Introduction

And I have made you this day a fortified city, an iron pillar, and
bronze walls against the whole land ... They will fight against you
but will not prevail

JEREMIAH 1:18

In the three-hundred and forty-third Arabian Night the Mamluk sultan al-Mālik al-Nāṣir sent for the chiefs of police of each the three urban agglomerations of late medieval Cairo: al-Qāhira, the new city within the walls, Būlāq, its riverine port district on the Nile bank, and Fustāṭ, Coptic old Cairo. Al-Mālik al-Nāṣir desired each inspector to recount the most astounding story they had encountered in the exercise of their duties. The chief inspector of Būlāq's narrative dealt with counterfeiters and deceivers, while the chief of Fustāṭ told a gruesome story about thieves and their executioners. Most significantly for the present work, al-Qāhira, the new city built by the Fatimids and the epicenter of Mamluk life, served as the backdrop for a tale about false witnesses. The inspector narrated the story of two “professional witnesses” (ar. *shuhūd ʿudūl*, or simply *ʿudūl*); upright Muslims of good reputation and sound of mind permitted by the qadi to give testimony about people and facts under his jurisdiction. It was revealed that both witnesses had been secretly leading a life of dissolute ways, indulging in the company of low women and the consumption of wine. The chief of police planned to trap the witnesses, with the complicity of the tavern- and brothel-keepers. Informed by the latter that an episode of debauchery involving the two men was taking place, the chief of police came to the brothel in disguise. With no apparent sign of alarm, the two men, together with the landlord, welcomed the police officer in and proceeded to bribe him for three hundred dinars. Tempted by the money, the chief of police accepted to cover for the two corrupt men, but only that one time. To the police inspector's horror, the following day the local qadi summoned him to appear in court, to answer to a debt of three hundred dinars claimed by the brothelkeeper. The plaintiff exhibited a written deed whereby the chief of police acknowledged the debt, a document duly certified by the two legal witnesses, who attested

to the validity of the transaction. Unable to counter this burdensome evidence, the chief of police paid the sum, and left vowing to have his revenge against the two witnesses. The story raises many questions for a contemporary reader: first of all, whether these men really did enjoy such a high reputation in their community, and why were they endowed with the privilege to testify in court. Since the paper exhibited to the qadi clearly bore no signature, why was it accepted by the court? Was the record valid just because it was supported by two “legitimate” witnesses?

This book deals with the Islamic idea that the word of honorable Muslims constitutes the proof par excellence, and that written documents and the testimony given by non-Muslims are of inferior value. According to this view, a merchant hailing from Christian Europe was at great pains to prove even the smallest claim in court, as neither his contracts nor his word were of any value if countered by Muslims. By the same token, a Frank made captive by corsairs or in a borderland attack in the Balkans was expected to prove his free condition by means of Muslim witnesses, failing which he was delivered to whosoever claimed to be his legitimate master. How, if at all, did Franks and Muslims manage to breach or circumvent what the late nineteenth-century jurist Francesco Contuzzi (1855–1925) called the “bronze wall”? This question lies at the heart of this book. In a nutshell, the present work addresses how the so-called ‘biases against non-Muslims’ were dealt with in medieval and early modern commercial litigation, in diplomatic talks and, more broadly, how discrimination based on religious affiliation could play out in the legal system. Together with the mistrust that Islamic law exhibited towards the word of non-Muslims, this work deals extensively with the chief inspector’s dilemma concerning the written deed produced against him and its legal value.

In recent years, historians have focused on the effects of these biases on Islamic societies, asking how they might have impacted Islamic economic institutions, or whether they might have fostered a shift towards a more European style of laws and courts.¹ My research deals instead with these precepts as a historical object, by attempting to understand how, in a typical Islamic

1 Important debates on the capitulatory regime, its economic significance, and issues of proof can be found in Kuran, Timur: *The Long Divergence: How Islamic Law Held Back the Middle East*, Princeton: Princeton Univ. Press, 2010, Van den Boogert, Maurits H.: *The Capitulations and the Ottoman Legal System Qadis, Consuls, and Berats in the 18th Century*, Leiden; Boston: Brill, 2005, Ergene, Boğaç A., “Evidence in Ottoman Courts: Oral and Written Documentation in Early-Modern Courts of Islamic Law”, *Journal of the American Oriental Society* 124 3 (2004), 471–491. Scholarly debates on the impact of European law and institutions revolve around the the “Jurisprudential Shift Hypothesis”: Van den Boogert, Maurits H., “Legal Reflections on the ‘Jurisprudential Shift Hypothesis’”, *Turcica* 41 (2009), 373–382, Kuran, Timur

context of legal and religious pluralism, people sought to overcome the challenges posed by these shari'a-based principles. In order to answer this fundamental question, I aim to locate, describe and historicize a change in attitude regarding diversity in Middle Eastern marketplaces and courtrooms. It should be noted, however, that my research runs parallel to two important trends in Islamic studies. The first focuses on majority-minority relations, i.e. those binding Muslims to the local Christian and Jewish populations, or dhimmīs. The second looks to Islamic jurisprudence, or *fiqh*; foreigners, in contrast with dhimmīs and Islamic sectarians, did not belong to the Islamic community and, according to jurists, had no interest in the common good, and therefore their role in the legal system was inferior. Unlike dhimmīs, they received little legal attention by Islamic Law. Rather than involve itself in these two dominant research subjects in Islamic studies, this book turns instead to a practical, historical reality that has largely passed under the radar in the scholarly debate. The restriction of proof to the testimony of Muslim witnesses, as well as the denial of validity for written records has been attested since the first century of the *hijra*. Caliph Yazīd b. 'Abd al-Mālik (ruled 720–723), is credited for banning unbelievers to testify for or against Muslims, a measure qualified by a Syrian chronicler as the *starting point of these perverted laws*.²

These attitudes have been presented by researchers as characteristic of the Islamic legal system, surfacing in legal discourse around the second half of the second century,³ even though the Qur'ān itself does not express any reserves about the drafting of documents and the use, if necessary, of unbelievers as witnesses. These biases have accompanied Islamic societies through the ages and, although some claim they weakened in late modern times, descriptions of Muslim testimony superseding that of Christians and Jews can be found

and Scott Lustig, "Structural Inefficiencies of Islamic Courts: Ottoman Justice and Its Implications for Modern Economic Life", ERID Working Paper Number 52 (2010), 1–35, Çizakça, Murat and Macit Kenanoğlu: "Ottoman Merchants and the Jurisprudential Shift Hypothesis", in: *Merchants in the Ottoman Empire*, Edited by S. Faroqhi and Gilles Veinstein, 195–213. Paris-Louvain-Dudley, MA: Peeters, 2008, Çizakça, Murat, "Was Shari'ah indeed the culprit?", MPRA Paper 22865, University Library of Munich, Germany (2010).

2 "Il prescrivit aussi qu'on ne récut point le témoignage d'un Syrien contre un Arabe. Il fixa le prix [du sang] d'un Arabe a douze mille [dinars] et celui d'un Syrien a six mille. C'est là l'origine de ces lois perverses", *Chronique de Denys de Tell-Mahré: quatrième partie*, edited by Jean Baptiste Chabot. Vol. 1, Paris: É. Bouillon, 1895, Tillier, Mathieu, "Califes, émirs et cadis: le droit califal et l'articulation de l'autorité judiciaire à l'époque umayyade", *Bulletin d'Etudes Orientales*, 63 (2014), 147–190.

3 Hurvitz, Nimrod: "Legal Doctrines, Historical Contexts And Moral Visions: The Case Of Sectarians in The Courts Of Law", in: *The Islamic Scholarly Tradition*, 239–264: Brill, 2011.

even in late-Ottoman, nineteenth-century court practice. Indeed, the impact of these prejudices was not uniquely confined to courts of law. It soon extended to the notarial practice and in customs houses, and had become a cumbersome presence at the Ottoman Imperial Council, where diplomatic talks were held. These legal features were instrumental in shaping specific institutions, artifacts and procedures, and in deepening the legal divide vis-à-vis their Latin Christian counterparts—a divide that became its most pronounced in the late Middle Ages. Islamic archives, if they existed at all, may have looked very different from European ones, as did notaries, their registers, and the way proof was advanced in court. At the end of this period, the divide generated artifacts such as the notarial register in the West, and scrolls up to ten meters long in the Islamic world.

Not all scholars focus solely on jurisprudence, and indeed recent works have looked at how the intricacies of witnessing, proof and evidence have affected the daily practice of justice and the drafting of documents. Despite their undisputed erudition, however, they depart from the chaotic legal world of the Mediterranean port cities addressed in the present work, and, one could argue, describe societies that seem to be inhabited exclusively by qadis. My aim here is to undertake a historical survey of how cross-confessional relations could be affected by these two important features of the Islamic legal system.

Although historical in nature, this work is concerned with the handling of legal principles and ideas by the users of the legal system, often lower-rank users, rather than presenting salient facts in the political history. Yet it aims at contributing to a better understanding of the transition from medieval ways to deal with diversity and unbelief to those common in the Early-Modern Mediterranean. The core facts discussed in the present research extend from the decade of 1350s, when Arab authors became more talkative about the legal affairs of foreigners, and when Venetians felt the need to dispatch their own Latin notaries to Syria and Egypt, hence welcoming the region into the Latin archival *Ecumene*. The main narrative becomes thicker between the years 1390s and 1440s, due to the impulse for governance changes by sultans such as al-Zāhir Barqūq (1382–1389 and 1390–1399), al-Muʿayyad Shaykh (1412–21) and al-Ashraf Barsbāy (1422–1438), as well as to heftier collections of notarial deeds in Venice's archives than those preserved for the second half of the 15th century. The core narrative ends with the scrutiny of the correspondences sent by Venetian diplomats in Istanbul between the 1480s and the 1550s. The Mamluk sultanate was embedded in both the spice and silk routes and hosted an unprecedented number of foreign merchants, often non-Muslims, ranging from Malacca and Ceylon to France and the Iberian peninsula in the

West.⁴ The Arab regions I scrutinize in this work hosted their own scholarly circles and legal institutions, and a tradition of dealing with Franks going back in time to Crusader and Byzantine periods (this precedent, eventually, will justify some breaches in the chronology). The Circassian Sultans (a branch of the Mamluk dynasty that ruled Egypt and Syria between 1382 and 1517) and their forerunners in the mid-fourteenth century, such as al-Nāṣir Muḥammad Ibn Qalāwūn (d. 1341) and his household, modelled a system by which communities were granted full legal coverage, starting from their very presence in the Islamic realm to the legal nature of their activities and the resolution of their eventual disputes. As we will see, one of the features that emerged in the mid-fourteenth century was that mixed disputes, this is, those involving at least a Muslim party, needed to be heard by an Islamic judge and not by a consul or by any other Frankish magistrate. Under the great sultans al-Ashraf Qāytbāy (1468–1496) and Qānṣūh al-Ghawrī (1501–1516), as well as under 16th-century Ottoman rulers, the supremacy of Islamic law in governing cross-confessional disputes was never discussed. Yet in 1625 a Venetian consul in Alexandria sent a report to the Doge on the current state of affairs during his tenure in office. The consul noted how, after centuries of Venetian presence in the country, the spice trade had almost abandoned Egypt, to the benefit of the new transoceanic routes. Most striking is a passage devoted to justice, where the consul assures “to your Most Serene prince that since these peoples hold the consul’s justice in such high esteem, often the Turks and Moors of the country, in mixed cases (*nelle cause miste*), while being able to benefit from the justice of the cadis, bring their disputes before my justice, with the other Frankish nations, as they do with the French, whose consul enjoys great reputation”.⁵ By depicting a scenario where the supremacy of sharī’a is no longer observed, the *relazione* sets a *terminus ante quem*. Whether the Consul is exaggerating the Muslims’ confidence in Frankish justice we do not know, but it is fair to say that by that time the Mediterranean addressed by the present work was long gone.

Needless to say, sketchy, oversimplified view of the biases’ role in Islamic history have been challenged on several fronts, starting with the work of the

4 Apellániz, F. (2016). “News on the Bulaq: a Mamluk-Venetian Memorandum on Asian Trade, AD 1503.” EUI Working Paper HEC 2016/01.

5 “e prometto a Vostra Serenità esser appresso quelle genti tanto in stima la giustitia del console, che molte volte li turchi et mori del paese, nelle cause miste, che potevano valersi della giustitia delli giudici, et cadì, venivano alla mia giustitia, et volevano da me esser giudicati con le altre nation franche, et in particolare con la francese, che ha console di molta reputatione”, Venice, Biblioteca Correr (hereinafter BC), Manoscritti Provenienza Diversa, C 306.

great legal historian Emile Tyan, who long argued that some schools of jurisprudence, such as the Mālikī, were more open to the use of written documents, and that in places where the school was hegemonic this attitude could have modeled court practices. Papyrologists and other specialists in Islamic documents have difficulty accepting the idea that, since documents had no *per se* legal value, Islamic societies did not rely on records as much as their Western counterparts did. Since archives hosting judicial and legal records do not seem to have survived for the Middle Ages, a growing number of researchers have been brandishing extant, fragmentary collections of written artifacts so as to refute the alleged inferiority of Muslims as regards writing and documentation. Chapter Two deals with this highly controversial issue, which has taken center-stage in Islamic studies, and weighs in by arguing that although a proper archival logic nearly emerged under the Ottomans, it certainly did not appear before then.

A privileged locus in the discussion is the judicial archive—the qadi's *diwān*—since major scholars such as Wael B. Hallaq argue it has always existed in Islamic societies. Research on medieval judicial documents is now claiming that documents were far more important than previously believed, and that they were systematically preserved by Muslims. Specialists of legal practice and of the functioning of qadi courts have sought to challenge a long-standing assumption: that medieval Islamic law was characterized by the strain placed by the demands of practical life on doctrine. Traditionally, in the absence of judicial archives for the Middle Ages, scholars have presented Islamic medieval law as purely theoretical, and fundamentally divergent from actual practice, a divide only narrowed under the Ottomans, with their pragmatic approach to lawmaking.⁶ In the case of both the Mamluk and Ottoman legal systems, authors have felt the need to dispute the established idea that *sharī'a* was a formalistic, idealistic and skeptical system that mistrusted the human capacity to attain the truth, and that therefore its precepts were not followed in practice. Recently, the work carried out on a judicial collection found in Jerusalem has helped to challenge this view, dwelling on the sophisticated procedures used by qadis to comply with the demands of *sharī'a*, particularly as regards the complex validation procedures found in Mamluk documents. However, these works' high degree of technical sophistication and their restriction to court procedure does not help historians to make sense of daily transactions with unbelievers. Similarly, researchers

6 Schacht, Joseph, *An introduction to Islamic law*, Oxford-New York, Clarendon Press, 1982, 76–85.

dealing with Ottoman judicial archives tend to conflate actual practice with works of jurisprudence, hence building the image of a legal empire whose jurists dedicated great effort to making the sultan's decrees compatible with *sharī'a*. My book does not concern itself with the technical solutions found by the qadis to make documents valid as bearers of truth, nor with the vexing question of whether or not practice followed *sharī'a* doctrine. However, it does dwell on these works' findings, which point for example to the Ottoman invention of the register—or *sicil*—a landmark in Islamic history, since without it historians would have no archives to investigate. I am much indebted to the contributions of Reem Meshal, in which she suggests there was an important change in attitude towards writing and documentation in the 16th century, which brought about the invention of the archive, and heralded a totally new approach by common people to documents and courts of justice. A great deal of attention will be paid to the scribes and notaries of the various confessions, to the artifacts they produced, and to the problems encountered by witnesses, either before the judges or simply when attesting to the validity of transactions in the marketplace.

This book is concerned with the actors and practices that have often passed under the radar of traditional scholarship on Islamic law. Much attention will be dedicated to the lowest layer of the legal profession: the notaries. Unlike their European counterparts, Islamic notaries have garnered little interest. Lisān al-Dīn Ibn al-Khaṭīb (1313–74) a secretary from Islamic Granada, described Islamic witnesses as materialistic men of ill-repute who could be found hanging around the markets.⁷ According to him, they passed themselves off as versed in law and in the drafting of contracts, often posing at the door of their workshop in the market surrounded by law books, in a calculated display of legal mastery. As in the case of the witnesses' story from the Nights, it takes some effort for the contemporary reader to understand the logic behind some of these episodes reported by Arab chroniclers. Ibn al-Khaṭīb describes notaries showing up at lunchtime at their clients' houses, and the latter feeling obliged to make room at their table for the scribes. Yet if they did not trust a particular clerk, due to his ignorance of the law or a reputation of dishonesty, why did clients not simply go to the next notary workshop in the street? As in any other aspect of daily life, *sharī'a* law is entrusted to implement a normativity stemming from Islam as a religion. Notaries were nominated by a qadi, who acknowledged his qualities as a probative and trustworthy witness; thus there

7 Turki, Abdelmagid, "Lisan al-Din Ibn al-Khatib (713–76/1313–74), juriste d'après son oeuvre inédite: *Muthla l-Tariqa fi dhamm al-wathiqa*", *Arabica* 16 (1969), 155–211 and 279–312.

was no official investiture or any requirement to follow a professional curriculum. The tension between the Islamic notaries and their clients resided in the fact that the former's appointment depended upon local qadis, which meant that the chances of actually choosing a notary were in fact fairly limited. Unlike Muslim 'udūl, Latin notaries were to be blamed for lying and committing perjury at court, but overall for their capacity to forge notary deeds. This was the main accusation against Ser Cepparello da Prato, the famous character by Ibn al Khaṭīb's contemporary Giovanni Boccaccio (1313–75) *perhaps the worst man that ever was born*, and who tried to cheat God almighty in his deathbed confession.⁸

The kind of legal issues that this book looks into was rarely commented upon by Arab authors; they did not deem it necessary to detail the risks associated with notaries and documents, and as in the story of the Cairo chief of police, it is often difficult to grasp the underlying mechanisms behind some of these episodes. Alongside harsh criticism, favorable portrayals of notaries abound, and indeed descriptions of virtue are often the best way to understand, by contrast, censurable attitudes. For example, Arab authors describe honorable notaries who refused women or dhimmīs the right to enter their workshops as clients. Considered to be socially weak, and whose word was legally inferior in court, it was implied that the latter could be blackmailed by corrupt 'udūl, and therefore that accepting their legal business could be harmful to a scribe's reputation. Ṭūlūn (1485?–1546) tells the story of Khitāb Ibn 'Umar al-Shuwaykī, a honorable man who for reasons initially unknown fell progressively ill, ending up in a *maristān*, or hospital, in the Šālīhiyya neighborhood of Damascus. Upon leaving the hospital he stopped at a shop and bought a length of rope for half a dirham, with which he subsequently hung himself. Ibn Ṭūlūn briefly comments on the motivations behind al-Shuwaykī's desperate act: he saw himself in the position of having to handle his wife's estate during her absence for a pilgrimage to Mecca. Indeed, after his suicide, it was found that a deposit (*wadī'a*) of four hundred and thirty gold dinars had been made to a religious institution. In light of the abundant criticism against notaries by chroniclers, one would expect Ibn Ṭūlūn to conclude that al-Shuwaykī had been a victim of dishonest notaries. Instead, he informs us that one of the madrasa's staff refused to keep the money without the acknowledgement of witnesses. Ibn Ṭūlūn is implying that new, supplementary testimony of the deposit needed to be given, and that a new deed must have been drawn up. This situation would have never occurred in Latin Europe,

8 The Decameron, by Giovanni Boccaccio, translated by J. M. Rigg, Day 1, Tale 1.

where a valid, original deed would have been kept by a notary at the disposal of the right holders.⁹

Another fundamental problem is the immaterial product of the notary's work. Unlike in the West, in the Islamic world, and particularly from the tenth century, witnessing services were divided into two steps. In the first step, testimony of a given fact was taken by a notary-witness (*taḥammul al-shahāda*). The second step implied the performance of witnesses before a judge (*adā' al-shahāda*). In general, in this second step the notary and other witnesses (usually two) gave oral testimony for the transaction. Some people were enabled by the judge to take on these services on behalf of the community, and came to be known as professional notaries, 'reputable witnesses' (*shuhūd 'udūl*, hereinafter simply 'udūl), or notary-witnesses (who Ibn al-Khaṭīb sarcastically describes for the case of Granada). Although the qadi, as a result of this second step, did sometimes produce some paperwork for his own use, the task of the 'udūl was in substance limited to witnessing and subsequently giving oral testimony. The 'udūl therefore, although they delivered a written deed to the parties as an aide-memoire, were not clerks charged with the keeping of original—or 'authentic,' as they are called in Western notarial jargon—documents in case one of the parties lost the copy. The fact that they did not file 'originals' in a ledger or casebook puzzled Latin merchants. Ultimately, clients resorted to the 'udūl because the latter were authorized by the local judge to act as depositaries of the truth, which implies that it was difficult to ensure the validity of a legal business, ranging from property to family and probate issues, without the notary's consensus, and eventually that of the witnesses accompanying him. To put it plainly, in late medieval times, people needed notaries in order to enjoy and maintain their actual rights, and it was for this reason that from time to time they welcomed the notary at their table.

European notaries have been celebrated as a unique feature of Western society, thanks to their capacity to confer legal validity to peoples' agreements and transactions. They were able to bestow public faith on the deeds they drew up, by virtue of their investiture by legitimate powers, such as the Emperor or the Pope. Islamic notaries, on the other hand, do not benefit from this triumphal view of institutional history, and the 'udūl's capacity to produce documents endowed with legal validity was far more limited. It is these conflicting views about the notarial institution that I will be discussing in this book. I will be targeting the assumption that the Islamic approach to notarization

9 Ibn Ṭūlūn, Shams al-Dīn Muḥammad Ibn 'Alī (1485?-1546): *Mufākahat al-Khillān fi Hawādith al-Zamān*, Edited by Khalīl al-Manṣūr, Beirut: Dār al-Kutub al-'Ilmiyah, 1998, 193.

was fundamentally different from the Western one, cast from classical models and Roman law. According to this assumption, the features characterizing the labor of the 'udūl stem from a religious normativity hailing from Islam as a religion, such as its formalistic principle that only good Muslims can be bearers of truth. Western notaries would have dwelt, instead, upon the old Roman practice of granting public faith to notarial deeds.

Siyāsa justice is another practice that has gone fundamentally unnoticed. Shari'a law can be described as a series of divine commandments to the community of believers, an abstract and general notion that historians of Islamic law increasingly refer to as the 'rule of law.' Shari'a as a legal ideal differs then from positive law; i.e. the trove of commentaries found in works of jurisprudence (*fiqh*). It is generally agreed that shari'a was applied by the Mamluks, together with most medieval sultanates, in two parallel, well-defined areas of jurisdiction. The first court level was run by qadis under the supervision of the four chief justices of the *madhhabs*, or legal schools. Their decisions could be appealed at a second, superior jurisdiction, which came in the form of 'royal courts' presided over by sultans and officials. Under the late Mamluks, these special courts gained in importance, leading to the development of a parallel judiciary that was perceived by many as competing with the traditional qadi courts. Several Arabic terms were used to denote the different manifestations of royal jurisdiction, such as *mazālim* and *Siyāsa*, however all were grounded in the same legal doctrines. Scholars have traditionally sought to understand these special jurisdictions and in which ways they corresponded with Islamic law. Since the time of the Abbasid Caliphate, jurists have composed works of jurisprudence dealing with governors' responsibilities in the application of justice; these theories are known as *mazālim* (plural of *mazlīm*, "oppression" and shortened form for *al-naẓar fī-l-mazālim*, the investigation of "injustices") and *Siyāsa*, an abbreviation for *al-Siyāsa al-Shar'iyya*, denoting *governance in accordance with Islamic law*. *Mazālim* indeed evokes the idea of the 'wrongdoings' committed by administrators, while the etymology of *Siyāsa* carries notions of behavior, public or self-conduct deriving from a primary meaning of the *tending or training* (of beasts).

As a branch of jurisprudence, some eleventh-century authors began to address the role of officials in criminal investigations and the loose procedural methods (in contrast with those adopted by the qadis) that they were supposed to follow, such as torture, or drawing conclusions from circumstantial, non-testimonial, evidence. In the late Middle Ages some mālikīs composed works that sought to furnish the qadi with the efficacy of police methods, and later, *Siyāsa* became a topic of debate for ḥanafī and ḥanbalī authors dealing more broadly with the "political" jurisdiction of judges. Some of these works

are over a thousand pages long, developing *Siyāsa* into an exercise in legal reasoning that covered the entire sphere of public policies and regulations. Large sections of the work *al-Ṭuruq al-ḥukmīya fī al-Siyāsa al-sharʿīyya* by Ibn Qayyim al-Jawzīyah (1292–1350) are devoted to proof and procedure, although it also covers a broad range of other topics, from gender to minority issues and market behavior.¹⁰ It should be noted that the aim of early jurists was to provide qadis with the more efficient resources that governors and officials already disposed of. However, the division of labor that eventually emerged saw Mamluk and Ottoman qadis confined to the traditional regime of proof, and the arbitration of disputes brought to them by the parties, while officials were in charge of conducting investigations and preventing crime in a more expedite manner. *Siyāsa* will be one of the primary concerns of this book, since over a century prior to the Ottoman conquest, *Siyāsa* judges had begun passing verdict over foreign merchants. As a forum for mixed cases (that is, cases involving Muslims and foreigners hailing from outside the abode of Islam, which therefore could not be resolved autonomously by the community in question), *Siyāsa* trials have gone largely unnoticed because they did not correspond to either of the two approaches mentioned earlier, focusing, respectively, on dhimmīs and traditional jurisprudence. On the one hand, *Siyāsa* justice was not delivered by the qadis, but by Mamluk officials and secretaries. On the other, *maẓālim* has traditionally been understood as justice delivered by the sultans or caliphs at tribunals located in their palaces. *Siyāsa* as a forum where Frankish merchants were judged has left no material traces on Islamic sources, let alone a series of proper court proceedings. Although in principle, it is agreed that Mamluk *Siyāsa* was inspired by a specific branch of jurisprudence, and that it respected the general rule of law, legal scholars have often approached *Siyāsa* with suspicion, seeing it as a chaotic and contingent discipline deprived of the legal rectitude applied by qadis to their court decisions.

The *Siyāsa* judges share their murkiness with other important actors of the legal system, the Islamic and Latin notaries, the latter subject to Frankish jurisdictions but nonetheless involved in the Middle Eastern cities of commerce. This book seeks not only to reveal the role of actors who have been largely overlooked until now, but also to focus on the forgotten subjects of the legal system; namely, foreigners. Foreignness was equally cast in Islamic legal categories. The foreigners I am addressing in the present work were mostly referred to by the historical sources as *mustāʾminūn* (hereinafter *mustāʾmins*, or *müstemins*

10 Ibn Qayyim al-Jawzīyah, Muḥammad Ibn Abī Bakr (1292–1350), *al-Ṭuruq al-ḥukmīyah fī al-siyāsah al-sharʿīyah* (Mecca, 1428 h).

in the Turkish spelling). A *mustā'min* was a legal foreigner, in contrast with a political enemy (*ifrānj, franjī*), disbelievers hailing from beyond the borders of Islam (*ḥarbīs*) the juridical unbeliever (*kāfir*) and Muslims hailing from distant countries (*gharīb*). Foreigners have been overshadowed by local minorities, or dhimmīs, in the cultural and historical narrative of the Middle East, to a point that is indeed embarrassing, when we consider that Islamic jurists devoted so few lines to the legal status of foreigners. *Mustā'min* is a notion derived from legal theories of hospitality. According to *sharī'a*, unbelievers hailing from outside the realm of Islam should be fought by means of *jihād*. However, there are exceptions to this general rule, including foreigners belonging to diplomatic missions, passing pilgrims belonging to the scriptural religions, or merchants residing in the Islamic polity for a limited period. Ideally, these three groups were granted permission to remain in the realm of Islam upon concession of a safe-conduct, or *amān* (whence *mustā'mins*, or *amān-grantees*). I will refer in many places to these treaties, and to equivalents such as the Ottoman *ahd-names* (from Arabic *'ahd*, a covenant between Muslims and unbelievers). The Sienese traveler, merchant and biographer of Tamerlane, Beltramo Mignaneli, in a letter to Francesco di Marco Datini, described his surprise on seeing such large numbers of foreign merchants in 1390s Damascus, and on observing their inclination towards illicit behavior.¹¹ And yet in spite of this strong presence, Mamluk history, a discipline mainly concerned with the Islamic elites as represented by the religious learned—the *ulama*—has relegated them to the field of economic history. In contrast with later periods, little has been written about foreigners and their legal and cultural vicissitudes in the pre-modern Middle East.

We know today that dhimmīs frequently appealed to Islamic courts and institutions in their quest for fair justice. Studies ranging from the Geniza period to late-Ottoman times show that dhimmī communities did not represent a legal challenge to the Islamic enterprise of governance. Communal courts and laws were granted broad jurisdiction over internal affairs and family law, yet in spite of occasional unwritten bans by their clergy, dhimmīs showed up at the qadi court and generally managed to cope with the Islamic 'witness system.' Foreigners, and more precisely European foreigners, differed from dhimmīs because their presence in the Muslim polity posed a challenge to Islamic law and governance. Mamluk authors such as Taqī al-Dīn al-Subkī (1284–1355), well

11 "qui sono poche spezie con saraini e tute in grande inchiesta e carestia salvo pepe e ogni di per montare ogni cosa fino aldiciembre pero che ora qui trovara tra catelani et genovesi e con veneziani piu cristiani ci fusono 25 anni ...", ASPo, Datini, *Fondaco di Barcellona*, Damascus, August 2th, 1395, received September 30th, 1395.

known for his interest in dhimmīs, also concerned themselves with the presence of foreigners, questioning whether they belonged to the regular jurisdiction of the qadis or if, on the contrary, they fell within that of the sultan and his amān and trading policies. Franks entered the Islamic polity for trading purposes, but according to most jurists they could neither give testimony against Muslims nor against local Christians and Jews. Foreign and local unbelievers did not belong to the same community and therefore, it was argued, would naturally target each other in court. The very presence of unbelievers impinged on governance, as well as on legal and procedural issues, and contributed to the implementation of Siyāsa courts, an exclusively Mamluk feature.

Although the historiography has little to say about the normative dimension of foreignness, amān theory and practice has garnered a great deal of attention. Amān theory most often materialized in legal acts generally referred to as ‘treaties of commerce,’ which stipulated the definitions and norms concerning these foreign merchants and communities. However, it has long been a sticking-point for researchers, seen as an erratic discipline in which shari’a norms were more often than not disregarded.¹² Attempts by rulers to accommodate for the presence of unbelievers in the Islamic polity, it is argued, were generally at odds with a strict application of *fiqh*. In the present work, I take an approach closer to legal anthropology than to that of jurists; I will be discussing some of these inconsistencies, such as the acceptance of written documents, the Europeans’ right to circumvent the jurisdiction of the qadis or, later, to use contracts against the word of Muslim witnesses. As Michael A. Köhler has put it, treaties were signed by common people and not by jurists, and in the same manner not everyone in society was a qadi concerned with the principles of Islamic law.¹³ Doctrinal restrictions impinged on the status of foreigners, yet they never managed to hamper diplomatic cooperation; for this reason, I will not attempt to answer the vexing question of whether amān and similar practices were actually compliant with shari’a or not.

12 Gourdin, Philippe: “Les marchands étrangers ont-ils un statut de dhimmi?”, in: *Migrations et diasporas méditerranéennes (Xe-XVIe)*, Edited by M. Balard and A. Ducellier, 435–446. Paris: Publications de la Sorbonne, 2002, Frantz-Murphy, Gladys, “Identity and Security in the Mediterranean World ca. AD 640—ca. 1517”, *Proceedings of the Twenty-Fifth International Congress of Papyrology, Ann Arbor 2007* (2010): 253–264, Wansbrough, John, “The Safe-Conduct in Muslim Chancery Practice”, *Bulletin of the School of Oriental and African Studies* 34.1 (1971), 20–35.

13 Köhler, Michael A., *Alliances and treaties between Frankish and Muslim rulers in the Middle East: cross-cultural diplomacy in the period of the Crusades*, edited by P. M. Holt and Konrad Hirschler, Cross-cultural diplomacy in the period of the Crusades, Leiden-Boston: Brill, 2013, 293–4.

Historians have long been fascinated by these sophisticated documents, but they have approached them more as diplomatic artifacts than as historical sources, a fascination that has extended to treating diplomacy as an elite practice. In this work, I aim to put these artifacts in context and historicize the norms they expressed about adjudication, notarization and cross-confessional relations, which, among other things, refer to *Siyāsa* as a jurisdiction. Specialists of Mamluk studies often claim that *Siyāsa* justice was to all intents and purposes equal to *maẓālim* practice, however Mamluk treaties insisted on the right to use local *Siyāsa* forums for mixed cases, and discouraged recourse to the traditional *maẓālim* hearings in Cairo. Through a historical approach to *amān*, I aim to identify the piecemeal, yet significant changes in the ways in which foreigners were dealt with in legal relations, towards the end of the Middle Ages. Medieval *amān* treaties, I argue, tended to limit the effects of any bias against non-Muslims, setting most issues within a technical-legal framework where a common solution could be found. In the 16th century, the Ottomans introduced rules and discourses regarding the relations between *dhimmīs* and *mustā'mins* in their *amāns* and decrees, as well as exceptions and amendments to *sharī'a* procedures that were not to the jurists' taste. Contrary to medieval practice, which granted foreigners with some procedural privileges, such the right to bring their case to specific courts, the Ottoman *ahdnames* concentrated all jurisdiction back into the hands of the *qadis*, and sponsored a purified version of the *maẓālim*, royal justice. After the Ottoman conquest of the Arab lands in 1516–1517, these biases against non-Muslim witnesses began to take a heavy toll, not only in commercial litigation, but in all sorts of cross-confessional relations.

By looking at the way notaries, archivists, judges and diplomats dealt with unbelief, my initial concern has been to seek explanations for the divergent practices that were used in the production and preservation of proof, as well as the mechanisms involved in governing cross-confessional relations and exchanges, ranging from the taking of oaths to the choice of a forum for mixed trials. Throughout the book, I will examine how court and market practices were affected, one way or another, by the application of the religious biases. Some of these practices—such as archival artifacts or notarial work—changed over the timespan covered here. Different practices echoed divergent notions of proof, something that often puzzled visiting merchants—as was the case for a Genoese merchant who found himself in the uncomfortable position of having to explain to a Latin notary that his Muslim colleagues had not deigned to keep the originals of the deeds proving a transaction. Ultimately, though, I am less interested in seeking explanations than in discovering the meaning behind such practices, and in particular in understanding the significance they

might have had for Islamic governance. Behind issues of notarization, archives and court practice, I identify an important change in the way in which cross-confessional relations were handled by Muslim polities. To this aim, I first describe a process whereby Islamic societies refashioned their approach to written documents, progressively adopting what I define as new attitudes towards the written. To be sure, by the end of this process, written documents were being used and produced more freely than in previous centuries, and inspired more confidence than they had previously, for both administrators and common people. Legal records in particular, such as notarized deeds, granted many hitherto-silent actors the right to prove, enjoy and preserve specific rights over the long-term. Together with former slaves, women and dhimmīs, Franks benefitted from this trend. Parallel to this tendency leading up to the development of proper judicial archives in Ottoman times, I will be streamlining a broader process whereby rulers and their secretaries began embracing documents—and in particular archived documents—as part and parcel of the language of governance.

Major trends in adjudication, obligation, and changes in attitude towards written evidence had a direct impact on the conduct of trade between Latins and other confessions. For centuries, several scribal institutions had coexisted in the Middle Eastern marketplace. This is epitomized by the practice, probably in place since the 1340s, of dispatching a Venetian scribe to Alexandria and Damascus; based on the descriptions of legal practice provided by these Venetian clerks, I argue that Latin notaries did not only serve the interests of their consuls and their fellow nationals, but that their deeds were also used by or against Muslims, and that they could, on occasion, put themselves at the disposal of Islamic judges. Italian notaries and Islamic *ʿudūl* crossed paths in the marketplace, and their deeds mutually acknowledged the binding character of those issued by their colleagues. The Medieval scenario of legal relations and collaboration I describe in this book faded towards the 16th-century Mediterranean when, paradoxically, people involved in mixed dealings increasingly relied on writing and documentation—although by that time such documents were for the most part contracts notarized at the qadi courts.

One could argue that consulates continued to exist in early modern times, particularly under the Ottoman aegis, with their panoply of commercial courts and chanceries. Although I acknowledge the importance of Latin institutions such as the Venetian Bailo of Constantinople in the closing section of this book, the present work is more concerned with depicting the end of a medieval state of affairs, where everyone in the marketplace was aware of each other's institutions and acted accordingly, using all available devices to resolve and prevent cross-confessional disputes. In practice, the solution often implied ample

recourse to technicalities. Under the Mamluks, the marketplace witnessed the labor of bilingual courtiers, customs officers acting as judges, and one could encounter a Venetian clerk intervening in the taking of oaths by Franks before a Muslim qadi. Mamluk emirs passed verdicts technically compliant with *sharīʿa*, however in practice they took a loose approach to the religious standards of evidence and unbelief. The Ottomans, in contrast, endowed the qadi with a jurisdictional monopoly over foreigners in their daily exchanges, making it compulsory to notarize contracts at the courthouse. Unlike in medieval times, the Ottoman enterprise of governance found a direct expression in the proliferation of Islamic contracts and records binding Europeans and Ottoman subjects together.

Together with the benches and courtrooms where Islamic judges sat in justice, the Middle Eastern archive is a key locus for the transformation I analyze here. As a point of departure, I argue that late medieval rulers do not seem to have attributed a specific role to the archive in the enterprise of governance. In this, such research goes against the grain of current scholarship on Islamic documentary studies, which claim that both caliphs and sultans made efforts to preserve the state and court records used in daily life. Scholars have taken recent discoveries of document collections as cues for the existence of Islamic judicial archives, adopting an apologetic tone when trying to explain the non-survival of these archives and collections. If the birth of the judicial archive under the Ottomans is accepted by at least some scholars, much more controversial is the idea that medieval sultans had recourse to documents and archives to a lesser degree than their Western counterparts. In this book I will be discussing current approaches to this debate, arguing that it was not until the Ottoman era that Islamic chanceries and secretaries began to adopt a conservative approach to written records.

In a recent article, a leading scholar in the field of Islamic legal practice, Christian Müller, has suggested that the Middle Ages saw an important shift in attitudes towards witnessing, the basic notarial activity. He argues that, while at first the nature of witnessing remained fundamentally oral, and papers acted simply as aide-memoirs, towards the 10th century a new, 'two-step notarization' pattern emerged.¹⁴ Similarly, although he does not provide the smoking gun, he suggests that the burdensome procedures adopted to keep documents alive were slightly, although significantly, altered during the Mamluk period. This meant that after witnesses had given testimony in court, written

14 Müller, Christian: "The Power of the Pen: Cadis and their Archives in Medieval Islam", in: *Manuscripts and Archives: Comparative Views on Record-Keeping*, edited by Alessandro Bausi, De Gruyter, 2018, 361–385.

aide-memoires were kept by the qadi, who, by applying special certification procedures (tasjil), could keep these documents alive, at least during his own tenure. Although in practice, mistrust towards writing pervaded legal theory, Müller points towards a wider acceptance of the archived document in the late Mamluk period. Together with storage places and practices such as the ‘two-step notarization,’ artifacts played an important role in this transformation. In Chapter Two, I sketch out the subtle mutation of scribal artifacts, from the medieval scroll to the Ottoman ledger, a feature that proved to be fundamental to the early modern approach to preservation.

Historians dealing with the Mamluk-Ottoman transition have provided a similar, essential contribution to our understanding of the change in attitude towards written proof. An inquiry into the dispersion of the Mamluk archives by Nicolas Michel has been instrumental in showing a significant change in attitude towards the validity of written documents.¹⁵ In medieval sultanates, the possibility for a government document to be accepted as authoritative was contingent on the person who had been entrusted with its production and safekeeping: the secretary, in whose house these collections were kept. In contrast, Ottoman rulers began to view the archive as a form and manifestation of their own governance and jurisdiction. The Ottoman sultans, therefore—under compelling circumstances related to conquest and taxation, needless to say—took records out of the hands of secretaries and handed them over to archivists instead. Michel’s detailed investigation of the whereabouts of Mamluk archives during the turmoil of Ottoman conquest is a striking blow to the theory that archives did not survive due to fortuitous contingencies. Perhaps because the Arab provinces represent a privileged vantage-point for observing legal change, it is historians of early Ottoman Egypt who have most clearly identified this transition to a more impersonal framework in the field of notarization. Reem Meshal has pointed to a fundamental shift that engendered the “mass-production of *ḥujjas*” for the very first time in Islamic societies. As a result, not only were government records now stored and put at the disposal of rulers, but notarial records (Ar. *ḥujja*, Tr. *hüccet*), now produced mostly by judges, found their way into court archives and were no longer the oral prerogative of the ‘udül.

While I elaborate on the findings of authors that have furthered the debate on the Islamic judicial archive, I do not vouch for the idea of a teleological race for the Western-like use of documents. The increasing value attributed to

15 Michel, Nicolas: “Les Circassiens avaient brûlé les registres”, in: *La Conquête ottomane de l’Égypte en 1517*, Edited by Benjamin Lellouch, 225–268: Brill, 2012.

archived documents in the Middle East did not materialize as a bureaucratic tendency to control foreign presence and to deal with religious difference. Indeed, I will be addressing how these changes ran parallel to a rigid adherence to basic shari'a principles, such as the discrimination of some witnesses on religious grounds. The Ottomans relied on writing and archives to a hitherto unknown extent, but at the same time exhibited an adherence to Islamic normativity to an equally unprecedented degree. Ottoman history is often viewed through the prism of ecumenism and social change; however, as far as the handling of cross-confessional relations is concerned, it was the quest for orthodoxy that dominated the broader legal reforms undertaken by the dynasty.

Explaining new attitudes towards archived documents, rather than attempting to explain the documents themselves—the object of my research—is essential to understanding the transformation endured by the Islamic enterprise of governance at the turn of the early modern period. Some researchers see these changes as signifying a move towards building a more centralized, Western-like state. This new proliferation of archived documents has been interpreted as a marker of the Ottoman state's tendency to form citizens, or *proto-citizens*, out of Muslim subjects. For others, efforts to render the law more uniform according to ḥanafī standards, and on top of previous layers of legal traditions, responded to broader objectives of empire-building.¹⁶ According to this interpretation, practices such as reliance on certain ḥanafī compendia of jurisprudence led to the eventual modernization of Islamic law during the Tanzimat period. There could be equal grounds to interpret the transformation of Ottoman governance in light of an increasing confessionalization of society. Indeed, Meshal has gone so far as to suggest that 16th-century judicial practice tended to level differences between free Muslims, including women or former slaves, as part of the Ottoman project of sponsoring a proto-citizenship. According to these views, legal practice drew clear distinctions between Muslim proto-citizens and non-residents or itinerant Muslims, and racially connoted slaves, as well as plaintiffs convicted by previous sentences. Although I do not necessarily propose to embrace the confessionalization or centralization paradigms, it is clear from a closer look at cross-confessional legal relations that not only Muslims, but also dhimmī communities appropriated some elements of Ottoman legal discourse, and sought legal privileges over foreign Christians by demanding the right to be considered a separate community.

16 Ferguson, Heather L., *The proper order of things: language, power, and law in Ottoman administrative discourses*, Stanford University Press, 2018, Meshal, *Sharia and the Making of the Modern Egyptian*, Aykan, Yavuz, *Rendre la justice à Amid: procédures, acteurs et doctrines dans le contexte ottoman du XVIIIème siècle*, Leiden-Boston, Brill, 2016.

Another angle for understanding changes in Islamic governance is encapsulated in the notion of textuality, whereby the state, in the formulation by Guy Burak, is considered as a phenomenon anchored in the authority of a wide variety of texts, ranging from state registers and judicial records to jurisprudence and history, and associated institutions such as the archive. These texts labored to instill confidence in archived documents in the heart of a Muslim society for whom, until that time, trust had been dependent upon the word of trustworthy members of the community. This line of interpretation draws on Brinkley Messick's analysis of the late modern Yemeni state, understood not only as a polity but as a discursive entity. Similarly, for Svetlana Buzov and other authors, the Ottomans sought to build a legal orthodoxy that minimized ethnic, cultural and language differences. This was achieved through the sponsorship of a ḥanafī legal guild, and the parallel implementation of an Ottoman corpus of "secular"—also referred to as "public" or "customary"—law, the *kanun*, which sanctioned the incorporation of previous custom. I will attempt to show how an offshoot of this project to build a legal orthodoxy impacted foreigners, who were the object of legal definitions and acts of power—one such example being the well-known 1613 'Carazo affair,' when an attempt to rigidly apply amān rules threatened Istanbul's entire merchant community.¹⁷ The Ottomans, incidentally, claimed jurisdiction over foreign Muslims, such as those expelled by the Habsburgs of Spain.

Throughout the book, and as a comparative *basso continuo*, the transformation of the Islamic enterprise of governance is understood by looking at the way in which commercial litigation across confessions was dealt with by both dynasties. Relations in the marketplace had received special attention from previous rulers in the region, such as the Byzantines and the Crusaders. As pointed out by the Greek-American scholar of Byzantium Angeliki E. Laiou, foreign merchants were often judged according to specific laws and norms. These relations were handled through legal categories implying access to rights, such as the imperial status of the *burgessioi*, but also through special jurisdictions for mixed cases, and by resorting to technical arrangements governing oaths and witnessing.¹⁸ This book presents evidence to support the theory that under the Mamluks a special jurisdiction—the Siyāsa courts—emerged as a competent site for judging mixed, commercial cases involving foreigners. The idea that a

17 Krstić, Tijana, "Contesting Subjecthood and Sovereignty in Ottoman Galata in the Age of Confessionalization: The Carazo Affair, 1613–1617", *Oriente Moderno*, 93, 2013, 422–453.

18 Laiou-Thomadakis, Angeliki E.: "Institutional Mechanisms of Integration", in *Studies on the Internal Diaspora of the Byzantine Empire*, Edited by H. Ahrweiler and A. E. Laiou, Washington, D.C.: Dumbarton Oaks Research Library and Collection, 1998, 161–81.

parallel judiciary existed is one that has generated heated debate since its beginnings. In the last decades, historians of Islamic law, critical with the ideas of the legal historian Joseph Schacht (1902–1969) and interested in harmonizing theory with practice, would object that this was no novelty, pointing to the *maẓālim* tradition of hearing cases at the sultan's court, according to his own judgment. Rulers traditionally held *maẓālim* justice sessions and in particular heard grievances against the arbitrary (*ẓulm*) decisions meted out by administrators. Sessions of royal justice are documented for the Abbasid period, presided over by the caliph and, on occasion, it involved the ruler's appointees. These practices are well known for Mamluk times, and, although the name and the format changed, similar hearings continued to be held by Ottoman sultans at the Imperial *Dīvān*. The right for foreigners, and particularly Frankish merchants, to appeal to such courts was an important point in Ottoman *aḥdnames*. With the rise of Istanbul as the epicenter of East-West relations, the Imperial *Dīvān*, as the site for *maẓālim* sessions, became the fulcrum of conflict resolution across confessions. Preserved in Venice's archives, decades of detailed reports by the Venetian ambassador (It. *bailo*, pl. *baili*) account for the *Dīvān*'s importance, not only in diplomacy, but also as a court of justice. If we adopt this conservative vision of royal justice, therefore, over time little appears to have really changed in the way Islamic rulers dealt with the affairs of foreigners.

This view is supported by the common conception of *maẓālim* not as an exceptional feature, but as part and parcel of Islamic jurisprudence. As far as late medieval rulers were concerned, they were implementing some of the doctrines that had been developed centuries before by authors such as al-Māwardī (972–1058). Mamluk *maẓālim* has been described as the act of making policy-based decisions by the sultans, who issued decrees and held justice sessions at their court in Cairo. Similarly, some historical attention has been paid to the exercise of these functions by appointees, such as the chamberlain (*ḥājib*) or the market inspector (*muḥtasib*). Some recent works have a tendency to present Mamluk *Siyāsa* as a problematic case, stressing the harsh criticisms advanced by some Mamluk chroniclers such as Ibn Ṭūlūn (1485?–1546), Tāj al-Dīn al-Subkī (1327–1370) or Abū Ḥāmid al-Qudṣī (d. 1483), as well as its alleged inconsistencies with *sharīʿa*.¹⁹ I would argue, however, that if we observe the *longue durée* of cross-confessional relations in the region—ranging from the Crusader period to the late 16th-century situation described in Venetian dispatches—the Mamluk *Siyāsa* emerges out of this timespan as a distinctive

19 Rapoport, Yossef, "Royal Justice and Religious Law: *Siyāsaḥ* and *Sharīʿah* under the Mamluks", *Mamluk Studies Review* XVI (2012), 71–102, 93–4.

historical phenomenon, notwithstanding its legal background. Moreover, *Siyāsa* and related terms such as *yasa* and *yasaq* were of common use during Ottoman times. Although some aspects of *Siyāsa* as a doctrine inspired actual practice under the Ottomans, such as for instance, the ruler's prerogative to mete out non-Quranic, physical punishments (*ta'zīr*), it is generally agreed that Mamluk *Siyāsa* did not find continuity in Ottoman legal practice. Under the Ottomans, the term *Siyāsa* came to denote these physical punishments, non-traditional taxes and other features of Ottoman governance, but never a branch of legal doctrine that reflected actual court practice.

Traditional *maẓālim* hearings, then, without the specific *Siyāsa* layout, characterized Ottoman adjudication. Franks fell under the regular jurisdiction of the local qadi courts, and could appeal the qadi's decisions at the Imperial *Dīvān*, as they would have in previous centuries. The sticking point that remained—that is, mistrust towards written documents—had by then been largely overcome by the new Ottoman policy of sponsoring contract registration. Authors such as Timur Kuran see the tendency towards a more rational, “modern” framework to have materialized in this acceptance of written contracts in the cases where Franks were involved, a specifically Ottoman feature that I address in Chapter Four.²⁰ As Ira M. Lapidus has recently pointed out, when reading recent works on cross-cultural trade, one has the impression that despite cultural barriers, trade was not difficult to arrange.

By approaching the legal devices put in place to govern the Frankish presence as a historical, contingent phenomenon, this work departs from the mainstream line of interpretation of royal justice and posits a more problematic sequence of events. Without necessarily levelling a direct challenge to any of the approaches mentioned above, the broader picture of a world of legal relations characterized by the progressive adoption of Western-inspired values and procedures will not be adopted in this book. Instead, I understand Venetian and Arabic sources to have depicted a scenario in which *Siyāsa* evolved into a specifically Mamluk mixed court, that was distinct from *maẓālim* court sessions held in faraway Cairo. Applied to cross-confessional litigation, *Siyāsa* emerged as a forum widely accepted by Frankish litigants even for cases between themselves. However, instead of being taken as a medieval step towards a pragmatic Islamic version of the ‘law merchant,’ these courts were dismantled as soon as the troops of Selim I entered Egypt, and were replaced by a traditional framework of adjudication, concentrating jurisdiction in the qadi courts and then, in appeal, in the Imperial Council, the Ottoman version of

20 Kuran, *The Long Divergence*, 253.

maẓālim. The early modern Middle East witnessed widespread recourse to archived documents by judges and secretaries, but when handling the governance of its foreign communities, adhering to the orthodox approach to the religious, skeptical principles of shariʿa was considered to be just as important as favoring trade with unbelievers.

To understand the important hiatus represented by the Ottoman approach to justice, I discuss the adoption of new attitudes towards the production, use and storage of written evidence. The Mamluks held the same fundamentally traditional attitudes and prejudices about written evidence as those that had characterized their predecessors. The most conspicuous marker of this attitude is the lack of Mamluk archives, and the fact that the only collections that have survived were kept neither by secretaries, nor by qadis, but rather owe their existence to exogenous practices and priorities (such as the series of Mamluk decrees preserved in Christian monasteries). Similar attitudes governed the conduct of affairs within the administration. The mid-15th-century secretary Shams al-Dīn Muḥammad al-Saḥmāwī (d. 868/1464), when describing the politics of the Indian subcontinent, confessed that he was unable to think of an example of correspondence between the Mamluks and some of its principalities since, he admitted, the Chancery had not recently dispatched any letters; thus implying an absence of long-term archive preservation.²¹ Yet the Ottoman period has yielded both judiciary and state archives, and as I argue, the logic behind the preservation of both kinds of artifact have much in common.

The present work is thus concerned with the long-standing legal reform sponsored by the Ottomans that was particularly visible in the newly-conquered Arab lands. 16th-century Ottomans were preoccupied by the desire to ensure the governance of their empire through the “secular” and customary laws of the individual territories—the *kanun*—and the need to preserve and apply these laws contributed to the development of archival practices. Qadis were part and parcel of this process, since they counted among the agents entrusted with applying these secular laws. So too were they expected to preserve *Kanunnames* and decrees in their courthouses for future reference. In addition, Ottoman legal reform concentrated in the hands of qadis notarizing activities previously entrusted to medieval notary-witnesses, the *ʿudūl*. Within a few decades, judges saw themselves mass-producing and archiving notarial documents that allowed people to enjoy rights, and in contrast with their

21 al-Saḥmāwī, Shams al-Dīn Muḥammad (d. 868/1464): *al-Thaḡhr al-bāsim fi šināʿat al-kātib wa-al-kātim: al-maʿrūf bi-ism al-Maḡṣad al-rafiʿ al-manshā al-hādī li-diwān al-inshā lil-Khālidi*, edited by Ashraf Muḥammad Anas and Ḥusayn Naṣṣār, 2 vol, Cairo: Maṭbaʿat Dār al-Kutub wa-al-Wathāʾiq al-Qawmīyah bi-al-Qāhirah, 2009, II, 781.

medieval predecessors, these documents were not perishable, and nor did they rely on the word of living witnesses, such as the Granadan blackmailers described by Ibn al-Khaṭīb. The early Ottomans heralded an end to the monopoly of the medieval *ʿudūl* as bearers of truth.

Throughout this book I stress that new, more receptive attitudes towards the use and preservation of documents were not the result of modernization, so much as they emerged due to legal reform, a different approach to notarization and from a distinctive Ottoman interpretation of ḥanafī doctrines. The new rulers disliked the notarial institution that had proliferated under the Mamluks, and soon the medieval notary witness became obsolete. Since traditional, oral witnesses were being replaced by the notarizing powers of the qadi, the first of the two biases—mistrust for circumstantial evidence such as written records—was profoundly affected and downplayed by Ottoman governance. These new features were clearly beneficial to the conduct of legal affairs involving foreigners, since parallel agreements rapidly allowed Frankish defendants to exhibit their contracts as proofs. Far from adhering to the discourse on modernization still prevalent in the historiography, my work delves into the emergence of a paradox; for, if on the one hand Muslims relied more than ever on documents and archives, their rulers stubbornly upheld the legal biases against minority witnesses. While new attitudes towards the written were being adopted, the enterprise of governance amidst diversity was being redefined around the creed that the word of Muslims was of superior value and could not be overcome. The requirement to advance Muslim witnesses, traditionally confined to court disputes, now extended to multiple areas of governance, and took a heavy toll on the activities of Frankish merchants, diplomats, and captives. The loose approach to the biases adopted by Mamluk officers in Siyāsa hearings gave way to a strict adoption of them at the Imperial Council in Istanbul. This work therefore embraces Ira M. Lapidus' criticism that "the biggest problem in [approaches to] cross-cultural trade was not negotiating among merchants of different cultures *but overcoming non-merchant prejudices, religious laws, and the political interests of rulers*."²²

Islamic governance has a long tradition of coping with unbelief, going back to the time of the Prophet in Medina and to the Omayyad and Abbasid Caliphates, in dealings with their Greek and Turkic neighbors. Late medieval and early modern jurists relied on available texts by Persian and central Asian authors such as al-Sarakhsī (d. 1096) or al-Marghīnānī (1135–1197) about

22 Lapidus, Ira M., "Religion and Trade: Cross-Cultural Exchanges in World History, 1000–1900 ed. by Francesca Trivellato, Leor Halevi, and Cátia Antunes (review)", *Journal of Interdisciplinary History* 46, 2 (2015), 267–269.

how to deal with unbelievers at the marketplace and in court. Mamluk jurists did not passively assimilate these much older doctrines either; they also called for an opener interpretation of the tradition. Whether Mamluk rulers made their decisions based on their awareness of such theories, it is difficult to know; on occasion in any case, the sultans seem to have referred to specific solutions described in *Siyāsa* works when it went in their own favor; to disgrace a political enemy, the shrewd al-Ẓāhir Barqūq had him accused by cheated foreign merchants. The present work aims to demonstrate, however, that Mamluk governance of foreign unbelievers was guided by *maẓālim* and similar doctrines on governance. The *Siyāsa* courts, evidence of which can be found in the notarial records left by Frankish merchants, while departing from it in practice, stemmed from the same line of legal reasoning as *maẓālim*. Thus, in dealing with those controversial areas where traditional *sharīʿa* proved insufficient, the practical needs of Mamluk governance were left in the hands of the legal system as a whole. In contrast, the fact that Ottoman rulers took cues from the doctrines of the *ḥanafī* tradition is well known. Defined by A. L. Udovitch as “the law merchant of the middle ages,” *ḥanafī* law was generally favorable to the resolution of disputes in daily relations with local Christians and Jews, although it drew a clear line of demarcation between foreign unbelievers, or *mustāʾmins*, and local minorities, or *dhimīs*. Again, this study challenges the conventional view that jurists tended to align with the rulers, hence sanctioning Ottoman governance. It was in the field of cross-confessional relations that the adherence by Ottoman governance to *ḥanafī* ideas was put to the test, because the sultans departed from *ḥanafī* doctrine in this specific, yet important area. One of this book’s main arguments is that Ottoman rulers pursued an orthodox position in the way they expected their subjects to treat foreign unbelievers in courts and markets, but that contrary to medieval sultans, they intervened in these matters and imposed their own legal decisions. Thus, even though their choices were expressed in the language of the legally learned, they did not necessarily limit themselves to following the injunctions of the *ḥanafī* thinkers. Considered as a whole, the array of practical decisions, policies and rulings that legally addressed *mustāʾmins* certainly constituted an Ottoman orthodoxy and generally complied to *ḥanafī* thought. However, their decisions sometimes departed from this and, on occasion, the solutions sponsored by Ottoman governance could look puzzling from a Muslim standpoint. The book addresses these variations, against the backdrop of a previous medieval practice where legal issues were fundamentally left to the best judgment of the religious learned, and the rulers limited themselves to promoting the rule of law in the daily life of the market.

Historians have a tendency to present Islamic justice as stemming from one of two different sources. Legal historians have traditionally privileged the normative aspect of the law and the jurists' activity, and recent interest in surviving court records usually underlines the conformity between procedure and jurists' doctrines. On the other hand, a more recent trend interested not in 'the law' per se, but in justice, considers the latter to have ultimately fallen under the ruler's sphere of action, and to include not only *maẓālim* but also the *ḥisba*, or market inspection, and *shurṭa*, or police activities, as well as *Siyāsa*.²³ To be sure, Mamluk rulers exerted an undeniable influence over justice, but it was mainly through the promotion of the legally learned, their schools and jurisdictions, and the activities of legal thinkers. In this, they followed the example of most medieval dynasties that came to rule over the vast lands of what once constituted the Caliphate. These sultans were not vested with any charismatic power, nor did they make any hereditary claims to the Prophet's lineage, in contrast with the Omayyad and Abbasid caliphs. Unlike caliphs, although they were certainly concerned with 'the law,' they carefully avoided presenting themselves as lawmakers. For this reason, when it came to their judicial duties, they considered that their role was more to redress grievances than to don the judge's attire and deliver justice.²⁴ They embraced the Islamic ideal that anyone in the community was capable of delivering justice;²⁵ as a result, Franks enjoyed the possibility to sue Muslims, without needing to head straight to the local ruler's palace and seek redress from him in person. Instead, in the *Siyāsa* courts, the sultans' officials passed judgment in provincial towns, treating the affairs of foreigners as an integral aspect of local governance, and some of them even began to study law. As one influential discussion on Mamluk *Siyāsa* has underlined, the new, parallel jurisdiction started to deal with issues ranging from divorce to bankruptcy and, throughout the long fifteenth century, the sultans made efforts to deploy it in harmony with the traditional courts of the *qadis*.²⁶ The present book is not interested in deepening an

23 Müller, Christian: "Mamluk Law: a reassessment", in: *Ubi sumus? Quo vademus?*, V&R Unipress, 2013, 263–284, see his criticisms on Stilt, Kristen: *Islamic law in action: authority, discretion, and everyday experiences in Mamluk Egypt*, Oxford-New York: Oxford University Press, 2012.

24 Garcin, Jean-Claude: "The Regime of the Circassian Mamluks", in: *The Cambridge History of Egypt. Vol.1: Islamic Egypt, 640–1517*, Edited by Carl F. Petry, Cambridge University Press, 1998, 290–317.

25 Johansen, Baber: *A Perfect Law in an Imperfect Society. Ibn Taymiyya's Concept of 'Governance in the Name of the Sacred Law'*, in: *The law Applied: contextualizing the islamic shari'a*, edited by Peri Bearman, Bernard G. Weiss and Wolfhart Heinrichs, IB Tauris, 2008, 259–94, 269.

26 Rapoport, "Royal Justice".

artificial divide between these two registers of the Mamluk legal system, or in siding with one of the contending views in this model: either a legal historian's world—inhabited by judges and jurists—or one of unbridled arbitrariness. Frankish merchants never ceased to visit either the stalls of the 'udūl, or the qadi's court. As far as judicial practice is concerned, the respective perimeters of Siyāsa and shari'a were well-defined.

Medieval/Mamluk rule marked an additional step in the post-caliphate trend of legitimizing the sultan's rule by sponsoring the religious learned in general, the four schools of jurisprudence and the different manifestations of Islamic identity, ranging from poetry to Sufism.²⁷ Mamluk rulers enhanced the display of royal justice by conducting maẓālim sessions in Cairo, by building 'Halls of Justice' in Aleppo and Damascus as well as convents and four-iwān madrasas—religious schools that hosted each of the four rites—and through public trials conducted by Mamluk officers sitting in benches in the street. To demonstrate their legitimacy, officials often formed judicial panels with qadis, as can be seen in the painting held at the Louvre, *The Reception of the Ambassadors*.²⁸ When dealing with foreigners and diversity, the Mamluks reconciled the doctrines of multiple *madhhabs*, even adopting the teachings of troublesome ḥanbalīs such as those of Ibn Taymīyah (1263–1328). Although medieval ḥanafīs sought to empower the qadis with the same procedural privileges as those of police officers and rulers, the Mamluks never did this. They limited the affairs of foreigners to the jurisdiction of the *ḥājib*, a military function usually rendered as 'chamberlain,' and the latter's justice became popular for mixed cases. Contrary to the situation depicted by the author of the 1625 *relazione*, Siyāsa courts were often the preferred forum even for cases among two ḥarbīs. As I argued in a recent article I extensively rely upon in Chapter Three, in Siyāsa trials, two major procedural obstacles—the bronze wall that inspired the title of this book—were circumvented: the impossibility for non-Muslims to testify against a Muslim,

27 I am much indebted to Ira M. Lapidus' insights into the transition from caliphate to post-caliphate Islamic societies, and its consequent effect on the relationship between religion and the state. Lapidus, Ira M.: *A History of Islamic Societies*, 2nd. Edition, Cambridge: Cambridge University Press, 1988, Rapoport, Yossef, "Legal Diversity in the Age of Taqlid: the Four Chief Qadis Under the Mamluks", *Islamic Law and Society* 10 2 (2003), 210–28, 210–28; Burak, Guy: *The second formation of Islamic law: the Hanafi school in the early modern Ottoman empire*: Cambridge University Press 2015, *Introduction*.

28 Campbell, Caroline: "The 'Reception of the Venetian Ambassadors in Damascus': Dating, Meaning and Attribution", in: *The Renaissance and the Ottoman World*, Edited by Anna Contadini, Routledge, 2016, 125–138.

and the non-acceptance of written documents. Not surprisingly, therefore, it is difficult to find complaints about the Mamluk system of justice, or even references to the issue of witnessing against a Muslim business partner. Yet with the Ottoman conquest of Egypt and Syria in 1517, and after a long silence, the ban against non-Muslims witnesses reemerged in the records as a major shortcoming of Islamic justice.

In 1517 the Ottomans took over Syria, Egypt and the Red Sea protectorate of Mecca, from whence Indian spices flowed into the Middle East. As Reem Meshal has forcefully demonstrated, military conquest was accompanied by a thorough reform of the local judiciary, by empowering a Turkish ḥanafī legal guild in the local judiciary, to the detriment of non-ḥanafī schools of law. The twofold jurisdictional structure mentioned above, although it did not totally disappear from legal theory, became much foggier in practice. Although Ottomans are all too often assumed to have been political pragmatists, they abandoned the innovative Mamluk approaches to mixed conflict resolution. They did away with the *Siyāsa* courts, and restored the qadi's authority upon mixed disputes at the basic court level. They returned to the classical *mazālim* system, this is, claims could only be judged in appeal by the sultan himself in Istanbul. Since that date, frequent grievances against the biases reemerge in the sources. Chapter Four therefore addresses how mixed and interfaith conflict was dealt with after 1517, after efforts to establish some kind of Islamic merchant court were abandoned. Due to the setback experienced by *Siyāsa* courts, decisions by local qadis could not be brought in appeal to the ḥājibs in trading places such as Damascus, Tripoli or Aleppo; instead, a case's transfer to the *Dīvān* in Istanbul, which in many senses involved more hurdles, became mandatory.

Under the Ottomans, in keeping with traditional *sharī'a*, witnessing by Franks against Muslims was accepted neither before the local qadi, nor in appeal at the *Dīvān*, at least in theory. A case study in the closing section sets this issue at the heart of Mamluk-Ottoman transition: it presents the difficulties encountered after a Venetian merchant firm in Syria fell bankrupt in the 1530s, when the local qadi in Aleppo refused to hear Christian witnesses to support its claims. Like many litigants, the Venetians stumbled over similar biases, such as the general principle that facts stemming from Muslim-produced proofs took precedence over facts witnessed by unbelievers. The Priuli bankruptcy, brought to appeal before the *Dīvān* in Istanbul and pleaded by the experienced Bailo Pietro Zen (1453–1539), provides a unique overview of how the biases were dealt with in early modern times. Solutions were no longer to be found in *sharī'a*-based technicalities, but rather on the terrain of diplomacy and negotiation.

The shifting approaches to the problem of proof and unbelief cannot simply be understood by either looking to ‘the law,’ intended as legal theory and jurisprudence, nor to justice, as a practical matter left in the hands of the ruler, qadis and officials. Recent analyses based on shari‘a court records put the qadi at the center stage both of doctrine and practice. By applying sophisticated procedures, such as *isjāl*, the qadi had the power to keep everyone’s legal rights alive by recertifying written, and therefore perishable, documents, hence safeguarding shari‘a theoretical concerns for truth-bearing. My aim here is to address the legal system, comprising both legal norms, or laws, and institutions. Throughout this book I will be dealing with the normative texts governing the presence of foreigners, the amān treaties, broadly known as ahdnames in Ottoman times, and, on occasion, legal opinions, Siyāsa treaties and other fiqh works ranging from the 14th to 16th centuries. My interest in institutions mostly centers around scribal culture, but also courtiers and officials operating in the Middle Eastern markets and courts. I refer to judges, and while distinguishing between different jurisdictions, my focus goes to how disputes were actually pleaded and, if at all, resolved, and to what extent the biases played a decisive role in their outcome. I go to the courthouse, where evidence and proof were advanced by the parties, but I also explore in the same measure the archive, since its disputed existence reflects notions and ideas about proof. Rather than attempting to define a hierarchy of institutions, I consider all these devices as constituents of the same legal system, equally affecting the ways in which cross-confessional relations were established, and disputes arbitrated. For this reason, and as a practical device, I often adopt a terminology that opposes medieval with Ottoman/early modern, as well as Latin with Islamic institutions. The legal system this book explores lies at the intersection between vernacular, ‘Islamic’ institutions and the legal, scribal and consular devices exported by the Franks to the Middle Eastern cities of commerce. Cross-confessional relations were defined by the intersection of both traditions and institutions, and were affected by Western and Islamic legal systems. More often than not—and in contrast with what is often assumed by historians of the Mediterranean—these legal systems interacted with each other far beyond mere mutual acknowledgement, and this was especially the case before the subtle crossing of a 1517 red line.

1.1 Structure of the Book

This book opens with an in-depth analysis of a question I define as the ‘archival divide.’ In it, I engage in an ongoing debate about why Islamic societies

have not yielded judicial archives, while Latin Christian ones did.²⁹ I discern between historians offering historicist explanations for a lack of Islamic archives, headed by the papyrologist Frédéric Bauden, and those who have gone a step further by suggesting that records did not survive due to deeper choices rooted in culture, path-dependence or the law. Twenty years ago, Michael Chamberlain claimed that Middle Eastern societies entrusted the biographical dictionaries composed by scholars with their strategies of social reproduction and perpetuation, rather than archived documents collected in notary ledgers. Today, Chamberlain's claim continues to provoke strong reactions among scholars. Recent works tend to depart from the views of classic authors such as Claude Cahen, Jean Sauvaget, Samuel Stern or Michael Chamberlain himself, who saw in the non-survival of archives deeper institutional motivations such as, to cite one example, the egalitarian nature of Islam, and the lack of status groups leading to the eventual birth of seigniorial institutions and their archives. By shifting the focus from the legal system to more contingent factors, researchers have gone so far as to claim that Islamic documents were not preserved simply because they were recycled, used as fuel or ritually erased. I then turn from the literature to an analysis of what constituted proof for both Latin Christians and Muslims by tracing the genealogy of concepts such as notarization, testimony, certification, artifacts like the Islamic *sijill* (Tr. *sicil*) or devices serving to store and preserve records, starting with the early medieval *qimaṭr*, the proto-archive where early qadis kept notarized deeds. This diachronic survey helps to explain the emergence of the Ottoman *sicil*, which radically changed patterns of record preservation.

For centuries, the norms for arbitrating cross-confessional conflicts and commercial disputes with Franks were encoded in amān treaties and executive decrees; however, a lack of perspective has led researchers to interpret these normative texts as dictated by pragmatic considerations and balances of power,³⁰ or as part of a general trend towards modernization, 'europeanization'

29 See, among recent contributions: Hirschler, Konrad, "From Archive to Archival Practices: Rethinking the Preservation of Mamluk Administrative Documents", *Journal of the American Oriental Society* 136.1 (2016), Hirschler, Konrad, "Document Reuse in Medieval Arabic Manuscripts", *COMSt Bulletin* 3/1 (2017) (2016), Burak, Guy, "Evidentiary truth claims, imperial registers, and the Ottoman archive: contending legal views of archival and record-keeping practices in Ottoman Greater Syria (seventeenth–nineteenth centuries)", *Bulletin of the School of Oriental and African Studies* 79.2 (2016), 233–254, Burak, Guy, "'In Compliance with the Old Register': On Ottoman Documentary Depositories and Archival Consciousness", *Journal of Economic and Social History of the Orient* 62 (2019), 799–823.

30 Valérien, Dominique, "La résolution des conflits dans les communautés européennes dans les ports du Maghreb médiéval, entre métropoles et pouvoir local", *Mélanges de*

and the western-like codification of Islamic law. A great deal of attention has been directed towards the so-called ‘capitulations’ signed with the Ottoman Empire, where such pragmatic features were often underlined. I argue instead that medieval agreements comprehensively covered most of the problems and solutions arising from cross-confessional relations. Far from being dictated by relations of power between unequal partners, treaties were based on the respect of technicalities that made it possible to overcome the obstacles presented by religious biases against unbelievers. Heirs of a long tradition of governing a heterogeneous marketplace, the Mamluk sultans were most successful in the diplomatic field, and signed numerous and important treaties with the European powers. A good deal of this success relied on the sultans’ ability to enforce shari’a-based norms in harmony with the jurists, and not by disputing them. In Chapter Three I therefore explore what this normative framework governing exchanges and the arbitration of mixed disputes actually consisted of. I guide the reader through several centuries of trade agreements and identify the principal trends and variations, as part of a wider process in an ever-changing context. I examine clauses giving instruction on the notarization of transactions, the striking of deals, adjudication and issues of proof, and how to proceed when deals were not honored. Again, religion was not adopted as a point of departure; French Crusaders or Castilian conquerors, for example, faced much the same problems as their Middle-Eastern Muslim counterparts. Paradoxically enough, the Crusader *Cour de la Fonde* was a privileged forum for cross-confessional conflict, where complex rules of procedure secured fair justice across confessions. By looking at precedents of Mamluk approaches to dealing with mixed conflicts, I identify a series of issues that straddled Byzantine, Latin and Islamic societies. In this section I target issues such as whether impartial justice required recourse to the defendant’s jurisdiction (as was the case for some Maghrebi rulers and the early Mamluks), the extent to which minority witnessing was accepted, and whether or not the burden of proof was placed on the defendant’s witnesses, irrespective of their faith (as was the case for late Crusaders). I also ask whether the law distinguished between people on the basis of their religion or confessional group, and interrogate the texts that stated whether merchants—and thereby foreigners—should fall under a broad application of local laws, be dealt with by different laws or courts, or

l’École française de Rome, *Moyen Âge* 115/1 (2003), 543–564, De Groot, Alexander H., “The Historical Development of the Capitulatory Regime in the Ottoman Middle East from the Fifteenth to the Nineteenth Centuries”, *Oriente Moderno* 22 (83) 3 (2003), 575–604, Veinstein, Gilles, “Les Fondements Juridiques de la Diplomatie Ottomane en Europe”, *Oriente Moderno*, 88 2 (2008), 509–522.

even by special mixed courts (like the *Cour de la Fonde*, and to some extent, the Mamluk Siyāsa tribunals). Another issue I address is the need for notarization, this is, whether agreements could be concluded and guaranteed by common people, by community witnesses or only by state-appointed officials—as was the case under the Ottomans.³¹ I also look to diplomatic agreements to answer questions about the acceptance of either oral or written notarization, and whether the legal system potentially accepted written evidence without the oral support of its authors. Lastly, I approach the judicial oath, an issue related to the validity of witnessing; I focus on whether minority oath was accepted, and if so, in what procedural circumstances it was taken. The recourse to specific places of worship or the choice of sacred books counted among the shared technicalities that legal actors drew on to justify this kind of oath-taking.

Chapter Three also refers extensively to the treaties signed between the Mamluk state and Aragon, Florence, Venice and to some extent Genoa, some of them preserved in their Arabic version. Other sources I use are the drafts and decrees that complemented the capitulations, as long as notarial deeds reflecting the handling of cross-confessional issues. Attention is given to treaties drawn up by powers located elsewhere, as was the case with the Ḥafṣids, and this extends to a survey of sources from Christian polities that were in direct contact with infidels and their legal systems. And for comparison, I observe Castilian legal codes and *fueros* drafted while the Kingdom was in the process of incorporating non-Christian minorities from the conquered lands. Particular attention is paid to the legal codes in French produced in Cyprus, which drew upon previously-recorded law collections from the East. Crusader society produced a most sophisticated set of rules for cross-confessional witnessing, and mixed courts with a commercial bias such as the *Cour de la Fonde*, or courts privative to specific minorities such as the *Cour des Syriens*.

My aim is to determine a series of problems inherent to mixed exchanges, and encoded in the late medieval legal system—problems that I will streamline throughout the final chapter of this book, which deals with actual practice in the Ottoman, sixteenth-century Mediterranean context. I observe legal practice as it took place in the two main cities of commerce under Mamluk rule, Damascus and Alexandria up to 1517, drawing upon the extant collections of Venetian notarial records produced in those cities. The presence of, and exchanges with infidels in Mamluk Syria became a subject of debate for Islamic legal theorists in the Mamluk period, such as Taqī al-Dīn al-Subkī or Badr al-Dīn

31 Faroqhi, Suraiya, "Before 1600: Ottoman attitudes towards merchants from Latin Christendom", *Turcica* 34 (2002), 69–104, Van den Boogert, *The Capitulations and the Ottoman Legal System*.

al-ʿAynī (1361–1451). More specifically, I provide an account of the emergence of the legal theory on governance under the late Mamluks. As a theory, *al-Siyāsa al-sharʿiyya* aimed to provide the ruler with the means to mete out punishment and serve judgement in special situations upon which shariʿa was silent, and it eventually led the Mamluks to sponsor Siyāsa courts, where commercial mixes cases, with their trove of procedural issues, were heard. I address works on Siyāsa written by theorists such as Ibn Qayyim al-Jawziyya, allowing me to understand the relationship between legal theory and judicial practice as it happened in a medieval society. If writings on legal theory clearly had an effect on the implementation of Siyāsa justice from above, so too did the subjects of the legal system—in this case Frankish plaintiffs and defendants—contribute to a bottom-up definition of a forum for cross-confessional relations. Mamluk Siyāsa courts, I argue, encapsulate the features that made possible to circumvent the ‘bronze wall’ that the religious biases represented, since judges were necessarily confronted with the need to examine Frankish testimonies and documents. A last section is thus devoted to describing the actions and the actual hearings of these courts, presided over by the ḥājibs in Damascus and usually by the viceroy (*nāʾib*) in Alexandria. Although verdicts stemmed out from shariʿa norms, Siyāsa constituted a special jurisdiction where Mamluk officials, rather than qadis, acted as judges. Considered to be a technicality that should be left in the hands of jurists, the legal issues generated by the presence of European merchants were transferred to these special courts as the jurists prescribed. Most of my findings on Mamluk Siyāsa can be found in this section, which extensively develops an article I published in the second 2016 issue of *Comparative Studies in Society and History*, “Judging the Franks.”³² In it, I look at descriptions of trials found in the Venetian notarial casebooks of Alexandria and Damascus. Again, I am interested here in the biases against unbelievers; that is, how notarized documents, private acts and minority witnessing were handled in the procedural practice of these courts. The fact that Siyāsa courts were promoted over previous modalities of royal justice shows that medieval societies had their own ways of responding to diversity and mixed cases, and handled legal norms in ways that were compatible with the specific demands of conflict resolution. The Mamluks, I argue, did this without circumventing due legal processes, and without really challenging the shariʿa system of norms, but instead by connecting with the subjects concerned by the provisions of Siyāsa.

32 Apellániz, Francisco, “Judging the Franks: Proof, Justice, and Diversity in Late Medieval Alexandria and Damascus”, *Comparative Studies in Society and History* 58 02 (2016), 350–378.

The book's closing section presents an analysis of the transition from Mamluk to Ottoman times; what I interpret to be a significant turning-point around 1517, after the Ottomans took over the majority of the Arab regions. Ottoman rulers abandoned Mamluk innovative approaches to mixed conflict resolution. They did away with the *Siyāsa* courts and empowered a ḥanafī legal guild and its qadis, often at the expense of local judges and their retinue of court witnesses. From that moment, and quite abruptly, the biases on witnessing reemerged in the European records as a major shortcoming of Islamic justice. In Chapter Four, I shift the focus to new actors and scenarios, such as the Venetian Bailo in Constantinople and his chancery, who played an important role in underpinning mixed dealings, and the Imperial Council—the *Dīvān-ı Hümāyūn*. The *Dīvān*, apart from hearing commercial cases, became the principal forum for cross-confessional interactions; together with plaintiffs, consuls and ambassadors negotiated with the pashas on all sorts of matters concerning trade, captives and borderland issues, and found themselves constantly stumbling over the *sharī'a* regime of proof when trying to substantiate their claims.

By focusing on the new attitudes adopted by early Ottoman rulers as regards proof and evidence, my research explains why these biases became so prevalent in Christian-Muslim relations from the sixteenth century. It argues that the biases, which medieval sultans had treated as a legal technicality (and thus the object of specific provisions by legal specialists) now formed the foundation of the Ottoman enterprise of governance. Problems stemming from the fact that Franks could no longer act as bearers of truth soon extended beyond the courthouse and the marketplace, and began to impinge on ample areas of governance. This concerned, for example, the management of human property (i.e. captives), because the biases impinged on how servitude and freedom should be defined, and that of territories, as they affected the outcome of borderland disputes; people were enslaved, sold and sent to the Anatolian or Egyptian inland simply because they could not prove their freedom by means of Muslim witnesses. The biases, moreover, were invoked not only by rulers, but also by other social actors and groups—such as local minorities—who found it useful to mobilize similar confessional categories.

in Chapter Four, I develop my research on the *Dīvān* as a forum for mixed commercial litigation, by providing a detailed description of cases that extended over multiple *Dīvān* sessions and that required interaction between the Venetian bailo, the pashas, witnesses and legal experts, and entailed the production and use of documentary artifacts. The chapter presents a number of cases brought before the *Dīvān* that involved Franks, which often revolved around the differences, real or perceived, between Frankish and Ottoman law; such as whether one could sue the dead, whether non-Muslims could stand surety for

others, the risk of false witnessing, or whether court proceedings ought to be recorded.

By virtue of the ruler's monopoly on *maẓālim*, in the sixteenth century the boundary between *sharī'a* courts and royal justice, previously so distinct, became less and less clear. A parallel, similar ambiguity played out in the *Dīvān*: although the Imperial Council is traditionally presented as a diplomatic forum, where the pashas and viziers met European ambassadors, its role as a high court is well known. My aim here is not to discuss whether one of these features predominated over the other, but rather to take this ambiguity as an integral part of Ottoman governance amidst diversity. In the *Dīvān*, diplomatic or 'political' issues arising from interaction with Franks manifested themselves as legal issues, and were therefore subject to methods and procedures based on *sharī'a*. As we shall see, Venetian diplomats were aware of the importance of the law and particularly, of the biases against non-Muslims, and expected their correspondents at the Senate to fully acknowledge the legal intricacies of their mission there.

The Ottoman approach to the legal system is a well-known territory, and 16th-century Ottoman judicial registers are extant for most Arab cities, covering almost all angles of it. In Chapter Two I sketch out the changes the Ottomans sponsored in the legal system and how they paved the way for a more open attitude towards writing and documentation. These policies led to the birth of an Islamic judicial archive, hitherto inexistent, and a parallel crisis in traditional notarization. Against this institutional background, Chapter Four explores further normative alterations to documentary practice contained in *kanun* and *amān* treaties, which permitted actors to continue to circumvent the legal biases against non-Muslims. The Ottomans granted privileges stipulating that Franks could defend themselves in court by exhibiting written deeds, more specifically notarized records (Ar. *ḥujja*, Tr. *hüccet*) produced by a *qadi*. Parallel to this measure, and more importantly, Muslim witnesses could not be heard against such deeds. To be sure, the Ottomans took the injunctions of *sharī'a* very seriously; however, I argue that rulers were ready to depart from *ḥanafī* orthodoxy when it came to certain crucial issues. The work of Mario Grignaschi, which focuses solely on jurisprudence through the study of collections of *fatwās* on issues of testimony and diversity, provides a fundamental contribution to my argument.³³ In the practice of Ottoman governance, rulers contradicted the opinions of *ḥanafī* jurists in that the latter distinguished

33 Grignaschi, Mario: "La valeur du témoignage des sujets non musulmans (dhimmi) dans l'Empire ottoman", in: *Recueils de la Société Jean Bodin, La Preuve, 3, Civilisations archaïques, asiatiques et islamiques*, 211–323. Bruxelles Editions de la Librairie encyclopédique, 1963.

between local and foreign Christians and Jews, who they considered to be “two different peoples” and who therefore could not testify for or against one another in court. As regards commercial litigation, however, Ottoman rulers saw all unbelievers as constituting a single people. Similarly, in 1557 Muslim merchants in Aleppo lobbied for, and obtained, a decree disposing new and special conditions for the use of Muslim witnesses in mixed cases and which only applied to that city.

Adopting a broad chronological overview is key to observe an institutional dynamic. The *longue durée* allows me to capture the link between legal norms and social processes. I aim to demonstrate that the advent of Ottoman rule saw the biases go beyond the marketplace/court medieval binomial to become a decisive tool for governance. Drawing upon venetian dispatches (It. *dispacci*) and more formal consular reports (*relazioni*), I show how the new attitudes towards proof and diversity affected Ottoman management of both physical space and human beings. The case of Marco Priuli, a Venetian who fell bankrupt in Syria in the 1520s, closes this section. His case provides us with a closing analysis of how his default was dealt with—passing first before a Syrian qadi, then to the Dīvān, and finally before Venetian commercial judges. The case is based on a hefty corpus of documents from the *Biblioteca Correr* in Venice, which appears to be the file used by the family attorney, including correspondences and Priuli’s testament drawn up in Damascus. A trader in diamonds and luxury items, Marco Priuli’s heirs and associates proved to be unfamiliar with the legal practices promoted by the Ottomans, and with the court’s requirements for proof and evidence. Priuli’s case provides a unique opportunity to observe how, shortly after the Ottoman conquest of Syria and Egypt, judges and officials began to deviate from previous legal practice regarding non-Muslims and mixed cases, and to promote their own practices for producing evidence. This key case of commercial litigation helps us to gauge the meaning of the legal changes the Empire was undergoing. In gross, biases and bans relating to proof and evidence were now invoked not only by judges and officials, but by dhimmīs and merchant groups. For the Ottoman dynasty, the orthodox approach to proof was a means to differentiate the political community it represented, and to mark out its specific vision of the Ottoman sovereign as guarantor of the rule of law. In this sense, the discussion of Priuli’s case raises important questions on *confessionalization* as a major vector in Ottoman history.³⁴

34 Krstić, Tijana, “Contesting Subjecthood and Sovereignty in Ottoman Galata”, 422–453, Krstić, Tijana: *Contested Conversions to Islam: Narratives of Religious Change in the Early Modern Ottoman Empire*: Stanford University Press, 2011, Buzov, Snjezana: *The lawgiver*

The thesis of this book is that, although the biases against non-Muslims constituted a veritable divide in the field of legal norms, during the late Middle Ages a trove of customs and institutions nuanced their effects, and maintained a subtle balance that remained in place until early Ottoman times. While medieval sultans accepted that commercial litigation—and more generally, relations with the Franks—should be loosely handled by shari‘a-based notions of governance, as expressed in *Siyāsa* treaties, under the Ottomans practices began to adhere much more strictly to the norm. This is not to say that Ottoman sultans were respectful of legal norms, while their predecessors were lenient, but that they approached the problem of governance amidst diversity according to an official orthodoxy. Medieval sultans used all of the legal devices at their disposal to govern their relations with the Venetians, Catalans, French and other Franks, without interfering with the judges’ prerogatives to use legal reasoning, issue opinions, hire their own notaries and deputies, and to organize the different schools of law. To tackle the presence of foreign unbelievers, they relied on available doctrines such as the *Siyāsa shar‘īyah* developed by jurists from different madhhabs, but also on dragomans, courtiers (Ar. *simsārs*) and customs officials in their legal capacities. Where necessary, the Mamluks gave space to critical thinkers—such as the ḥanbalī Ibn Qayyim al-Jawziyah and his master Ibn Taymīyah—who reflected extensively on governance, and who had a more open attitude towards proof and religious diversity, at least in some respects. Mamluk rulers were well aware that Islamic law prevented unbelievers from being actors in the legal system, but they handled the issue as a legal technicality, open to interpretation by jurists and, in cases upon which shari‘a was silent, to their own intervention as heads of the community. Up until Mamluk times, there was a large consensus on the procedural limitations that had to be observed by the qadis in their quest for truth, such as mistrust for archived records, documents and other artifacts considered to be suspicious, as well as for the word of unbelievers. Since early Islamic times, however, legal doctrines have allowed judges to make procedural exceptions as acts of grace (*istiḥsān*),

and his lawmakers: the role of legal discourse in the change of Ottoman imperial culture, PhD. Thesis: University of Chicago, 2005, Rothman, E. Natalie: *Brokering empire: trans-imperial subjects between Venice and Istanbul*, Ithaca, N.Y.: Cornell University Press, 2012, Meshal, Reem A., “Antagonistic Shari‘as and the Construction of Orthodoxy in Sixteenth-Century Ottoman Cairo”, *Journal of Islamic Studies* 21 (2) (2010), 183–212, Meshal, *Sharia and the Making of the Modern Egyptian*, Ozil, Ayşe: *Orthodox Christians in the late Ottoman Empire: a Study of Communal Relations in Anatolia*, London; New York: Routledge, 2013, Burak, Guy, “Faith, law and empire in the Ottoman ‘age of confessionalization’ (fifteenth–seventeenth centuries): the case of ‘renewal of faith’”, *Mediterranean Historical Review* 28:1 (2013), 1–23.

for reasons of necessity (*maṣlaḥa*, *dārūra*) and opportunity, and have given the ruler permission to inflict exceptional punishments, and to the judge to fulfill his duties as a governor. Until 1517, this could be done because the Franks were commercial partners who entered the realm of Islam for trade (the ideal situation foreseen by Islamic law). Under the Ottomans, however, this codified, patterned exchange entrusted to jurists and qadis transformed into a diplomatic operation with next-door neighbors. In 16th- and 17th-century Ottoman Istanbul or Cairo, commercial litigation often became tangled up in issues of residence and Islamic jurisdiction, the ransom and ownership of slaves, and border relations. While in Mamluk times contact with unbelievers was circumscribed to specific contexts such as the marketplace, the Ottomans had to deal with a porous and ever-growing inner boundary. This was not only a physical border, but a social contact zone in the tributary territories, or even in the heart of Istanbul. Challenged by the necessities of enforcing the rule of law, the Ottomans brandished a revered ḥanafī doctrine on legal dealings with minorities and unbelievers. They adhered to the letter in matters concerning the legal rights of local minorities, such as their right to testify in court in some cases. However, as I intend to demonstrate, Ottoman rulers also tailored the ḥanafī doctrine as regards foreigners, in order to comply to the same imperative of dealing with diversity under an Islamic system of governance. To all appearances, and probably in all earnestness, safeguarding the highest level of respect for the traditional rule of law, the choices the Ottomans made profoundly altered the way foreigners and Muslims related to each other.