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Al-Maqrīzī's Discussion of Imprisonment and Description of Jails in the *Khīṭaṭ*

Al-Maqrīzī provides his views about the penalty of incarceration and its status under Islamic law as an extended preface to his survey of jails and prisons as they existed in Miṣr/al-Qāhirah from the founding of these towns to his own day.¹ Several themes and subtexts may be discerned as one reads through al-Maqrīzī's comments. The most pointed of these is the dubious efficacy of imprisonment itself as a deterrent to criminal activity. Al-Maqrīzī's ambivalence towards the quality of governance under the Mamluk Sultanate is readily apparent from his depiction of conditions prevalent in Cairo's institutions of incarceration. As in his other works, al-Maqrīzī rarely misses an opportunity to castigate the Mamluk regime as the culprit behind most ills burdening the civil society of the Mamluk capital. Whether the sordid conditions he vividly portrays would, in fact, have differed appreciably under a regime more to his liking remains a problematic issue.

The entry on prisons is substantial. In the Būlāq edition (volume 2, p. 187), it fills two and one-quarter printed pages, with 39 lines on the full pages, 9 on the third.² The average Arabic word count per line is 14. Al-Maqrīzī begins with a statement quoted from Ibn Sīdah about the several terms and grammatical forms that derive from the two roots for incarceration: *sīn-jīm-nūn* and *ḥā'-bā'-sīn* (lines 3–6). He then relates several hadiths that express the Prophet's concept of imprisonment. Since al-Maqrīzī chose these traditions to reinforce his own views about incarceration, the section merits quoting (with omission of the praise formulas) (lines 6–27):

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¹This analysis of al-Maqrīzī's statements about imprisonment and jails in his *Khīṭaṭ* was undertaken in the context of a larger study of crime and criminal prosecution in the major cities of the Mamluk Sultanate: Cairo and Damascus. The study is based on more than 1000 incidents of crime and violence reported by prominent chroniclers of events in these cities. Al-Maqrīzī's own chronicle, *Kitāb al-Sulūk li-Ma'rifat Duwal al-Mulūk*, was examined as an important source for such incidents.

²In addition to the section on prisons, al-Maqrīzī inserted a detailed description of a site he named Sijn Yūsuf (Prison of Joseph) (volume I, p. 207). This proved to be a revered shrine, located in al-Jīzah Province, attributed to the confinement of the Prophet Joseph during his sojourn in Egypt. He allegedly received divine revelation there. The site was the object of veneration and pilgrimage during the medieval period. It had no function as a prison for criminals.

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The Imam Aḥmad and Abū Dāwūd transmitted from the hadith of Yahz ibn Ḥakīm from his father, and he from his grandfather . . . , who said that the Prophet held (a person) in custody (*ḥabasa*) under an accusation (*tuhmah*). And in the *Jāmi' al-Jalāl* of al-Suyūṭī, on the authority of Abī Hurayrah . . . who said that the Messenger of God . . . confined (*ḥabasa*) (a person) under an accusation for a day and a night. For the legal incarceration is not the prison (*sijn*) (itself) in a straitened place. Rather, he (who is under an accusation/charge) is (to be) personally restrained and prevented from independent egress unless he be in a house (*bayt*) or a *masjid*, or his agent on his behalf, and sticks close by him (*wa-mulāzimatuhu la-hu*). In this regard, the Prophet . . . named him a prisoner (*asīran*).

As Abū Dāwūd and Ibn Mājih related from al-Hurmās ibn Ḥabīb from his father . . . , who said: "I came before the Prophet with one (who was) indebted to me." And he (Prophet) said to me: "Take custody of him." Then, he (Prophet) told me: "O brother of the Banī Tamīm, what do you want me to do with your prisoner?" According to the version of Ibn Mājih, the Prophet subsequently passed by me at the end of the day. He said: "What did your prisoner commit, O brother of the Banī Tamīm?" For it was this [personal custody] that was incarceration (*ḥabs*) during the time of the Prophet. Abū Bakr . . . did not possess a prison intended for incarceration of the disputants.

But when the populace (*al-ra'īyah*) were dispersed in the time of 'Umar ibn al-Khaṭṭāb . . . , he ['Umar] bought from Ṣafwān ibn Umayyah . . . a house (*dār*) in Mecca for 4000 dirhams, and made it into a prison for incarceration. On this issue the ulama disputed as to whether the imam could establish a jail on the basis of two statements (*qawlayn*). For one said: "He who does not set up a prison bases his case on the fact that neither the Messenger of God . . . nor his successor after him established a prison. Rather, he (Prophet) would detain him in a certain place. Or, he would appoint over him a guardian. This [policy] would be called the safeguard or voucher (*al-tarsīm*). Or, he would order his debtor to stick by him. It was said to him, that he who [does] institute a prison takes his proof from the act of 'Umar ibn al-Khaṭṭāb. Thus was set the practice (*sunnah*) in the time of the Messenger of God . . . , and of Abī Bakr, 'Umar, 'Uthmān and 'Alī . . . , that one not be jailed for debts, but [rather] that the two contestants [in the suit] remain in close contact (*yatalāzimu*). The first to incarcerate for debt was

Shurayh the Judge (*al-Qādī*).

As for imprisonment as it is now, it is not sanctioned for any of the Muslims, because it crowds [too] many individuals in a place confining to them, or [a site] making impossible the performance of [either] the ablution or the prayer. [Indeed], some of them [inmates] would see the genitals of others. The summer heat [or] winter cold would afflict them. One might well be jailed for a year without any recourse, since the original cause (*aṣl*) for his incarceration was by a warrant (*‘alá ḍumān*).

When al-Maqrīzī addresses conditions in jails of his own day, he is vituperative:

As for the prisons of the prefects (*walātah*), one cannot describe the distress/misfortune (*al-balā’*) that afflicts their inmates. For it is widely known that they [prisoners] go out with aides [of the prefects] in irons. They beg for alms while they bewail their hunger in the streets. [But] whatever alms are given them they may not retain—except what enters their bellies. The charitable offerings collected for them from the people the jailer (*sajjān*) and staff of the prefect keep. He who does not please them, they punish excessively. Nonetheless, they [inmates] are employed in digging, construction, or similar hard labor. The [prefect’s] aides goad them. When they finish their labors, they are returned to the jail in irons without having eaten anything. There are many similar conditions for which space does not permit relating.

Al-Maqrīzī’s selection of traditions, and comments on contemporary circumstances of prison life, unambiguously disclose his own stand on imprisonment. If the Prophet’s actions are to be viewed as an exemplary precedent for policy, then personal supervision or recognizance is legally mandated rather than physical confinement to a building. Such confinement is, in fact, attributed to the second of the Prophet’s successors, ‘Umar, and as such should be interpreted as an innovation without legal sanction. Second, imprisonment for debt serves no purpose. Indeed, it is counterproductive. Although not explicitly stated, the presumed reason for allowing the debtor to remain unconfined, but under the recognizance of his own plaintiff, is his capacity to continue working for pay, and thus to discharge his debt. Incarceration for debt was widespread in the Mamluk Sultanate, and al-Maqrīzī denounced it as more than personally demeaning. The practice contributed to the fiscal decline of the state, over which al-Maqrīzī obsessed continuously throughout his works. At a time of labor shortages brought on by

plague mortality, the removal of debtors from the work force amounted to gross incompetence on the part of the ruling authorities. Not only would debtors be unable to reimburse their claimants, but the economy would suffer the loss of potential laborers, many of them skilled.

Finally, al-Maqrīzī fulminates over the degradation imposed on prison inmates of his own time, presumably from personal observation. Muslims, no matter the severity of their crimes, should not be treated inhumanely by fellow believers. I find al-Maqrīzī's denunciations of prevailing conditions puzzling, if not truculent. His position is not intrinsically defensible if one accepts a relationship between severity of offense and punishment inflicted. Al-Maqrīzī's subsequent discussion of Cairo's jails and prisons does not ignore the heinous acts of hardened criminals, many of whom were repeat offenders, incarcerated in those prisons with forbidding reputations. But he remains stridently insistent on the fundamental rights of Muslim believers, especially when incarcerated by their co-religionists. (Note that al-Maqrīzī does not mention the confinement of non-Muslims in this passage. In the narrative sources, including his, one encounters imprisonment of Muslims, Christians [mostly Copts, a few Europeans], and Jews frequently. 'Alawīs, Samaritans and Hindus appear infrequently.)

Al-Maqrīzī's perspective is clearly apparent when he decries the close confinement of inmates and its hindrance of their religious obligations (ablution and prayer). The exploitation of charitable giving by sympathetic onlookers on the part of prison wardens he denounces outright. One must question whether release of convicted criminals to the recognizance of their victims would warrant any serious consideration by the legal authorities as a viable means of deterrence. Al-Maqrīzī's exclusive focus on the suffering of inmates implies the primacy of his criticism for the regime that jailed them, to the subordination of realistic concern over reprisal for criminal behavior or of the public's right to safety.

Al-Maqrīzī's focus is sustained throughout his description of specific prisons (pp. 187, lines 28–39; 188, lines 7–39; 189, lines 1–8 and left margin). The Būlāq edition lists eight sites in Miṣr and al-Qāhirah designated either as a jail (*ḥabs*) or prison (*sijn*) (lines 28–30). This summary list differs from the following text, since the most prominent—and infamous—prison, al-Maqsharah, is not mentioned. It is, however, discussed in some detail below (p. 188, lines 34–39). By contrast, the jails of al-Daylam and Maydān al-Raḥbah do not appear in the text, as noted in the margin on p. 189. Al-Maqrīzī begins with the two institutions in Miṣr: the Jails of Succor (*Ḥabs al-Ma'ūnah*) and of the Salt Fish Seller (*Ḥabs al-Ṣayyār*). The former was presumably the oldest house of incarceration, its locale dating back to the founding of Miṣr al-Fuṣṭāṭ. The site was originally owned by Qays ibn Sa'd ibn 'Ibādah al-Anṣārī, who bequeathed it to the Muslim community. Over the centuries, the site was occupied by a warehouse for pepper, a police station

(*shurṭah*), a monetary exchange or customs house (*dār al-ṣarf*), a mosque residency, and finally a jail—after the year 381/991–92. Ultimately, the founder of the Ayyubid Sultanate, Ṣalāḥ al-Dīn Yūsuf, converted the jail into a madrasah, known as al-Ashrafīyah bi-Miṣr. It was functioning during al-Maqrīzī's lifetime. No reference to its inmates or their crimes appears in the text.

The Ḥabs al-Ṣayyār was set up after the Succor Jail was closed. It replaced a shop in an alley (*zuqāq*) where a repository for salted fish (*ṣīr al-mulūḥah*) had been located. The jail remained in use until the destruction of Fuṣṭāṭ after the end of the Fatimid period. Its inmates were political officials, with no reference to their offenses.

Al-Maqrīzī describes five prisons in al-Qāhirah: the Treasury of Banners [possibly, Troops] (*Khizānat al-Bunūd*), the Succor Jail (*Ḥabs al-Ma'ūnah bi-al-Qāhirah*); the Treasury of Shamā'il (*Khizānat Shamā'il*); the Maqsharah Prison; and the Pit of the Citadel (*al-Jubb bi-Qal'at al-Jabal*). Al-Maqrīzī provided background information about the original purposes of their sites and the careers of their founders. The *Khizānat al-Bunūd*, for example, was set up in the district (*khuṭṭ*) known as the Treasury of Banners, located near the Festival Gate (*Bāb al-'ūd*). Under the Fatimids, weapons were manufactured in it. It burned down in 461/1068–69, and was replaced by the prison. Amirs and civil notables were confined there until the end of the regime. The Ayyubids maintained the *Khizānat al-Bunūd* as a prison, but under al-Nāṣir Muḥammad ibn Qalāwūn it was converted into a residence (*manzil*) for Frankish officers (*al-'umarā' al-fīranj*) and their families. It was razed in the year 744/1343–44 to make room for private residences.

The *Khizānat Shamā'il* was founded by an amir of peasant origin who rose to prominence during the reign of al-Malik al-Kāmil ibn al-'Ādil. During the French siege of Dumyāt in 615/1218, this *Shamā'il* swam across the blockaded harbor of the port to alert al-Kāmil's staff about weaknesses in the enemy's lines. Al-Kāmil named him "sword of his revenge" (*sayf niqmatihī*) and rewarded him with the prefecture of Cairo, a post he held until the enthronement of al-Malik al-Ṣāliḥ Ayyūb. The latter arrested and executed him. *Shamā'il*'s prison was, according to al-Maqrīzī, "among the most heinous and ugly in appearance. Incarcerated within were those sentenced to death: habitual thieves and highwaymen, those the sultan intended to destroy among the Mamluks, and those who had committed serious crimes (*aṣḥāb al-jarā'im al-'azīmah*)." He commented wryly that "its warden (*sajjān*) was assigned to it by the prefect (*wālī*) of Cairo in return for [payment] of a certain sum of money each day. During the days of al-Nāṣir Faraj, this came to a large amount." The *Khizānat Shamā'il* continued in such vein until it was razed by Sultan al-Mu'ayyad Shaykh on Sunday 10 Rabī' I 818/18 May 1415 to make room for his madrasah and tomb adjacent to Bāb Zuwaylah.

Al-Maqrīzī dwelled on the wretched conditions prevailing in the last two

prisons he described: the Maqsharah and the Pit. To quote: "The Maqsharah is located in the vicinity of Bāb al-Futūḥ, [standing] between it and the Mosque of al-Ḥākīm. Wheat was husked (*yuqshiru*) there. Among its several structures was a tower (*burj*) on the wall to its right outside Bāb al-Futūḥ. Houses were rebuilt above it, which stood until the Khizānat Shamā'il was razed. This tower and the Maqsharah were [then] designated as a prison for hardened criminals. The houses standing there were demolished in the month of Rabī' I in the year 823/March–April 1420. It was then [opened] as a prison and the criminals were transferred to it [presumably from the Khizānat Shamā'il]. It was one of the most heinous prisons, and among the most straitening. Within it languished prisoners in the depths of depression and despair—beyond description. May God spare us from its myriad tribulations."

The Pit of the Citadel (probably a cistern originally) acquired such a gruesome reputation that it transgressed the accepted limits of the peculiar code of camaraderie among Mamluks known as *al-khushdāshīyah*. To quote:

Officers were incarcerated in it. It began operating in the year 681/1282–83. The sultan then was al-Manṣūr Qalāwūn. It continued functioning until al-Malik al-Nāṣir Muḥammad ibn Qalāwūn demolished it on Monday 17 Jumādā I, year 729/19 March 1329. This occurred because arguments for the reform of its use were intensifying. Amirs testified to its horrors of oppression, the multitude of bats, and foul odors emanating from it. Consequently, its [demolition was decided upon. The Amir Baktimur al-Sāqī had in his retinue an individual whom he had mocked and scorned. He consigned him to the Pit where he was left suspended. He then drew him back up after he had passed the night in it. When he was brought before Baktimur, he informed him of the atrocities he had seen with his own eyes in the Pit. He described terrifying acts [occurring there]. The debate became heated during the council, with amirs who had been in the Pit recounting what went on there with regard to afflictions. Baktimur [then] discussed the matter with the sultan. The latter ordered the amirs' release, and filled it in. Over it [the site] he built a barracks for the Mamluks. Debris from the demolition of the large hall adjacent to the Main Treasury was used to fill in this pit. For God knows what is proper.

Al-Maqrīzī's description of these jails emphasizes the inherent impropriety of their function, the sordidness of conditions endured by their inmates, regardless of their offenses, and, most interestingly, their transitory nature. All but the Maqsharah

had ceased operating, and had been replaced by other structures that served more positive purposes—such as private residences or places of learning. Only the Maqsharah was in operation at the time al-Maqrīzī stopped writing the *Khiṭaṭ*. My own research confirms that the Maqsharah was statistically the most frequently cited prison in Cairo up to the Ottoman conquest and possibly beyond.

To what extent al-Maqrīzī's denunciation of wretched conditions in prisons as legally unsound and morally repugnant was representative of juristic opinion remains an open question. Certainly the limited number of jails he described for a metropolis the size of Miṣr/al-Qāhirah during the Mamluk period does not imply sufficient space, even under the inmates' straitened circumstances, to confine large groups of offenders. Whether the institutions he discussed actually represented the full range of places where criminals or political prisoners were confined is also open to speculation. The motives behind al-Maqrīzī's fulmination against prisons and conditions of imprisonment therefore remain as intriguing a question as his other controversial perspectives.