

Justice and Leadership
in
Early Islamic Courts

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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

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Printed in the United States of America
ISBN 9780674984219

Chapter Eight

Joking Judges: A View from the Medieval Islamic West

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Yaḥyā b. Maʿmar (d. 229/843) held the position of judge in Cordoba, which was associated in those early times (when to be judge also implied being an Arab) with the directorship of the Friday prayer.¹ During one of the religious festivals in Cordoba, Yaḥyā b. Maʿmar went to the open air oratory (*muṣallā*) and saw that the notables (*ashrāf al-nās*) and the officials of the Umayyad administration (*khidmat al-sultān*) had hurried to take positions near the carpet where he was going to pray. Yaḥyā b. Maʿmar ordered his assistants to move his carpet forward, which gave the majority of people (*sawād al-nās*) the opportunity to situate themselves near him, so that those who had been the last now were the first, and those who had been the first now found themselves at the back. His action inspired admiration and was much talked about—then and afterwards—as a clever trick by which Yaḥyā b. Maʿmar outwitted the powerful in favor of the average Muslim. According to another version of this account, the trick helped him rid himself of opponents who had decided to gather around him in order to criticize his performance, instead managing to surround himself with impartial believers who were interested in the religious duty performed and not in

* This paper has been written within the research project *Practicing knowledge in Islamic societies and their neighbours*, financed by the Alexander von Humboldt Foundation (2014–2019) and it is related to my current research on the judges of al-Andalus. I wish to thank Luis Molina and Virginia Vázquez for their help.

1 On him, see PUA [Online], ID no. 11693 (last accessed March 21, 2016). The combination of the position of judge with that of director of prayer was criticized in later times: Vincent Lagardère, *Histoire et société en Occident Musulman au Moyen Âge, Analyse du Mi'yār d'al-Wanšarīsī* (Madrid, Casa de Velázquez, 1995), 7:73,129, quoting al-Wanšarīsī (d. 914/1508), *al-Mi'yār al-mu'rib wa'l-jāmi' al-mughrib 'an fatāwī ahl Ifriqiya wa'l-Andalus wa'l-Maghrib* (Rabat: Wizārat al-Awqāf wa'l-Shu'ūn al-Islāmiyya, 1981), 10:77–78.

its agent.² If we try to visualize the scene, its comical potential is evident.³

Other comical scenes, as well as witty remarks and jokes, can be found in the source from which I have taken Yahyā b. Ma‘mar’s story—Ibn Ḥārith al-Khushanī’s (d. 361/971) *History of the Cordoban judges* (*Kitāb quḍāt Qurṭuba*). Ibn Ḥārith al-Khushanī was a Mālikī scholar from Ifrīqiya who emigrated to al-Andalus when his homeland was under Fatimid rule.⁴ He composed a number of works for the son of the Cordoban Umayyad caliph ‘Abd al-Raḥmān III (the son being the future caliph al-Ḥakam II), and among them was a history of the judges of Cordoba. In the introduction to this work, Ibn Ḥārith al-Khushanī praised the prince al-Ḥakam for fostering historical knowledge, for his efforts to preserve the genealogical lore, and for publicizing the merits of previous generations so that the memory of the past was not lost. When the prince ordered him to write a work devoted to the Cordoban judges, Ibn Ḥārith al-Khushanī approached those among his contemporaries who narrated past stories about the judges and those who had memorized their deeds (*ruwāt al-akhbār fī akhbārihim ... ahl al-ḥifẓ fī af‘ālihim*). Thanks to these informants, he was able to collect edifying and delightful anecdotes about the sound intelligence of those judges, their vast knowledge, their equanimity, their refined understanding, their incisive sagacity in penetrating the interior of things, their correct firmness in making decisions coupled with their benevolent inclination to benefit everyone, their righteous administration of justice, and the probity of their behavior.⁵ Looking at the biographical entries, their content is not limited to commendation: the shortcomings, mistakes, and evil deeds of some of the judges were also treated. Ibn Ḥārith al-Khushanī devoted some preliminary lines as well to reminding his readers of the seriousness of the affairs dealt with by the judges (crimes, murders, debts, slander), which could lead to

2 Ibn Ḥārith al-Khushanī, *Quḍāt Qurṭuba*, ed. and trans. Julián Ribera (Madrid: Iberica, 1914), 85 (ed.)/104–05 (trans.). In the version recorded by Qāḍī ‘Iyād (d. 544/1149), *Tartīb al-madārik li-ma‘rifat a‘lām madhhab Mālik* (Rabat: Wizārat al-Awqāf wa’l-Shu‘ūn al-Islāmiyya, 1983), 4:149, the source is Abū ‘Abd al-Malik Ibn ‘Abd al-Barr (d. 338/950), who wrote a now (lost) history of the scholars and judges of al-Andalus. In his version, instead of a carpet a staff is mentioned and those who had intentionally occupied the space closest to Yahyā b. Ma‘mar had done that in order to criticize his sermon. By moving the staff and the ensuing change, the judge ensured that those situated near him had no ill will towards him. As a Sevillan-named judge in Cordoba and as an upright and conscientious judge, he had to face the opposition of many local jurists and notables.

3 Michael Cooperson, “Images without illustrations: The Visual Imagination in Classical Arabic Biography,” in *Islamic Art and Arabic Literature: Textuality and Visuality in the Islamic World*, ed. Oleg Grabar and Cynthia Robinson (Princeton: Mark Wiener Publishers, 2001), 7–20.

4 On his biography see Jum‘a Shaykha, “Abū ‘Abd Allāh Muḥammad b. Ḥārith b. Asad al-Khushanī al-Ifrīqī al-Andalusī,” *Cahiers de Tunisie* 26 (1978): 33–60; Amalia Zomeño, “Ibn Ḥārith al-Juṣānī, Abū ‘Abd Allāh,” in *Biblioteca de al-Andalus*, vol. 3: *De Ibn al-Dabbāg a Ibn Kurz*, 290–96, no. 548; PUA [Online], ID no. 8774 (last accessed March 21, 2016); and HATA [Online], no. 6/92 (last accessed March 21, 2016).

5 Khushanī, *Quḍāt Qurṭuba*, 6–7 (ed.)/4–5 (trans.).

sentences of great gravity. Theirs was an especially imposing and complex duty, entailing consequences not only for those being judged but also for those adjudicating—to the extent that some individuals refused to become *qāḍīs*, fearing not only that a faulty performance could affect their destiny in the Other life, but that the office itself impaired their salvation and could also endanger their lives.⁶ Being offered the *qāḍī*ship established the reputation of those who received the offer, while their refusal established their piety, a dynamic that had as its starting point the close connection between the judge and the ruler—the ruler being the one who named the *qāḍī*. Those who accepted the *qāḍī*ship were not only aware of its dangers, but also knew how demanding such an office was and that it required not only legal and religious knowledge and intelligence (including an understanding of human failings),⁷ but also self-control and the right attitude in court.

Specific norms were established in order to teach the correct performance of judgeship, not only in terms of imparting justice, but also in terms of the judge's conduct outside of the court or courtroom during his tenure of office.⁸ Those norms both reflected practice and affected it. Thus, correct behavior on the part of the judge, and his appropriate handling of verbal and physical relations with those involved in court procedures and trials, are recurring concerns in the biographies of judges without chronological restrictions. Thus, it was recorded of Abū Sulaymān b. Ḥawṭ Allāh (d. 621/1224) that, the more exalted the litigant acted, the more composed and quieter he became,⁹ while Abū al-ʿAbbās b. Rashīq al-Kātib (d. 442/1050) recommended that judges give no sentence while in a

6 Ibid., 7–8 (ed.)/6–8 (trans.). On the *topos* of rejecting a nomination to the judgeship, see Noel J. Coulson, "Doctrine and Practice in Islamic law: One Aspect of the Problem," *Bulletin of the School of Oriental and African Studies* 18 (1956): 211–26. On the presence of *qāḍīs* in Hell, see Christian Lange, *Locating Hell in Islamic Traditions* (Leiden: Brill, 2015), 18, 157 (corrupt judges), 154: noting that judges who were too severe on earth would continue to rebuke the tortured in hell but are rebuked by them as well.

7 The issue of what was better, a judge with legal knowledge but no intelligence or an intelligent judge with no legal knowledge, was discussed by the Andalusī al-Bunnāhī (d. ca. 794/1391) in his work on judges and muftis, *al-Marqaba al-ʿulyā fī-man yastahiqqu al-qaḍāʾ waʾl-futyā*, *La Atalaya Suprema sobre el Cadiazgo y el muftiazgo*, ed. and trans. Arsenio Cuellas Marqués and Celia del Moral (Granada: Universidad de Granada, 2005), 12–13 (ed.)/98–99 (trans.).

8 For the case of the Mālikī legal school that prevailed in the Maghreb and al-Andalus see Alfonso Carmona, "Los *ādāb al-quḍāt* o normas de conducta del juez islámico," *Homenaje al Prof. Juan Torres Fontes*, t. I (Murcia: Universidad de Murcia, 1987), 235–43, at 241: judges should not joke; and his "Le malékisme et les conditions requises pour l'exercice de la judicature," *Islamic Law and Society* 7, no. 2 (2000): 122–57. For other schools, see Irene Schneider, *Das Bild des Richters in der "Adab al-Qāḍī" Literatur* (Frankfurt: Peter Lan, 1990).

9 Antonio Rodríguez Figueroa, "Ibn Ḥawṭ Allāh, Abū Sulaymān," *Biblioteca de al-Andalus*, 3:325–26, no. 567. He preferred that his sentences were executed far from him, with the presence of witnesses.

state of indignation and anger.¹⁰ In an anecdote on the same theme, ‘Amr b. ‘Abd Allāh (d. 273/886) demanded that a litigant in his court give him the document (*wathīqa*) that he had presented as proof and had subsequently hidden in his sleeve. The judge had to insist several times and, eventually, the litigant, infuriated, threw the document at him, hitting his face. ‘Amr b. ‘Abd Allāh became pale and everyone in the court thought that the culprit was going to be punished, but the judge recovered his forbearance (*ḥilm*) and continued with his duty without reacting to the insult.¹¹ Being the first Cordoban judge of *mawlā* (loosely, non-Arab) origin and *ḥilm* being the paramount virtue of the Arabs, such a reaction proved that he was fit for the office. Judges had to control not only their reactions to the behavior of others, but their bodies in general. Thus, fearing that deprivation from food could make him harsher than needed, the judge Abū Bakr Ibn Zarb (d. 381/991) never sat in his court without having previously eaten.¹²

Many other anecdotes along the same lines could be adduced from the biographical literature devoted to judges. After all, we have here one of the discursive modes used to construct the judge’s exemplarity as inscribed in social relations.¹³ While positive anecdotes are to be expected in the depiction of men meant to serve as exemplars of good conduct and faultless morality—with negative anecdotes serving the inverse purpose—Ibn Ḥārith al-Khushanī also included a number of anecdotes revealing the good-humored and even jocular disposition of some Cordoban judges. In this case, and given the controversy over humor versus seriousness in the construction of exemplars in Islamic civilization, which attitude toward humor did he intend to convey? Let us first review the stories Ibn Ḥārith al-Khushanī recorded for two judges and one judge *manqué*, which represent three out of the forty-five total biographical entries included in his book.

We will deal first with the judge *manqué*. Muḥammad b. ‘Īsā al-Ma‘āfirī al-A‘shā (d. 221/836) was a scholar known for his fondness for laughter and joking, which caused serious qualms about the decision to name him judge. When approached with these qualms, al-A‘shā made it clear that he would never accept the position, but not because he considered himself

10 Fernando N. Velázquez Basanta, “Ibn Rašīq al-Kātīb, Abū l-‘Abbās,” *Biblioteca de al-Andalus*, vol. 4: *De Ibn al-Labbāna a Ibn al-Ruyūlī*, 446, 983.

11 Khushanī, *Quḍāt Qurṭuba*, 122–23 (ed.)/150 (trans.). Similar behavior is recorded of the same judge regarding the naughty behavior of some students in the mosque where he was judging.

12 Documentación, “Ibn Zarb, Abū Bakr,” *Biblioteca de al-Andalus*, vol. 6: *De Ibn al-Ābbāb a Nuḍāt al-‘aṣr*, 256–57, no. 1431. For another example of a judge controlling his body, see Manuela Marín, “Signos visuales de la identidad andalusí,” *Tejer y vestir: de la antigüedad al islam* (Madrid: Consejo Superior de Investigaciones Científicas, 2001), 137–80, at 154.

13 On such discursive modes, see Julia Bray, “Literary Approaches to Medieval and Early Modern Arabic Biography,” *Journal of the Royal Asiatic Society* 20 (2010): 237–53, quoting previous studies on the topic.

unfit, only because he was concerned about his salvation, according to the well-known *topos*. He reminded those who had expressed these qualms that ‘Alī b. Abī Ṭālib never abandoned his good humor, not even when he became caliph.¹⁴ If that was true in regard to someone as irreproachable as the Prophet’s cousin and son-in-law, why would he have had to abandon his own good-humored disposition, had he accepted the position of judge?¹⁵ Al-A‘shā once gave testimony (*shahāda*) in front of the judge al-Aswār b. ‘Uqba, who commented that, given al-A‘shā’s fondness for jesting (*hazl*), he could not determine whether his *shahāda* was serious. This comment mortified al-A‘shā.¹⁶ Another anecdote shows him walking in the company of the judge Muḥammad b. Ziyād (d. after 240/854) when they met a drunkard. The *qāḍī* ordered his assistants to seize that man in order to punish him. They continued walking until they reached a narrow area and the *qāḍī* went ahead, al-A‘shā following behind with the assistants. Al-A‘shā took the opportunity to tell those assistants that the judge had decided to set free the drunkard, which they did. When the *qāḍī* learned of this, he was not displeased with al-A‘shā’s behavior.¹⁷

Then we come to the men of good humor who *did* become judges. The judge Sulaymān b. Aswad al-Ghāfiqī (d. after 273/886), described as a virtuous and austere man, was famous for having been strict in making the Umayyad emir and his officials adhere to the law by submitting them to the *qāḍī*’s justice. He was also known for his jesting (*du‘āba*). A professional witness (*rajul min al-‘udūl*) named Ibn ‘Ammār used to stand in his audience (*majlis ḥukmih*),¹⁸ without moving, until the judge left. This Ibn ‘Ammār possessed an emaciated mule who spent the whole day at the door of the mosque. One day, a woman came before the judge and said in Romance: “Oh, judge! Look at your wretched one!” The judge answered, also in Romance: “You are not my wretched one! My wretched one is Ibn ‘Ammār’s mule that spends the whole day eating away at his bit at the door of the mosque!”¹⁹

14 For a statement of ‘Alī that supports humor, see Franz Rosenthal, *Humor in Early Islam* (Leiden: Brill, 1956), 56.

15 Khushanī, *Quḍāt Qurṭuba*, 10–11 (ed.)/11–12 (trans.). On this scholar see also HATA [Online], no. 1/5 (last accessed March 21, 2016).

16 Khushanī, *Quḍāt Qurṭuba*, 102–03 (ed.)/125–26 (trans.).

17 For the culture of leniency regarding drinking wine in al-Andalus, see below, note 64. See also Khushanī, *Quḍāt Qurṭuba*, 86 (ed.)/106 (trans.); and Maribel Fierro, “Tres familias andalusies de época omeya apodadas Banū Ziyād,” in *Estudios Onomástico-Biográficos de al-Andalus*, 12:85–142, esp. 115–18.

18 On the judge’s audience and its location, mainly in the mosque during the early Islamic period, see Mathieu Tillier, “Un espace judiciaire entre public et privé: Audiences de cadis à l’époque abbaside,” *Annales Islamologiques* 38 (2004): 491–512.

19 Khushanī, *Quḍāt Qurṭuba*, 138–39 (ed.)/171 (trans.). On Sulaymān b. Aswad, see Avila (dir.), PUA [Online], ID no. 3740 (last accessed March 4, 2016).

Sulaymān b. Aswad also devised what could be considered a "practical joke", planning a mischievous trick on a man called Ibn Qulzum, causing him embarrassment and indignity. Ibn Ḥārith al-Khushanī defines the story as a *ḥikāya mustatrafā* or singular anecdote. Ibn Qulzum was a Cordoban who ardently desired to be named director of prayer in the Friday mosque. Knowing this, one Friday morning on which Ibn Qulzum came to visit him, Sulaymān b. Aswad told his servant to appear in front of him crying and saying that his master was dying, and then to let him into his room. Sulaymān laid down on his bed and pretended that he was at death's door. When Ibn Qulzum saw him, he started crying and lamenting his friend's state. He left shortly after and went to see the vizier Hāshim b. 'Abd al-'Azīz, whom he informed that the judge was expiring and thus would be unable to direct that Friday prayer. Ibn Qulzum then exhorted the vizier to write immediately to the emir about the need to replace the dying judge. Hāshim b. 'Abd al-'Azīz asked him to confirm that this was really the case, and Ibn Qulzum insisted that he had seen Sulaymān b. Aswad on his death bed with his own eyes. Hāshim b. 'Abd al-'Azīz then proceeded to write to the emir describing the situation. The emir read the letter and took time to meditate about its contents: He remembered how much Ibn Qulzum wanted to be named director of prayer and that no illness was known to afflict Sulaymān b. Aswad, and he then concluded that the whole affair appeared suspicious. Thus, the emir asked one of his more trusted eunuchs to go to the judge's house and verify the situation. The eunuch found Sulaymān b. Aswad sitting and in excellent health, and they left together in the direction to the Friday mosque. The eunuch then went to the palace to inform the emir, who had a great laugh on the trick played by the judge upon Ibn Qulzum.²⁰

As regards the judge Aslam b. 'Abd al-'Azīz (d. 312/924), member of an important family of Umayyad *mawālī*,²¹ a Christian came to him asking to be put to death. The Christian was convinced that only his likeness (*shibh*) would die, whereas his real self would directly go to heaven. The judge tried to reason with him, arguing the absurdity of his belief and

20 Khushanī, *Quḍāt Qurṭuba*, 150–51 (ed.)/186–88 (trans.). The same story is recorded by Bunnāhī, *Marqaba*, 86–87 (ed.)/217–18 (trans.). The other joking judge recorded by Bunnāhī is al-Mundhir b. Sa'īd al-Ballūṭī (265/879 or 273–355/886–966), who also has a short entry in Ibn Ḥārith al-Khushanī's work but without the joke. It tells how the judge spent one very hot summer day in the company of the caliph al-Ḥakam II and his chamberlain, the eunuch Ja'far al-Ṣīqlābī, who decided to swim in the pond of the garden where they were resting. The judge kept complaining about the heat but seemed reluctant to cool himself in the pool. He finally entered, but did not swim. Asked about that by the caliph, he answered that contrary to the eunuch, he had an anchor and he was afraid of drowning because of its weight. This reference to his castration deeply hurt the eunuch. See *ibid.*, 104–05 (ed.)/240–41 (trans.).

21 He had two turns in office: 300–309/912–921 and 312–314/924–926. On him, see Maribel Fierro, "Los cadíes de Córdoba de 'Abd al-Raḥmān III (r. 300/912–350/961)," in *Cadíes y cadiazgo en el Occidente islámico medieval*, in *Estudios Onomástico-Biográficos de al-Andalus* 18:69–98.

hoping to dissuade him of his wish to be a martyr. When the dissuasion proved unsuccessful, the judge lashed him, proving that—as he had already warned the Christian—it was his own body, and not that of his likeness, which suffered the punishment.²² The general context of the story is the movement of the so-called voluntary martyrs—Christians who resisted the growing process of Arabization and Islamicization by publicly insulting the Muslims' Prophet and the Islamic religion in order to intentionally seek martyrdom by means of the punishment their insult invoked.²³ This case is slightly unusual, however: For one thing, this movement took place mostly between the years 235/850 and 245/859, so this case appears to be quite late. Also, in this case there is no record of the Christian having insulted Islam. The Christian's idea that only a likeness of his would die evokes the Qur'anic conception of Jesus' death in Qur'an 4:157,²⁴ suggesting a belief in the existence of "doubles." According to some Ismā'īlī interpretations, Jesus did die on the cross, but it was only one of his natures or names,²⁵ which helped reassure believers in the *imāms* that their violent deaths did not affect their divine element, only their human shells (*shibh*).²⁶ Jessica Coope understood this case to mean that the Christian made a distinction between his body and his spirit or soul,²⁷ an interpretation that coincides with the Ismā'īlī position.²⁸ What is of interest here is that the story is narrated in a very lively way, with the conversation between Aslam and the Christian emphasizing the stupidity and ignorance of the would-be martyr, underscored by the rationality of the judge's arguments and his condescending attitude towards the Christian—all elements that must have provoked laughter in those present at the trial.

In the other stories told of Aslam, his jokes are directed toward

22 Khushanī, *Quḍāt Qurṭuba*, 186–87 (ed.)/231–33 (trans.).

23 See generally Kenneth B. Wolf, *Christian Martyrs in Muslim Spain* (Cambridge: Cambridge University Press, 1988); and Jessica A. Coope, *The Martyrs of Córdoba. Community and Family Conflict in an Age of Massive Conversion* (Lincoln: Nebraska University Press, 1995).

24 See generally Todd Lawson, *The Crucifixion and the Qur'an: A Study in the History of Muslim Thought* (Oxford: Oneworld, 2009).

25 Antonella Straface, "An Ismā'īlī interpretation of *šubbiha lahum* (Qur. IV, 157) in the *Kitāb šaḡarat al-yaqīn*," in *Authority, privacy and public order in Islam: Proceedings of the 22nd Congress of L'Union Européenne des Arabisants et Islamisants*, Orientalia Lovaniensia Analecta 148, ed. B. Michalak-Pikulska and A. Pikulski (Leuven: Peeters, 2006), 95–100.

26 Lawson, *The Crucifixion and the Qur'an*, 80. The Ikhwān al-Ṣafā' also accepted the death of the human nature of Jesus, see *ibid.*, 85–89.

27 Coope, *The Martyrs of Córdoba*, 52.

28 This analysis is taken from Maribel Fierro, "Plants, Mary the Copt, Abraham, Donkeys and Knowledge: Again on Batinism during the Umayyad Caliphate in al-Andalus," *Differenz und Dynamik Islam. Festschrift für Heinz Halm zum 70. Geburtstag/Difference and Dynamics in Islam. Festschrift for Heinz Halm on his 70th Birthday* (Würzburg: Ergon, 2012), 125–44, at 142–43.

Muslims and involve wordplay.²⁹ Aslam is described as a man who was able to sharply convey the truth without making much ado about it (*shadīd al-mubāyana fī al-ḥaqq qalīl al-mudārāt fih*), sometimes revealing it with a funny remark (*lafẓ nādir*) that appeared on the surface to be merely an opinion (*raʿy*), but which conveyed another, humorous meaning (*al-nādir waʿl-fākiha*). Several examples are given. One day, the jurists Abū Ṣāliḥ Ayyūb b. Sulaymān and Saʿd b. Muʿādh entered Aslam’s house and sat down.³⁰ Aslam looked at them and quoted the Qurʾānic verses 10:80 and 26:43, in which the prophet Moses tells the sorcerers: “Throw whatever you are going to throw: *alqū mā antum mulqūna*.” Aslam astonished the two jurists with how funny the words were and how true in their meaning.³¹ As with the sorcerers in the Qurʾānic story, it is implied that the jurists had come to visit him with deceiving and corrupting intentions. Another day, the jurist Muḥammad b. al-Walīd came to talk to Aslam about something he wanted to obtain from him. Aslam, instead of employing the usual formula *samʿan wa-ṭāʿatʿan* (I hear and I obey, i.e., I will do what you ask me), answered with the Qurʾānic verse 2:93: “We hear and we rebel: *samiʿnā wa-ʿaṣaynā*,” which is what the Israelites said to Moses when he came down with the Tablets and worshipped the calf. The implication was that Aslam would not do what he wanted—as if there was something unacceptable in the request.³² Aslam’s most famous instance of verbal humor was what he told a man from the town of Niebla (Labla in Arabic). The man came to see him and asked: “Oh, judge, do you recognize me?” Aslam answered in the negative. The man then said: “I am the judge of Niebla: *anā qāḍī Labla*,” and Aslam retorted that he should not disapprove of God’s control over the destiny of man as he had pronounced *anā qāḍī Labla* in a way that sounded like *anā qāḍī lā bi-llāh*.³³

The fourth and fifth examples of witticism happened when Aslam was acting as judge. Aslam was informed that one of the jurists who had to testify in his court had received a carpet as a gift from the person he would testify about. When the jurist entered his presence, taking off his boots (*akhfāf*) and walking on the carpet, the judge remarked: “Beware the carpet!” Hearing this remark, the man realized that the judge knew of his

²⁹ For another example of a judge playing with words see Fernando N. Velázquez Basanta, “Retrato jaibiano del poeta y Qāḍī l-ʿyamāʿa de Granada Abū ʿĀfar Aḥmad b. Furkūn (el abuelo),” *Revista del Centro de Estudios Históricos de Granada y su Reino* 5 (1991): 47–53.

³⁰ On them see Manuela Marín, “*Šūrā* et *ahl al-Šūrā* dans al-Andalus,” *Studia Islamica* 62 (1985): 15–51.

³¹ Khushanī, *Quḍāt Qurṭuba*, 185 (ed.)/229 (trans.).

³² *Ibid.*, 185–86 (ed.)/229–30 (trans.). Ibn al-Walīd retorted: *qulnā wa-iḥtasabnā*.

³³ *Ibid.*, 186 (ed.)/230–31 (trans.).

corrupt dealings, and he did not dare to testify.³⁴ On another occasion, a man who had a lawsuit (*khuṣūma*) came to Aslam and told him that he had brought with him a witness from Seville who would testify in his favour. The judge showed astonishment, doubtful that someone would have come from such a far place to his court. When the Sevillian witness appeared, the judge asked him: “Are you a *muḥtasib* or a *muktasib*?” (that is, someone acting with the intention to fulfill the duty of commanding good and forbidding evil, or someone acting in pursuit of something material). The Sevillian was not pleased with the remark and told him that he, as a judge, had no right to ask such questions. Aslam was in court to say what he had to say, and to listen to his testimony, and he as the judge had to make his own decision. Aslam conceded that the man’s complaint was legitimate, and he listened to his declaration.³⁵

This last anecdote has to do with what was and was not acceptable in the judge’s dealings with those appearing before him, an issue reflected in other biographies such as that of the judge al-Naḍar b. Salama al-Kalā’ī (d. 302/914). During his time, there was in Cordoba a man called Ibn Raḥmūn, known for his love of jesting. While a lawsuit was taking place in the court, this Ibn Raḥmūn kept making jokes and funny remarks, provoking the laughter of those present. Not only did al-Naḍar not stop him, but he was also smiling. The litigant who was the object of Ibn Raḥmūn’s jokes told the judge that when they were out the judge’s sight, Ibn Raḥmūn did not cease to insult him and to mention his mother, and that that was what Ibn Raḥmūn did again in court, provoking the laughter of all those present with the tacit consent of the judge.³⁶

Similar stories were not included in the biographical dictionary of scholars and judges of Ifrīqiya written by Abū al-‘Arab al-Tamīmī (d. 333/945) and Ibn Ḥārith al-Khushanī himself.³⁷ In these works, we find

34 Ibid., 186 (ed.)/231 (trans.).

35 Ibid., 185–86 (ed.)/230 (trans.).

36 Ibid., 160 (ed.)/198–99 (trans.). The precise contents of Ibn Raḥmūn’s jokes are not clear, but they can be guessed. On al-Naḍar, see PUA [Online], ID no. 11243 (last accessed March 21, 2016).

37 The edition consulted is *Classes des savants de l’Ifriqiya par Abu’ l-‘Arab Moḥammed ben Aḥmed ben Tamīm et Moḥammed ben al-Ḥārith ben Asād al-Ḥoṣanī*, ed. and trans. Mohammed Ben Cheneb (Paris: E. Leroux, 1915; Algiers: E. Leroux, 1920). The edition is based on a manuscript that belonged to the Andalusī Abū ‘Umar al-Ṭalamankī (d. 429/1038). It includes three works: 1) *Ṭabaqāt ‘ulamā’ Ifriqiya* by Abū al-‘Arab al-Tamīmī (47 ff. in 3 parts); 2) *K. ṭabaqāt ‘ulamā’ Ifriqiya* by Ibn Ḥārith al-Khushanī (47 ff. in 3 parts); 3) *K. ṭabaqāt ‘ulamā’ Ifriqiya (Dhikr ‘ulamā’ ahl Tūnis)* (6 ffs.) by Abū l-‘Arab al-Tamīmī. In the edition, references to judges are found on pp. 79, 82, 85, 91, 94, 101, 102, 157, 158, 180, 193, 203, 211, 217, 219, 220, 225, 228, 244, 246, 247, 252, 253, 264, 266, 269, 271–72, 274, 275, 277, 280, 285, 308, 319, 320, 321, 322, 328–35, 343–44, 346. On Abū al-‘Arab, see M.J.L. Young, “Abū l-‘Arab al-Qayrawānī and his Biographical Dictionary of the Scholars of Qayrawān and Tunis,” *Al-Masāq* 6 (1993): 57–75; and Fethi Bahri, “Abū l-‘Arab et al-Khuchanī, deux auteurs et une oeuvre,” *IBLA* 190 (2002): 187–202.

the usual stories about scholars who refused to be judges, or who were so overwhelmed by the responsibility of the office that they never gave any sentence, and about judges who maintained their composure while being treated rudely.³⁸ Only of the judge Sulaymān b. ‘Imrān is it reported that he made fun of people and ridiculed them, with no examples given.³⁹ Also, no joking judge is mentioned in al-Kindī’s (d. 350/961) *Akhbār quḍāt Miṣr*,⁴⁰ whereas Wakī‘ (d. 306/918) has a number of them.⁴¹ ‘Ubayd Allāh b. al-Ḥasan al-‘Anbarī (d. 168/785), judge of Basra, not only recited poetry while in court, but also made fun of serious affairs: after an inquiry regarding a certain man, it was revealed that the man loved young boys. The judge reacted to this by asking: “Is he the knight or the lancer?” The same judge, when dealing with a litigant from the tribe of Rabī‘a, asked him if he knew some verses that satirized his tribe, to which the litigant responded by reciting verses that denigrated the judge’s tribe. The judge then acknowledged that his behavior had not been acceptable and that he had provoked the man first. The same happened when the judge joked about a woman in his audience, which led her to answer in kind, and going even further by making sexual remarks. Although ‘Ubayd Allāh b. al-Ḥasan al-‘Anbarī was generally appreciated for his performance as judge, there were some who complained to the governor about his jokes. This is what the scholar Muḥammad b. Mus‘ar did, reminding him that for God, mocking people was equal to ignorance.⁴² Another judge, Yaḥyā b. Aktham—who started his career as judge of Basra between 202/817 and 210/825-6—was described as *kathīr al-muzāḥ* (often joking), adding that he was always trifling in his *majlis*, as was his successor Ismā‘īl b. Ḥammād b. Abī Ḥanīfa, known for his playing with words in order to mock others and for having recited in his *majlis* verses that fell into the *mujūn* category—on which more will be said later.⁴³

38 Khushanī, *Classes des savants de l’ifrīqiya*, 34–36 (ed.)/92–96 (trans.); 85 (ed.)/158–59 (trans.); 136–37 (ed.)/221 (trans.).

39 *Ibid.*, 183 (ed.)/273 (trans.). Sulaymān b. ‘Imrān followed sometimes unconventional procedures in order to give a sound judgment. For an example, see *ibid.*, 181–82 (ed.)/271–72 (trans.).

40 Kindī, *Histoire des cadis égyptiens (Akhbār quḍāt Miṣr)*, trans. Mathieu Tillier (Cairo: Institut Français d’Archéologie Orientale, 2012). The only case worthy of note is that of a judge who wrote a poem satirizing a governor. See *ibid.*, 81.

41 Wakī‘, *Akhbār quḍāt Miṣr*, ed. ‘Abd al-‘Azīz Muṣṭafā al-Marāghī (Cairo, 1947–1950). These anecdotes have been analyzed by Tillier in his article mentioned in above, note 18, at 503–05.

42 Wakī‘, *Akhbār quḍāt Miṣr*, 2: 112, 114–116; Tillier, “Un espace judiciaire entre public et privé,” 503–05. On this same subject, see Abdullahi Ali Ibrahim, *Assaulting with Words. Popular Discourse and the Bridle of Sharī‘ah* (Evanston: Northwestern University Press, 1994).

43 Wakī‘, *Akhbār quḍāt Miṣr*, 2:166, 168; Tillier, “Un espace judiciaire entre public et privé,” 503–04. On Yaḥyā b. Aktham’s connection with *mujūn*, see Zoltán Szombathy, *Mujūn: Libertarianism in Mediaeval Muslim Society and Literature* (Warminster: Gibb Memorial Trust, 2013), 169.

This was not behavior limited to the early period of Islam: the judge of Seville Abū Umayya b. ‘Ufayr (d. 637/1239) wrote poetry while attending to the litigants and their affairs. Some of his preserved verses have a scandalous nature, among them three verses that describe a trial that allegedly took place in his court between a gazelle and a goat, with him sentencing in favor of the latter.⁴⁴

The figure of the joking judge—of which other examples could be collected⁴⁵—has passed into folklore. According to a widespread legend in Morocco, the stork was a judge who was bored by his job, so he put soap where the litigants had to walk. When they slipped and fell on their backs, he burst into laughter. To punish him, God transformed him into a stork: the noise of his squawk is a reminder of the judge’s laughter.⁴⁶ At the same time, the *qāḍī* and the scholar also became figures of ridicule in Islamic folklore.⁴⁷ Judges were not immune from being the aim of the jokes of others⁴⁸ and especially of being satirized by poets,⁴⁹ which sometimes led to the poet being punished by the mocked judge.⁵⁰ For the early period, the Cordoban Umayyad poet al-Ghazāl (d. 250/864) considered the judge Jukhāmīr b. ‘Uthmān al-Sha’bānī, known for his evil behavior towards the people, to be ignorant and foolish, and attacked him in his verses.⁵¹ The same judge—of whom a very negative view is given—was ridiculed by another poet, Ibn al-Shamīr (d. after 206/822). The judge had cards where the names of the litigants were written to be read in order to call them to appear in court. The poet put among them one card with the names of Yūnus b. Matī (Jonas) and al-Masīḥ b. Maryam (Jesus). The judge did not grasp what was going on

44 Teresa Garulo, “Notas sobre *muḥūn* en al-Andalus. El capítulo VII del *Nafḥ al-ṭīb* de al-Maqqarī,” *Anaquel de Estudios Árabes* 26 (2015): 93–120, esp. 108.

45 For the Almoravid period see Alfonso Carmona, “al-Garnāṭī, Abū Ishāq,” *Biblioteca de al-Andalus*, vol. 1, *De al-‘Abbādīya a Ibn Abyaḍ*, 396–98, no. 121.

46 Edmond Doutté, *Missions au Maroc. En tribu* (Paris: P. Geuthner, 1914), 6.

47 Ahda M’hamed, “Le droit coutumier des Ait Attad’Aoufous (Sud-Est Marocain),” *Awal. Cahiers d’Études Berbères* 24 (2001): 87–117.

48 Khushanī, *Classes des savants de l’Ifriqiya*, 187–89 (ed.)/275–77 (trans.).

49 Antonio Rodríguez Figueroa, “al-‘Azafī, Abū l-Qāsim Muḥammad,” *Biblioteca de al-Andalus*, 1: 133–34, no. 42; Fernando N. Velázquez Basanta, “al-Bastī, ‘Abd al-Karīm,” *Biblioteca de al-Andalus*, 1:213–14, no. 65; Mayte Penelas, “al-Ilbīrī, Abū Ishāq,” *Biblioteca de al-Andalus*, 6:381–84, no. 1467; Fernando N. Velázquez Basanta, “al-Majzūmī, Abū Bakr,” *Biblioteca de al-Andalus*, 6:482–86, no. 1518. For Egypt, see Kindī, *Histoire des cadis égyptiens*, 143, 163, 169, 177, 192–93.

50 Mayte Penelas, “al-Ilbīrī, Abū Ishāq,” *Biblioteca de al-Andalus*, 6:381–84, no. 1467. See also Intisar A. Rabb, “Society and Propriety: The Cultural Construction of Defamation and Blasphemy as Crimes in Islamic law,” in *Accusations of Unbelief in Islam: A Diachronic Perspective on Takfir*, ed. Camilla Adang et al. (Leiden: Brill, 2016), 434–64, for the punishment inflicted on a storeowner for making fun of a judge.

51 Khushanī, *Qudāt Qurṭuba*, 94 (ed.)/116 (trans.). At *ibid.*, 98–99 (ed.)/121 (trans.), the same poet ridicules the naivety of another judge.

and had them summoned, this leading to strongly-worded mocking verses on the part of the poet.⁵² The judge Muḥammad b. Bashīr had had ten cards for summons with his seal (*tābīʿ*) prepared when he was named for the *qāḍī*ship in Cordoba and he used them until he died. Muḥammad b. ʿĪsā al-Aʿshā—the judge *manqué* already dealt with who was a man prone to jest and hyperbole (*kathīr al-nādir*, *kathīr al-taṭnīb*)—every time he met a friend of the judge asked him: “When are you going to meet the ten auctioneers (*dallāl*)? When are you going to visit the ten agents?” Muḥammad b. Bashīr learned of this and was displeased, and took care to warn Muḥammad b. ʿĪsā to stop saying such things.⁵³ Beyond their own behavior, judges could also become objects of ridicule due to the behavior of family members and relatives,⁵⁴ or due to their attire, especially when they came from the rural hinterland,⁵⁵ or, more cruelly, because of their physical appearance.⁵⁶

We have seen that in his book on Cordoban judges, Ibn Ḥārith al-Khushanī incorporated amusing stories both about judges who were made fun of and about judges who made fun of others. Such stories do not necessarily provide a historical kernel of meaning, but—as good stories—supply a multi-faceted perspective on human behavior and choices. We know by now that “medieval Arab biographies are often less a factual record than a field of controversy,” and that for many biographers, their aim was to illustrate types, not to document lives.⁵⁷ On the other hand, the joking

52 Ibid., 95–96 (ed.)/117 (trans.).

53 Ibid., 58–59 (ed.)/72 (trans.).

54 An example dealing with the wife of the judge Muḥammad b. Ziyād, that led to much gossip, is recorded at *ibid.*, 104–05 (ed.)/129 (trans.).

55 This is what happened to Saʿīd b. Sulaymān al-Ballūṭī, who was from the rural region to the north of Cordoba known as Faḥṣ al-Ballūṭ, famous for its acorns, who dressed with a white *jubba*, a white high conical bonnet, and a white cape. When he appeared so dressed in the mosque where he adjudicated, those who worked there brought a basket full of acorn crusts and put them below the prayer carpet of the judge. Guessing that they had played the trick on him, the judge then swore that he would act with them as hard as the wood of kermes oak that cannot be broken, and forbade them from appearing in his court for a year, such that they became impoverished. See *ibid.*, 109–10/133 (trans.).

56 ʿAmr b. ʿAbd Allāh was called al-Qubʿa (crested lark) because he was very small, so that when he was seated he was almost invisible. When he sat to judge he required the litigants to each write their names on a card, then he mixed those cards and started to call the persons there mentioned. A man asked the poet Muʿmin b. Saʿīd—who lived near the mosque where the judge acted—to write his name for him as he was illiterate, telling him that his name was ʿUqba, but Muʿmin wrote Qubʿa instead. When the judge took that card and realized what was going on, he became irate, but refrained himself from doing anything and left that card to the end. When very few people remained in the court, the judge recommended that ʿUqba—who had described to him the man who had written his name—to stay away from Muʿmin from then onward. See Khushanī, *Qudāt Qurṭuba*, 120–21 (ed.)/147–48 (trans.). This Muʿmin—who appears as having been intimate with the judge—on another occasion made an explicit and funny reference to the judge’s liking for boys.

57 Bray, “Literary Approaches,” 238.

judges do not seem to be formulaic, as there are biographical dictionaries of judges that do not include any of them. Inclusion or exclusion of such stories can be understood as part of a “living chain of debate with other practitioners of biography, and perhaps even with other genres,”⁵⁸ and in this respect Ibn Ḥārith al-Khushanī’s work contains a larger share of the *adab* component than similar works. Having been commissioned by the Umayyad prince al-Ḥakam to write a work devoted exclusively to Cordoban judges, as he himself states in the introduction to his book, Ibn Ḥārith al-Khushanī recorded a local memory that included amusing stories,⁵⁹ in the same way that the Iraqi Wakīʿ—who moved in literary circles—had done.⁶⁰ Making funny remarks and joking was part of the life of the cultivated elite, although it could also have dangerous consequences, as a famous trial involving a relative of the Umayyad emir ‘Abd al-Raḥmān II (r. 206–238/822–852) showed some decades before Ibn Ḥārith al-Khushanī wrote his book.⁶¹ Restraint and restrictions in what to say and how to say it was thus also part of the cultivated elite’s education. Within this context, Ibn Ḥārith al-Khushanī’s biographical dictionary can be considered a work of *adab*, aiming at teaching while entertaining through a collection of stories that make for a good read and that are remembered afterwards precisely because they are appealing and offer food for thought. His work does not hide the human failings of judges, and he does not intend to portray them as models of perfection. Through their behavior and the reactions to it, his aim is to move the reader to reflect on how to decide what is right and what is wrong on the basis of religious values, never homogenous even within Islam, and even less so when other types of values were also at stake.

Ibn Ḥārith al-Khushanī started with a judge *manqué*, al-Aʿshā, whose jocular disposition was problematic from a legal point of view because it was difficult to ascertain when he was serious and when he was joking. As a witness in court, the judge did not know what to do with al-

58 See *ibid.*, 245. See also Abdallah Cheikh-Moussa, “L’historien et la littérature arabe médiévale,” *Arabica* 43 (1996): 152–88.

59 Still to explore is to what extent he supplemented and complemented that local memory.

60 Among the authors of works on judges, Wakīʿ was associated with the poet and *adīb* Abū al-Faraj al-Iṣfahānī: see his biography in A.K. Reinhart, “Wakīʿ,” *IEJ*. Kindī, on his part, seems to have moved only in religious circles, which may explain the absence of any “joking” character in his work on Egyptian judges. A judge and literary man, Tanūkhī (d. 384/994), included judges in one of his works of *adab*. See Mathieu Tillier, “L’exemplarité chez al-Tanūḥī: les cadis dans le *Niṣwār al-muḥāḍara*,” *Arabica* 54 (2007): 1–24. Both Ibn Qutayba (d. 276/889) and Ibn ‘Abd Rabbihī (d. 328/940) included mention of judges in *‘Uyūn al-akhbār* and *al-‘Iqd al-farīd*, respectively.

61 The nephew of a royal concubine had been accused of blasphemy and executed, in spite of claiming that he had just talked in jest. See Maribel Fierro, *La Heterodoxia en al-Andalus durante el periodo omeya* (Madrid: Instituto Hispano-Árabe de Cultura, 1987), 57–63. (Ibn Ḥārith al-Khushanī does not include this case in his book.) For the relationship between joking and blasphemy, see also Rabb, “Society and Propriety.”

A‘shā’s testimony, so what would happen if he was himself the judge? One of the stories included by Ibn Ḥārith al-Khushanī alerted the reader to the dangers of using hyperbolic language in trials: an old man had testified in front of the judge al-Ḥabīb b. Ziyād saying that he had known about the affair being judged for one hundred years. When the judge inquired about his age and he answered that he was sixty years old, the judge retorted that it was impossible for him to testify on the affair under consideration as he had been born after it had taken place. The old man apologized saying that he had spoken in a hyperbolic way (*‘alā al-mithl*), but the judge ordered him lashed, pointing out that when giving testimony no *mithl* could be used, and he then proceeded to explain how someone had ended up being crucified for having spoken that way. Summarizing a long and detailed story, during the times of the emir Muḥammad, there was a severe famine leading to many criminal acts and thus to many death sentences and hand amputations. The *ṣāhib al-sūq* at the time was Ibrāhīm b. Ḥusayn b. ‘Āṣim, who was charged by the emir with being especially harsh while authorizing him to sentence quickly without elevating the cases to him, which Ibn ‘Āṣim did. One day a young boy (*fatā*) was brought to him by his neighbors, who complained about his evil deeds. They did not want him to be punished, but only taught a lesson. Yet, when the *ṣāhib al-sūq* asked the eldest what punishment he thought the boy deserved, and the old man answered in an exaggerated way (*al-mithl wa’l-mubālagha*) that he deserved to be put in the hands of the executioners, this is precisely what the *ṣāhib al-sūq* did. To his neighbors’ dismay, the young boy was crucified.⁶² Playing with words could lead to dangerous consequences and exaggeration is one of the ingredients of humor. With these and similar stories, Muslims—including judges—on alert that context should be taken into consideration when words were uttered and that this was not only common sense, but that their religion also forced them to be aware of this fact.⁶³

The judge *manqué* al-A‘shā not only liked joking, he also had a lenient view on sinful behavior such as drinking wine, and he was not alone in this: other scholars who were renowned judges are also described as having had the same attitude.⁶⁴ Al-A‘shā eventually did not become a judge,

62 Khushanī, *Quḍāt Qurṭuba*, 177–79 (ed.)/219–22 (trans.). In the story used for illustrating the point, the official who decided according to hyperbolic testimonies was not a judge but a *ṣāhib al-sūq* who moreover was implementing extremely severe orders given by the ruler.

63 See Ibrahim, *Assaulting with Words*. In the case of scholars, R. Kevin Jaques has shown how they were careful and deliberate in the use of words. See his “The Other Rabī: Biographical Traditions and the Development of Early Shafī‘ī Authority,” *Islamic Law and Society* 14, no. 2 (2007): 143–79, esp. 156.

64 Ibn Ḥārith al-Khushanī has a section to deal precisely with the issue of why Andalusis were quite open in their acceptance of wine consumption. See his *Quḍāt Qurṭuba*, 103–04 (ed.)/126–27 (trans.); see also *ibid.*, 168 (ed.)/208 (trans.), 196 (ed.)/243 (trans.). For a funny story of how an

though he could have, despite his benevolence towards drunkards and his love for fun. Such fondness did not impair belief and morality as explicitly stated by al-A'shā himself, pointing to the precedent of 'Alī b. Abī Ṭālib. The example was double-edged in an Umayyad context, given the deep anti-'Alid sentiment that existed then.⁶⁵ So perhaps after all al-A'shā's example was not the best choice to convince others that in his case, love for fun did not negate his acceptability as judge. At the same time, Ibn Ḥārith al-Khushanī came from Ifrīqiya, where, before the Fatimids, the Aghlabids had ruled in the name of the 'Abbāsids, that is, in a context where the figure of 'Alī b. Abī Ṭālib functioned as an exemplary model. Taking this into account, it is the reader who is invited to make a decision regarding al-A'shā's case: Ibn Ḥārith al-Khushanī is in control of the narrative not so much in order to bring it to a "black or white" quandary, but to alert the reader that there is not such clear demarcation between black and white, even if the colors are real and need to be known as being different one from the other.⁶⁶

Coming now to Ibn Ḥārith al-Khushanī's two joking judges, Sulaymān b. Aswad's funny commentary happened while he was acting as judge in the mosque, but it had no direct link with any current trial. The joke, moreover, had as targets a mule and a woman, both trans-culturally and traditionally providers of material for ridiculing and laughing. Thus, his witticism—which was probably funnier in the Romance language than in the Arabic translation—affected only tangentially his office as a judge. In the case of the practical joke against Ibn Qulzum, it happened in a private setting and did not involve the *qāḍiship*. It did reveal that Sulaymān b. Aswad did not recoil from ridiculing and mocking a fellow scholar, but on the other hand the scholar in question had put himself in jeopardy with his immoderate and publicized desire to be named director of prayer. Aslam b. 'Abd al-'Azīz's funny remarks also mostly happened in a private setting except for two that took place in his court. Regarding the latter, one of them—making the venal witness realize that he had been discovered—helped the judge in putting an end to a corrupt transaction. The other also originated in the suspicion that there was something wrong in the testimony of a witness, but in this case the targeted person was offended and defended his honor, proclaiming publicly that it was unfit and unacceptable for a judge

Eastern judge supported the consumption of wine, see Szombathy, *Mujūn*, 202.

65 See Maribel Fierro, "La política religiosa de 'Abd al-Rahmān III," *Al-Qanṭara* 25 (2004): 119–56.

66 Ibn Ḥārith al-Khushanī is not so much providing contradictory evidence as in the case of 'Iyāḍ, according to Jonathan Brockopp, "Contradictory Evidence and the Exemplary Scholar: The Lives of Saḥnūn b. Sa'īd (d. 854)," *International Journal of Middle Eastern Studies* 43 (2011): 115–32. Brockopp shows that such cases offer the reader a variety of contextual frameworks in which individuals with their words and deeds are inscribed.

to indulge in mockery against a witness while sitting in his audience.⁶⁷ This suggests that the judges' behavior at court was not clearly regulated nor was there a consensus of what was appropriate to do and not to do on his part. Stories such as these were in fact contributions to the emergence of such consensus.

During the period considered here, the Cordoban judges had their courts in the mosque, that is, in a public space that was at the same time charged with spirituality. Mathieu Tillier has shown that some of the judges of the early 'Abbāsīd period did not consider it inappropriate to introduce profane elements into such a setting, such as reciting poetry and indulging in laughter. Reactions such as that of the scholar Muḥammad b. Mus'ar regarding which attitudes were permissible or not in the mosque indicate the existence of discrepancy of opinions,⁶⁸ and it is significant that what can be called the "pro-seriousness" position is voiced not by a judge, but by a scholar: as Tillier has concluded, the early Abbāsīd judges in the sources he studied do not appear as representatives of religion.⁶⁹ By Ibn Ḥārith al-Khushanī's time, a case like that of the judge of Basra, Ismā'īl b. Ḥammād b. Abī Ḥanīfa, who recited in his *majlis* verses that fell into the *mujūn* (libertinism) category, seems to have been uncommon as he did not include any such example, but we have seen the case of a later judge in Seville who did write such poetry.⁷⁰ Hence, silence on this may be due to other reasons. In his detailed monographic study on *mujūn*, Zoltán Szombathy has pointed that among the indications of the suspect status of joking for the 'ulamā' there is the recommendation some of them make that "appointees to the position of judge (*qādī*) should avoid laughter and jesting."⁷¹ On the other hand, the 'ulamā' in general were against rigidity and severity and in favor of moderation:⁷² "Some celebrated savants whose dedication to Islamic norms and general propriety cannot be seriously doubted would not have serious qualms about cracking jokes themselves or sanctioning other's jesting by listening to it and showing no disapproval thereof."⁷³ Szombathy concludes

67 'Alī b. al-Ḥusayn b. Ḥarb (d. 319/931), a judge in Wāsiṭ, was also reprimanded in similar circumstances. See Tillier, "Un espace judiciaire entre public et privé," 499.

68 On this judge, see above, note 42.

69 Tillier, "Un espace judiciaire entre public et privé," 499, 503, 506.

70 See above, note 44.

71 Szombathy, *Mujūn*, 15, referring to the Andalusī jurist Ibn Juzayy's (d. 741/1340), al-*Qawānīn al-fiqhīyya*, and to the Ḥanafī al-Samarqandī (d. 375/985-6), for whom a laughing or jesting judge "destroys the solemnity of the session."

72 Asma Afsaruddin, "Exegeses of 'Moderation': Negotiating the Boundaries of Pluralism and Exclusion," *The Good Society* 16 (2007): 1-9.

73 See Szombathy, *Mujūn*, 203 and n. 130: "taken together these data do seem to imply that educated people saw no contradiction between someone's being a religious scholar and his

that more than office, it was personality which determined whether someone was in favor of or against frivolity and humor, and that there was no uniform attitude among the ‘*ulamā*’ in this field, as already indicated by Roy Mottahedeh when he pointed out that the piously minded and the ‘*ulamā*’ were not identical categories.⁷⁴ Szombathy also states that “judges were often perceived, even stereotyped, as being more lenient and perhaps more susceptible to *mujūn* than other categories of religious savants.”⁷⁵ He then proceeds to give a number of examples, including a *qāḍī* of Mecca who not only did not punish a drunkard but showed sympathy for him, and the famous *qāḍī* al-Tanūkhī who indulged in wine and profligacy in the company of the vizier al-Muhallabī while maintaining proper and dignified behavior when acting as judge. Also, judges, like all others, had a past, and in their youth they could have done things that they later regretted.⁷⁶

The fact that joking and jesting were often perceived as bordering *fisq* and *mujūn*, and that a judge would have allowed neither a *fāsiq* nor a *mājin* to act as witnesses in his court,⁷⁷ implied that a judge probably tended to be careful not to expose himself so as to be included in that category. A virtue we have already encountered, *hilm*,⁷⁸ was the quality with which judges would ideally be associated: it involved “a number of moral norms and attitudes, from serene justice and moderation to forbearance and leniency, touching on self-control and dignified behaviour.”⁷⁹ As the scholar Muḥammad b. Mus‘ar reminded the judge of Basra, for God, mocking people was equal to ignorance.⁸⁰ Had He not said in the Qur’ān 49:11 “Do not let certain people scoff at others?” while a number of *ḥadīth* reports enjoined Muslims not to make fun of others.⁸¹ While in the portrayal of the judge ‘Amr b. ‘Abd Allāh there is the suggestion that he was able to share in laughing at the jokes he was exposed to, in other cases those who were the target of joking were hurt. It is through these hurt feelings and through the dangers of exaggeration in discourse that cautionary limits—more than outright rejection—suggest an explanation for the judges’ joking and to the

enjoyment of frivolous humour.”

74 Roy P. Mottahedeh, *Loyalty and Leadership in an Early Islamic Society* (Princeton: Princeton University Press, 1980), 149.

75 Szombathy, *Mujūn*, 205.

76 *Ibid.*, 206.

77 *Ibid.*, 215–27.

78 See above, note 11.

79 Charles Pellat, “Seriousness and Humour in Early Islam,” *Islamic Studies* 2 (1963): 353–62, esp. 353.

80 See above, note 42.

81 Pellat, “Seriousness and Humour in Early Islam,” 354–55.

joking of those involved in court trials. At the same time, the joking reminds the audience that the court itself was an arena where human weaknesses and even foolish behavior were exposed. For those who were not rigorists and for whom humor was acceptable as just another manifestation of human behavior, it was obvious that humor could not be expelled from such an arena, especially when it reflected a character's personality, and when awareness of its dangers was necessary.

PROOFS