious and ethnic communities was a common feature in this period. The Kutama Berbers themselves divided along old tribal lines, notably the rival Zanata and Sanhaja confederations, while Maliki Arabs lobbied with the Hanafis for powerful posts at the Aghlabid court.

**The Fatimid judiciary**

These references illustrate that the Fatimid judiciary drew upon scholars from a variety Sunni madhhabs as well as of Shi‘I (Allouche, 2009). On matters related to family or personal law, they could pronounce judgment depending on their preferred Sunni, Shi‘i or madhhab, but on matters related to public order and social governance, their pronouncements had to be in accordance with the Fatimid legal code. Similarly, the Fatimid doctrine had precedence in the performance of public ritual, especially those concerning communal worship and prayers.

The safeguarding of public order was also reinforced through making sure that the senior most Fatimid officials personally adjudicated the cases presented at the mazalim courts (Dodge, 2013). These sessions gave a formal mechanism for any subject to present a case against the state or its bureaucrats. After commander Jawhar al-Siqqilli had established Fatimid control in Egypt, he used to personally hear the mazalim twice a week. On the same way, in al-‘Aziz’s reign, the vizier Ya‘qub Killis is recorded to have administered the mazalim grievances every day after the morning prayers. In the later years of al-‘Aziz’s rule, Muhammad al-Nu‘man assumed that function of administering the mazalim cases.

In terms of Fatimid judicial system, mazalim means a special type of court, where sessions for adjudication of cases of injustices are held or supervised by the supreme political authority, or by other high-ranking authority.In the view of Al-Mawardi, the mazalim institution existed in the pre-Islamic Arab community and also under the Fatimid regime. Mawardi mentions Caliph ‘Umar Ibn of the Umayyads, and caliphs al-Hadi, al-Rahsid, al-Mahdi, al-Ma’mun, and al-Muhtadi of the Abbasids as vital leaders who employed adjudications in the mazalim to distribute justice.

A session of mazalim institution requires the presence of five types of assistants. These are the secretaries, and the notaries, guards, the qadis, and the faqihs (Tabassum & Cilardo, 2012). The jurisdiction of mazalim extends to the adjudication of abuse of power related cases involving both non-officials and officials. It also deals with the matters of the supervision of waqf, restitution of properties taken by force, restitution of properties taken by force, and the enforcement of public order that exceeds ordinary internal security measures. Mazalim also by extension deals with issues of restitution of properties taken by force, the enforcement of public duty issues such as pilgrimage, jihad, Friday prayers, feasts, and other extraordinary events. It is also called to provide arbitration between worrying parties.

The primary difference between the ordinary judicial courts and the mazalim is that the supervisor of mazalim has extra discretionary power (Walker, 2002). The ordinary judge is bound by the conventional judicial system limitations, whereas the supervisor of mazalim court enjoys greater procedural latitude. For example, he may obtain evidence in procedures might be unacceptable to an ordinary court’s judge. The mazalim supervisor is also free to include arbitrational settlements that bind on the contesting parties. This option is not available to the judge in an ordinary United States court system. In other words, the uniqueness of the mazalim court system lies in the breadth of its supervisors’ political authority and discretionary power. The Chief Justice (Qadi ul-Qudah) is head of the judiciary (Allouche, 2009). He has the jurisdiction to appoint and remove all Mazalim judges in the state. There are exceptions to this power concerning the Qadi Mazalim which am going to explain in the judicial independence below. The *Khaleefah* has to power to appoint the *Qadi ul-Qudah* and also remove him. The conditions for the *Qadi ul-Qudah* are similar to those of the *Qadi Mazalim.*

**Judicial Independence**

There are two types of judicial independence. Decisional and institutional independence. Decisional independence is the idea that the Mazalim judge should be able to decide the results of a trial with autonomy based on the law and case itself, without letting the politics, media or other things interfere with their decision (Allouche, 2009). Institutional independence means the judicial branch is independent of the legislative and executive branches. The *Khilafah’s* judiciary enshrines both decisional and institutional independence to a level that exceeds any of the democratic countries today.

**Institutional independence**

The *Khilafah* has an independent high court known as the mahkamat mazalim, Court of Unjust Acts (Allouche, 2009). It is presided over by *Qadi Mazalim*, the most qualified and eminent judges in the state and granted more powers by the Shari’ah. *Khilafah* has the power to remove any state official regardless of their position or role, including the *Khaleefah* if he persists in pursuing a path that is outside of the terms of his Bay’ah. Ordinary citizens who have a complaint against the state can register the complaint with the Court. The Council of the Ummah can also refer complaint coming up between itself and the *Khaleefah* to the Court.

What is unique about the mahkamat mazalim, compared to other judicial courts, is that the *Qadi Mazalim,* Government Investigations Judge has investigatory jurisdiction and does not require a plaintiff to record a complaint before launching an investigation (Dodge, 2013). The Court of Unjust Acts will therefore closely monitor the actions of all state officials and the legislation adopted to make sure it conforms to Shari’ah and no mazlama; oppression is committed against the citizens.The executive counterbalance to the power of mahkamat mazalim is by the *Khaleefah* in principle having the power to remove and appoint the Chief Justice and all other judges below him. The *Khaleefah* can either dedicate his Chief Justice the authority to appoint all the mazalim judges or appoint them himself.

In the times of the Ash-Sham and Sultans of Egypt, the mahkamat mazalim was known as the ‘House of Justice.' The Sultan Al-Malik Al-Salih appointed deputies to act on his behalf in the house of justice, where they were given the power to remove the Mazalim and to gather the witnesses, the Faqihs, and judges. To make sure that the *Qadi Mazalim* is free from political interference the Shari’ah has restricted the executive powers of the *Khaleefah* concerning the removal of the *Qadi* from office (Tabassum & Cilardo, 2012). If the *Qadi Mazalim* is investigating a case against the *Khaleefah*, Delegated Assistant or the Chief Justice, then the *Khaleefah* cannot remove the *Qadi Mazalim* from his office. The evidence for this is the principle of Shari’ah which states that the means that results in haram is itself haram.

A question may arise that if the *Qadi Mazalim* makes a judgment against the *Khaleefah* can the *Khaleefah* abuse his powers and overturn the ruling? There is completely no concept in the *Khilafah* of a ‘Pardon’ for committed crimes as exists in the West (Allouche, 2009). The United States Constitution allows the President of the United States to Pardon all crimes except impeachment. This gives the United States President extensive judicial power in preventing prosecutions from taking place or even overturning court rulings. The most famous ‘misuse’ of this power in the history was by Gerald Ford in 1974 (Allouche, 2009). After Richard Nixon resigned from office because of the Watergate scandal, Gerald Ford, his Vice-President, assumed the Presidency. In an address which was televised to the nation on 8 September 1974 Gerald Ford gave Richard Nixon a full pardon for his part in the Watergate scandal, thus preventing any more judicial proceedings against him. Critics argued that it was a ‘corrupt bargain’ between them. Richard Nixon would resign giving the vice president Gerald Ford the Presidency in return for Gerald Ford giving Richard Nixon a full pardon. Either way, such corrupt bargain can never take place in the *Khilafah*. Once qadi has passed judgment on an issue then this ruling cannot be overturned by anyone in the state including the *Khaleefah.*

Having said this position, there is an appeal process for those judgments complainant believes have been made on a different basis other than Shari’ah or when new and better evidence comes to light that places doubt over the first witness presented in the court (Allouche, 2009). For instance, if a witness in a murder case later admits he lied to the court or the murderer himself confesses then this judgment will be overturned. The mahkamat mazalim is the appeal court for such cases. The *Khilafah’s* judiciary has the mandate to issue judgments that are enforced by the state. Thus once the *Qadi Mazalim* has made a judgment against the *Khaleefah* it must be enforced by the other state institutions such as the state Treasury (Bait ul-Mal), army or the police. The *Khaleefah* cannot under any circumstances overturn the ruling, and he will be forced if need be to submit to it. For instance, if the *Khaleefah* introduced a new taxation policy to build a grand, new mosque to celebrate his 70th birthday, then the Court of Unjust Acts has the authority to scrap this unlawful taxation. The State Treasury would be barred from imposing this illegal taxation, and the *Khaleefah* would have no authority whatsoever in this matter.

**The Ahl Al-Kitab**

A praised feature of al-‘Aziz’s administration is the fostering of good relations between the Fatimid state and the substantial Jewish and Christian minority groups of his empire (Walker, 2016). Al-Mu‘izz’s aman declaration indicated that those regulations given through custom to the ahl al-kitab would be upheld. Fatimid policy under al-‘Aziz and al-Mu‘izz extended such privileges especially by granting permission for the upkeep and renovation of Christian places of worship. Al-‘Aziz permitted the the largest indigenous Egyptian Christian community, Copts, to rebuild the Church of St. Mercurius near al-Fustat besides this being opposed by some Muslims.

Al-‘Aziz also established cordial relations with a minority Christian confession in Egypt, the Melkite Christian community, which had a great following in Syria. Al-‘Aziz’s most attested consort was a Melikte Christian who was the mother of Sitt al-Mulk, the famous Fatimid princess. Al-ʿAziz’s brothers-in-law, Arsenius and Orestes, and Sitt al-Mulk’s two uncles were subsequently appointed as Melkite Patriarchs of Jerusalem and Alexandria respectively. Towards the later part of Al-ʿAziz’s reign, he promoted the Christian bureaucrat ‘Isa Nasturus to take responsibility for the overall administration and management of the state having been an overseer of the financial bureau before the promotion. Nasturus, in turn, appointed Manashsha b. Ibrahim, the Jewish administrator as a financial controller over Syria (Gleave, 2009). These appointments resulted in disquiet among some Muslim members who felt that their privileged status was had been deprived. Excesses committed by many non-Muslim officials seem to have similarly led to the tensions.

**Administration and culture in relation to legal framework**

As opposed to the Western European governments in the era, advancement in Fatimid offices of the state was more meritocratic rather than based on heredity (Gleave, 2009). Members of other branches of Islam faith, such as the Sunnis, were just as likely to receive government appointed posts as Shiites. Tolerance was extended to non-Muslim faiths such as Jews and Christians, who occupied high-level government offices based on ability, and tolerance was set into place to make sure the flow of money from all non-Muslims to finance the Caliphs' vast army of Mamluks came from Circassia by Genoese merchants. However, there were exceptions to this attitude of tolerance most especially by Al-Hakim bi-Amr Allah, though this has been highly debated, with the reputation of Al-Hakim among historians of the medieval Muslim conflated with his part to play in the Druze faith.

The Fatimids were also famous for their exquisite arts. Lusterware, a type of ceramic, was prevalent during the Fatimid period. Metalworking and glassware were also popular. Many traces of Fatimid architecture work exist in Cairo today; the most defining examples include the Al-Hakim Mosque and the Al-Azhar University (Walker, 2016). Al-Azhar University is perhaps the oldest in history and was the first university in the East. The madrasa is one of the relics of the Fatimid dynasty Egypt era, descended from Fatimah, daughter of Muhammad. Fatimah was called Az-Zahra, and the madrasa was named in her honor. Its building was completed in the year 361 A.H on the 9th of Ramadan. Both Al-Hakim bi-Amr Allah and Al-'Aziz Billah added to its premises. It was further repaired and extended by Al-Hafiz Li-Din-illah and Al-Mustansir Billah. Fatimid Caliphs always encouraged jurists and scholars to have their gatherings and study-circles in this mosque, and thus it was transformed into a university that has the claim to be the oldest still-functioning University.

Intellectual life in early Egypt during the period of Fatimid achieved a significant progress and activity, because of many scholars who lived in or came to Egypt and the number of books available (Walker, 2016). Fatimid encouraged students, gave prominent positions to learners in their courts to establish a good legal system, and established libraries in their places so that they might expand their knowledge and reap highest benefits from the hard work of their predecessors. Perhaps the most important feature of the Fatimid rule was the freedom of reason and thought extended to the citizens, who could believe in whatever they thought was right, provided they did not go against the rights of others (Walker, 2016). Fatimids reserved separate pulpits for different sects of Islam, where the learners expressed their ideas in whichever manner they wished to express. Fatimids gave patronage to the university scholars and invited them from all corners of Egypt, spending money on them even when their cultural and religious beliefs conflicted with those of the Fatimids. From this point of view, the history of the Fatimids is, in fact, the history of philosophy, knowledge, and literature. It is the history of sacred freedom of speech and expression.

**Disagreements of the Jurists**

Al-Qadi al-Nuʿman was the key legal ideologue and theorist of the North African Fatimid dynasty in the early tenth century (Walker, 2016). This interpretation makes available in the English language for the first time his primary work on Islamic legal system, which presents a legal framework supporting Fatimids’ principle of legitimate rule over the Muslims. Composed as part of a complete project to set up the theoretical basis of the formal Fatimid legal school, disagreements of the Jurists in the Fatimid dynasty expounds a distinctly Shiʿi model of hermeneutics, which does not accept the methods of legal interpretation used by Sunni jurists.

The work commences with an intensive discussion of the historical causes of divergence in jurisprudence in the first Islamic centuries and continues to address the specific interpretive methods of the Sunni legal system, arguing that they are both ineffective and illegitimate. While its immediate mission is to give way for the foundation of the legal Ismaʿili tradition, the explanation also preserves several Islamic legal theoretical works no longer extant including al-Wusul ila maʿrifat al-usul and Ibn Dawud’s manual and thus throws some light on a very important stage in the historical development of Fatimids legal system that would otherwise be lost to history.

**References**

Allouche, A. (2009). The Establishment of Four Chief Judgeships in Fāṭimid Egypt. *Journal of the American Oriental Society*, 317-320.

Dodge, B. (2013). THE FĀTIMID LEGAL CODE. *The Muslim World*, *50*(1), 30-38.

Gleave, R. (2009). Marrying Fatimid Women: Legal Theory and Substantive Law in Shīʿī Jurisprudence. *Islamic Law and Society*, 38-68.

Tabassum, S., & Cilardo, A. (2012). The Early History of Ismaili Jurisprudence: Law under the Fatimids.

Walker, P. E. (2002). *Exploring an Islamic Empire: Fatimid history and its sources* (Vol. 7). IB Tauris.

Walker, P. E. (2016). The Relationship between Chief Qāḍī and Chief Dā'Ī under the Fatimids. In *Speaking for Islam* (pp. 70-94). Brill.