

Justice and Leadership
in
Early Islamic Courts

Edited by Intisar A. Rabb and Abigail Krasner Balbale

PROOFS

Published by the
Islamic Legal Studies Program, Harvard Law School
Distributed by Harvard University Press
Cambridge, Massachusetts
2017

Library of Congress Control Number:
2017948414

PROOFS

Copyright © 2017 by the President and Fellows of Harvard College
All rights reserved
Printed in the United States of America
ISBN 9780674984219

Chapter Seven

Justice, Judges, and Law in Three Arabic Mirrors for Princes, 8th–11th Centuries

Louise Marlow
Wellesley College

Many scholars have highlighted the centrality of the theme of justice in pre-modern Islamic political thought, and noted its especially striking prominence in “mirrors for princes.”¹ The topic, often the subject of a mirror-writer’s opening chapter, yields some of the mirror literature’s most characteristically cited aphorisms: “The ruler is the shadow of God on earth, and in him every wronged person takes refuge;” “An hour of justice is better than sixty years of worship.”² The prevalence and durability of these maxims did not diminish their meaning. Every repetition took place in a specific context, in which it carried immediate local significance. In his pioneering study, *Loyalty and Leadership in an Early Islamic Society*, Roy P. Mottahedeh elucidated in brilliant fashion, among other topics, the meanings that conceptions of royal justice carried for the inhabitants of the Būyid polity of

1 By “mirrors for princes,” I refer to works of political advice composed for the benefit of rulers, princes, and other members of the political élites. From antiquity into the early modern period (or even later), mirrors flourished in numerous political and cultural settings, and the genre is amply represented in the Islamicate languages. The mirror literature constitutes an important vehicle for the expression of political thought. On the theme of justice in such writings, see A. K. S. Lambton, “Justice in the Medieval Persian Theory of Kingship,” *Studia Islamica* 17 (1962): 91–119; Linda T. Darling, *A History of Social Justice and Political Power in the Middle East: The Circle of Justice from Mesopotamia to Globalization* (London and New York: Routledge, 2013); Linda T. Darling, “Social Cohesion (‘Asabiyya) and Justice in the Late Medieval Middle East,” *Comparative Studies in Society and History* 49 (2007): 329–57; Linda T. Darling, “‘Do Justice, Do Justice, For That is Paradise’: Middle Eastern Advice for Indian Muslim Rulers,” *Comparative Studies of South Asia, Africa and the Middle East* 22 (2002): 3–19.

2 For examples, see Abū Ḥāmid al-Ghazālī, *Naṣīḥat al-mulūk*, ed. Jalāl al-Dīn Humāī (Tehran: Kitābkhāna-yi Millī, 1972), 15, 81 = F. R. C. Bagley, *Ghazālī’s Book of Counsel for Kings* (London: Oxford University Press, 1964), 14, 45; cf. Lambton, “Justice in the Medieval Persian Theory,” 105.

fourth/tenth- and fifth/eleventh-century Iraq and western Iran.³ In *Loyalty and Leadership*, Mottahedeh explored a large repertoire of anecdotes, assembled from diverse sources, to evoke, with sensitivity and imagination, a society's self-understanding. In this brief essay, I shall treat the more formal literature of mirrors for princes, and attempt to link the disquisitions of the genre's learned authors to the political cultures in which they lived, with particular attention to the subject of legal justice.⁴ I shall suggest that the mirror literature's underpinnings in timeless wisdom notwithstanding, the genre conveyed conceptions of justice that were complex and multiple. Not only viziers and secretaries but also jurists and judges composed mirrors for princes; having achieved high levels of accomplishment in the religious sciences and, in the case of judges, appointment to important functions within the state, these specialists in the religious law were well situated to advise the rulers whom they served.

IBN AL-MUQAFFA'S *RISĀLA FĪ AL-ṢAḤĀBA*

I begin with an author who was an official secretary (*kātib*) and littérateur rather than a jurist or a judge, but who formulated what Joseph Lowry has termed "the first Islamic legal theory."⁵ Ibn al-Muqaffa' (d. ca. 139/757), a major contributor to the formation of Arabic literary culture and a principal mediator into that culture of Middle Persian *andarz*, composed an advisory text known as *Risāla fī al-ṣaḥāba* ("Epistle on the Ruler's Companions"), intended, it seems, for the caliph Maṣū' (r. 136–158/754–775). Ibn al-Muqaffa', Lowry asserts, confronted the "principal epistemological problem of Islamic legal theory, namely, the relationship of indeterminacy to interpretive authority within the context of a revealed law."⁶ Ibn al-Muqaffa', perceiving the lack of uniformity in the scholars' formulation of law, urged the caliph to review the conflicting legal rulings and adjudicate between them.⁷ Under the rubrics of *dīn* (religion) and *'aql* (rational intellect), he distinguished between parts of the law that excluded human interpretation and parts of the law that required and permitted interpretation; in the

3 Roy P. Mottahedeh, *Loyalty and Leadership in an Early Islamic Society* (Princeton: Princeton University Press, 1980 [rev. ed., London: I. B. Tauris, 2001]), 175–90.

4 Cf. Mottahedeh's "Preface to the Second Edition," *Loyalty and Leadership*, vii–x.

5 Joseph E. Lowry, "The First Islamic Legal Theory: Ibn al-Muqaffa' on Interpretation, Authority, and the Structure of the Law," *Journal of the American Oriental Society* 128 (2008): 25–40.

6 *Ibid.*, 26.

7 Cf. Patricia Crone and Martin Hinds, *God's Caliph: Religious Authority in the First Centuries of Islam* (Cambridge: Cambridge University Press, 1986), 86 and n. 182, with reference to an example recorded in Waki', *Akhbār al-quḍāt* (Beirut: 'Ālam al-Kutub, 1980), 3:46, in which three Kūfan authorities pronounce different legal opinions in response to a question involving the status of a sale.

latter sphere, moreover, he argued that the caliph should exercise supreme and exclusive authority. The distinction between a non-derogable sphere and a variable sphere of the law features importantly in Ibn al-Muqaffa'’s treatment of the extent of the subjects’ duty of obedience. Ibn al-Muqaffa'’, in accepting the premise of the maxim and *ḥadīth*: “*Lā ṭā’ata li-makhlūq*ⁱⁿ *fī ma’ṣiyat al-Khāliq*: There is no obligation of obedience on the part of the created being in [acts of] disobedience to the Creator,” stipulates that obedience to the caliph depends on his implementation of major elements of Islamic law—such as the rules pertaining to prayer, fasting, pilgrimage, avoidance of the unlawful, and penal matters—that fell within the non-derogable sphere.

At the same time, Ibn al-Muqaffa'’ assigns to the caliph a supreme interpretive authority in matters that fall within three categories: personal judgment (*ra’y*), administration (*tadbīr*), and “the political authority (*amr*), the reins and handles of which God has put in the hands of imams.”⁸ By these categories Ibn al-Muqaffa'’ appears to have had in mind numerous matters, including affairs related to military strategy, the collection and distribution of war spoils, the appointment and removal of officials, legal interpretation in cases for which there is no precedent, the implementation of penal law and of legal decisions according to the Qur’ān and *Sunna*, waging war and concluding truces, and accepting and disbursing property on Muslims’ behalf.⁹ As Lowry points out, the ruler’s upholding of the ordinances and precedents (*iqāmat al-‘azā’im wa’l-sunan*) that preclude human interpretation ensures his legitimacy and entitles him to the subjects’ obedience. At the same time, the sphere of the law that entails the use of reason and in which the ruler exercises discretion also necessitates the subjects’ obedience.¹⁰ In this conception, Ibn al-Muqaffa'’ had formulated a theory of two spheres of law—one admitting no interpretation, and to the implementation of which the ruler is obligated; the other permitting and requiring rational interpretation, and the implementation of which fell largely within the ruler’s discretion.

Lowry proposes that in formulating this theory of these two spheres of the law, Ibn al-Muqaffa'’ in effect anticipated later conceptualizations of

⁸ Lowry, “First Islamic Legal Theory,” 31.

⁹ *Ibid.*, 28–34. See also Paul Heck’s discussion of the “person-centered” nature of Ibn al-Muqaffa'’s conception of law in his “Law in ‘Abbasid Political Thought from Ibn al-Muqaffa'’ (d. 139/756) to Qudāma b. Ja’far (d. 337/948),” in *‘Abbasid Studies: Occasional Papers of the School of ‘Abbasid Studies, Cambridge, 6-10 July, 2002*, ed. James Montgomery (Leuven: Peeters, 2004), 83–109, at 85. See also S. D. Goitein, “A Turning Point in the History of the Muslim State,” in *Studies in Islamic History and Institutions* (Leiden: Brill, 1968), 149–67, esp. 157; István T. Kristó-Nagy, *La pensée d’Ibn al-Muqaffa’ : Un «agent double» dans le monde persan et arabe* (Paris: Éditions de Paris, 2013), 236–37.

¹⁰ Lowry, “First Islamic Legal Theory,” 33.

the structure of Islamic law.¹¹ The largely negative response to his vision of the caliph's authority with regard to legal interpretation in the latter sphere has tended to obscure this important point.¹² Ibn al-Muqaffa' wrote at a time when the *madhāhib* (schools of law) were still in relatively nascent stages in their formation, and when caliphs, as Patricia Crone and Martin Hinds have asserted, perhaps possessed a credible claim to religious-legal authority.¹³ Despite the divergence between Ibn al-Muqaffa's vision and subsequent developments, his urging of the caliph to assume this responsibility echoes the way in which some later mirror-writers encouraged their royal patrons to equip themselves with the knowledge necessary for intervention in the religious-legal realm.

PSEUDO-MĀWARDĪ'S NAṢĪḤAT AL-MULŪK

Ibn al-Muqaffa's distinction between the spheres of *dīn* (religious and fixed) and *ʿaql* (rational and discretionary) finds an implicit endorsement in a later Arabic mirror, the *Naṣīḥat al-mulūk* ("Counsel for Kings") of Pseudo-Māwardī, an unidentified tenth-century Mu'tazilī author schooled in the Ḥanafī tradition that predominated in the Sāmānid kingdom.¹⁴ In keeping with the categories of juristic and theological discourse, Pseudo-Māwardī conceives of the relationship between rulers and their subjects in terms of mutual and interdependent rights and obligations (*ḥuqūq*, pl. of *ḥaqq*). Detailing the duties of the ruler in a five-part treatment of the quality of *taqwā* ("godliness," living in mindfulness of God), he lists:

[Fourthly]: Executing God's penal laws, carrying out His ordinances among His servants, upholding equity (*qist*) in His lands, exercising judgment according to that which is right (*al-ḥukm bi'l-ḥaqq*) over [the people's] lives, wealth, persons, womenfolk, and reputations; avoiding injustice

11 Ibid., 25–26; cf. Heck, "Law in 'Abbasid Political Thought," 97 and n. 28.

12 On the apparent lack of reaction to Ibn al-Muqaffa's proposals, see Goitein, "Turning Point," 166–67; Andras Hamori, "Ibn al-Muqaffa'," in G. Böwering, ed., *The Princeton Encyclopedia of Islamic Political Thought* (Princeton: Princeton University Press, 2013), 232–33.

13 Crone and Hinds, *God's Caliph*, 43–57, 85–87.

14 Regarding the authorship of this mirror, I follow, in the present discussion as in my *Counsel for Kings: Wisdom and Politics in Tenth-Century Iran* (Edinburgh: Edinburgh University Press, 2016), the arguments advanced by Fu'ād 'Abd al-Mun'im Aḥmad in the introduction to his edition of *Naṣīḥat al-mulūk al-mansūb ilā Abī al-Ḥasan al-Māwardī* (Alexandria: Mu'assasat Shabāb al-Jāmi'a, 1988), used in the preparation of this essay, entitled "Muqaddimat al-taḥqīq wa'l-dirāsa," 5–33; and in his monograph *al-Māwardī wa-kitāb Naṣīḥat al-mulūk* (Alexandria: Mu'assasat Shabāb al-Jāmi'a, n. d.); as well as Hassan Ansari, "Yak andīshanāma-yi siyāsī-yi arzishmand-i Mu'tazilī az Khurāsān dawrān-i Sāmāniyān," *Barrasīhā-yi tārikhī*, <http://ansari.kateban.com/entryprint1951.html> (last accessed June 2017). See now also the insightful discussion of Makram Abbès, *Al-Māwardī: De l'éthique du prince et du gouvernement de l'état* (Paris: Les Belles Lettres, 2015), 202–03.

and transgression against them and partiality among them.¹⁵

Invoking the maxim and *ḥadīth*, *lā ṭā'ata* (also invoked by Ibn al-Muqaffa'), Pseudo-Māwardī extends the maxim's scope to subordinate the subjects' duty to obey the political authorities to the ruler's just and legitimate governance of the polity. As a premise for his argument, he affirms the king's sharing in the human condition of his subjects. He writes:

The subjects and the ruler (*al-ra'iyya wa'l-rā'ī*) are united in closeness of kind and connectedness (*qurb al-mujānasa wa'l-munāsaba*), similarity of nature, form, and kinship (*mushākalat al-ṭabī'a wa'l-ṣūra wa'l-ḥāma*); and connectedness (*munāsaba*) necessitates compassion and inclination. In addition, he owes them the rights (*ḥaqq*) due to the religious community (*milla*) and the covenant of protection (*dhimma*), for God has made the believers brothers, and the *dhimma* a trust (*amāna*). Obedience is incumbent on them only on condition of justice, the fulfillment of that which he has promised, compassion and mercy (*innamā yajibu 'alayhim al-ṭā'a bi-sharīṭat al-ma'dala wa'l-wafā' bi'l-ahd wa'l-ra'fa wa'l-rahma*). For it is related that the Prophet said: "The Quraysh have a claim against you, to the effect that if they seek mercy they should be treated mercifully, if they submit to arbitration they should receive justice, and if they conclude pacts they should be fulfilled (*in 'āhadū wufū*). Whoever does not act in this way, then the curse of God, the angels, and all the people will be against him; his action will not be accepted from him in any fashion." He also said: "There is no duty of obedience to the creature in disobedience to the Creator: *lā ṭā'ata li-makhlūqⁱⁿ fī ma'siyat al-Khāliq*. And he said: "Obedience is due only in return for goodness: *innamā al-ṭā'a fī al-ma'rūf*."¹⁶

The king, Pseudo-Māwardī asserts, is like his subjects in kind (*jins*) and in nature (*ṭabī'a*), and his relationship (*munāsaba*) with them requires his sympathetic treatment of them. His debt of responsibility involves the entirety of his subjects, Muslim and non-Muslim alike. Pseudo-Māwardī cites *ḥadīth* reports that broaden the subjects' claims against the ruler to include general principles of clemency, justice, and the fulfillment of covenants. The last of these qualities, *wafā'* or loyalty, was essential to the maintenance of the social relationships through which the king's governance was conducted

15 Pseudo-Māwardī, *Naṣīḥat al-mulūk*, 148.

16 Ibid., 254–55. Cf. *ibid.*, 103. For the *ḥadīth* report, see Nasā'ī, *Sunan al-Nasā'ī bi-sharḥ al-Ḥāfiẓ Jalāl al-Dīn al-Suyūṭī* (Beirut: Dār al-Fikr, 1930), 7:159–60; Ibn Mājah, *Sunan*, ed. Muḥammad Fu'ād 'Abd al-Bāqī (Cairo: 'Īsā al-Bābī al-Ḥalabī, 1952), 2:955–56, nos. 2863–65; and Khaled Abou El Fadl, *Rebellion and Violence in Islamic Law* (Cambridge: Cambridge University Press, 2001), 121.

and the subjects' lives rendered secure; breach of *wafā'* risked the severance of the king's bonds with the intermediaries on whose active support his governance depended.¹⁷

Strikingly, Pseudo-Māwardī encourages the ruler to develop a degree of expertise in the religious sciences, as well as the cultivation of personal virtues. Study of the religious laws and ordinances, he writes, is an obligation for every Muslim, but particularly necessary for kings, because they are charged with the duty to investigate the grievances of their subjects (*al-naẓar fī maẓālim al-ra'īyya wa'l-bariyya*), to listen to their claims, proofs, oaths and testimony, and to adjudicate accordingly. Pseudo-Māwardī urges the king to attain the qualifications necessary for the exercise of rational inquiry (*naẓar*) and independent reasoning (*ijtihād*) in matters pertaining to the religious law. The king may be required to lead the ritual prayer; respond to questions involving the collection of the prescribed alms and charitable donations; or adjudicate in matters concerning marriage, sale and inheritance, the division of the spoils of war, and the allocation of revenue within the kingdom. Pseudo-Māwardī impresses upon the king the desirability of limiting his dependence on specialists, such as judges, jurists and jurisconsults, for every case (*nāzila*) and eventuality (*ḥāditha*) that might occur. He adds:

Furthermore, if the king acquires a satisfactory degree of juristic understanding, it will enable him to pursue independent reasoning (*ijtihād*) and rational enquiry (*naẓar*) in his own right. He will be equipped to seek proofs for his own reasoning, and to interpret according to his own judgments, because in his interpretation (*ta'wīl*) he will only do that which is permitted to him. A knowledge of jurisprudence will also provide the king with juridical strategies (*al-ḥiyal al-fiqhiyya*), by means of which he will be able to avoid much of what is forbidden and to follow only that which is licit (*kathīr min al-ḥarām ilā al-ḥalāl*), and to abandon the false for the true (*min al-bāṭil ilā al-ḥaqq*).¹⁸

In this forceful passage, Pseudo-Māwardī urges the king to cultivate juristic knowledge in order to minimize his dependence on specialists who, as he hints elsewhere, might falter in their impartiality. He envisages a minimal “sum” of beliefs to which Muslims, including the king, should subscribe, and discourages him from seeking to impose uniformity beyond

17 Cf. Mottahedeh, *Loyalty and Leadership*, 40–96 and passim; Jürgen Paul, *Lokale und imperiale Herrschaft im Iran des 12. Jahrhunderts. Herrschaftspraxis und Konzepte* (Wiesbaden: Reichert Verlag, 2016), 331–50.

18 Pseudo-Māwardī, *Naṣīḥat al-mulūk*, 159–60.

this minimum.¹⁹ His vision of the law is of a dynamic and continually evolving phenomenon, in the continuing development and enactment of which the qualified ruler should participate.

This understanding of the ruler's qualifications to contribute in a limited fashion to the development of Islamic law finds a context in the education of the Ṭāhirid and Sāmānid *amīrs*. 'Abd Allāh b. Ṭāhir (d. 230/845), recipient of the celebrated advisory text composed by his father, Ṭāhir,²⁰ was trained in *adab* and *fiqh*, literary culture and jurisprudence, and was especially noted for his poetry and prose.²¹ The Sāmānid Aḥmad (I) b. Asad, governor of Samarqand until his death in 250/864, was, according to the fourth/tenth-century historian Narshakhī, "learned and pious" (*'ālim va pārsā*), and according to Ibn al-Athīr (d. 630/1233), he was religiously observant (*dayyin*), was rationally intelligent (*'āqil*), and composed fine poetry in Arabic.²² At least four of Aḥmad's sons—Naṣr (I), Ishāq, Ya'qūb, and Ismā'īl—heard and transmitted *ḥadīth* reports, which they related on the authority of several transmitters, including their father.²³ They fit within a category of persons to whom Roy Mottahedeh has drawn attention: those who, while not professional scholars, devoted a portion of their time to hearing and transmitting *ḥadīth* reports. Indeed, these early Sāmānid *amīrs* provide telling examples of this perhaps "semi-professional" group.²⁴ Prominent among the subjects of the *ḥadīth* reports that they transmitted

19 Marlow, *Wisdom and Politics*, 1:218–20. Cf. Hossein Modarressi, "Essential Islam: The Minimum that a Muslim is Required to Acknowledge," in *Accusations of Unbelief in Islam: A Diachronic Perspective on Takfīr*, ed. Camilla Adang, Hassan Ansari, Maribel Fierro, and Sabine Schmidtke (Leiden: Brill, 2016), 395–412, esp. 404–408.

20 On this important Arabic work of political advice (mentioned further in what follows), see C. E. Bosworth, "An Early Arabic Mirror for Princes: Ṭāhir Dhū l-Yamīnain's Epistle to His Son 'Abdallāh (206/821)," *Journal of Near Eastern Studies* 29 (1970): 25–41.

21 Muḥammad b. Aḥmad al-Dhahabī, *Siyar a'lām al-nubalā'*, ed. Bashshār 'Awwād Ma'rūf and Shu'ayb al-Arna'ūt (Beirut: Mu'assasat al-Risāla, 2001), 10:684–85. Cf. C. E. Bosworth, "The Tahirids and Arabic Culture," *Journal of Semitic Studies* 14, (1969): 45–79, esp. 54, 58.

22 Abū Bakr Muḥammad b. Ja'far Narshakhī, *Tārīkh-i Bukhārā*, trans. Abū Naṣr Aḥmad b. Muḥammad b. Naṣr al-Qubāwī, summ. Muḥammad b. Zufar b. 'Umar, ed. Mudarris Razavī (Tehran: Kitābforūshī-yi Sanā'ī, 1984), 91; and the English translation by Richard N. Frye, trans., *The History of Bukhara, Translated from the Persian Abridgement of the Arabic Original by Narshakhi* (Princeton: Markus Wiener, 2007), 105; Ibn al-Athīr, *al-Kāmil fī al-tārīkh*, ed. C. J. Tornberg, *Ibn-el-Athiri Chronicon quod perfectissimum inscribitur* (Leiden: E. J. Brill, 1862 [repr. Beirut: Dār Ṣādir, 1965–7]), 7:456.

23 Sam'ānī, *al-Ansāb* (Hyderabad: Maṭba'at Majlis Dā'irat al-Ma'ārif al-'Uthmāniyya, 1962–82), 7:25; Najm al-Dīn 'Umar b. Muḥammad b. Aḥmad Nasafī, *al-Qand fī dhikr 'ulamā' Samarqand*, ed. Yūsuf al-Hādī (Tehran: Ā'īna-yi Mīrāth, 1999), 65, no. 60, where the author mentions the four brothers in this order, and states that all of them related *ḥadīth* (*kulluhum yuhaddithūna*); 587–88, no. 1035.

24 Mottahedeh, *Loyalty and Leadership*, 142; W. L. Treadwell, "The Political History of the Sāmānid State" (PhD diss., University of Oxford: 1991), 99 n. 129; Sam'ānī, *al-Ansāb*, 7:25; Nasafī, *al-Qand fī dhikr 'ulamā' Samarqand*, 65, no. 60; 587–88, no. 1035.

are the themes of *ghazw* (raiding or warfare at the frontier), justice, and respect for scholars, topics that feature prominently in mirrors for princes.²⁵

Pseudo-Māwardī praised the Sāmānid *amīr* of Samarqand, Ishāq b. Aḥmad, for his devotion to religious knowledge (*ilm*) and literary culture (*adab*), and for his love (*maḥabba*) for the persons who pursued these subjects, as well as his frequent and attentive contact with them.²⁶ The Sāmānid *amīr* Ismāʿīl b. Aḥmad (r. 279-295/892-907) likewise attained a degree of learning in both the religious and the literary branches of knowledge, specifically combining *ḥadīth* and *adab*. According to a report related on the authority of Naṣr II's vizier Abū al-Faḍl Balʿamī (d. 329/940), Ismāʿīl stated that the first book pertaining to *adab* that he had committed to memory was the *Adab al-kātib* ("Good Conduct of the Secretary") [of the littérateur Ibn Qutayba, d. 276/889], and next the *Gharīb al-ḥadīth* ("Unusual Words Used in Ḥadīth") of Abū ʿUbayd [al-Qāsim b. Sallām, d. ca. 224/838];²⁷ he then embarked on the study of *ḥadīth* and *ādāb* (pl. of *adab*). Nasafī reported further that Ismāʿīl was proficient in Arabic grammar and inflexion (*iʿrāb*), and well versed in the differences of legal interpretation (*kāna ... yaʿlamu al-ikhtilāfāt*).²⁸

As detailed in the preceding discussion, Pseudo-Māwardī also mentions the types of legal issues in which the ruler might find it necessary to draw upon his religious knowledge and to exercise his rational discretion, and his observations coincide with the activities reported for the early Sāmānid *amīrs*. Their cultivation of the religious-moral style characteristic of the northeast, including their participation in religious studies, equipped them to lead the prayers at the funerals of eminent scholars.²⁹ They also adjudicated in matters that required a degree of juristic understanding. Naṣr (I) b. Aḥmad (r. 250–279/864–892), for example, received a document related to a *waqf*, which he was able to authenticate and implement in a beneficial manner.³⁰ Furthermore, the early Sāmānid *amīrs* became proverbial for their assiduous efforts to redress the grievances (*maẓālim*) of

25 Samʿānī, *al-Ansāb*, 7:24–25; Treadwell, "Political History," 99 n. 129.

26 Pseudo-Māwardī, *Naṣīḥat al-mulūk*, 107.

27 Muḥammad b. Ishāq al-Nadīm = Ibn al-Nadīm, *Kitāb al-Fihrist*, ed. Ayman Fuʿād Sayyid (London: Al-Furqan Islamic Heritage Foundation, 2009), 1.i:237, 216, 271. Abū ʿUbayd was a grammarian, Qurʾānic scholar, and jurist; born in Herat, he was engaged as a tutor to two families in Khurāsān, enjoyed the patronage of ʿAbd Allāh b. Tāhir in Baghdad, and died in Mecca.

28 Nasafī, *al-Qand fī dhikr ʿulamāʾ Samarqand*, 65, no. 60.

29 Jürgen Paul, "The Histories of Samarqand," *Studia Iranica* 22 (1993): 69–92, esp. 88. On the themes that recur in the self-representation of the transmission of knowledge in the northeast, see Roy Mottahedeh, "The Transmission of Learning: The Role of the Islamic Northeast," in Nicole Grandin and Marc Gaborieau, eds., *Madrassa: La transmission du savoir dans le monde musulman* (Paris: Éditions Arguments, 1997): 61–70, esp. 61–63.

30 Nasafī, *al-Qand fī dhikr ʿulamāʾ Samarqand*, 587–88, no. 1035.

their subjects. Ismā'īl (I) b. Aḥmad (r. 279–295/892–907) was celebrated for his regular and sustained accessibility to his subjects even at the cost of great physical hardship; according to the Ghaznavid historian Bayhaqī (d. 470/1077), Ismā'īl I explained that if an indigent stranger (*gharibī darvīsh*) happened to wish to bring a matter to his attention and found the *amīr* unavailable, he might be moved to curse him in his prayers (*marā du'ā-yi bad gūyad*).³¹

Pseudo-Māwardī discusses the ruler's duty, as part of his upholding of justice, to “render judgment among the subjects in their grievances and their petitions (*an yaḥkuma baynahum fī maẓālimihim wa-da'āwīhim*). He should hear their proofs and testimonies according to the Book of God and the *Sunna* of His Prophet, and that which right (the rightful claim) and the mandate of a legal judgment (*mā yūjibuh al-ḥaqq wa'l-ḥukm*).”³²

Pseudo-Māwardī's encouragement of the ruler's individual participation in *ijtihād* and *naẓar* coincides with Mu'tazilī rejections or restrictions of *taqlīd*, the following of precedent without rational inquiry into it or its alternatives.³³ To arrive at the truth by means of *ijtihād* required exertion and effort; *naẓar* involved not merely quiet meditation but active speculation, associated with dialogue and argument.³⁴ Pseudo-Māwardī's exposition is somewhat reminiscent of Ibn al-Muqaffa's advice to the caliph, whom the earlier writer, as noted above, exhorted to assert religious authority and adjudicate in various matters of religious law.

The appointment of judges was among the most important responsibilities of the ruler, and directly linked to his duty to uphold the law. Authors of mirrors frequently detailed the qualifications and qualities necessary in the judge, and warned their royal recipients against potential abuses of the judicial office. In his advisory testament (*waṣīyya*) to his son 'Abd Allāh upon the latter's appointment to the governorship of Diyār Rabī'a, Ṭāhir had emphasized the unparalleled importance of the judgeship (*qaḍā'*),

31 See Abū al-Faḍl al-Bayhaqī, *Tārīkh-i Bayhaqī = Tārīkh-i Mas'ūdī*, ed. Q. Ghanī and A. A. Fayyād (Tehran, 1945-6), 69. Cf. Niẓām al-Mulk, *Siyar al-mulūk (Siyāsatnāma)*, ed. H. S. G. Darke (Tehran: Bungāh-i Tarjama va Nashr-i Kitāb, 1962), 28–29; and English translation by Hubert Darke trans., *The Book of Government or Rules for Kings* (London: Routledge and Kegan Paul, 1978), 21–22; Mīrkhwānd, *Tārīkh-i rawẓat al-ṣafā'* (Tehran: Markazī-yi Khayyām Pirūz, 1959-60), 4:36. Paul points out that the Sāmānids sometimes delegated the responsibility for *maẓālim* to individuals outside the dynastic family; see his *Herrscher, Gemeinwesen, Vermittler: Ostiran und Transoxanien in vormongolischer Zeit* (Beirut: Franz Steiner Verlag, Stuttgart, 1996), 151 and n. 16. On the subjects' duty to offer prayers on behalf of the ruler, see further Paul, *Herrscher, Gemeinwesen, Vermittler*, 223–32.

32 Pseudo-Māwardī, *Naṣīḥat al-mulūk*, 261.

33 Josef van Ess, *Die Erkenntnislehre des 'Aḍudaddīn al-Īcī: Übersetzung und Kommentar des ersten Buches seiner Mawāqif* (Wiesbaden: Franz Steiner Verlag, 1966), 242, 279, 303, 325–27 and passim.

34 Van Ess, *Erkenntnislehre*, 16, 20 (cf. *jadal* and *mujādala*), 303.

and described it as “God’s balance, by which circumstances maintain their balance in the world: *al-qaḍā’ ... li-annah mizān Allāh alladhī ya‘tadilu ‘alayh al-aḥwāl fī al-arḍ.*”³⁵ In a list of the qualities necessary in judges, Pseudo-Māwardī mentions knowledge (*‘ilm*), understanding (*fiqh*), religion (*diyāna*), temperance (*‘iffa*), trustworthiness (*amāna*), awareness (*dirāya*), integrity (*‘adāla*), probity (*ṣiyāna*), and familiarity with the (religious) ordinances, statutory limits, precepts and stipulations (*shurūṭ*).³⁶ Somewhat later in his mirror, he resumes:

The king should exert himself in the selection of judges (*ḥukkām*), and appoint only persons who are religiously observant and upright, knowledgeable and learned in jurisprudence, resourceful and trustworthy, dignified and composed.... He should direct the judge to immerse himself in investigation, rational inquiry and finding for the weak against the strong, and exhort him not to rush to judgment before the completion of the investigation and inquiry, nor to delay after the firm establishment of proof and consolidation of the evidence. For in both of those cases lie neglect and omission. The judge should not render judgment out of inclination, nor stray from the path of justice out of partiality towards the person awaiting judgment....³⁷

The essential prerequisite in the matter of the *qāḍī* and the *ḥākim* is that the ruler should appoint him on terms that provide him with ample and comfortable allowances, so that he has no need for, and will not covet, the possessions of the subjects; avidity for the goods of the lower world, especially in these times of ours, has become a habit among the *‘ulamā’*, quite contrary to what ought to be the case with them. It is related from the Prophet that he said, “Anyone who increases in knowledge and at the same time increases in cupidity for the world, increases only in distance from God, while God increases in dislike of him.”³⁸

Aristotle summed the whole matter up when he said: “The judge (*ḥākim*) is a lord to those over whom he holds authority (*sayyid ‘alā man waliyah*), so in the judge, four qualities should come together, namely, that he be modest, scrupulous, knowledgeable, and not hasty.”³⁹

35 Ṭabarī, *Ta’riḫ al-Ṭabarī = Ta’riḫ al-rusul wa’l-mulūk*, ed. M. Faḍl Ibrāhīm (Cairo: Dār al-Ma‘ārif, 1960-77), 8:587.

36 Pseudo-Māwardī, *Naṣīḫat al-mulūk*, 240-41.

37 Ibid., 261-62.

38 Ibid., 262; cf. Maṣūḥ b. al-Ḥusayn al-Ābī, *Nathr al-durr* (Cairo: al-Hay’a al-Miṣriyya al-‘Āmma lil-Kitāb, 1980), 1:189.

39 Pseudo-Māwardī, *Naṣīḫat al-mulūk*, 262. For the Pseudo-Aristotelian citation, see also Mario Grignaschi, “La «Siyāsatu-l-‘āmmiyya» et l’influence iranienne sur la pensée politique islamique,” *Acta Iranica* VI, Deuxième Série, *Hommages et Opera Minora*, Volume III, *Monumentum H. S.*

Pseudo-Māwardī follows his citations from Pseudo-Aristotle with the full correspondence dispatched by the second Rightly Guided Caliph, ‘Umar b. al-Khaṭṭāb (r. 13–33/634–44), to Abū Mūsā al-Ash‘arī, whom ‘Umar appointed to governorships in Basra and Kufa,⁴⁰ and to Mu‘āwiya b. Abī Sufyān, his governor in Damascus (later the first Umayyad caliph, r. 41–60/661–80).⁴¹ When at a later point in the same chapter Pseudo-Māwardī turns to the ruler’s redress of grievances, he again invokes the exemplary conduct of ‘Umar, and also that of the fourth Rightly Guided Caliph and, for the Shī‘a, the First Imām, ‘Alī b. Abī Ṭālib (r. 35–40/656–61):

The king should protect the common people (*‘amma*) from his own injustice, and the injustice of his companions and retinue.... If the subjects oppress one another, the *sultān* is their place of retreat, their succor, their refuge and their source of assistance.... The king should behave in accordance with this quality—by which I mean justice (*‘adl*)—in following the command of God and imitating Him, accustoming himself to the habits of His righteous prophets and friends, and following the path of the surpassing sages, in accordance with God’s promise to the just of an ample reward and noble recompense in the afterlife, and His threat to the unjust of painful chastisement and severe punishment.

The Commander of the Faithful ‘Umar brought a case before Zayd b. Thābit [d. 45/665] for judgment, swore an oath against his adversary, and they both reached agreement. The Commander of the Faithful ‘Alī brought a case before Shurayḥ b. al-Hārith b. Qays al-Kindī [d. ca. 72–99/691–718], his *qāḍī*, for judgment; Shurayḥ pronounced two decrees, and ‘Alī abided by the legal obligation placed upon him after the verdict.⁴²

Nyberg (Leiden: E. J. Brill, 1975), 33–286, at 115–16; Miklós Maróth, *The Correspondence Between Aristotle and Alexander the Great: An Anonymous Greek Novel in Letters in Arabic Translation* (Piliscsaba: The Avicenna Institute of Middle Eastern Studies, 2006), 36.

40 Pseudo-Māwardī, *Naṣīḥat al-mulūk*, 263–64. Cf. Ibn Qutayba, *Kitāb ‘Uyūn al-akhbār* (Cairo: Maṭba‘at Dār al-Kutub al-Miṣriyya, 1925), 1:66; al-Jāḥiẓ, *al-Bayān wa’l-tabyīn*, ed. ‘Abd al-Salām Muḥammad Hārūn (Cairo: Maktabat al-Khānjī, 1960), 2:48–50; Māwardī, *al-Aḥkām al-sultāniyya wa’l-wilāyat al-diniyya* (Cairo: Muṣtafa al-Bābī al-Ḥalabī, 1966), 71–72; and English translation by Wafaa H. Wahba, trans., *Al-Māwardī: The Ordinances of Government* (Reading: Garnet Publishing, 1996), 80–81.

41 Pseudo-Māwardī, *Naṣīḥat al-mulūk*, 264. Cf. Abū Yūsuf, *Kitāb al-Kharāj*, ed. Iḥsān ‘Abbās (Beirut: Dār al-Shurūq, 1975), 264–65; Jāḥiẓ, *Rasā’il al-Jāḥiẓ*, ed. ‘Abd al-Salām Muḥammad Hārūn (Cairo: Maktabat al-Khānjī, 1964–79), 2:31.

42 Pseudo-Māwardī, *Naṣīḥat al-mulūk*, 269–70. For both individuals, the first a Companion of the Prophet, one of the Prophet’s scribes and a *qāḍī* under ‘Umar and ‘Uthmān, and the second a *tābi‘*, member of the generation that followed the Prophet’s Companions, and an early *qāḍī* of Kūfa, see Ṭabarī, *Ta’rīkh*, *sub anno* 21 = *History of al-Ṭabarī*, 14:15–16, and nn. 84 and 87. For accounts of ‘Umar’s recourse to Zayd’s arbitration, see Wakī‘, *Akhbār al-quḍāt*, 1:108; for ‘Alī’s consultations with Shurayḥ, see *ibid.*, 2:194–97. Ibn Khallikān reports two incidents in which ‘Alī came before Shurayḥ in his *Wafayāt al-a’yān wa-anbā’ abnā’ al-zamān*, ed. Iḥsān ‘Abbās (Beirut: Dār Ṣādir,

The Prophet said: “Fear God in the matter of grievances (*mazlīma*), for injustice constitutes darkness on the Day of Resurrection.”⁴³ ... We have read in the testament (‘*ahd*) of an Indian king to his son: Know that, (in the case of) the person from whom you have suffered an injustice (*mazlīma*) or against whom you have acted excessively in punishment, that which you have brought upon yourself is more severe than that which you have brought upon him. For the traces left by the injuries of this world are effaced and will disappear, whereas the injuries incurred from sins stick to (men’s) souls until retribution (*qiṣāṣ*) removes them.

In the same way, the resolute kings have never ceased to commend this (matter), to enjoin it in their testaments (‘*uhūd*), to fill their books (*kutub*) with it, and to transmit it in the records (*āthār*) of their conduct (*siyar*).⁴⁴

Pseudo-Māwardī proceeds to reproduce the full account, also reported in the ninth-century *Kitāb al-Tāj*, of the Sasanians’ practices of holding *mazālim*, followed by Pseudo-Aristotle’s advice on this subject to Alexander.⁴⁵ I have cited this section at some length in order to convey Pseudo-Māwardī’s underscoring of the universal nature of the imperative for royal justice, which applied to the circumstances of his particular time and space as much as it had in the societies of antiquity. He emphasizes the ruler’s responsibility for ensuring equal access among the many constituencies that comprised his subjects to his fair settlement of their grievances and disputes; for upholding the law that supported the social order; and for overseeing the rightful enactment of the religious ordinances that guaranteed his legitimacy and the moral integrity of the public sphere. In a manner somewhat reminiscent of Ibn al-Muqaffa’, Pseudo-Māwardī urges the ruler to participate in the legal interpretation needed to achieve these ends. He also addresses certain issues of positive law, particularly in the final chapters of his book, which treat the collection and disbursement of wealth (Chapter Eight), enemies of the realm (Chapter Nine), and interpretations of controversial matters, such as listening to music and the consumption of wine, that concern kings (Chapter Ten).

1977), 2:460–63, esp. 462 no. 290.

43 Tirmidhī, *al-Jāmi‘ al-Ṣaḥīḥ wa-huwa Sunan al-Tirmidhī*, ed. Muḥammad Fu‘ād ‘Abd al-Bāqī (Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, n. d.), 3:126.

44 Pseudo-Māwardī, *Naṣiḥat al-mulūk*, 270–72.

45 Ibid., 273. Cf. *Kitāb al-Tāj fī aḥlāq al-mulūk*, ed. Ahmed Zeki Pacha, *Le livre de la couronne (Kitab el Tadj)* (Cairo: Imprimerie nationale, 1914), 159–63 = Charles Pellat, *Le livre de la couronne* (Paris: Société d’Édition Les Belles Lettres, 1954), 179–82. See also Grignaschi, “La «Siyāsatu-l-‘āmmiyya»,” Maróth, *Correspondence*, 30, 37.

AL-MĀWARDĪ'S *TASHĪL AL-NAẒAR WA-TA'JĪL AL-ẒAFAR*

Pseudo-Māwardī, as indicated in the previous section, envisaged a sphere in which the properly qualified ruler might employ his independent legal judgment. In his urging of the ruler to devote careful attention to the appointment of judges whom he authorized to act on his behalf, Pseudo-Māwardī anticipated the concerns articulated in later mirrors, including those of the chief judge (*qāḍī al-quḍāt*), Abū al-Ḥasan 'Alī b. Muḥammad al-Māwardī (d. 450/1058). The pre-eminent Sunnī jurist of his time, Māwardī was somewhat controversially awarded the honorific appellation supreme judge (*aqḍā al-quḍāt*) in 429/1037–8 and was involved in diplomatic as well as legal services on behalf of the 'Abbāsīd caliphs. Adviser to the caliphs al-Qādir (r. 381–422/991–1031) and al-Qā'im (r. 422–467/1031–1074), Māwardī also enjoyed cordial relationships with the Būyid rulers (320–454/932–1062; in Iraq, 334–447/945–1055) of Iraq and western Iran. Best known for *al-Aḥkām al-sulṭāniyya* ("Governmental Ordinances"), a comprehensive treatment from a juridical point of view of political authority and the functions, rights, and duties of various governmental offices,⁴⁶ Māwardī also composed mirrors, in which he integrated his broad religious learning with his fluency in the rich Arabic literary culture (*adab*) of his time. The sense of justice displayed in his mirrors reflects and responds to the complex needs of a diverse and cosmopolitan society. Particularly telling are Māwardī's references to numerous exemplary figures, associated with a diverse array of imaginative worlds, presented as authoritative and meaningful constituents in an inclusive conceptual framework. This feature of Māwardī's writing correlates with his emphasis on the harmony that he envisages as a consequence of the diversity and multiplicity of human experience. The maintenance of this social harmony, in Māwardī's portrayal, requires the ruler's justice.⁴⁷

Although better known for his works in the field of jurisprudence, Māwardī wrote several mirrors. They include *Qawānīn al-wizāra* ("Foundations of the Vizierate"), addressed to an unidentified vizier, and *Durar al-sulūk fī siyāsāt al-mulūk* ("Pearls of Conduct in the Governance of Kings"), an abridged version, as Makram Abbès has established, of *Tashīl*

46 Written "in order that he [the addressee, 'to whom obedience is incumbent'] should know the various paths of the jurists (*madhāhib al-fuqahā*) regarding his rights ... and duties." See Māwardī, *al-Aḥkām al-sulṭāniyya*, 3 = *Ordinances of Government*, 1.

47 As Heck has put it, the ruler is "the agent of political cohesion." See his "Law in 'Abbāsīd Political Thought," 87–88. On Māwardī's mirrors, see Riḍwān al-Sayyid, "Tamhīd: al-Ijtimā' al-basharī: Dirāsa fī ru'yat al-Māwardī al-ijtimā'iyya," in *Tashīl al-naẓar wa-ta'jīl al-ẓafar*, ed. Riḍwān al-Sayyid (Beirut: Dār al-'Ulūm al-'Arabiyya, 1987), 7–93; Abbès, *De l'éthique du prince*, 173–209; and Mohammed Arkoun, "L'Éthique musulmane d'après Māwardī," *Revue des études islamiques* 31 (1964): 1–31, reprinted in *Essais sur la pensée islamique*, Troisième édition (Paris: Mouton et Larose, 1984).

al-naẓar wa-taʿjīl al-zafar, dedicated to the Būyid ruler of Iraq Bahāʾ al-Dawla (r. 379–403/989–1012).⁴⁸ His multi-faceted work of ethics *Adab al-dunyā waʾl-dīn* (“Rules of Conduct in Religious and Mundane Matters”) and his collection *al-Amthāl waʾl-ḥikam* (“Proverbs and Wise Maxims”), both closely related to the category of *adab*, intersect with Māwardī’s writings in the instructive and advisory genres.⁴⁹ The present discussion is limited to Māwardī’s *Tashīl al-naẓar wa-taʿjīl al-zafar* (“The Facilitation of Reflection and the Hastening of Victory”), skillfully elucidated by Riḍwān al-Sayyid in the introduction to his edition of 1987, and further explored in the fine study and translation of Makram Abbès. Māwardī composed *Tashīl al-naẓar* in two parts, the first devoted to the moral dispositions of the king (*akhlāq al-malik*) and the second to the governance of the kingdom (*siyāsāt al-mulk*). As Abbès has pointed out, the two parts correspond to the domains of ethics and politics respectively; the “facilitation of rational reflection” alludes to Māwardī’s theoretical account of the virtues, the “hastening of victory” to their deployment in the realm of governance.⁵⁰

Permeating his treatment of justice is Māwardī’s insistence on moderation, balance and harmony, qualities in which lie the promotion of prosperity and the wellbeing of the body politic. This emphasis is apparent in his preface, which he opens with the words:

To proceed: God, may His name be glorified, by the supreme efficacy of His wisdom (*balīgh ḥikmatih*) and the justice of His decrees (*ʿadl qaḍāʾih*), made humankind in varying categories and differing groups, in such a way that they should be kindly inclined one to another in their difference and in concord in their diversity, so that the followers and the followed among them should choose to be warmly disposed to one another, the commander and those subject to his command mutually supportive in reciprocal co-operation. [As the poet has said]:

*Since of old, human beings have lived with human beings;
Humanity has never lacked people whose assistance is
sought, nor people who seek the assistance of their fellows.*⁵¹

48 Abbès, *De l'éthique du prince*, 203–09. Aḥmad, who published the edition of *Durar al-sulūk*, also concluded that it belonged to Māwardī’s œuvre. See Fuʾād ʿAbd al-Munʿim Aḥmad, “Muqaddimmat al-dirāsa waʾl-taḥqīq,” in *Kitāb Durar al-sulūk fī siyāsāt al-mulūk*, ed. Fuʾād ʿAbd al-Munʿim Aḥmad (Riyadh: Dār al-Waṭan, 1997), 7–52, at 35–40.

49 For a discussion of the likely order in which Māwardī wrote the various works relevant to political authority, see Riḍwān al-Sayyid, “Tamḥid,” *Tashīl al-naẓar*, 82; Abbès, *De l'éthique du prince*, 200–09. On *Adab al-dunyā waʾl-dīn*, see Mohammed Arkoun, *Essais sur la pensée islamique*, 3rd ed. (Paris: Maisonneuve et Larose, 1984), 251–81.

50 Abbès, *De l'éthique du prince*, 211.

51 Māwardī, *Tashīl al-naẓar wa-taʿjīl al-zafar*, ed. Riḍwān al-Sayyid (Beirut: Dār al-ʿUlūm al-ʿArabiyya, 1987), 97 = Abbès, *De l'éthique du prince*, 239–40. The verse is by Abū Nuwās (d.

For Māwardī, as for his predecessors Ibn al-Muqaffa⁶ and Pseudo-Māwardī and his contemporary the historian and polymath Miskawayh (d. 421/1030), explicating the foundations and principles of governance and sovereignty (*siyāsāt al-mulk*) required attention to the wisdom and achievements of the past.⁵² It was an inclusive undertaking in which humanity's collective remembered experience provided a varied and valuable repertoire of insights that coincided with the teachings of divine revelation. As Māwardī writes in his introduction:

In this book I have treated in brief the foundations of governance and sovereignty that our predecessors have stipulated (*mā aḥkama al-mutaqaddimūn qawā'idah*), for every religious community (*milla*) has its mode of conduct (*sīra*), and every age its distinctive character (*sarīra*). Those who came before us required some familiarity with the *sharī'a* and the contracts it mandates, and with the contractual relationships involved in governance. Governance should at once accord with the principles of religion and correspond to the needs of the world.⁵³

In the first part of *Tashīl al-nazar*, Māwardī situates justice in the context of Platonic and Aristotelian conceptions of the virtues, of which justice represents, on the one hand, the sum and culmination of all the virtues, and on the other hand, moderation and equipoise, the mean or mid-point between extremes. Māwardī distinguishes between innate dispositions (*akhlāq al-dhāt*) and actions rooted in volition (*a'fāl al-irāda*).⁵⁴ In his exposition of the virtues, he distinguishes between virtues that represent beginnings—primordial virtues, or means—and virtues that represent ends. The first of the virtues—the primordial virtue—is rational intellect (*'aql*), because it is from rational intellect that the other virtues arise and by rational intellect that the other virtues are ordered. The last of the virtues is justice (*'adl*), which is the result or product of all the virtues, which are bound to it. Intellect and justice are two mutually supportive and closely affiliated companions; the one necessarily stands in need of the other. The virtues that lie between the first and last occupy intermediary positions between intellect and justice, intellect being distinguished by its

between 198/813 and 200/815). See *Dīwān Abī Nuwās*, ed. al-Ḥasan b. Ḥānī' (Beirut: Dār al-Kitāb al-'Arabī, 1982), 616.

52 See further Mohammed Arkoun, "Contribution à l'étude du lexique de l'éthique musulmane," *Bulletin d'études orientales* 22 (1969): 205–39, and "Éthique et histoire d'après les *Tajarib al-Umam*," *Atti del terzo Congresso di studi arabi e islamici* (Naples: Istituto Universitario Orientale, 1967): 83–112.

53 Māwardī, *Tashīl al-nazar*, 97–98 = Abbès, *De l'éthique du prince*, 240–41.

54 Māwardī, *Tashīl al-nazar*, 101 = Abbès, *De l'éthique du prince*, 245.

function of ordering them, justice by its function of evaluating them.⁵⁵ As Abbès points out, for Māwardī, unlike the philosophers, whether Greek or Arab, it is good government rather than happiness that constitutes the goal of the virtues.⁵⁶

In an account reminiscent of Miskawayh's exposition of moral dispositions, Māwardī, citing "a philosopher," reports that the foundations of virtuous dispositions are four: discernment, courage, temperance, and justice; it is from these (Platonic) foundations that all of the other virtues are derived.⁵⁷ He explains further that the vices likewise have beginnings and ends; they begin with foolishness and end with ignorance.⁵⁸ The virtues lie at the praiseworthy mid-point between two blameworthy vices. By combining virtues, other virtues arise: for instance, intellect combined with courage produces patience in adversity and loyalty in fulfilling commitments.⁵⁹ If the king cultivates the virtues in accordance with balance (*ta'dīl*), he will attain just governance (*siyāsa 'ādila*) and virtuous conduct (*sīra fāḍila*); yet if he departs from moderation (*qaṣd*) and equipoise (*i'tidāl*), he will reach one of the two blameworthy extremities.⁶⁰

In his second section, Māwardī turns to the practical demonstration of the virtues in the ruler's governance of the kingdom. From his abstract portrayal of justice as the end and resulting product of the virtues, he addresses the enactment of justice in the political sphere. Without the ruler's authority (*sulṭān*), he writes, the subjects are incapable of defending themselves, nor can they achieve justice and equity (*tanāṣuf*) in their interactions without his kindness (*iḥsān*).⁶¹ The subjects hold ten rightful expectations of the ruler:

- (1) Ensuring their ability to dwell safely in their homes;
- (2) Ensuring the security of their persons and their dwellings;
- (3) Averting harm from the subjects and deterring covetousness;
- (4) Exercising justice and equity with regard to them;

55 Māwardī, *Tashīl al-naẓar*, 107 = Abbès, *De l'éthique du prince*, 251.

56 Abbès, *De l'éthique du prince*, 211–12; cf. *ibid.*, 247.

57 Cf. Arkoun, "Contribution à l'étude du lexique de l'éthique musulmane." As Abbès indicates, the assertion derives from Plato, *Republic*, Book IV. See Abbès, *De l'éthique du prince*, 252.

58 Māwardī, *Tashīl al-naẓar*, 108, 109; Abbès, *De l'éthique du prince*, 252.

59 Māwardī, *Tashīl al-naẓar*, 111, 111–13 = Abbès, *De l'éthique du prince*, 252, 255.

60 Māwardī, *Tashīl al-naẓar*, 177 = Abbès, *De l'éthique du prince*, 327. The pairing of just governance (*siyāsa 'ādila*) and virtuous conduct (*sīra fāḍila*) recur throughout *Tashīl al-naẓar*; see further below.

61 Māwardī, *Tashīl al-naẓar*, 214 = Abbès, *De l'éthique du prince*, 373.

- (5) Dividing the parties to disputes among them;
- (6) Urging them to follow the demands of the law (*sharʿ*) in their acts of worship and in their social transactions;
- (7) Upholding the penal laws and God's claims among them;
- (8) Ensuring the safety of their roads and routes;
- (9) Upholding the public welfare by preserving their water supplies and maintaining their irrigation channels;
- (10) Evaluating people's worth and arranging them in their stations, according to the distinguishing criteria of religion, profession, livelihood, and probity.

These ten duties, which coincide largely albeit not completely with the ten public duties listed in Māwardī's *al-Aḥkām al-sulṭāniyya*,⁶² comprise just governance (*siyāsa ʿādila*) and virtuous conduct (*sīra fāḍila*), and if the ruler fulfils them, they will earn him the sincere obedience of his subjects and ensure the wellbeing of the kingdom.⁶³ Just governance involves, in addition to the protection of religion and the careful selection of assistants, four foundational principles: hope, fear, equity (*inṣāf*) and the rectification of inequity (*intiṣāf*).⁶⁴ Alexander, he reports, once asked the Indian philosophers which was more conducive to virtue, justice or courage? The philosophers replied, "If justice prevails, there is no need for courage!"⁶⁵

Like other writers who combined a familiarity with and facility in Arabic literary culture with learning in jurisprudence, Māwardī, who also wrote a dedicated work *Adab al-qāḍī* ("Rules for Judges"), urges his addressee to attend carefully to the selection and oversight of judges.⁶⁶ In a section of *Tashīl al-naẓar* devoted to four categories of officials regarding whom the ruler should be particularly vigilant, he addresses as the second of these categories *quḍāt* and *ḥukkām*, judges and magistrates, of whom he writes:

Judges and magistrates, who represent the scales of justice (*mawāzīn al-ʿadl*),⁶⁷ and to whom the ruler delegates judgment, are the guardians of the *sunna* by virtue of their following it in their judgments. By means of judges and

62 See Māwardī, *al-Aḥkām al-sulṭāniyya*, 16–17 = Wahba, *Ordinances of Government*, 16.

63 Māwardī, *Tashīl al-naẓar*, 214–15 = Abbès, *De l'éthique du prince*, 374–75.

64 Māwardī, *Tashīl al-naẓar*, 224 = Abbès, *De l'éthique du prince*, 383.

65 Māwardī, *Tashīl al-naẓar*, 225 = Abbès, *De l'éthique du prince*, 385.

66 Cf. Māwardī, *Adab al-qāḍī*, ed. Muḥyī Hilāl al-Sarḥān (Baghdad: Maṭbaʿat al-Irshād, 1971), 1:618–48.

67 Cf. Q. 21:47 (*al-mawāzīn al-qist*); cf. 6:152, 11:85.

magistrates, the aggrieved person attains justice through the rectification of his oppressor's injustice, and the weak see the fulfillment of their rightful claims against the strong. If judges and magistrates lack scruples and are much given to covetousness, they will destroy the *sunna* by innovating in their judgments, and they will undermine rightful claims by following capricious desires. Their rebuke (*qadh*) of religion will exceed their rebuke of the kingdom. The harm that their disregard for justice inflicts on the kingdom will exceed the harm that their negation of what is right causes plaintiffs who come before them; for it has been said: "Foolishness in judges and injustice in rulers are among the ugliest of things." Anūshīrvān [= Khusraw I, "The Immortal-Souled," r. 531–79] said: "A ruler whose judges are unjust is not just, and a ruler whose officials (*kufāt*) are corrupt is not good (*ṣāliḥ*)." In the selection of judges, after due consideration of the conditions necessary according to the *sharʿ*, good governance requires that they should be good in their outward demeanor and trustworthy in their inner selves, earnest and not given to jest, utterly scrupulous and resistant to cupidity; satisfaction averting them from entreaty, probity preventing them from greed, patience deterring them from annoyance, justice restraining them from inclination. For their knowledge they should have recourse to study, and for their comprehension they should turn to the repositories in their memory. They should be of a fine nature and excellent imagination, avoiding uncertainty and remaining distant from doubt; in obscure matters they should consult, in ambiguous matters they should proceed slowly; for the person who perfects this approach will not be diverted, and the person who deviates from it will not be sought out.⁶⁸

At a later point in his mirror, Māwardī adds:

A scholar said, "Justice and equity produce a period of concord (*i'tilāf*)." ... The worst calamity that afflicts judges (*qudāt*) is avidity, and the worst calamity that afflicts professional witnesses (*ʿudūl*) is unscrupulousness.⁶⁹

As the previously mentioned passages from *Naṣiḥat al-mulūk* and *Tashīl al-naẓar* demonstrate, authors of mirrors frequently insisted on the ruler's conscientious attention to the selection and performance of judges. Rulers, they stipulate, should take the utmost care in their appointment of judges and provide them with generous salaries so as to protect them from

68 Māwardī, *Tashīl al-naẓar*, 239 = Abbès, *De l'éthique du prince*, 402–03. For Māwardī's treatment of doubt, see Intisar A. Rabb, *Doubt in Islamic Law: A History of Legal Maxims, Interpretation, and Islamic Criminal Law* (New York: Cambridge University Press, 2015), 36 n. 40, 183, 205, 232–33. In *al-Aḥkām al-sultāniyya*, Māwardī, like other Shāfiʿī jurists, employed the "doubt canon" in his treatment of criminal law. See *ibid.*, 233 n. 15.

69 Māwardī, *Tashīl al-naẓar*, 261 = Abbès, *De l'éthique du prince*, 430.

the need to augment their earnings, especially by dishonest means. Mirrors, while warning against their frailties, also feature judges as exemplars of good conduct. Māwardī, who, reports suggest, held himself to a high standard,⁷⁰ cites the example of a judge of Ma'mūn (r. 198–218/813–33); this judge alerts the caliph to consequences and averts fiscal harm.⁷¹

Whereas Ibn al-Muqaffa', in his category of the law that admits the use of human reason, encourages the caliph to engage in legal interpretation, and Pseudo-Māwardī urges the king to acquire the training necessary to prepare him to practice *nazar* and *ijtihād*, Māwardī, in *Tashīl al-nazar*, does not invite the ruler to participate through the exercise of his rational intellect in legal interpretation; rather, he limits the ruler's responsibilities to implementing the parts of the law that fall within his spheres of governance and to selecting qualified and suitably disposed judges to carry out the other facets of the *shar'*.

CONCLUSION

As the preceding discussion has suggested, Arabic (and Persian) mirrors for princes of the second-fifth/eighth-eleventh centuries represent a range of perspectives in their treatments of justice, judges, and the law. As Mottahedeh has described in his portrayal of the political culture of Būyid Iraq and western Iran, the ruler, by virtue of his position outside the society that he governed, was widely regarded as responsible for maintaining justice by achieving an equilibrium among the competing interests of his subjects.⁷² The identification of the ruler as the subject's ultimate recourse against injustice, including and perhaps especially the injustice of his own agents, constitutes an abiding theme in the mirror literature, and numerous narratives, as well as prescriptive passages, explore the royal duty of redressing grievances in the hearing of *mazālim*. With regard to the religious law, the three texts selected for discussion in this essay illustrate the shift from Ibn al-Muqaffa's advice to the ruler that, in the face of different and conflicting legal rulings, he assert and exercise supreme interpretive authority, to Pseudo-Māwardī's assigning to the ruler the responsibility for *nazar* and *ijtihād*, and eventually to Māwardī's limitation of the ruler's intervention in law to little more than the choice of good judges. The shift reflects the increasingly formalized location of authority for legal matters

⁷⁰ See, for example, Māwardī's account of an incident in which he felt humbled by his inability to respond to a legal query in his *Adab al-dunyā wa'l-dīn*, ed. Muṣṭafā Saqqā (Cairo: Maṭba'at Muṣṭafā al-Bābī al-Ḥalabī, 1973), 81–82.

⁷¹ Māwardī, *Tashīl al-nazar*, 240–42 = Abbès, *De l'éthique du prince*, 404–05, and 405 n. 8.

⁷² Mottahedeh, *Loyalty and Leadership*, 177–80.

in the ‘ulamā’ and the institution of the *madrassa*, and the ruler’s retreat from the personal intervention that Ibn al-Muqaffa⁶, and to a degree Pseudo-Māwardī, could still envisage. The ruler remained the guarantor for upholding the religious law among the Muslim population in his kingdom and for the fulfillment of the covenant of protection extended to the non-Muslim populations. While their treatments and perspectives vary, authors of mirrors frequently emphasize the antiquity and universality of the themes of justice, redress, and law; and by their deployment of an eclectic and diverse set of authorities they make plain the rightful expectations of just governance shared by the multiple constituencies among the king’s subjects. Notwithstanding the recurrence in advisory literature of well-known themes, motifs, texts, and maxims, the concept of justice is far from static in the hands of the mirror writers. It comprehends the multiple and diverse legal cultures of the particular milieux in which the authors of mirrors composed their texts, and responds to immediate and local conditions. The three texts to which I have referred chart changing political and cultural environments in which rulers situated themselves differently in relation to the religious scholars who possessed the authority to adjudicate in legal matters and in relation to the populations that constituted their subjects.