CHAPTER 3

‘Men Like the Franks’: Dealing with Diversity in Medieval Norms and Courts

Car encor ne seient il Suriens et Grifons ou Judes ou Samaritans ou Nestourins ou Sarasins, si sont il aucu homes come les Frans de paier et de rendre ce que iuge sera, tout aucu come est etabl en la cort des borgeis

Livre des Assises de la Cour des Bourgeois, Assise ccxxxvi

Until recently, an enquiry into cross-confessional exchanges would have naturally started with the amān charts and similar documents, the diplomatic formulation of the so-called ‘treaties of commerce.’ And indeed, this is despite the fact that historians of Islam have long since pointed out the problematic nature of such artifacts, contesting the idea that amān treaties and similar artifacts were real, bilateral agreements and even questioning the very idea of Islamic diplomacy. Recent research insists on the heterogeneous nature of these documents, which grouped together a diverse array of institutions, such as the truce and the safe-conduct, and also highlights the perils of understanding medieval treaties in light of the later, uneven Ottoman ‘capitulations.’\(^1\) One is struck by the importance attached to such diplomatic artifacts by Western historiography, an interest that does not seem to have declined in recent years. One argument that is often cited is that these texts depart from the basic postulates of legal theory, such as the imposition of taxes considered illegal by sharīʿa, the reliance on written documents as proof, or the unbeliever’s status in Islamic lands and the duration of his stay.

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1 Theunissen, Hans: Ottoman-Venetian Diplomats: The ‘Ahd-Names: the historical background and the development of a category of political-commercial instruments together with an annotated edition of a corpus of relevant documents. Vol. 1, 1998, Frantz-Murphy, “Identity and Security in the Mediterranean World ca. AD 640—ca. 1517”, 253–264.
Researchers of cross-confessional diplomacy have often pointed out inconsistencies between chancery practice and juridical theory. In his reading of Max Weber’s writings on Islamic law, Abraham Udovitch has described the problems faced by qadis who had to comply with the fixed rules of a rational, formal law, in a chaotic context of commerce and minorities pervaded by forms of legal pluralism and particularism. In this domain, Islamic law, while invoking its direct affiliation with the Revelation, opened the door to the silent, piecemeal incorporation of merchant customs or ‘popular practice.’ To describe the changing status of foreign merchants, Angeliki Laiou has introduced the concept of accommodation—oikonomia—to explain the abandonment by Byzantine judges of the abiding principle that the same law should be applicable to all subjects. In his recently translated monograph, Michael Köhler has insisted on the strain that Islamic legal theory imposed on cross-cultural diplomacy. However, echoing Udovitch’s view that local practice complemented the general principles of divine law, he acknowledges that the biases against Muslims inherent to Crusader law were not fully enforced in the daily practice of diplomacy. Indeed, Köhler argues that such limitations did not hinder contenders from reaching durable agreements, which owed much of their flexibility to their imprecise nature. The main device used to circumvent major legal biases was to resort to technicalities: agreements were not drawn up by jurists, but relied upon the parties’ respect for technical instruments, such as duration and suspension clauses, bans on fortification or formulas of shared sovereignty, and respect for procedural patterns such as oaths and validation techniques. To be sure, amān theory imposed upon Muslims the duty of pursuing jihād against the ḥarbīs, except for those involved in trade, pilgrimage and diplomacy, yet it is most striking that a clause in the 1283 treaty between the Mamluks

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2 Wansbrough, “The Safe-Conduct in Muslim Chancery Practice”, Brunschvig, Robert: *La Berbérie orientale sous les Hafsides*, Paris: Adrien-Maisonneuve, 1940, 1, 431–40, Moukarzel, Pierre: “La législation des autorités religieuses et politiques sur les marchands Européens dans le sultanat mamelouk (1250–1517)”, in: *Religious cohabitation in European towns (10th-15th centuries)*, Turnhout, Brepols Publishers, 2014, 121–139.
3 Udovitch, A. L., “Les échanges de marché dans l’Islam médiéval: théorie du droit et savoir local”, *Studia Islamica* 65 (1987), 5–30, Gourdin: “Les marchands étrangers ont-ils un statut de dhimmi?”, 437.
4 Laiou-Thomadakis, “Institutional Mechanisms of Integration”.
5 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, Leiden-Boston: Brill, 2013, Riley-Smith, Jonathan: “Government and the indigenous in the Latin Kingdom of Jerusalem”, in: *Medieval frontiers: concepts and practices*, edited by David Abulafia and Nora Berend, Aldershot, Burlington, VT: Ashgate, 2002, 121–131.
and the kingdom of Jerusalem foresaw that Christians should give the Muslim contracting party two months’ notice before the arrival of a new Crusade.⁶

When it comes to examining the multifaceted artifact of the diplomatic agreement, with its heavy burden of political and economic connotations (privileges, capitulations, traités de commerce, etc.), it is surprising that it has received so little attention from a comparative perspective. As trophies hanging on the walls of the offices of papyrologists and diplomats, they are most often treated in isolation, and at best considered in light of similar treaties underwritten by a single polity. As a result, we still know relatively little about the actual origins of many decisions, particularly regarding the choice of jurisdiction for mixed cases, and other practicalities concerning the management of disputes. In spite of the significance of the treaties—through their attempt to set a normative framework for relating to foreigners—not all of the norms governing contact between Muslims and Franks were included in them. In the previous section, I elaborated on the idea that it was not only the ruler who set legal norms, to then be followed by actors; rather, they stemmed from different spheres of normativity, such as government reforms, policy-based regulations, the discourse of jurists and notarial practice, and in addition they changed a great deal over time. As for treaties, they were not necessarily fully implemented, and nor were they exhaustive, but were increasingly complemented by a series of ad hoc decrees that could even depart from the letter of the treaty itself and contradict its terms. As suggested earlier, Muslims saw the treaty as an artifact that merely pointed to more detailed oral discussions and agreements, and for which proper, Islamic witnessing needed to be provided. Niels Steensgaard mentions an episode in which the Ottoman authorities asked the European consuls to hand over the texts of the ahdnames in their possession, so that they could be modified.⁷ The new versions were handed to the Nations only after repeated demonstration.

In this section, I turn to a subject that was often covered in treaties, particularly from late medieval times: adjudication. Treaties and legal codes tackled the conditions under which exchanges should be actually made; transactions

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⁶ Köhler, Alliances and treaties between Frankish and Muslim rulers, 305.
⁷ Steensgaard, “Consuls and nations in the Levant from 1570 to 1650”, 18. Işiksel stresses the conflicting views and misunderstandings around the diplomatic agreements, “Resident ambassadors’ complaints sprang from their belief that the capitulations were bilateral agreements, enacted according to the norms of ius gentium. However, this was not quite true because the sultan could alter and even remove articles previously granted, whenever he deemed such a policy appropriate—at times without even notifying the other party”, Işiksel, Güneş: “Hierarchy and Friendship: Ottoman Practices of Diplomatic Culture”, 16.
needed to be concluded under fair conditions, but these conditions also needed to remain valid over time. For this reason, clauses not only described how business deals should be struck, but also how the handling of evidence should be dealt with, in case of dispute further down the line. In the eastern Mediterranean, early treaties such as those underwritten with the founding Mamluk sultans al-Ẓāhir Baybars (ruled 1260–1277) and al-Manṣūr Qalāwūn (ruled 1279–1290) mostly dealt with issues of non-aggression and were political in nature, while in the late Middle Ages and up to late Ottoman times clauses dealing both with the closing of deals and with issues of witnessing and registering took precedence over other topics. It is my contention that these clauses dealing with proving, transacting and bringing deals to court encoded the many changing attitudes towards the fundamental problem of dealing with diversity.

Traditional approaches to the diplomatic artifact are of little interest to this research; rather than attempting to define an Islamic orthodoxy on the grounds of which Europeans and Muslims were supposed to have interacted, my aim here is instead to capture the reconfiguration of cross-confessional relations at the turn of the early modern era. Encoded in the letter of diplomatic negotiations, this reconfiguration is located at the intersection between several sources of normativity, including legal thought, amān provisions and bottom-up legal practices, which defined relations at the marketplace and in court. In this chapter, I deal with treaties both diachronically and from a comparative perspective; more importantly, however, I broaden my analysis to the actual sphere of adjudication, as in the courts and judgeships entrusted by the treaties to hear disputes between Muslims and Franks. I refer to a series of problems inherent to mixed exchanges, which I further develop throughout Chapters Three and Four, and which straddled late medieval and early modern times.

The first issue with mixed disputes in Islamic polities was determining whether, in order to ensure impartial justice, the defendant should be allowed to have recourse to their home jurisdiction. This principle, commonly referred to with the Latin phrase *actor sequitur forum rei*, could intervene in conflict resolution by granting, for example, a non-Muslim defendant the right to bring a Muslim plaintiff to his own consular court, hence limiting the prevalence of shari‘a jurisdiction over particular legal devices. A second, major issue was defining the extent to which minority witnessing could be accepted. Crusader law can give us valuable insight into this question, as it set an important precedent for the handling of minority witnessing in cross-confessional environments. Another aspect of interfaith litigation was whether or not the burden of proof lay on the defendant’s witnesses. Although Crusader law stemmed from the feudal legal system exported to the Kingdom of Jerusalem, paradoxically, it
denied Latin Christian witnesses the right to give testimony against Syrian, Jewish or other indigenous defendants. A third problem was determining whether the law should distinguish between people on the basis of their religion, or of their confessional group. Closely related to this, a fourth issue concerns the existence or not of mixed courts. Merchants—and thereby foreigners—were often dealt with through a broad application of local laws, or through different laws or courts. Although they were based upon different theological and legal concepts, both Crusader and Islamic law incorporated biases against minority confessions. Making people different before the law was a fundamental challenge to the safekeeping of cross-cultural relations, and similarities emerge in the ways in which both legal systems coped with this. The Cour de la Fonde emerged as a privileged setting to arbitrate inter-communal and market disputes in Crusader lands, and it found a parallel in the Siyāsa courts sponsored by the Mamluks and presided over by the ḥājib, a military officer.

A fifth issue related to cross-confessional arbitration concerns the need for notarization; that is, whether agreements could be concluded between and guaranteed by ordinary people, by community witnesses, or by state-appointed officials. A sixth issue questions whether notarization was oral or written, and ultimately, if a given legal system accepted written evidence without the oral support of its authors. Again, similarities can be traced between the ways in which Crusader and early Mamluk normative texts addressed the problem. Although my aim is not necessarily to level the differences between distinct traditions, some striking resemblances can be observed between the jurors in Crusader courts and the Islamic ūdūl and instrumental witnesses. Lastly, the taking of oaths played an important role in the handling of cross-confessional relations, in and outside the courts of justice. This is an issue related to the validity of witnessing, although Mediterranean societies with an opener attitude to minority witnessing were not necessarily more eager to accept the oaths of unbelievers, and vice-versa. Legal texts, but also practice-oriented chancery handbooks described the procedural circumstances and conditions under which minority oaths should be accepted.

This seven problems articulated in practice much of the intricacies of cross-confessional dealings. Diplomatic treaties and the branch of Crusader law known as Burgess law paid a great deal of attention to oaths, special courts and jurisdictions and, more generally, to dealings with natives and the evidence they produced. When dealing with this heterogeneous array of issues, lawmakers often departed from a strictly juridical approach; for example, nowhere in Venetian and Genoese legal codes is it explicitly stated that a Jew cannot testify, however Mediterranean practice had it that they could only appear as witnesses for cases involving two Jewish parties. Examples abound,
and in the same vein the recourse to shared technicalities has been noted as the practical grounds for the signature of truces, also in cross-confessional relations at the marketplace a trove of procedural, practical solutions to actual problems prevailed over the application of legal biases against unbelievers. This spirit also pervaded many of the efforts by Mamluk jurists to grant the Islamic ruler with legal solutions to cope with the presence of foreign merchants and colonies of Franks in Islamic lands. One of these solutions was found in the so called ‘royal’ or Siyāsa courts (in contrast with the ‘qādī’ or ‘sharī’a’ courts), which late Mamluk treaties increasingly designated as the places where the ruler and his delegates should hear the grievances of foreign merchants.

3.1 An Introduction to Siyāsa

The new role played by royal justice under the Mamluks has been identified by historians as an important shift in the history of Islamic Law. Since early Islamic times, the courts of the qadis, where shari’a was applied according to traditional jurisprudence with complex rules of procedure, had been supplemented by more expedient courts. The most well-known among these royal jurisdictions was the maẓālim, in whose courts the ruler theatrically displayed his justice and gave verdicts according to his own judgment. In this chapter I will be dealing with the Siyāsa, a similar royal jurisdiction derived from the maẓālim, which frequently overlapped with it, and where justice was instead administered by the chamberlain (ḥājib) and other military officers, such as the head emir in Alexandria.8

For centuries, we have erroneously believed that Siyāsa referred to a lost legal code imported from Asia. Contemporaries believed that the word Siyāsa was etymologically connected to the Mongol word yasa, and with the Turkish yasaq, which, as we have seen, was a term used by Arab subjects of the Ottomans to refer to Ottoman customary law—principally taxes considered unlawful and imposed by the Turkish government. We know now that it has its origins in a lost Arabic root meaning ‘the tending and training’ (of beasts). Siyāsa is commonly translated as ‘politics,’ and sometimes rendered as ‘governance,’ or ‘statecraft.’ The conceptual world of the jurists was ideally meant

8 For a discussion of siyāsah under the Mamluks, Nielsen, Secular Justice, Rapoport, "Royal Justice", Irwin, Robert, "The Privatization of "Justice" under the Circassian Mamluks", Mamluk Studies Review 5, (2002), 63–70, Fuess, Albert, "Zulm by Mazālim? The Political Implications of the Use of Mazālim Jurisdiction by the Mamluk Sultans", Mamluk Studies Review 13 (2009), 121–147.
to harmonize Siyāsah Schāriyyah, a legal theory of governance, with the general rule of law, or shāri’a. This was a more troublesome task for Mamluk judges, sultans and officials, who, as Mamluks chronicles show, daily entered into conflict with qādīs while administering justice. Regarded with suspicion by both contemporaries and modern historians, Mamluk Siyāsah is now stirring up a lively scholarly debate, perhaps due to growing recognition of its importance in the later modernization of Islamic law. The debate on Siyāsah has revolved around the question of whether it was compliant with religious law, was a new invention by the Mamluks or predated them, was secular or not, or whether it was simply a tool of political legitimacy for the sultans. As mentioned in the Introduction, important research by Baber Johansen on the disciples of Ibn Taymiyah (d. 1328) has underlined the efforts of Siyāsah thinkers to overcome the limitations of the justice administered by the qādīs, particularly in the field of proof and evidence, precisely the question at issue here. In the first section of this chapter, I use an asymmetrical comparison between Islamic and Byzantine and other Christian societies to describe Crusader and early Mamluk approaches to the recording and closing of deals, and how transactions could be challenged if they went wrong. I subsequently turn this line of inquiry to the royal courts, by exploring the role of Mamluk Siyāsah as a judicial practice, and

9 On late medieval siyāsah, Lambton, Ann K. S.: State and Government in Medieval Islam: an Introduction to the Study of Islamic Political Theory: the Jurists, Oxford; New York: Oxford University Press, 1981, 138–152, Hallaq, Wael B.: The origins and evolution of Islamic law, Cambridge, UK; New York: Cambridge University Press, 2005, 99–101, Black, Antony: The history of Islamic political thought: from the Prophet to the present, Edinburgh: Edinburgh University Press, 2001, 158–164.

10 Rapoport, “Royal Justice”, 100–1, Irwin, “Privatization”, 66.

11 For the origins, meaning, and different perceptions of the term, Vogel, Frank E.: “Siyasa”, in: Encyclopaedia of Islam, Second Edition, IX: 693b, Lewis, Bernard: “Siyasa”, in: In Quest of an Islamic Humanism: Arabic and Islamic studies in memory of Mohamed al Nowaihi, edited by A.H. Green, Cairo: American University in Cairo Press, 1984, 3–14, Najjar, Fauzi M.: “Siyasa in Islamic Political Philosophy”, in: Islamic theology and philosophy: studies in honor of George F. Hourani, edited by George F. Hourani and Michael E. Marmura, 92–110, Albany: State University of New York Press, 1984, Masud, Muhammad Khalid, “The Doctrine of Siyāsah in Islamic Law”, Recht van de Islam 18 (2001), 1–29.

12 Fuess, “Zulm by Mazālim?”, 132, 141. I do not think it necessary to further elaborate here on this debate, which is thoroughly addressed by Youssef Rapoport in his “Royal Justice”, 73–80. Neither is it my intention to create an artificial divide with scholarship on Mamluk mazālim; instead, I aim to shift the focus away from the well-known mazālim court in Cairo, to a broader legal and geographical setting, Nielsen, Secular Justice, 32.

13 Johansen, “Signs as Evidence”, Johansen, Baber: “Vérité et torture. Ius commune et droit musulman entre le Xe et le XIIe siècle”, in: De la violence, Edited by Françoise Hérétier, Paris: Odile Jacob, 1996, 123–168.
focusing on a hitherto unknown aspect of it; namely, its role in settling mixed commercial disputes.

Capturing the emergence of Siyāsa as a judicial practice is difficult for two reasons. First, although normative texts can provide us with some snapshots of a given society’s attitudes towards diversity, a more dynamic picture of what actually happened in practice requires a series of judicial records that simply do not exist. Descriptions of Siyāsa trials suggest that an oral approach to procedure was adopted, and rarely mention verdicts or legal acts being put into writing. The second issue is that islamologists concerned with the history of Islamic justice often attempt to reconcile their findings with legal theory, hence privileging the quest for precedent over social change. Since the times of the Caliphate, Islamic rulers had a long tradition of sitting in justice at the palace to hear petitions and grievances about the unjust rulings of secretaries and officials. The very existence of this practice, called maẓālim, appears to support the idea that the Mamluk Siyāsa courts were not in themselves an innovative feature. In this chapter, I adopt the view that, although both developments drew upon the same kind of legal reasoning, Siyāsa constituted a separate concern for jurists, in the same way that it had in 12th-century Transoxiana, while in the Mamluk context the maẓālim was increasingly understood as a court of appeal. The closing section of this chapter dwells extensively on Mamluk Siyāsa courts as a forum for mixed commercial conflict; a picture that, significantly enough, emerges out of the Venetian notarial records drawn up in Alexandria, which reveal a dimension of Islamic law invisible to Arabic sources. Mamluk Siyāsa was clearly a late byproduct of the doctrines dealing with the legal attributions of the Islamic sovereign, such as maẓālim and taʿzīr, the sovereign’s right to mete out punishments. However, it also emerged in the

14 Tillier, Mathieu: “Qadis and the political use of the mazalim jurisdiction under the Abbasids”, in: Public Violence in Islamic Societies: Power, Discipline, and the Construction of the Public Sphere, 7th-19th centuries C.E, edited by Christian Robert Lange and Maribel Fierro, Edinburgh: Edinburgh University Press, 2009, 42–67, Tillier, Mathieu: “The Mazalim in Historiography”, in: The Oxford Handbook of Islamic Law, Edited by Anver M. Emon and Rumeed Ahmed, Oxford: Oxford University Press, 2015, 356–380.

15 Moukarzel: “La législation des autorités religieuses et politiques sur les marchands Européens dans le sultanat mamelouk (1250–1517)”, Christ, Georg: Trading Conflicts: Venetian Merchants and Mamluk Officials in Late Medieval Alexandria, Leiden-Boston: Brill, 2012, Fuess, “Zulm by Mazālim?” , Winter, Michael, “The judiciary of late Mamluk and early Ottoman Damascus: The administrative, social and cultural transformation of the system”, in: History and Society During the Mamluk Period (1250–1517) 5, Göttingen 2014, 193.

16 Johansen: “Vérité et torture. Ius commune et droit musulman entre le Xe et le XIIIe siècle”, 132.
context of previous efforts undertaken in Palestine or in the Byzantine Empire to define a technical framework for resolving cross-confessional conflict. To be sure, Siyāsa drew on available legal theory, but as regards its competence for foreigners, it materialized in the hitherto unexplored institution of Islamic commercial mixed courts, and was endowed with an open approach to proof, procedure and unbelief. Together with legal theory, the rise of Siyāsa is better understood in light of these available precedents.

Similarly to diplomatic treaties, Crusader law addressed most of the crucial issues mentioned earlier on proof and adjudication, and dealt with cross-confessional relations with an unprecedented intensity. Their legal codes, or Assises, anticipated much of the concerns surrounding the amān treaties underwritten with Muslims. If the Crusaders exported Latin-Christian and particularly feudal law to the Kingdom of Jerusalem, the resulting legal system cross-pollinated with shari‘a and with Byzantine precedent, approaching their solutions on matters of witnessing, in the opening to judicial autonomy for minorities and in the introduction of some religious biases. Feudal law governed relations among the nobles, and was complemented by a second legal layer known as Burgess law. In principle, Burgess law was meant to be applied to the second principal group in Frankish lay society: non-nobles, liegemen, or burgenses.17

The keystone of the Crusader adjudication system was the High Court, which applied feudal law among the nobles, and was complemented both by an eminently civil court known as Cour des Bourgeois and—more interesting for our study—a commercial and mixed court called the Cour de la Fonde.18 I will leave the High Court out of this discussion, as it is not strictly relevant to cross-confessional relations, and focus on the last two tribunals, which applied the Assises des Bourgeois, or Burgess law. Christians native to the Crusader States, who mostly belonged to the confessional group referred to as ‘Syrians,’ seem to have enjoyed some legal autonomy on the basis of their own courts and officials. We have little knowledge about the nature of the rulings passed by the Cour des Syriens, although we do know that the court applied the customary law of the Oriental Christian communities, and sources describe it as being composed of the raïs and a mixed panel of jurors. In addition, it cannot be excluded that, in the Crusader states, some disputes between Muslims were

17 Prawer, Joshua: “Social Classes in the Crusader States: The “Minorities””, in: A History of the Crusades: The Impact of the Crusades on the Near East, edited by K. M. Setton, N. P. Zacour, et al., vol. v, 59–115: University of Wisconsin Press, 1985.
18 Nader, Marwan: Burgesses and Burgess law in the Latin Kingdoms of Jerusalem and Cyprus, 1099–1325: Ashgate, 2006, 156.
arbitrated by Islamic law, however specialists have not found any evidence for Crusaders giving official recognition to this. As concerns cross-confessional relations in the marketplace, in any case, Crusader law set a precedent in creating a complex framework of courts of justice. At the center of the adjudication system was a mixed, commercial court, set up as the principal forum for cross-confessional dispute. In complement to this a sophisticated, highly technical set of rules governing witnessing and the production of evidence in mixed settings was developed.

The Cour de la Fonde, therefore, counted as an immediate forerunner of the Siyāsa tribunals, which were empowered to pass judgment on merchants of different confessions. Moreover, this koinè of solutions in Crusader law incorporated late Byzantine law, upon which the Crusader system must have drawn extensively. Angeliki Laiou draws a link between the Crusader status of the bourgeois and the Byzantine category of burgesioi, which was often applied to different categories of foreign merchants and bestowed by Manuel I Komnenos upon Venetians. As long as they kept their political independence, the Byzantines governed cross-confessional relations in the market by transferring mixed cases to special, often imperial courts, by imposing technical solutions on the taking of oaths according to religious affiliation, and by imposing a ban on Jewish witnesses. However, until the Fourth Crusade brought about a loss of political independence, consular justice for issues between foreigners was not allowed, at least officially, in favor of Byzantine, local courts. This legal balance shifted in favor of foreigners after 1204, when jurisdiction over mixed issues was transferred to the foreigners’ courts and judges. In any case, if we leave aside the repertoire of specific formulas that were applied to each case, it appears that the set of concepts and devices employed by Crusaders bore some similarities with those used by Middle Eastern societies to solve the issue of cross-confessional relations and disputes.

3.2 The Crusader Marketplace

The fulcrum of commercial arbitration in Crusader lands was the Cour de la Fonde, a denomination related to the Islamic notion of funduq, or urban caravanserai. Set up in Acre and in other cities, it passed verdicts for both commercial and interfaith cases; that is, it passed judgment for all commercial disputes

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19 Mayer, Hans Eberhard, “Latins, Muslims And Greeks In The Latin Kingdom Of Jerusalem”, History 63, 208 (1978), 175–192.
20 Laiou-Thomadakis: “Institutional Mechanisms of Integration”.
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and any lawsuit involving native Christians, Jews, Muslims and Samaritans. Although it acted as a mixed commercial court, it is unclear whether it had jurisdiction over Latin traders, who may have been able to resort to the Cour des Bourgeois if they so wished, even if this appears to have been unlikely from the viewpoint of enforcing transactions within a composite merchant community. Most of what we know about Crusader commercial jurisdiction comes to us through late medieval sources, which reflect the situation after the fall of Acre in 1291, when Crusader society had resettled in Cyprus and founded an epigone state on the island. Late legal codes were apparently compiled by the Venetians when they took over the island later in the 1470s. In general, late Palestinian sources describe a situation where the Cour de la Fonde gradually absorbed the Cour des Syriens as a forum for minority disputes. Similarly, in late Crusader Cyprus there is no evidence of the Fonde jurisdiction and the Cour des Bourgeois rose to prominence in most cross-confessional and civil matters, gradually attracting all jurisdiction for mixed and commercial disputes. As mentioned earlier, in the Kingdom of Jerusalem the system of feudal and bourgeois law was perfected with the court of the Syrians, who enjoyed judicial autonomy by virtue of the privileges granted to them by the Crusaders. In the Latin kingdom of Jerusalem, this court passed verdict in Jerusalem, Nablus, Tyre, Bethlehem, Nicosia and Famagusta. Syrians did not obey the Roman church—that is, they deviated from the loi de Rome—however they were granted tax exemptions and privileges both in the Holy Land and, later, in Cyprus, thanks to their political alliances. As for the Cour des Syriens, it survived after the fall of Acre as one of the Cypriot jurisdictions; however, intriguing as this may seem, the Cour des Syriens and its rais do not seem to have continued to handle cross-confessional relations after this point, and became limited to a murky, special jurisdiction for some elites in the 15th century, before ultimately vanishing under Venetian legal reform. In 15th-century Cyprus, it has to be noted, the closest example of a mixed court was the tribunal held by the Capitano di Famagosta, a Genoese magistrate. The late Crusader legal system foresaw the supremacy of feudal law, as epitomized by the High Court, where

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21 A.Bugnon: Abrégé du Livre des Assises de la Cour des Bourgeois, in Recueil des historiens des croisades, vol. 2: Lois, Paris, 1843, xxxv.
22 Ibid. xxiv.
23 Otten, Cathérine: “Le registre de la Curia du capitaine Génois de Famagouste au Milieu du XV siècle: Une source pour l’étude d’une société multiculturelle”, in: Diplomatics in the Eastern Mediterranean 1000–1500: Aspects of Cross-Cultural Communication, Edited by Alexander D. Beihammer, Maria G. Parani, et al., Brill, 2008, 251–274, Fossati Raiteri, Silvana: Genova e Cipro: l’inchiesta su Pietro de Marco, capitano di Genova in Famagosta, 1448–1449, Genova: Università di Genova, Istituto di medievistica, 1984, ix-lxxxi.
irrational forms of proof and evidence always existed. Muslim visitors were amazed by the duels, ordeals and trials by fire or water they witnessed, even if such methods were restricted to the Frankish elite and its internal disputes. Exceptionally, duels were accepted for commercial disputes, but only if these suits involved claims for more than a silver marc.

3.2.1 Muslims and Crusader Courts
The complex configuration of Crusader Latin courts reflects the importance that Western legal systems attached to the notion of status; as an old-regime legal system, it was status, and not its human, physical vessel that was considered to be the depositary of rights. The Crusader legal system was therefore characterized by a double tier of courts; one for those of high or noble status, and another for the urban class known as the burgesses. The abiding principle was that both groups could only be judged by their peers—which, incidentally, became all the more complex as time went on and these groups became ever more heterogeneous, hence opening the door to more and more exceptions and technicalities. This idea of hierarchized and separate spheres of courts clashed with the Islamic legal conceptions, in which status groups were not granted any specific treatment. Shari'a was conceived as an egalitarian system dominated by the personality of the law; in principle, the same law applies to all Muslims, irrespective of where they live and of their social standing. Dhimmi could have recourse to the qadi, and it has been argued that the so-called dhimmi rules and biases against non-Muslims do not correspond to fixed statuses, but rather answer to the dhimmis’ refusal to accept the Revelation, precisely what these rules encourage dhimmis to do.  

In the legal world that came into being under the Crusaders, Muslims were granted the lowest status by their social superiors, however this status did not apply in the exceptional framework governing relations in the marketplace. Significantly, insofar as the Cour de la Fonde was concerned, Muslims were accepted as subjects of the legal system. Strikingly, this echoes the observation by Johansen that, for

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24 Emon, Religious Pluralism, 66–7, Friedmann, Yohanan: “Classification of unbelievers in Sunni Muslim Law and Tradition”, in: Tolerance and coercion in Islam: interfaith relations in the Muslim tradition, 54–86. New York: Cambridge University Press, 2003.
25 Edbury, Peter W.: “Latins and Greeks on Crusader Cyprus”, in: Medieval Frontiers; Concepts and Practices, Edited by David Abulafia and Nora Berend,133–143. Aldershot: Ashgate, 2002, 137.
26 Nader, Marwan, “Urban Muslims, Latin Laws, and Legal Institutions in the Kingdom of Jerusalem”, Medieval Encounters 13 2 (2007), 243—270, 256–7. Nader focuses on courts and procedure as facilitators of cross-confessional relations. On the Crusaders’ attitude toward natives, and particularly Muslims, see Riley-Smith, Jonathan: “Government and
Islamic law, religious and gender hierarchies dictated social transactions, but not commercial exchange. As regards debts and contractual obligations, differences between Muslims and dhimmis were flattened out by jurists.27

Muslims are mentioned among the plaintiffs who brought their claims to the Cour de la Fonde, as we learn from a well-known passage by Ibn Jubayr (1145–1217) that has contributed to a—probably undeservedly—positive image of Crusader rule among plural confessions.28 In addition, borrowings from Islamic practice included obvious examples, such as the institution of the muhtasib (market inspector), which survived in late medieval Cyprus.29 The Cours were presided over by the bailiffs of the funduqs, assisted by jurors of different Christian confessions, namely four Syrians and two Franks.30 It is perhaps for this reason that in early Mamluk treaties we find a marked tendency to consider the head of the Customs and similar officials as potential judges for mixed cases. And indeed, the functioning of the Cours points to a tendency to accept a certain degree of legal pluralism. Contrary to what happened in the High Court, and to a certain extent in the Cour des Bourgeois, in the Cour de la Fonde irrational means of proof were not accepted, and native Christians were not subjected to ordeals or allowed to resolve disputes through duels. Similarly, a crucial feature was the presence of scribes of different confessions; there were Arabic-speaking scribes both at the Cour de la Fonde and at the Cour de la Chaîne: “escrivein sarasinois ou fransois ... a la fonde on a la chaene.”31 In light of the abundant evidence for Arab Christian scribal families working in Cyprus, Jean Richard has assumed that here Saracen/sarasinois might mean Syrian Christian, something that has also been confirmed by Ibn Jubayr, who
mentions these Christian scribes (“kuttāb al-dīwān min al-naṣāra”).\textsuperscript{32} Another striking parallel can be found in the 13th-century treaties concluded by the Mamluks with Genoa and Venice, which stipulated the right for Franks to dispose of their own Christian scribe at the customs house.\textsuperscript{33}

### 3.2.2 Jurors and Witnesses

The presence of jurors in commercial and civil Crusader courts also raises questions about what might have been borrowed from previous Islamic practice, as well as possible continuities with it. As a professional body versed in local law, the jurors were regularly present in court, where they overlooked the drafting of proceedings, provided the parties with legal advice, and could sometimes be appointed as judges to preside over the court. According to the detailed description provided by Marwan Nader, the jurors at the Cour des Bourgeois acted as witnesses and certified as to the legitimacy and permanency of transactions; in this sense, their role might be equated with that of the Islamic instrumental witnesses first described by Claude Cahen, and later by researchers of Ottoman justice.\textsuperscript{34} Initially called witnesses by the sources, as in the case of the ‘udūl, lists of eligible witnesses/jurors were drafted for the use of the cours. They were appointed upon decision of the seigneur justicier and ultimately, the king, and therefore could be dismissed. However, they also worked outside the court, where they were vested with a certain degree of notarizing power, since their presence at the conclusion of a sales contract sufficed to validate it. Like the Muslim ‘udūl, jurors had to prove themselves to be “wise and good men.”\textsuperscript{35} In addition, only those who were “bourgeois et frans, de la loi de Rome” qualified for the job. Religious biases against minorities, such as those against Monophysite and Oriental Christians—who could not be jurors in the case

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\textsuperscript{32} Richard, Jean: “Le plurilinguisme dans les actes de l’Orient latin”, in: La langue des actes. Actes du Xle Congrès international de diplomatique (Troyes, jeudi n-samedi 13 septembre 2003), Paris, O. Guyot-Jeannin 2004, supported with further evidence by Jacoby, David: “The fonde of Crusader Acre and its tariff: some new considerations”, in: Dei gesta per Francos: études sur les croisades dédiées à Jean Richard, crusader studies in honour of Jean Richard, edited by B. Z. Kedar, Jonathan Simon, et al., Ashgate, 2001, 277–293, Ibn Jubayr, Muḥammad Ibn Aḥmad (1145—1217): Riḥlat Ibn Jubayr, Beirut: Dar wa Maktabat al-Hilal, n.d., 248.

\textsuperscript{33} Tafel, G.L.F. and G.M. Thomas: Urkunden zur älteren Handels- und Staatsgeschichte der Republik Venedig, mit besonderer Beziehung auf Byzanz und die Levante: Vom neunten bis zum Ausgang des fünfzehnten Jahrhunderts: Hof- und Staatsdruckerei, 1856, 488, treaty of 1254, “Capitulum. Item, quando applicuerint, habere debeant unum scribunum Christianum, qui clarificet in doana, et debeat scire suas rationes per totum tempus.”

\textsuperscript{34} Baldwin, Islamic Law and Empire in Ottoman Cairo, 35, Cahen, “A propos des Shuhud”.

\textsuperscript{35} Nader, Burgesses and Burgess law, 144–9, 152.
of the Crusader states—often presented as specific uniquely to Islamic judicial practice, were in fact shared with other eastern Mediterranean societies, including the Crusaders and Byzantines. Indeed, the importance of jurors in Crusader court procedure has been traced back to Carolingian institutions, even if it seems fair to say that it bore more points in common with its closer, Muslim counterpart.

3.2.3 Courts and Bans
Little is known about how the Crusader courts actually functioned in practice, despite the amount of Crusader jurisprudence that has come down to us. When the Venetians took over the Kingdom of Cyprus they made an impressive effort to collect all available legal texts, mostly late ones. It is generally agreed that those addressing procedure in the High Court reflect an earlier stage in Crusader law, notably the *Livre des Assises* by John of Ibelin, while those dealing with the Cour des Bourgeois, principally the *Livre des Assises de la Cour des Bourgeois* and the *Livre contrefais* are considered to be late. Early High Court Assises do not mention Muslims at all, because they reflect the legal world of the elites of Crusader society, however the extant legal codes on bourgeois jurisdiction, which included the Cour de la Fonde, describe a society in which transactions between individuals of different religions and confessional groups were very frequent. In the Cour de la Fonde, bourgeois law was applied rather than Syrian customary law, although it was a version of Crusader law that addressed a mixed and minority public, and excluded, for example, recourse to ordeals.

Franks, and among them, the burgesses, appear as a minority group in bourgeois jurisprudence, along with the many Syrians, Jews, Samaritans, Armenians and Muslims involved in trade; the issue of witnessing and guaranteeing for others is thus a primary focus of the Assises. A striking contrast between law produced in the Kingdom of Jerusalem and its later versions can be observed in the status of witnesses (*garans*). Early legal texts referring to the High Court are clear: only baptized Christians could testify, and only those obeying *la loi de Rome* were allowed to bear witness for important matters. In contrast with this strict approach to witnessing and testimony, the issue of minority witnessing is more amply developed in the *Assises des Bourgeois*, and indeed this text

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36 “Et qui viaut prover par garans fié ou chose de fié ou autre chose, il covent qu’il soient ii loiaus garans ou plus de la loy de Rome, se ce n’est de prover aage ou lignage. Que l’on peut prover ses ii dites choses par chascun home ou feme, mais que il soit crestien batie et qu’il soient.ii. ou plus et que il s’acordent bien ensemble a une parole.”, Edbury, Peter W.: *John of Ibelin: Le livre des assises*, Leiden; Boston, Brill, 2003, 165–66.
represents a point in time when Crusader law dealing with the legal handling of cross-confessional relations was at its most complex.

Crusader jurisprudence, therefore, was extremely attentive to transactions in which the parties’ different confessions might give rise to complications or dispute. It cannot be said that the Crusaders considered everyone to be actors in the legal system, or that they went so far as to apply the same law to Latins and non-Latins alike. However, it is clear that, if feudal and seigniorial courts continued to judge nobles according to traditional jurisprudence, fundamental biases against non-nobles and non-Latins were kept out of the marketplace. One example can be found in the case of the ban on heretic witnessing, in which Crusader law departed from the stance taken by Roman law, developed in the Republican period, that did not impinge on individual creeds. As we saw earlier, Justinian’s legal codes insisted on excluding Jews from witnessing, and this found continuity in both Crusader and shari’a law. However, in the Cour de la Fonde this was not the case; as we shall see, in this court all witnesses had equal value in mixed cases. To cope with these inconsistencies, the Crusaders created a system of courts and bans that made legal enforcement compatible among confessions, while safeguarding the theoretical supremacy of noble status above the burgesses, Syrians and heretics. Although the early legal text of John of Ibelin does not mention Muslims at all, they emerge in bourgeois legal codes, and it is clear that the late Crusaders considered them to be, if not actors, at least subjects of the legal system. Often quoted by proponents of an alleged Crusader tolerance, a passage in Assise ccxxxvi refers to Muslims’ and other non-Latins’ right to justice and their involvement in mixed dealings, acknowledging that “si sont il auci homes come les Frans.”

### 3.2.4 Writing Down Transactions

Parallel to underlying principles of status and religion, Crusader justice introduced a series of technical solutions for dealing with the way transactions were produced, recorded, and the eventual recourse to dispute resolution in court. According to bourgeois legal codes, sales contracts could be concluded in court, which meant they were notarized in *reconnoissance* and were therefore deemed valid; if not, (“se la chose nen estoit faite en la cort”) they needed to be underwritten in the presence of witnesses. As regards the Fonde, it appears that important parallels can be drawn between bourgeois law and Mamluk and some Maghrebi contemporary amān documents. Treaties signed with the Mamluks in the thirteenth and fourteenth centuries describe a situation in

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37 E. Kausler, *Les Livres des Assises et des Usages dou Reaume de Jerusalem*, Assises LIX, LXIII.
which deals were concluded in a similar setting: at the customs house (dogana, ar. Dīwān). Outside of this ideal framework, presumably in urban marketplaces (usually referred to with the expression in bazar) treaties encouraged the conclusion of deals in the presence of witnesses. In the Mamluk dogana, these agreements foresaw the assistance of a Christian scribe.38 In the Fonde and the Chaîne courts, which presented a similar tribunal for maritime issues, it was Latin and Arab scribes who recorded transactions.

Although the Assises and Mamluk treaties underline the usefulness of notarization, the jurist and editor of the Assises Auguste-Arthur Beugnot (1797–1865) notes that one important commercial transaction—the loan—needed in Crusader lands to be proven by means of oral witnessing.39 This fact is particularly relevant in that it presents a deviation from the general tendency in southern European cities to enhance the role of notarization. As we saw in Chapter Two, the tendency in communal law was to ascribe probative value to the notarial deed; in the Crusader lands, however, due to the influence of French law, seigniorial approval was required to validate a document. This was noted, for instance, by Francesco Balducci Pegolotti (1290–1347) in his Pratica della mercatura, who states that, at least for matters of debt, in Cyprus notarial contracts were deprived of legal value. Transactions continued to be registered by royal officials, the “escrivains du comerc,” similarly to how they were at the Fonde.40 The role of witnesses to transactions must therefore have been all the more important in places where this parallel, non-Latin notarial tradition existed.41 Beugnot claimed that frequent recourse to oral agreements pushed the Crusader legal mind to develop

38 “Item, quando applicuerint, habere debeant unum scribanum Christianum, qui clarificet in doana, et debeat scire suas rationes per totum tempus,” 1254 treaty with the Venetians, Tafel and Thomas, Urkunden zur älteren Handels, 488, and the 1230 treaty with Tunis, “Et quod valeant(ur) habere scribanum Christianum suum in doana ad eorum voluntatem,” 305.
39 A. Beugnot, Abrégé du Livre des Assises de la Cour des Bourgeois, xliii.
40 “in Cipro ... in nulla parte dell’isola non vale nulla carta de notario se non fosse de testamento o de dota o di schiavo comperato o de navoleggiamento salvo se lo re lo fasse valere per grazia a cui volere mettere avantì per usare sa ragione,” Richard: “Aspects du Notariat public à Chypre sous les Lusignan”, Otten, Cathérine: “Quelques aspects de la justice à Famagouste pendant la période génoise”, in: Πρακτικά του Τρίτου Διεθνούς Κυπρολογικού Συνεδρίου, Λευκωσία, 16–20 Απριλίου 1996. 2, Μεσαιωνικό Τμήμα, Nicosia, 2001, 333–351, mentions the existence of a “cour d’enregistrement” in Famagusta where contracts were registered, 338.
41 “Il se peut que nous ayons là le résultat d’une évolution et qu’antérieurement au 15e siècle les notaires investis par l’autorité impériale aient été normalement des Latins, les membres des autres communautés ayant habituellement recours à des notaires ou à des personnes jouissant des mêmes pouvoirs issus de leurs propres rangs,” Richard: “Aspects du Notariat public à Chypre sous les Lusignan”, 207–9. Richard, Jean, “La diplomatique royale
a highly complex set of rules underpinning cross-confessional witnessing. Determining what religion the witness should be in the case of deals concluded between men of different faiths presented a very real challenge. And indeed, the late Assises present a complex casuistry of cross-confessional exchange involving Latins, Jews, Jacobites, Nestorians, Armenians, Syrians, Muslims and even some obscure Christian sects.

Assise cccxxvi in the Livre des Assises de la Cour des Bourgeois describes the Cour de la Fonde and its procedure. Although most Assises come in the form of ad hoc casuistry for precise legal issues, the text acquires a more normative tenor when describing the court, its staff and issues of procedure. After introducing its role in the marketplace, as well as stressing the need for the bailiff and the jurors to commit to maintaining justice amidst diversity, the text quickly moves on to matters of proof and evidence. Its primary focus is the general ban on cross-confessional witnessing, after which it turns to the question of oaths.42 The Crusader witness system described both in the Palestinian Assises, and then in later Assises from Cyprus is well-known. In gross, in late Burgess law we find a total ban on cross-confessional witnessing. A Latin Christian witness could not give testimony against a Jacobite defendant, and neither could a Jacobite be used to testify against a Nestorian defendant, and so on, including heretics (that is, Jews). In practice, no one was allowed to bear witness against a person other than those of his own confessional group. In addition, oaths played an important role; Assise cccxxvi goes on to detail the modalities of oath-taking by Jews and other non-Latins, such as the sacred texts involved in the ceremony of oath-taking (mentioning the Torah, Qurʾān, Pentateuch for Samaritans, etc.). The Assise closes with a discussion of the procedure to follow in the case of a dispute opposing two parties belonging to the same faith, in which case religion of the witnesses did not matter.

Several crucial features regarding the legal framework described in Assise cccxxvi should be pointed out here. Firstly, the cross-confessional ban, as it was practiced in late Crusader times, was total, and also extended to the social elite—that is, the feudatories and their descendants. Latin Christians were barred, for instance, from testifying against Syrians, or even against Muslims. Secondly, at the Cour de la Fonde social, status, and religion categories had been flattened out, and all the non-Franks now belonged to a generic second rank in society. In contrast with this general tendency, the social elite

dans les royaumes d’Arménie et de Chypre (XIIe-XVe siècles)*, Bibliothèque de l’école des chartes (1986), 69–86.

42 See the note on this topic written by Adam Bishop for the relmin research project, http://www.cn-telma.fr/relmin/extrait136984/.
maintained a procedural privilege. In cases where they were accused without witnesses, Muslims were obliged to take an oath, whereas a Frankish defendant need not do so.\textsuperscript{43} It should be noted that the regime governing the use of oaths by court procedure in the Assises des Bourgeois closely resembles that of shari‘a: Shafi‘i, Malikis and Hanbalis accept the defendant’s oath provided that the plaintiff does not have sound proof (bayyina).\textsuperscript{44} Unlike Crusader law, however, Islamic law did not impose religious distinctions limiting the validity of oaths by non-Muslims: discrimination applied to witnessing, while everyone was allowed to take oaths.\textsuperscript{45} It did, however, provide ample detail on the validation of minority oaths, such as the books considered to be sacred and by the Jews, Muslims or Samaritans. In passing, it should be noted that complex rules on oath-taking also appear in late Byzantine law.\textsuperscript{46}

The procedural privilege of the social elite follows the same logic as the act\textsuperscript{or sequitur forum rei} principle discussed later in this section, in the limited sense that it strengthened the position of a Latin Christian defendant, but not if the same Latin is the plaintiff. A debate within Islamic jurisprudence argued that minorities, who could have cause for resentment due to their inferior position in society, did not have a vested interest in safeguarding the public good, and therefore would naturally target their social superiors in court by providing false testimony. The Crusader witness system seems to have been based on a similar principle: if the oath privilege system did not exist, the reasoning went, an ill-meaning non-Latin could have a Frank convicted on the basis of a forged accusation. The privilege allowed the Frankish defendant to win the case without needing to invoke the name of god, and eventually, committing a sinful action such as perjury. It has to be noted however, that, at least theoretically, this privilege was the keystone of Latin legal superiority in commercial litigation; but for this final pledge of a Latin Christian denying his opponent’s claims without taking an oath, there appears to be no device at the Fonde that might have granted any advantage to Latins over non-Latins and infidels. It is for this latter reason that the Cour de la Fonde and the Crusader witness system stand

\textsuperscript{43} “Ici orres la raison dou Franc et dou Sarasin. Se un Franc se clame en la cort dun Sarasin daveir que il li deit, et le Sarasin li nee laveir, et le Franc nen a garens: la raison comande que le Sarasin deit iurer sur sa lei que il rien ne li deit, et atant en deit estre quite. Encement et se un Sarasin se clame dun Franc en la cort daveir que il li deit, et le Franc li nee laveir, et le Sarasin nen a garens: le dreit comande que le Franc ne deit pas faire sairement au Sarasin, se aucune chose nen i avoit de recounoissance.”, E.Kausler, Les Livres des Assises et des Usages dou Reaume de Jerusalem, 89, Assisse LIX.

\textsuperscript{44} Bechor, God in the Courtroom, 30–34.

\textsuperscript{45} Ibid., 339–41.

\textsuperscript{46} Laiou-Thomadakis: “Institutional Mechanisms of Integration”, 173.
out as exceptions in the history of cross-confessional conflict resolution, and
indeed they found an unexpected parallel in the late Mamluk Siyāsa courts
that I will discuss below. The Crusader witness system was not only protective
of minorities when their transactions were notarized at the Fonde, but also
when they were concluded in the marketplace, because the cross-confessional
nature of witnessing was imposed on all plaintiffs, meaning that no actor had
the upper hand in terms of production of proof. In contrast, in a shari'a court,
it was the minority defendant who might look for Muslim witnesses to plead
his case. This potential threat to the advantageous legal position of feudatories,
I must stress, applied only to commercial litigation, and was limited to bour-
geois jurisdiction. At the opposite end of the Crusader system of adjudication,
as expressed in the Livre des Assises for the High Court, the early, abiding bias
against non-baptized witnesses was absolute for cases involving nobles.47

As described in bourgeois law books, biases against certain witnesses were
considered to be functional to cross-confessional relations. This is epitomized
in the lawsuit involving two equal parties; in derogation of the general prin-
ciple that nobody could bear witness in the High Court against someone of
a different confession (“nul ne peut porter garantie en la haute court contre
persones qui ne sont de sa nacion”), in a case involving, say, two Christians,
and therefore deprived of cross-communal resentment, other unbelievers,
such as Muslims, might allegedly be able to testify, since they could not be
targeting either party on religious grounds. In terms of its applications in the
Fonde at least, the Crusader witness system epitomizes the notion that dealing
with diversity was clearly a legal sphere of its own, where superior—and often
formalistic—legal principles were not overtly contradicted, but subject to a
technical framework of implementation.

3.2.5 **Crusader Cyprus**
The Crusaders’ legal system went through still further transformations
when it was exported to its offshoot society in Cyprus in 1291. We know that

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47 “Et qui viuat prover par garans fié ou chose de fié ou autre chose, il covient qu’il soient
ii loiaus garans ou plus de la loy de Rome, se ce n’est de prover aage ou lignage. Que l’on
peut prover ses ii dites choses par chascun home ou feme, mais que il soit cresten batié
et qu’il soient ii ou plus et que il s’accordent bien ensemble a une parole,” Edbury, John of
Ibelin: Le livre des assises, 165, and again: “Ne gens de nassion qui ne sont obeissans a Rome
ne pevent porter garantie en la haute cort, se ce n’est contre celui ou ceaus qui sont de
sa nacion que des ii dites choses. Que nul ne peut porter garantie en la haute court con-
tre persones qui ne sont de sa nacion,” 167. This point is central to Edbury’s view of the
Crusader legal system, Edbury: “Latins and Greeks on Crusader Cyprus”.

in Palestine the Cour des Syriens appears to have been absorbed by the Cour de la Fonde, perhaps because it comprised Syrian jurors. If the Cour de la Fonde disappeared in Cyprus, we know that the need to deal with cross-confessional conflict did not diminish. The Cour des Syriens, headed by the raïs, and comprising at least two jurors and a scribe, persisted. It passed verdicts in civil cases and served the purposes of registering contracts, and had jurisdiction in cases where at least one of the parties could claim some 'oriental,' Greek or Syrian, status; however, apart from constituting a privative legal forum for Syrians, it was not competent on commercial litigation. The disappearance of the Fonde has been attributed to the fact that there were no Muslims living on the Island. Indeed, Marwan Nader has noted that the courts had difficulty providing enough jurors of Latin stock, hence jeopardizing the abiding principle that Latins should only be judged by their peers. Apart from the mutations in the Kingdom’s social composition after 1291, in Cyprus Crusader law entered into competition with the legal systems of the Italian communes, and with other commercial courts. The subsequent transfer of ownership of the city of Famagusta from the Lusignan Crusader monarchy to the Commune of Genoa in 1373 was responsible for introducing Genoese status and jurisdiction to the Island. Venice also promoted her interests in Cyprus by granting citizenship privileges or by recognizing the Crusader-Venetian status for some Cypriots. Although in the beginning it appears that some commercial courts are mentioned by the sources to have been under royal jurisdiction, by the fifteenth century the Italian city republics had set up consular tribunals throughout the Mediterranean, and exported their own courts to subjected territories like the city of Famagusta.

48 Richard, Jean: “La cour des Syriens de Famagouste d’après un texte de 1448”, in: Croisades et États latins d’Orient: points de vue et documents, 383–398: Aldershot, 1992, Nader, Burgess and Burgess law, 138–42, Otten: “Quelques aspects de la justice à Famagouste pendant la période génoise”, 339–41.

49 Jacoby, David: “Citoyens, sujets et protégés de Venise et de Gènes en Chypre du XIIIe au XVe siècle”, in: Recherches sur la Méditerranée orientale du XIIe au XVe siècle: peuples, sociétés, économies, London: Variorum Reprints, 1979, 159–188, Balard, Michel: “La Massaria Génoise de Famagouste”, in: Diplomats in the Eastern Mediterranean 1000–1500: Aspects of Cross-Cultural Communication, edited by Alexander D. Beihammer, Maria G. Parani, et al.: Brill, 2008, 235–249, Balard, Michel: “Note sull’amministrazione Genovese di Cipro nel Quattrocento”, in: La storia dei Genovesi; Atti del Convegno di studi sui ceti dirigenti nelle istituzioni della Repubblica di Genova, Genova 11–14 Giugno 1991, Edited by Tipolitografia Sorriso Francescano, XI, parte 1, 83–94. Genova 1994.
On Cyprus, a commercial tribunal in Nicosia was held by the Venetian Bailo, while that in Famagusta was held by the Genoese Capitano.\textsuperscript{50} The Venetian consul in Famagusta sat in justice for Venetian residents, for cases worth less than 50 Byzantines, however this threshold did not apply for travelling merchants (\textit{homeni de passazo}).\textsuperscript{51} The logic behind this exception was that travelling merchants found themselves in a weaker position, and were therefore in need of additional legal protection—a notion to which I will return, as it played an important role in the development of Mamluk Siyāsa. Like those in action in the Italian cities, a Genoese \textit{Mercanzia} court heard cases under the loggia at Saint Francis’ Church in Famagusta (where a Genoese coat-of-arms can still be seen), and similar tribunals such as the \textit{bailli du comerce} are mentioned for the 14th century.\textsuperscript{52} After the transfer of royal dominion over Famagusta to the Genoese, the Podestà/Capitano was endowed with jurisdiction over the \textit{bourgeois}, but also over the Syrians, Jews and Franks who had traditionally fallen under the jurisdiction of the Fonde. Indeed, the treaty of 1374 foresaw that the Commune should apply the law according to the customs and assises of Cyprus.\textsuperscript{53} In terms of actual judicial archives, the Cour of the Capitano is the only one to have yielded a consistent series of proceedings, and if on the one hand these documents offer a window into the legal world of their Crusader predecessors, on the other it departs from the Eastern Mediterranean tradition of counterbalancing religious discrimination through the application of a set of technicalities and notions of legal particularism. The new legal regime brought about after Famagusta was incorporated to Genoese dominion resulted in a freer approach to the rigid Crusader notions of status. Thus, under Genoese rule, we find the Capitano’s court recognizing the right for some Jews and Syrians to enjoy the status of \textit{burgesses}.\textsuperscript{54} This went a step further under subsequent Italian rules, such as the Venetians who took over

\begin{itemize}
\item \textsuperscript{50} Otten, Cathérine: "Les droits du consul des Vénitiens à Famagouste au xve siècle", in: \textit{Mélanges Cécile Morrisson}, 619–631. Paris: Collège de France— CNRS, 2010, Otten: "Le registre de la Curia".
\item \textsuperscript{51} “Che’l possa far rason a Venitiani fina ala suma de bisanti 50 de Famagosta et da là in zoso, non astrenzando a questa quantità i homeni de passazo, si in domandar come in responder, ai quali el possa far raxon de ogni quantitate.” Otten: "Les droits du consul des Vénitiens à Famagouste au xve siècle", 629.
\item \textsuperscript{52} ASG SG 590/1292, 75v, mentions a panel of four arbitrators of the "officium mercantie" in Famagusta.
\item \textsuperscript{53} Otten: "Quelques aspects de la justice à Famagouste pendant la période génoise", 337.
\item \textsuperscript{54} ASG SG 590/1288, 76, 127, ASG SG 590/1290, 57r., Musso, Giangiacomo, "Gli ebrei nel Levante genovese: ricerche di archivio", La Berio a. 10., n.2 maggio-agosto (1970), 5–27, 21–2, confirms this with additional notarial evidence.
\end{itemize}
the Island a century later, and who suppressed the remnants of the Crusader courts, including the Cour des Syriens.

Tantamount to the merging of Bourgeois and Fonde jurisdictions, these communal courts should have attracted a great deal of cross-confessional litigation, as in Cyprus acquiring Venetian or Genoese citizenship could be most valuable to anyone involved in trade. Besides Latin migrants accessing citizenship, even Syrian Christians and Jews embraced some lesser Genoese and Venetian status in Famagusta (the so-called ‘white’ Genoese or ‘white’ Venetians), and one could be a citizen of these republics while still remaining a vassal of the Lusignan king according to feudal law. Finally, Genoa and Venice fostered the progressive transfer of commercial and cross-confessional cases to the new courts sponsored by the Italian powers. In this context, the Capitano attracted the most cross-confessional civil cases, and his jurisdiction was extended to cover commercial disputes.

Together with the statutes of the Venetian consular court, the Capitano is probably the only tribunal for which proceedings have been preserved. Although Muslims do not appear in the surviving ledgers, it is clear that fair justice was at least delivered by the Capitano in cross-confessional cases. Armenians, Copts, and a group of Arabic-speaking Syrian Christians referred to as Fazolati appear in the preserved ledgers, both as defendants and as plaintiffs. Although the court was used by Latins of Crusader lineage, such as the so-called ‘white Genoese,’ the frequency of instances of fazolati and Jewish plaintiffs in the registers makes it clear that this court can be considered the Fonde’s true heir.55

At the Capitano, contracts between Jews and involving Jewish and Christian parties were notarized; in my view, the notarizing role of this court responded to a 1374 injunction to observe the ancient Crusader laws (“gubernare burgenses … secundum usus et asisias regni Cypri”). Thus we find in the registers a Jew named Azariel who had a loan registered at the Court of the Syrians, and which he produced before the Capitano when he took his debtor to court. Jews sued each other and notarized arbitral agreements between each other at the court, and, although the scribes do not record any of the parties’ origins, it seems that it also served as a forum for disputes arising in Nicosia and in other cities. At the Genoese court of Famagusta, for example, debtors could be arrested following denunciation by a Jewish creditor.56 The Capitano, moreover, enforced decisions made by the Mercanzia and the Court of the Syrians. In addition, the court registered the appointment of courtiers charged with the supervision of

55 Jew Salomon Habibi sued a woman named Levantina, ASG SG 590/1291, 95r.
56 ASG SG 590/1290 November 1438, f. 64, 20 March.
various crafts and market activities. Among these censarii we find some women, and market brokers exhibited some degree of confessional variety, including Jews, Armenians, Fazolati and White Genoese. Aspirants to the censarii post were sponsored by a patron, who then signed the act of appointment—and indeed, in one case we find a Jew acting as guarantor.\textsuperscript{57}

It is obvious that from a late medieval perspective Courts such as those of the Genoese permitted important procedural advantages for parties. The main benefit was that plaintiffs could produce written evidence that would be considered by the court without the intervention of witnesses. Unlike the situation in Crusader courts described by Pegolotti, where notarial deeds had no probative value, they were freely accepted by the judge. And indeed, plaintiffs produced all kinds of notarial documents before the Capitano. Deeds drawn up by Venetian notaries in Damascus turned up during the hearings, hence confirming that the Middle East was included in a Latin, imperial notarial oecumene.\textsuperscript{58} Greek notarial documents were just as readily translated and incorporated into the proceedings by the court notary. Hebrew documents were the object of sworn translations and used as a basis for judicial decisions. In contrast, apart from the case of an apostate, Muslims never appeared before the Court, nor are Islamic deeds mentioned, although we know that Muslims had been present on the island since it had become tributary to the Mamluks in 1420.\textsuperscript{59} I have come across only one instance of a Muslim involved in a judicial act, and the way written evidence was handled in this case is very significant. In April 1455, the Capitano had a vessel seized at Famagusta harbor, on the basis of a claim by Giorgio Manson, an individual of Syrian-Crusader origin who had entered into business with a certain Ali Sulumano of Tripoli, who owned the boat jointly with two Latins. Solumano owed a good deal of money to Manson, according to an acknowledgement of debt exhibited to the court, although, meaningfully enough, it does not mention in which language this document was written. Nor did the court, contrary to its own practice with notarial deeds produced elsewhere, appear to find it useful to have the document incorporated into the proceedings. The reader is left none the wiser, therefore, as to whether the court accepted evidence produced in Islamic lands, and if Muslims could be admitted as real actors of the legal system, or simply have their goods seized.\textsuperscript{60}

\textsuperscript{57} ASG SG 590/1291, 412–14, ASG SG 590/1292, 187–201.
\textsuperscript{58} ASG SG 590/1289, f.106v.
\textsuperscript{59} ASG SG 590/1288, 114v, a certain Petro de Soria \textit{olim saracenus}.
\textsuperscript{60} ASG SG 590/1291, 123v.
Nowhere in the Genoese legal system are religious-based limitations against minorities expressly stated. In general, metropolitan jurisprudence never refers to how proof advanced by unbelievers or in alien languages should be dealt with, for instance, by notaries. In this, the Genoese legal system matched the Venetian one, and more broadly, those related to the continental tradition of the Ius Commune, and differed from the Islamic, Byzantine and Crusader ones. Yet it has been noted that, as witnesses, the Jews of the Genoese colonies appear with less regularity in the registers than Greeks, and, when they do, it is uniquely as witnesses to the transactions of their coreligionists. The legal historian Elisabeth Santschi has remarked that, as regards minorities under Venetian dominion, the Statuti of Venice applied to everyone, although some legal particularisms were observed for family law. Although she does not provide empirical evidence for court practice, she notes that Jews in the colonies could testify either for or against each other, but also against Christians. However, this contrasts with the praxis observed by Venetian notaries in Alexandria and Damascus, where Muslims and Jews only signed documents that included at least one non-Christian party. This can be observed, without exception, in a serial survey of deeds running between 1360 and 1450.

At this point, we can draw several conclusions from the Crusader legal system and its transfer to Cyprus. First, that the legal systems of the Latin city states differed from Middle Eastern ones in that they lacked explicit legal biases. However, despite this difference, it should be noted that in Latin European market and court practice, the role of non-Christians as actors of the legal system was limited, and this practice had features common to the Islamic, Byzantine and Crusader ‘witness systems.’ Under all three of these Eastern Mediterranean regimes, justice was indiscriminately dispensed to believers and unbelievers alike. In the podestral court of Famagusta, in commercial courts such as those in Florence, and even in Venice, before the giudici di petizion, whose sentenze have come down to us, this did not happen, since

61 Becker, Brian Nathaniel: Life and Local Administration in Fifteenth-Century Genoese Chios, Ph.D. Thesis, Western Michigan University: ProQuest Dissertations and Theses, 2010, 213, Balard, Michel: “Il notaio e l’amministrazione della giustizia nell’oltremare genovese”, in: Hinc publica fides. Il notaio e l’amministrazione della giustizia, edited by V. Piergiovanni., Milan: A. Giuffrè, 2006, 355–369, Balard quotes an interesting case in which non-Latins inhibited from appearing in court. Argenti, The religious minorities of Chios: Jews and Roman Catholics, 130–41.

62 Santschi, Elisabeth: “Contribution à l’étude de la communauté juive”, 177–211.

63 ASVe, CI, N, B. 22, Notary V. Bonfantin, Jan. 17, 1393, June 28, 1419, ASVe, Notarile Testamenti, B. 215, Notary S. Peccator, May 2, 1448, Oct. 5, 1448, Oct. 14, 1448, ASVe, CI, N, B. 211, Notary N. Turiano, f. 6v, May 21, 1455.
Muslims were always absent, even if the city counted with a nurtured community of Ottoman merchants. If the legal systems of Genoa and Venice had opener attitudes towards diversity, paradoxically enough, in practice unbelievers enjoyed even less access to the legal system, and Muslims never appear as actors or subjects of it in the surviving records. In this, the Genoese tribunal in Cyprus sets a definitive line of demarcation with its Crusader past.

3.3 The *actor sequitur forum rei* Principle

If the Cour de la Fonde provided a more neutral forum for commercial litigation, it would not be fair to say that Muslim rulers were exclusively interested in asserting the supremacy of shari‘a and of the local qadi courts. Indeed, a most interesting development in the field of adjudication is the inhibition of the shari‘a and the acceptance of alternate systems of mutual enforcement— that is, by defining a procedure involving both foreign and local courts. The general principle by which Roman law defined the geographical jurisdiction under which a given case should be tried is known as *actor sequitur forum rei*, according to which disputes were heard in the court that had jurisdiction over the defendant, rather than the plaintiff. Again, this abiding *actor sequitur* principle echoed Byzantine and Crusader procedure, in whose courts disputes between burgesses from different cities were heard in the court of the defendant.64

*Actor sequitur* was the main principle governing the settlement of mixed disputes in treaties between European and Muslim states, and in particular with the early Mamluks, which stipulated that it was the religious and legal status of the defendant that determined the court in which a dispute should be tried. In cases involving a Muslim party, the *actor sequitur* principle stood at odds with the supremacy of shari‘a in Islamic societies, since it implied that, if the defendant was a Muslim, the case should be heard by an Islamic judge, but that if a Muslim sued a Frank the issue should be transferred to the latter’s consul.

The *actor sequitur* principle was adopted for specific times and places, and was not applied universally. Kate Fleet has found evidence for mixed panels comprising Frankish and indigenous judges for pre-Ottoman Turkey and the Tatar khanates, however the sources are not sufficiently clear on the extent or

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64 Nader, *Burgesses and Burgess law*, 154. Macrides, Ruth J.: “The competent court”, in: *Kinship and Justice in Byzantium, 11th-15th Centuries*, Ashgate 1999, 117–130.
regularity to which such solutions were resorted to. Use of the *actor sequitur* principle is documented for Islamic Iberia and Christian societies during the early Reconquista, and in a commercial context it was sanctioned in very early Mamluk treaties. According to the Mamluk-Venetian treaty of 1254, signed with the Mamluk sultan Muʿīzz al-dīn Aybak (1250–1257), this principle stood as a major guideline for adjudication:

Item, quod, si aliquis Sarracenus clamauerit se de aliquo Veneto, diffininator causa ante consulem Venetorum. Et si aliquis Venetos proclamauerit se de aliquo Sarraceno, diffiniatur ratio ante illum, qui fuerit loco Soldani; et potestatem habeat consul faciendi rationem inter ipsos.

In the Maghreb the same principle of transferring jurisdiction to the defendant’s forum is mentioned in the Ḥafsid treaties with Genoa (1343) and Pisa (1397). This put Frankish judges in the position of potentially passing verdict on Muslims, which in turn represented a challenge to the dominance of shariʿa within the Dār al-islām. The Venetians seem to have promoted this cross-communal adjudication system in their treaties with Lesser Armenia (1307), Cyprus (1306) and even in Tabriz (1320). This makes it all the more intriguing that it should be adopted in the first Mamluk treaties with European powers, which may have drawn extensively from Crusader practice. As we saw earlier, it is still up for debate whether the Crusader legal system was truly as pluralistic as some would have it believed, to the extent of recognizing parallel jurisdictions for every community, even for Jews and Muslims. What is clear, however, is that aside from defining a forum for mixed disputes at the Cour de la Fonde, it privileged the defendant’s confession by imposing the burden of proof upon his own community witnesses.

The 1290 treaty between al-Manṣūr Qalāwūn and Genoa confirmed the initial Mamluk tendency to rely on the *actor sequitur* principle. In it, the Islamic ruler bestows upon foreign consuls the right to pass judgment in cases where

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65 Fleet, Kate: “Turks, Mamluks, and Latin Merchants: Commerce, Conflict, and Cooperation in the Eastern Mediterranean”, in: *Byzantines, Latins, and Turks in the Eastern Mediterranean world after 1150*, edited by Jonathan Harris, Catherine J. Holmes, et al., Oxford University Press, 2012, 327–344, 341, Fleet, “Turkish-Latin Relations”, 611, Orlando, Ermanno, “Venezia, il diritto pattizio e il commercio mediterraneo nel basso medioevo”, *Reti Medievali Rivista* 17 (1) (2016), 3–33, mentions the treaty of 1342 with Zanibech.

66 Tafeland Thomas, Urkunden zur älteren Handels, 487.

67 Amari, M.: *I diplomi arabi del R. Archivio Fiorentino*, Florence: Le Monnier, 1863, 320, Valérian, “La résolution des conflits”, 557.

68 Orlando, “Venezia, il diritto pattizio e il commercio mediterraneo nel basso medioevo”, 17.
the plaintiff is a Muslim; however, if the lawsuit is initiated by a Frank, the adjudication must go in the opposite direction, to the sultans’ officers (“deffiniatur ratio ante illum quo fuerit loco soldani”). It has to be noted that the Mamluks do not seem to have dwelt much upon the precedent set by their immediate Muslim predecessors, the Ayyubids, who in 1238 concentrated all jurisdiction for mixed cases in the hands of Islamic judges. The actor sequitur rule was not only enforced for interfaith cases, but also for disputes opposing two Franks. For the Byzantine context, Angeliki Laiou and others have interpreted the transfer of disputes to foreign courts as a sign of weakness resulting, predictably enough, from the Latin takeover of Constantinople during the Fourth Crusade. In his discussion of the 1323 treaty, or even when addressing mazālim jurisdiction, Dominique Valérian shares this tendency to explain all decisions made by Muslims as dictated by an unfavorable balance of power. However, the balance of power between Crusaders and Muslims was much more advantageous to the Mamluks than to the Ayyubids, hence explaining the adoption of the actor sequitur principle on this basis appears questionable.

3.4 Empowering One Consul over the Others

A technique similar to the actor sequitur principle, for ensuring intra-communal dispute resolution amongst non-Muslims, was to empower one consul over the others. This seems only to have been used for cases between Franks of different origins, and the granting of such privileges seems to have concerned mainly the Maghreb. This approach probably has its roots in the Islamic tendency to deal with non-Muslims in an inter-communal framework, and therefore to consider all Franks to be a single community governed by the laws of Islamic

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69 Holt, P. M.: Early Mamluk diplomacy, 1260–1290: treaties of Baybars and Qalâwûn with Christian rulers, Leiden; New York: E.J. Brill, 1995, 145.
70 “Item, si aliquis Venetus habuerit placitum cum alio Christiano, diffiniatur ante Consulem. Et si habuerit placiturn cum Saraceno, diffiniatur ante justitiam terre. Et sic de hoc respondimus,” Tafel and Thomas, Urkunden zur älteren Handels, 338.
71 “Item, quod si aliquis Florentinorum injuriatus aliquem fuerit, quod ejus consul teneatur eum punire juxta ipsorum rictum. Et si alius offenderit Florentino, quo consul offendentis teneatur ipsum punire,” Houssaye Michienzi, Ingrid, Datini, Majorque et le Maghreb (14e-15e siecles): réseaux, espaces Méditerranéens et stratégies marchandes, Leiden, Brill, 2013, 173–4. 1421 treaty between Florence and Tunis, article 2.
72 Valérian, “La résolution des conflits”, 557, 563–4.
73 Humphreys, R Stephen: “Ayyubids, Mamluks, and the Latin East in the thirteenth century”, Mamluk studies review, 2, 1998: 1–17, 10.
legal pluralism. Perhaps for this reason, Maghrebi rulers qualified the Pisan consuls to hear any dispute between Franks, irrespective of their political belonging. This clause is stipulated in the 1358 treaty with the Marinids, who gave precedence to the qādis for mixed cases, but empowered the Pisan consul as judge among all Franks.\textsuperscript{74} While the Marinids in the west and the Ayyubids in the east maintained the precedence of sharīʿa courts over cases involving at least one Muslim, the early Mamluks and the Ḥafṣids, in contrast, opened the door to the \textit{actor sequitur forum rei} principle. Moreover, Mamluk and Ḥafṣid treaties do not necessarily refer to qadis, but mention instead the judicial functions of officials, such as those attached to the customs offices.\textsuperscript{75}

In any case, after the second half of the fourteenth century all alternative solutions for dealing with mixed cases were progressively abandoned in the Eastern Mediterranean, and no subsequent Mamluk treaty mentions the \textit{actor sequitur} principle. The 1496 agreement with Florence makes it clear that officials should pass judgment irrespective of the identity of the plaintiff or the defendant,\textsuperscript{76} and neither the Mamluks nor the Ottomans empowered a single European consul over the others. In other words, while up until the fourteenth century for Islamic rulers and policy-makers it was conceivable that a fellow Muslim might appear before a Frankish judge—normally a consul—this tendency changed during the fifteenth century. In fifteenth-century treaties, the supremacy of sharīʿa is not challenged, and therefore no Muslim could be brought before a Christian judge. A similar tendency has been noted for the Turkish principalities, which progressively discarded the \textit{actor sequitur} principle in favor of Islamic adjudication for mixed disputes, irrespective of who the defendant was.\textsuperscript{77} As a minor exception to this principle, the Catalan treaty with

\begin{itemize}
\item \textsuperscript{74} “E questo è il capitolo undecimo, lo quale havete domandato. Che se alcuno mercatante pisano havesse quistione con un altro Cristiano d’altra lingua, che sia la quistione dinanzi del vostro consolo; salvo che se la quistione fusse grande che portasse pondo, che vengha a sententarla al cadi’ della terra. E quando nel luogo non havesse consolo e la detta quistione fusse, che la veggia tra loro lo aveli (al-walī) de la terra, e sino lo signore del castello. Et habbiamovelo conceduto questo. E quando la quistione fusse dal Saracino al Cristiano, che torni alla ragione de’ Saracini e de’ loro cadi.” Amari, \textit{I diplomi}, 311.
\item \textsuperscript{75} Art. 5 of the treaty between Pisa and Tunis: “Et se alcuno Saracino si ramaricherà d’alcuno Pisano, sia tenuto farlo richiedere dinanzi al consolo de’ Pisani; e l’consolo debba quegli spedere et fargli ragione; et se questo non facesse, allora et in quel caso il Saracino si possa lamentare al signore della doana. Et se alcuno Pisano, o chi per Pisano sia astretto, vorrà o dovrà adomandare d’ alcuno Saracino, o da alcuna altra persona che sia sotto la pace del detto re, allora il Pisano debba adomandare ragione in doana; et la doana sia tenuta di fare a lui ragione, et quello da lui spacciare,” ibid., 320.
\item \textsuperscript{76} Ibid. 188, “min muslim ‘alā bunduqi aw ‘alā muslim min bunduqi.”
\item \textsuperscript{77} Fleet, “Turkish-Latin Relations”.
\end{itemize}
Barsbay allowed Muslims to have recourse to a merchants’ arbitration panel if they so wished. Technical arrangements for the resolution of conflicts were sometimes at odds with legal theory, since no Muslim jurist would have agreed to hand a case concerning Muslims over a Frankish consular court. The Mamluks had a similar tendency to transfer disputed cases from other nations to the Venetian consul, even if this was never sanctioned in the treaties, and was often the source of bitter complaint from, for example, Genoese merchants.

The transfer of litigation to the defendant’s court gradually faded from the adjudication system in the East over the course of the fourteenth century, acknowledging the rule of Islamic law over the issues derived from the presence of foreigners. However, this tendency to abandon the *actor sequitur* principle cannot exclusively be interpreted as a bid to renounce legal pluralism. Islamic rule of law did not prevent, but fostered consular jurisdiction, provided European consuls limited themselves to arbitrating intra-communal disputes alone, criminal cases excluded. Although the fourteenth century saw a progressive fixing of cross-confessional litigations in the field of action of Islamic judges, either qadis or officials, out of court many cross-confessional interactions were dealt with by notaries and consular institutions. Imperial investiture granted notaries the title of *judex ordinarius*, who had ample judicial prerogatives and assisted private arbitration panels. The attribution of cases to consular officials had been developing since late medieval times, not by virtue of any exceptional privilege, as has often been assumed, but due to a growing Islamic acceptance of the legal particularism of dhimmīs and mustā‘min communities. Moreover, the courts and notaries in the Italian colonies, as well as those under consular jurisdiction, tended to level differences between Latin Christians and aliens, admitting anyone as an actor of the legal system.

Instead of putting an end to legal pluralism, the unprecedented ascendancy of consuls and their notaries went hand in hand with the rise of an Islamic, yet alternative jurisdiction to the qadi courts: the Siyāsa courts. From the mid-14th century, and up to 1517, treaties such as the agreements between the Mamluks and Cyprus started to mention the transfer of mixed cases to Siyāsa officials, rather than to qadis in shari‘a courts. In the Arab Middle East, beyond informal solutions such as arbitration by peers, commercial litigation was solved either in the framework of communal institutions, or, in all mixed cases, before the officials presiding over Siyāsa courts.

The disappearance of *actor sequitur* clauses for mixed cases coincided, at least under the Mamluks, with the rise of Siyāsa as a legal theory, and with

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78 Ruiz-Orsatti, “Tratado de Paz”. 
its materialization as a mechanism for enforcing court decisions. The Sīyāṣa courts, rather than displacing previous practice, came as an added layer to a widespread tradition of relying on ad hoc, technical solutions to the problem of governing amidst diversity. These technical solutions included, as we have seen, a panoply of devices that encompassed the taking of oaths, the selection of witnesses on religious grounds and the acceptance of cross-confessional instances of adjudication. The precedent that the Mamluks set from this moment on was that they repositioned the problem of coping with diversity in the realm of Islamic law. If the Roman-law actor sequitur principle, the ultimate expression of this late medieval solution to mixed litigation, persisted in Castile, in contrast in the East it was abandoned entirely.

3.5 An Iberian Epilogue

Some of the elements that had made cross-confessional relations possible persisted under different conditions in the far Western extremity of the Mediterranean basin, in Castile. From a second-rank polity with narrow territorial claims in northern Christian Iberia, Castile underwent a social transformation accompanying its political expansion, at the expense of both neighbors and infidels. Expanding from a peripheral county to a hegemonic Iberian power from the 11th to the 13th centuries, it incorporated an unprecedented number of Muslim and Jewish communities under the aegis of a Christian king. The Battle at Navas de Tolosa in 1212 witnessed the unlocking of the Almohad stronghold in southern Spain, and led to the fall of the larger cities, such as Seville in 1248. Parallel to this expansion, several legal codes were issued in an effort to extend a uniform legal layer over heterogeneous communities. The laws in Castile, ranging from earlier ones such as the Espéculo to the late compilation of Las Siete Partidas, devoted a good deal of attention to issues of cross-confessional witnessing. In particular legal realities, as was the case of Seville, Islamic notions and ideas on governing diversity were adopted and rephrased by Christian rulers. As a result, in Reconquista Castile, Muslims found themselves bound by similar laws of obligation as those that had been imposed on dhimmis under Islamic rule.

In 1251, the Genoese concluded an agreement with the Castilian King that exhibits numerous analogies with amān treaties. Among these, the Genoese

79 Gourdin: “Les marchands étrangers ont-ils un statut de dhimmi?”, Gallego, Isidoro González, “El Libro de los privilegios de la nación genovesa”, Historia. Instituciones. Documentos 1 (1974), 275–358.
were granted permission to enjoy a public bath and quarters, and consuls were considered not as exogenous magistrates but as officials appointed by the King, in the same fashion that Mamluk and Ḥafṣid rulers did. More interestingly for our argument, adjudication was guided by the *actor sequitur forum rei* principle, whereby a Castilian plaintiff could potentially end up before the Genoese Consul if he sued a Genoese citizen. For two centuries, the Castilian monarchs mirrored the dhimmī status, imposing it upon Muslims and Jews, and reserved a similar treatment for both foreign merchants and religious minorities. Forms of legal particularism and private jurisdiction and courts were recognized in Seville to Muslims, Jews and Genoese merchants, then extended in 1282 to Catalan traders. The 1251 treaty distinguished between Genoese residents and those “from abroad,” considering the former to be local subjects, just as it happens to mustāʾmins remaining in Islamic land after the expiration of their amān.80 The 1251 document expresses the King’s prerogative to judge criminal offenses, as well as other technicalities of adjudication also present in Ḥafṣid treaties; *mutatis mutandis*, the Castilian text mirrors Islamic amān practice and theory.81

As for the Islamic biases against witnesses, they were grafted into a specific legal context; that of the early codes such as the *Fuero Real*, which uniquely envisaged the action of Christian witnesses. The process has been documented by Mélanie Jecker, who has examined the codification of local laws under Alfonso X of Castile, although in her interpretation the novelty of it can be found not in the influence of shariʿa, but in the revival of Roman law. In fact, early Castilian law books do not mention any particular biases, and the first allusions to applying alternate methods of oath-taking to Muslims and Jews appear only in late appendixes to the *Fuero Real*. The *Espéculo* announces its intention to ban non-Christian witnesses for cross-confessional disputes, although it allows exceptions for cases where no Christian witnesses are available. In this, the thirteenth-century Castilian code drew direct inspiration from Qurʾān 11: 282, which elaborates on the need to have recourse

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80 “E estos consoles que non puedan judgar ningund juyzio de sangre nin puedan judgar a vezino de la çibdat de Sevilla mas que iudguen entre los genueses que vinieren de fuera que non fueren vezinos de Sevilla. E si por avenuta el ginoes que viniere de fuera querella del vezino de Sevilla quel lieve antel fuero e los alcaldes de Sevilla e si el vezino de Sevilla oviere querella del genues que viniere de fuera quel lieve otro si ante los consules,” Gallego, “El Libro de los privilegios de la nación genovesa”, 290.

81 For example, the right for an indigenous subject to appeal to his own institutions if unsatisfied with the foreign consul’s verdict, see Amari, *I diplomi*, 320, quoted above.
to women and unbelievers when male, Muslim witnesses are not available.\(^8\)

When foreseeing the absence of believers to act as witnesses, the Revelation refers to the historical reality of the early hijra, when Muslims were a dominant minority and no real project of mass conversion was even on the agenda of Islamic governance. This situation of isolated communities is with all certainty what the Castilian lawmaker also had in mind, leaving few doubts as to crosspollination between the two texts, and more generally between Castilian law and Islamic fiqh. Like in Islamic jurisprudence, emphasis is placed on the trustworthiness of these Islamic witnesses vis-à-vis their own communities, a point brought up by contemporary thinkers such as Ibn Qayyim, in a passage on minority testimony included in his Siyāsa treatise.\(^8\)

Lastly, a direct parallel can be traced between Castilian Law and Mālikī doctrines—dominant in al-Andalus—which allowed for torture if a defendant was found guilty of public infamy.\(^8\)

The author of the Espéculo seems to mirror, mutatis mutandis, the Islamic idea that Revelation, rather than contradictory breaks, has experienced a historical continuity. A crucial notion in Islam, it is reflected in the fact that conversions to faiths other than Islam are not allowed.\(^8\)

In the Espéculo, in contradiction with the general rule in force for mixed marriages, a Jew who had converted to the last version of the divine message, hence embracing Christianity, should not be allowed to keep his former Jewish wife.\(^8\)

The lawmaker stresses the continuity between both versions of the Revelation, the Jewish faith

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\(^8\) Opúsculos legales del rey don Alfonso el Sabio, Tomo I, El espéculo o espejo de todos los derechos, edited by Real Academia de la historia, Madrid: Imprenta Real, 1836, 194, “Testigo non deve ser ome que sea de otra ley, asi como judio, o moro, o herege, o ome que aya otra crencia que non sea de la nuestra. Ca atal como este non puede testiguar contra cristiano, sinon si fuer en algún fecho malo que feziese alguno, o quisiese fazer, o fuese en conseio de lo fazer contral rey o contra el regno, o en otro fecho malo que feziese otroso, en algún logar que non acaesciesen y christianos con que lo podiesen provar.”

\(^8\) Ibn Qayyim al-Jawziyah, al-Ṭuruq al-ḥukmīyah, 512, “idhā qabalna shahāda baʿḍahum ʿalā baʾḍ iʿtabarnā ʿadālatahum fī dīnihim.”

\(^8\) El espéculo o espejo de todos los derechos, 194, “Mas si aquellos que fuesen acusados desta manera fuesen en ante enramados dotro fecho malo, dezimos que el testimonio destos que dudemos con el enfamamiento, que aquellos acusados avian ante, es ayuda para metello a tormento para saber la verdad de aquel fecho.”

\(^8\) Johansen, “Signs as Evidence”, 170.

\(^8\) Friedmann: “Classification of unbelievers in Sunni Muslim Law and Tradition”, 66–7.

\(^8\) Emon, Religious Pluralism, 66–7.

\(^8\) “Otroso dezimos, que si el marido e la mugier fueren de señas leys, e eyendo en uno denostare el de la otra ley al que fuere christiano, ol conseiase cosa por que pierda su alma, si el christiano se quisier partir del que fuer dotra ley, non deve el otro seer entregado del, maguer le demande.” El espéculo o espejo de todos los derechos, 382–3, Ley xxxiv.
“being the beginning and the precedent of ours”. Following a similar logic as that evoked for ḥarbīs and their lack of interest to preserve the common good, thus it was assumed that a Jewish woman would tend to drag her husband back to the previous version of the message expressed by the Jewish prophets. This principle echoes Qurʾān 60:10, dealing with the problem of women who emigrated with the Prophet to Medina and to whether or not they remained the wives of unbelievers back in Mecca. If marrying a dhimmī wife is lawful, in this case the marriage contract has been severed by conversion, hence the Qur’anic injunction “do not hold on to your marriages with unbelieving women”. The Castilians consider Moors and heathens not exposed to the same risk as Jews, since their beliefs could not be proved “by prophets and saints,” and who would therefore be supposedly less tempted to return to their original unbelief.

Similarities between Islamic and Castilian law can also be found in discussions about the transfer of proof from one judge to another, and in particular the application of a special procedure for the taking of oaths. A great amount of detail was given on the words that needed to be said, on the sacred character of the places of worship and on the use of sacred texts. In this, Castilian law needs to be read against the backdrop of late medieval developments in Islamic law, more precisely notarial manuals such as Jawāhir al-ʿuqūd by Muḥammad Ibn Shihāb al-Dīn al-Suyūṭī (1413/1414–1475) or al-Saḥmāwī’s chancery manual. Saḥmāwī was deeply preoccupied with the issue of oaths, and devoted a long section to the topic, identifying specific formulae for the different confessions of Jews, Samaritans, Christians, Zoroastrians, and an intriguing category of “Greek philosophers.” As concerns the Franks, he provided the example of an oath taken to sanction a treaty in 1371. The technical handling of cross-confessional relations in both Castilian and Islamic lands reached its peak in this period, with al-Saḥmāwī’s list of a long series of non-Muslim sacred artifacts and notions, and similar elaborations on oaths made by Jews.

87 “e es probado por muchas profetas e por muchos santos, e es la su ley comienzo e testimonio de la nuestra”; Ibid., 383, Ley xxxv.
88 “los que se convertiesen a la nuestra ley [...] puñarien de los engañar, e de los tornar a la su creencia, e sacarlos de la nuestra”; Ibid., 384.
89 Ibid., 205, Ley xxii. Hallaq, Wael B., “Qadis Communicating: Legal Change and the Law of Documentary Evidence”, al-Qantara, 20 2, 1999, 437–66.
90 al-Suyūṭī, Muhammad Ibn Shihāb al-Dīn (1413 or 14–1475): Jawāhir al-ʿUqūd wa-Muʿīn al-Quḍāḥ wa-al-Muwaggīʿin wa-al-Shuhūd Edited by Muhammad Hāmid al-Fiqī, 2 vols. vol, Cairo: Maṭbaʿat al-Sunnah al-Muḥammadīyah, 1992, 11, 339–352.
91 al-Saḥmāwī, al-Thaghr al-bāsim, 853–95.
Dealing with Diversity in Medieval Norms and Courts

and Muslims from the author of the *Espéculo* and the *Partidas*. The text of the *Partidas* recommends oath-taking at the synagogue, echoing Islamic law’s ideas about the efficacy of validating an oath in houses of prayer. Elisabeth Santschi has detected the same interest in oath-taking in two rulings on the topic by the Venetian authorities in Crete.

A further evolution can be noted in the later texts produced under Alfonso the Wise. Without falling in major contradiction, the *Partidas* deal with proof and unbelief with much more parsimony, and, for example, do not mention the issue of the availability of majority witnesses. The *Partidas* declare a total ban on cross-confessional witnessing, without explicitly accepting the validity of the ḥanafī exception; that is, that in Castile Jews could not give testimony for or against Muslims, and vice versa. This ḥanafī exception is instead provided by the *Espéculo*, allowing for a technical acceptance of non-Christians as witnesses, provided, like in Islamic law, they were considered to be upstanding by their peers. Castilian law equally foresaw the participation of Muslims in cases of lèse-majesté, and where no upright Christians were available to testify.

One is tempted to see an Islamic genealogy in the Castilian jurisprudence on these matters. Baber Johansen realized that, despite a backdrop of fundamental differences regarding truth and the purpose of the legal process, some legal issues developed along parallel lines in the late Middle ages. In several works, Johansen elaborates on the common interest that canon law, *ius commune* and shari’a had in allowing judicial torture as a means to get to the truth. This issue, as we shall see in the following pages, was on the agenda of Mamluk rulers and jurists in the fourteenth century. The fact that such genealogies cannot be

92 El espéculo o espejo de todos los derechos, 406–9, Las siete partidas del rey Don Alfonso el Sabio, cotejadas con varios codices antiguos por la Real academia de la historia, edited by Real Academia de la historia Madrid, 3 vols., Madrid: Imprenta real, 1807, 485–7.
93 Santschi, “Contribution à l’étude de la communauté juive”, 207–8. Bechor, *God in the Courtroom*, 122–4.
94 *Las siete partidas*, 11, 519, “et aun decimos que home de otra ley asi como judio, o moro o herege, que non puede testiguar contra cristiano, fueras ende en pleyto de traycion que quisisen facer al rey ó al regno; ca entonces bien puede seer cabido su testimonio, seyendo tal home que los otros de su ley nol podiesen desechar con derecho para non valer lo que testiguase, et seyendo el fecho averiguado por otras pruebas ó presunciones cer tas: mas quando los que fuesen de otra ley hobsien pleyto entre sí mismos, bien pueden testiguar unos contra otros en juicio et fuera del.”
95 El espéculo o espejo de todos los derechos, 194, “Ca en tal manera como esta, tambien deven yr sus testimonias de omes, que sean de otra ley, seyendo tales, que non los podiesen desechar de testimonio otros omes que fuesen de su ley misma.”
96 Johansen, “Signs as Evidence”, Johansen: “Vérité et torture. *Ius commune* et droit musul man entre le Xe et le XIIe siècle.”
definitively proved does not justify the tendency by scholars to interpret every
novelty as reminiscent of Roman law. Lastly, repeated mentions of heathens
(*gentiles*) in fourteenth-century Castilian legal codes probably echo Islamic
jurisprudence, which since very early started nuancing between, on the one
hand, Christian and Jews, and non scripturaries on the other.

Islamic influences surface in another point of doctrine expressed in Cas-
tilian law, as regards the deciphering of witnessing. As I mentioned in the
previous chapter, Siyāsa theorists were concerned with the problem of en-
larging the narrow investigative methods traditionally granted to the qādī.
Ibn Qayyim (1292–1350) deals with the issue of witnessing amidst diversity
at three different points in his major work on Siyāsa, *al-Ṭuruq al-ḥukmīyah*. Also
departing from an orthodox approach to the regime of proof, the judge
is obliged to pay attention to signs and clues that might shed light on the
witness’s motivations. Contrary to traditional jurisprudence, he should not
simply rely on the utterances of an *a priori* trustworthy, Muslim witness while
neglecting his personal knowledge of the surrounding context in which wit-
nessing is rendered. Confronted with a defendant who claimed to have reg-
ularly deposited a certain sum of money with the plaintiff over the last fif-
ten years, the judge was advised to examine his purse and inquire about
the coinage in order to ascertain whether the coins in the bag were actually
in circulation at that time. Incidentally, Ibn Ḥijjah al-Ḥamawī (died 1434), in-
cluded the same story in an anthology of prose entitled *Thamarāt al-Awrāq*,
in which he stressed the dishonesty of the notaries who initially received the
money as a deposit and later attempted to fraud the merchant by replacing
the dinars with dirhams.97

The judge is also required to go beyond simply hearing the witnesses’ depo-
sitions, and to scrutinize the “faces of the adversaries” (ujūh al-khuṣūm). In this
way, the judge might acquire a certain expertise (*durbah*) in interpreting the true
intentions of lying witnesses, so as “to avoid making mistakes.”98 Parallels with
this approach can be found in Castilian law; Marta Madero has identified a pas-
sage in *Partidas 3.16.26* that describes the procedure to be adopted when hearing
witnesses, advising judges to scrutinize the facial expressions of the speaker.99

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97 Ibn Ḥijjah al-Ḥamawī, Taqī al-Dīn Abū Bakr Ibn ‘Ali (d.1434): *Thamarāt al-Awrāq*, edited
by Muḥammad Abū al-Faḍl Ibrāhīm, Beirut: Dār al-Kutub al-ʿIlmīyah, 1983, 118, Ibn
Qayyim al-Jawzīyah, *al-Ṭuruq al-ḥukmīyah*, 69.
98 Ibn Qayyim al-Jawzīyah, *al-Ṭuruq al-ḥukmīyah*, 71.
99 “et desde quel testigo començare á decir debe el judgador oirle mansamente, et callar
fasta que haya acabado catandol todavía en la cara,” *Las siete partidas*, 11, 527.
Madero points out that this particular point draws from the writings of jurists such as Baldo, as well as previous classic authorities. In the same vein as the Castilian lawmaker, Ibn Qayyim insisted that the judge should inquire as to the circumstances in which the witness had acquired their knowledge of the facts. Whatever the origins, coincidental or not, of these comparable procedures for ascertaining the veracity of oral testimony, they attest to a common tendency to attempt to rationalize procedure and the regime of proof, and to entrust the judicial process with the task of unveiling the truth.

Similarly to Castilian lawmakers, Ibn Qayyim dealt extensively with the unbeliever’s credibility as a witness. He condones hearing non-Muslims in cases related to last wills and similar circumstances where no Muslims are available, and insists that dhimmis propend to seek the truth in their community lives, that they are committed to the Islamic enterprise of governance and that Muslims, therefore, should rely on minority community leaders, the a‘yān. Unbelievers, thus, should be taken as eyewitnesses in the same manner as the Prophet relied on vernacular, non-Muslim guides during his journey to Medina. The Qur‘ān, moreover, recommends relying on Muslims, but does not forbid unbelievers from bearing witness. Internecine quarrels and religious hatred between confessions should not invalidate their witnessing, Ibn Qayyim reasoned, just as it did not for shī‘ī and sunnī Muslims, who were often embroiled in similar disputes. The fact that non-Muslims were considered liars in religious matters did not make them liars to the judge, as they disobeyed the Revelation out of ignorance, and therefore could be considered to be acting in good faith. Muslims relied on the unbelievers’ community leaders and its upstanding members for daily dealings, hence trusting their judgment—unless these individuals were considered to be notorious perjurers.

Together with infidels, Ibn Qayyim’s arguments repeatedly mention merchants and debt issues as relevant examples, and arguments in favor of minority witnessing multiply in al-Ṭuruq al-ḥukmiyāh. It is my contention that the issue of cross-confessional legal relations greatly inspired Mamluk Siyāsa in theory and practice, and, together with the presence of foreign merchants, contributed to new developments in proof and procedure in Islamic law, at least until a new agenda took priority under the Ottomans.

100 “et en aquel logar que fallare que dice que sabe el fecho debel preguntar como lo sabe faciendol decir por qué razón lo sabe, si por vista, ó por oida ó por creencia: et la razón que dixo debela facer escribir”; ibid. ii, 527, Ibn Qayyim al-Jawzīyah, al-Ṭuruq al-ḥukmiyāh, 65.
101 Ibn Qayyim al-Jawzīyah, al-Ṭuruq al-ḥukmiyāh, 63.
102 Ibid., 483–5.
3.6 Siyāsa Justice in Theory and Practice

In spite of recent interest in Siyāsa as a special Muslim jurisdiction, its authority over foreigners has gone almost totally unnoticed. We know that mixed disputes were dealt with by some sort of ‘secular justice’; however only an imperceptible legal shift from maẓālim to Siyāsa can explain the exact nature of these courts. The way in which Siyāsa emerged in the Mamluk context fits into the model of legal change conceived by Wael Hallaq, whereby jurists proved to be sensitive to issues related to, in this case, the presence of foreigners and unbelievers, a concern which in turn was reflected in their fatwās and writings. Siyāsa found its way into mixed cases through the “piecemeal modification of particular aspects of the law” and the articulation of a new doctrine about fatwās and commentaries, in response to new and “wide ranging circumstances.”

To further complicate the study of Siyāsa, court proceedings, if they ever existed, have not survived, and trials can only be reconstructed through descriptions provided by the Franks to their own notaries. The courts of the ḥājibs existed until the mid-fourteenth century as a special jurisdiction administering justice among the military. Before that, the numerous bilateral treaties that regulated the activities of Frankish traders make no mention of the ḥājib, the military official who presided over the courts. Again, it is through a comparative and diachronic reading of the treaties that we are able to understand one of the principal features of Siyāsa: the transfer of mixed cases out of the qādī’s hands, and into those of other officials, such as the ḥājib. In early treaties, the ḥājib is never mentioned, while the qādī clearly adjudicates. The 1271 treaty with Genoa foresaw that in some circumstances “the case should be brought before the Muslim judge (archadi, i.e. al-qādī).” Similarly, the treaty of 1303 with Venice describes disputes being settled by the qādī: “questio oriretur, debeat diffiniri per cadhy terre,” as is the case for Article 22 of the

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103 Hallaq, Wael B.: “Islamic law: history and transformation”, in: The New Cambridge History of Islam, Vol. 4, 2010, 142–183, 171 and Rapoport, “Royal Justice”, 73.
104 al-Šahmāwī, al-Thaghr al-bāsim, 393, describes the changing role of the ḥājib throughout the Mamluk period.
105 al-Qudsī, Badhl al-nasāʾīh al-sharʿīyya, 184, states that, in ‘our days’, the ḥājib has been charged by the Turks (i.e. the Mamluks) with the arbitration of disputes.
106 Holt, Mamluk diplomacy, 136, Fleet: “Turks, Mamluks, and Latin Merchants”, 340.
107 Holt, Mamluk diplomacy, 145–6.
108 Thomas, G. M.and R. Predelli: Diplomatarium veneto-levantinum sive acta et diplomata res venetas graecas atque levantis illustrantia, Vol. 1, Venice: Deputazione veneta di storia patria, 1880, 7.
Mamluk-Venetian treaty of 1345: “tunc uenditor et emptor debeant ire ad rationem coram el cadi.”

I have previously referred to the late medieval tendency to concentrate all mixed jurisdiction in the hands of Muslim judges. Indeed, up until the mid-fourteenth century Middle Eastern qādīs passed verdict on lawsuits involving Frankish and Muslim parties. However, this did not contradict the general right to appeal to the sultan’s maẓālim, invariably mentioned in Ayyubid, Mamluk and Ottoman treaties. In principle, early jurists writing about Siyāsa sought to empower qādīs with the same inquisitive power enjoyed by the officials traditionally entrusted with the repression of crime, however in Mamluk times Siyāsa justice was in practice entrusted to the hājibs, some emirs and, on occasion, the head customs official.

3.6.1 Persians in Cairo, Franks in Acre

Treaties signed before the 1360s allowed the qadis to adjudicate disagreements between Muslims and Christians, while the right to appeal directly to the sultan’s maẓālim court in Cairo was always recognized. The first explicit mention of the Siyāsa courts as a competent jurisdiction in mixed trials can be found in the 1368 draft treaty with Cyprus. The treaty deals extensively with issues of justice, repeatedly mentioning that disputes involving Cypriots and Saracens should be heard by judges who are unspecified by the document, but clearly different from qadis. Unfortunately the extant Latin document accounts only for the Cypriots’ requests, as it was not ratified by the sultan. This draft is nonetheless important as it sets a line of demarcation with previous practice. From this point on, treaties abandoned principles of equity, such as the defendant’s right to have recourse to his own court, leaving sharīʿa as the unique and
abiding legal system; this development meant that a Muslim was now guaranteed to be judged by his peers, and in this case a Mamluk official. Few details are given at this stage as to the nature of these judges, who were expected to pass judgement “by virtue of their office,” and should they decline to do so, the case could be transferred to the qadi.

According to the Arab historian Taqī al-Dīn al-Maqrīzī, it is an episode in 1352–1353 that triggered the expansion of Siyāsa jurisdiction to the affairs of foreigners. According to this famous passage, in that year some Persian merchants arrived in Egypt fleeing mistreatment by the Mongols. They struck a business deal in Cairo with local merchants that turned bad. The Persians appealed to the ḥanafī qādī, but the defendants found a loophole in the ḥanafī bankruptcy regulations and managed to get away with their debts. The ḥanafī school prescribed the imprisonment of debtors for a limited period before they could be declared bankrupt, and it seems that the Cairo merchants were ready to spend some time in jail waiting to be declared default, so that they would not have to pay. In other words, sharīʿa regulations on bankruptcy prevented the plaintiffs from obtaining a satisfactory verdict. However, the Persians complained to the sultan in the Dār al-ʿAdl, the Hall of Justice where maẓālim sessions took place, who for the first time handed the case over to the royal courts. The ḥājib, in turn, “punished” the Cairene merchants (presumably, by torturing them, ar. ʿāqabahum) and forced them to pay their debts. The former were acting in accordance with juridical doctrines such as the Siyāsa Sharʿiyah—“Governance According to Islamic Law”—of Ibn Taymīyah, which recommended the sultan inflict corporal punishment on defaulters who were, we must imagine, hiding their wealth. After this first intervention on issues of debt backed by the sultan himself, al-Maqrīzī argues, the ḥājib took advantage of the episode to reprimand the ḥanafī chief qādī and forbid him from hearing future cases “concerning merchants and debtors.”

If the rise of Siyāsa under the Mamluks is connected with other major judicial developments, it also needs to be placed in the wider context of the Mongol and Timurid invasions. Previous dynasties displaced by nomadic invasions, such as the Zanjīs and the Ayyubids were at odds with the dominance of the shāfiʿī school. They had established four chief judges in Syria, promoted professorships in the Şāliḥiya Madrasa and appointed judgeships from the four

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111 Ibn Taymīyah, al-Siyāsah al-sharʿiyah, 63. al-Maqrīzī, Ālī ibn ‘Alī (1364–1442): Kitāb al-Mawāʾ iz wa-al-‘ibār fi dhikr al-khītaṭ wa-al-āthār, Cairo: Maktabat al-Thaqafa al-Diniyya, n.d. vol. 2, 220–22, Rapoport, “Royal Justice”, 82–3. Irwin, “Privatization”, 66, Moukarzel: “La législation des autorités religieuses et politiques sur les marchands Européens dans le sultanat mamelouk (1250–1517)”, 132.
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madhhabs during the 13th century. Joseph H. Escovitz has devoted a detailed study to the decision by the Mamluk Sultan Baybars to establish full chief judgeships for each of the four madhhabs in 1265. For contemporaries, the institution of the qadi al-quḍāt came about as the result of conflicts between royal and qadi justice, often taking place at the Dār al-ʿAdl, the siege of Royal justice. In several narratives, the shāfiʿī qadi Ibn Bint al-Aʿazz bears the brunt for the Mamluks’ wrath. He is repeated blamed by the sultan and the emirs due to his slowness on making decisions, the inadequate character of penalties, his lack of expedience when forcing defendants to refund victims and his arbitrariness to accept some testimonies.¹¹² Together with this judicial discontent, contemporaries highlighted the great number of people flocking to Cairo, which had now become the siege of sultanian power, thriving with scholars and adherents of the different legal rites. The influx of Persian refugees, and particularly merchants, has been noted in a wider, Mamluk-dominated area extending from Cairo to Jedda and Yemen.¹¹³ Lastly, Siyāsa justice appears as a post-Crusader phenomenon, at a time when trade across confessional boundaries could not be conducted anymore through the European commercial outlets in Palestine and Lesser Armenia.

A second episode, not hitherto linked with al-Maqrīzī’s story of the Persian merchants, can help us to further understand how the problem of foreigners was handled by Mamluk jurists. In April 1353, the shāfiʿī jurist Taqī al-Dīn al-Subkī issued a legal opinion (fatwā) on a similar topic regarding the juridical situation of some Frankish merchants in Acre. The merchants, according to the petitioner, a provincial governor, had gone beyond the terms of their agreement when they started to publicly celebrate religious ceremonies that offended local Muslims (apparently, they hired Muslim porters during a procession). In his response to the consultation, al-Subkī placed all jurisdiction over foreign merchants in the sultan’s hands, rather than in those of the qadis; it was the ruler and his agents who enjoyed discretionary power to punish offenders in this case, as their offence was not clearly specified by shariʿa.¹¹⁴ It was this

¹¹² Escovitz, Joseph H.: The Office of Qâdî al-Quḍât in Cairo under the Bahrî Mamlûks, Berlin: Klaus Schwarz, 1984, 23–31.
¹¹³ Power, Timothy C.: “Trade Cycles and Settlement Patterns in the Red Sea Region (c. AD 1250–1250)”, in: Navigated Spaces, Connected Places. Proceedings of Red Sea Project V. Held at the University of Exeter 16–19 September 2010, edited by D.A. Agius, J. P. Cooper, et al., Oxford: Archaeopress, 2012, 137–45, Vallet, Eric: L’Arabie marchande: Etat et commerce sous les sultans rasîlîdes du Yémen (626–858/1229–1454), Paris: Publications de la Sorbonne, 2011, 646–7.
¹¹⁴ Atiyya, ‘Aziz: “An unpublished XIVth century Fatwā”, in: Studien zur Geschichte und Kultur des Nahen und Fernen Ostens, Edited by W. Heffening, P. Kahle, et al., Brill, 1935, 55–68,
same concern for preventing the qādī from adjudicating in cases concerning merchants and debts, according to al-Maqrīzī, that motivated the Sultan’s intervention in the Persians’ case. Al-Subkī, who had been appointed as one of the first official legal advisors of the royal courts in Damascus, took inspiration from the theories of governance championed by Ibn Taymiyah and his disciples, who promoted the which regulated the application of discretionary punishment (taʿzīr) by the ruler.\footnote{al-Subkī, Taqī al-Dīn ‘Ali Ibn ‘Abd al-Kāfī (1284–1355): Fatāwā al-Subkū, edited by Ḥusām al-Dīn Qudsī, 2 vols., 1355 Vol. 2, 417–21.}

In 1370, al-Subkī’s son, Abu-l-Barakāt, who followed his father as legal advisor (muftī) at the Dār al-ʿAdl, enriched his father’s text with a long commentary on the juridical situation of Frankish merchants.\footnote{116 Aḥmad Abū al- Barakāt b. ʿĀli b. ʿAbd al- Kāfī al- Subkī, (d. 773 AH), for whom a lengthy biography can be found in Ibn Ḥajar al-ʿAsqalānī, Aḥmad Ibn ʿAlī (1372–1449): al-Durar al-Kāminah fī Aʿyān al-Miʾah al-Thāminah, edited by Muḥammad Sayyid Jād al-Ḥaqq, 5 vols., Cairo: Dār al-Kutub al-Ḥadīthah, 1966–1968, 1, 210–6., Nielsen, Secular Justice, 171, provides a list of muftīs at the Dār al-ʿAdl.} The latter, legally enemies of Islam, could enter the realm of Islam for trading purposes upon acceptance of a pact. The basic legal concept here is that any foreign merchant in Islamic lands could benefit from a safe-conduct (amān) protecting his life and property for a limited period. Outside this protection framework (for instance, when it expired or when its terms were broken) the amān-holder lost his legal status as a protected foreigner (mustāʾmin), and in consequence any tax or extraterritoriality privileges, such as consular jurisdiction, expired. While from a European viewpoint commercial privileges constituted the main scope of these treaties, for the Muslim authorities they were also the instrument that solved the juridical dilemma of the European presence in Islamic lands, providing merchants with a clear legal personality and settling jurisdictional issues. Together with other prerogatives, treaties included recognition of the right for European consulates and consular courts to deal with issues among Franks. Government-sponsored jurists like the Subkīs took the issue of the Franks’ safe-conduct very seriously, placing the presence of Frankish merchants in the sphere of public interest (maṣlaḥat al- Islām) and stating that officers, not qaḍīs, had jurisdiction over issues concerning their legal status. In so doing, they were opening the door for action by royal courts over these disputes.\footnote{117 Schacht, Joseph: “Amān”, in: The Encyclopaedia of Islam: Second Edition, 1, 429–430. Leiden 1986, Schacht, Joseph: “ʿAhd”, in: The Encyclopaedia of Islam: Second Edition, 1, 255–260.}
In recent times, authors have spotted the episode of the Persian merchants as a relevant landmark in the history of Mamluk justice. It connects the important presence of foreigners and their fragile legal position, on the one hand, with the shortcomings of sharīʿa in terms of enforcement and the rulers' renewed interest for Siyāsa. Rarely, however, have these episodes been associated with contemporary works on Siyāsa, such as that in which Ibn Taymiyah avouched for torturing dishonest defendants in debt cases. One might object that it is after all an exaggeration to assume that isolated snapshots such as that of the merchants in Acre could account for the expansion of Siyāsa under the Mamluks. It is true, however, that Taqī al-Dīn Ibn al-Subki was concerned with issues of governance and mustāʾmins beyond his fatwā on Acre’s merchants. Najm al-Dīn al-Ṭarsūsī (1320-ca. 1356), one of al-Subkī’s acquaintances, reports that the latter intervened in a dispute between jurists on whether rulers and officials should accept gifts from Frankish kings. Al-Ṭarsūsī and al-Maqrīzī traced a common genealogy of royal justice, the ḥājibs and the Hall of Justice in their writings, and both point to the reigns of al-Nāsir Muḥammad and al-Ẓāhir Barqūq as the peaks of their development. It has been suggested that the rise of Siyāsa might also be attributed to Timur’s conquests in mainland Persia, which pushed local merchants out of their homeland and towards the Mamluk area of influence. The increasing presence of traders from the former Ilkhanid lands, and the borrowing of the Persian term khawājā to designate them may well come in support of these views. Indeed, a third vignette, discussed below, may be connected with both Persian presence and the rise of royal justice under the Mamluks.

The specific legal argument advanced by Ibn Taymiyah on debt issues was again invoked, this time by Sultan Barqūq during his second reign in 792/1390, against the shāfiʿī judge Shihāb al-Dīn al-Qurshī al-Malḥī. It has to be noted that Barqūq’s rise to the sultanate is equated with a coup d’État against the

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118 Alsabagh, “Before Banks: Credit, Society, and Law in Sixteenth-Century Palestine and Syria”, 7–8.
119 al-Ṭarsūsī, Najm al-Dīn Ibrāhīm Ibn ʿAlī (1320-ca.1356), Tuḥfat al-Turk fi-mā Yajib an Yuʿmal fi al-Mulk, edited by Ridwān al-Sayyid, Ibn al-Azraq Center for Political Heritage Studies, Beirut, 2012, 125–8, and a similar discussion on inheritance and the public treasury involving al-Subki, ibid. 43–5.
120 Ibid. 48–9, al-Maqrīzī, al-khiṭat, 207–8.
previous Mamluk regime, which comprised an aristocracy of emirs and a narrow circle of families amassing appointments in the judiciary. After almost a decade in power, Barqūq endured a rebellion that ended up with his own imprisonment in the fortress of al-Karak, awaiting a death sentence. What came about during his reinstatement to power is telling of the nature of the relationship between sultans and judges before Ottoman times. As Michael Winter has argued, despite the fact that they are often presented as autocratic Oriental despots, and in spite of their frequent disputes with the ulama, for the Mamluk sultans getting rid of the former by violent means was seldom an option, since it challenged the sultan’s legitimacy as promoter of the religious learned. The Ottomans, instead, had three şeyhülislams executed in 1634, 1656 and 1703.121 In Cairo, Barqūq’s rivals labored to obtain a condemnatory fatwā securing a death penalty for him, underwritten by most of the chief judges, including Ibn Khaldūn, Barqūq’s former protégé. Barqūq eventually managed to escape death and to put down the revolt—and the fatwā episode must indeed have been a bitter disappointment for him, as he had supported Ibn Khaldūn since his arrival from the Maghreb, granting him offices and defending him from his numerous rivals.122 Having marked himself out as one of Barqūq’s opponents during the revolt, al-Qurshī was summoned to Cairo. Probably for the very same reason he reinstated some treacherous emirs, Barqūq was forced to look for a legal loophole to deliver al-Qurshī to the executioner. The sultan accused the qādī of belonging to a sectarian group, probably seeking to obtain a harsh verdict or even a death sentence against him, as Mālikī qadis often ruled in similar cases.

Although, significantly, many chroniclers mention al-Qurshī’s gruesome fate, only Ibn Ṭūlūn and Ibn Ḥajar al-ʿAsqalānī (1372–1449) report that a second legal strategy was actually adopted to that end. A “Persian merchant” showed up during a hearing, Ibn Ṭūlūn reports, and “sued al-Qurshī on the basis that he was keeping money and fabrics from him.” Al-Qurshī denied this, although it did not save him from being whipped fifty times, then delivered to the judicial officers to look for the plaintiff’s money by means, first of the stick, then again

121 Winter, Michael: “The judiciary of late Mamluk and early Ottoman Damascus: The administrative, social and cultural transformation of the system”, in: History and society during the Mamluk Period: (1250—1517), V&R Unipress, Göttingen, 2014, 193–220. Clayer, Nathalie, “L’Autorité religieuse dans l’islam ottoman sous le contrôle de l’État?”, Archives de sciences sociales des religions [En ligne] 125, janvier—mars 2004, 45–62.

122 Fischel, Walter J.: Ibn Khaldun in Egypt: His Public Functions and His Historical Research (1382–1406); A Study in Islamic Historiography, Berkeley and Los Angeles: University of California, 1967.
the whip. Al-Qurshī died at the Khizāna prison shortly afterwards. Ibn Ḥajar insists on the summary nature of al-Qurshī’s trial, and on the brutality in the administration of the taʿzīr. Historians have rightly pointed to more spectacular developments in late medieval legal history, such as the appearance of the hall of justice under the Ayyubids and the appointment of four chief qadis by Sultan Baybars. However impressionistic and anecdotal the abovementioned stories might be, they point to the endorsement of Siyāsa by late Mamluk rulers, to the borrowing of concepts from jurists to that end, and attest to the importance of foreign merchants’ legal needs in this process.

On doctrinal grounds, it would be a mistake to see a strict separation between Siyāsa and preceding versions of royal justice, such as the maẓālim sessions delivered in Cairo by the sultans. As a theory, Siyāsa took precedent from the much older doctrine of maẓālim, and the former’s development in late medieval times by ḥanbalī and mālikī thinkers is therefore uncontroversial. However, if we focus on legal change instead of looking for precedent, the ḥājib’s court appears as an “expansion of royal jurisdiction,” “parallel to the shart’ah courts of the qādīs.” Although late Mamluk treaties signed with Florence, Genoa, Venice and Aragon have attracted a great deal of attention, the mid-fourteenth-century shift towards Siyāsa has not been fully understood. The real novelty brought about in Mamluk times happened in the field of judicial practice: with precedents since the fourteenth century, treaties ruled the jurisdiction of the qadis definitely out of mixed issues, even as a court of appeal.

Fifteenth-century treaties started to include clauses according to which mixed trials should be heard by “the viceroy or chamberlain (ḥājib) or officials of the province, and none other than the above-mentioned should adjudicate between them.” As early as 1415, the Venetian government instructed ambassadors dispatched to Cairo to plea that disputes be heard in the sultan’s presence, or at least that of the viceroy (vel naibys, ar. nāʾib), or the ḥājib (aut agebis) and not before the qadis (cadi legis). The Venetians’ requests were met in the amān granted by Sultan al-Muʾayyad Shaykh (1412–1421), which included this

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123 Ibn Ṭūlūn, Shams al-Dīn Muḥammad Ibn ‘Alī (1485?-1546): Qudāt Dimashq: al-Thaghr al-Bassām fi Dhikr Man Wulliya Qaḍāʾ al-Shām, edited by Ṣalāḥ al-Dīn al-Munajjīd, Damascus: al-Majma’ al-ʿIlmī al-ʿArabī, 1956, 117., Ibn Ḥajar al-ʿAsqalānī, Aḥmad Ibn ʿAlī (1372–1449): Inbāʾ al- Ghumr bi- Anbāʾ al-ʿUmr, edited by Ḥasan Habashi, 3 vols., Cairo: al-Majlis al-Ālā lil-Shuʿūn al-Islāmīyah, 1969–1972, 1/416–7, and his obituary, 423.

124 Johansen: “Vérité et torture. Ius commune et droit musulman entre le Xe et le XIIIe siècle”.

125 Rapoport, “Royal Justice”, 75, 101.

126 Iorga, Nicolae, “Notes et extraits pour servir à l’histoire des croisades au XVe siècle”, Revue de l’Orient Latin 4 (1896), 545–6.
provision. Recourse to the courts of the ḥājibs applied to any situation involving Franks, and therefore determined the abandonment of the *actor sequitur* principle.¹²⁷ The same clause was stipulated again in the subsequent treaties of 1422, 1442 and 1497.¹²⁸

There is another aspect that made Siyāsa look different from previous forms of royal justice. The right to appeal to the mazālim courts, set by the sultans in most cases in the capital city, is as old as political Islam, and is more or less explicitly stated in every amān granted by a respectful sovereign. However, going to Cairo or wherever the sultan delivered his justice represented a burden and indeed Muslim merchants abused this right by suing Franks, but not deigning to turn up in court later in Cairo. Mazālim was therefore a source of “damage” (ḡarāma) and “difficulty” (mashaqqa), and Frankish governments lobbied to avoid their subjects having to resort to the sultan’s court in Cairo in mixed cases.¹²⁹ Mazālim was generally considered to be a court of appeal, a *board for grievances* chaired by officials who made decisions on unjust decisions made by qadis. Mamluk Siyāsa differed, in practical terms, from mazālim in that it gave Franks the right to be heard on the spot by an official applying less stringent procedures than those adopted by the qadis. As for the procedural advantages of Siyāsa, they are well known, comprising permission to accept non-Muslim witnesses, the using of personal and public knowledge by the judge, the reliance on documents considered to be trustworthy even if non-notarized, the power to depute officials to make inquiries, and in general ample latitude in the examination of evidence and the deliverance of punishments.¹³⁰

Ibn Qayyim, for instance, did not share the mistrust of ḥanafī, shāfiʿī and mālikī jurists about the use of written evidence by qadis. He describes how in practice, in order to use his own documents, a judge needed to personally remember, file, register and have records sealed and sworn by witnesses. Ibn Taymiyah, he argues, accepted the validation of testimony on the basis of a written document if the witness himself was no longer available. If we could not trust the written word, this would be the ruin of Islam; since the traditions (sunna) of the Prophet’s life are no longer in the hands of ordinary men, we are forced to rely instead on old, revered manuscripts. The same, indeed, was the case for jurisprudence, since copies of legal texts were consulted for reference.

¹²⁷ *Diplomatarium veneto-levantinum*, Vol. 1, 311.
¹²⁸ Wansbrough, “Venice and Florence”, 488 (Mamluk-Venetian treaty of 1442), 512 (Mamluk-Florentine treaty of 1497).
¹²⁹ Amari, *I diplomi*, Treaty of 1496, ch. 10, 192, negotiations in 1488, 376, 11.
¹³⁰ Nielsen, *Secular Justice*, 12–26.
The Prophet himself relied on writing and exchanged correspondence with rulers. In deathbed situations involving last wills, for example, where witnessing is problematic, the hadith recommends relying on written documents: “It is not permissible for any Muslim who has something to will, to stay for two nights without having his last will and testament written and kept ready with him” (Bukhari, Sahih IV, 51, 1). Ibn Qayyim goes on to quote instances in which the judge should proceed by examining handwriting, and by securing written testaments by having them read and certified by witnesses.

For Ibn Qayyim, the act of writing asserted one’s willingness to bear testimony; being equated to the oral utterances of Muslims, writing needed to be subjected to forensic examination by the judge, in the same way that a witness looks at and inspects the reality for which he would bear testimony. To counter an excessive reliance on oral proof, such as the need to read documents out loud, writing is a way to enunciate, and enunciating unveils the willingness of the individual. Doubting the written word was not much different from doubting one’s own sight and hearing, and indeed it often happened that witnesses to someone’s handwriting could express uncertainty. As in the case of minority witnessing mentioned earlier, the thought given by Siyasa theorists to written evidence tended to undermine the fundamental biases against it, with which this book is concerned. Although jurists thought of mazālim and Siyasa as forms of procedure, rather than as separated doctrines and notions of justice, in practice Siyasa circumvented the traditional forms of procedure in use in shari‘a courts and made petitioning to the mazālim in Cairo unnecessary.

The legal change brought about by Siyasa should not be interpreted as the mere substitution of the qadi courts and their shari‘a-based norms with new, “secular” ones. Rather, Mamluk jurists were providing rulers with the necessary legal space to manage the political realities of a European presence. Works endorsing al-siyāsa al-shar‘iyya justified the existence of civil judges, and not only qadis, in the community, who could administer justice based on state interests, and not just traditional jurisprudence. According to Siyasa theorists, the ruler and his delegates should sit in judgment and deliver physical punishments, not due to any exceptional power, but as part of their obligation to make decisions for the benefit of the community—an issue that is explicitly mentioned in both of al-Subkī’s fatwās on Acre and al-Maqrīzī’s story of the Persian merchants. “The Imām,” al-Subkī states “can deal with them [the Franks] ... not according to his pleasure, but according to what seems to be for the good

131 Ibn Qayyim al-Jawziyyah, al-Turuq al-hukmiyyah, chapter 23, 544–567.
132 Emon, Religious Pluralism, 179–83, Johansen, “Signs as Evidence”.
of Muslims.”

As can be inferred from the spirit of the new amān treaties, dealing with Frankish traders fell within the imperatives of governance, and it was up to the royal courts to pass judgment on their affairs. The Mamluk government expanded upon this with the parallel development of royal courts in Damascus, Aleppo, Cairo and Tripoli, with state-appointed muftīs and its own hierarchy of ḥājibs, thus expanding Siyāsa jurisdiction over criminal law as well as civil cases, and away from the jurisdiction of the qadis. Its practical implementation and geographic coverage outside Cairo made Mamluk Siyāsa appear fundamentally different from previous versions of royal justice. Moreover, Siyāsa judges were granted jurisdiction over the judiciary. They prosecuted qadis in cases where favoritism led to the appointment of colleagues who were “ignorant of the law,” or to embezzlement from charitable trusts. As most Mamluk chroniclers belonged to the same religious establishment as the qadis, straightforward resentment against Siyāsa can be found in many of the sources; in one case, the historian Ibn al-Ḥimṣī was arrested in the course of a ḥājib investigation. Siyāsa judges set up their own detention facilities, and further quarrels emerged regarding the jail in which a detainee should be kept, although prison conditions—at least for the Frankish merchants—seem to have been relatively fair. According to Ibn Ṭūlūn who had no sympathy for the new parallel judiciary, Franks accused of debauchery could encounter arrested judges in the ḥājib prison of Damascus.

Apart from delineating a legal sphere of action for the ruler, Siyāsa theorists and the sultans who sponsored them were launching a critique of the procedural limits of sharīʿa, which, as in the case of the Persian merchants narrated by al-Maqrīzī, could prove harmful to foreign merchants. Siyāsa courts

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133 The delegates’ (nāʾib) responsibility, punishment (taʿzīr), and public good (maṣlahat al-muslimīn) are explicitly addressed by al-Subkī, Atiyya: “An unpublished XIVth century Fatwā”, 65–66, 60. Maqrīzī also insists on punishment, but instead uses the term āqabahum.

134 ASVe, Giudici di Petizion, Reg. 98, f. 151v, mentions a trial in Tripoli before the ḥājib: “davanti lazebo el qual el dixe e qual el fexe sentenciar...”.

135 The function is described in the chancery manual by al-Sahnūrī, al-Taḥqīr al-bāsim, 393.

136 Ibn al-Ḥimṣī, Ahmad Ibn Muhammad (1473–1527 or 8): Hawādith al-zaman wa-wafayāt al-shuyūkh wa-al-aqrān, edited by ‘Umar Tadmuri, 3 vol, Şayda: al-Maktabah al-‘Aṣriyah, 1999, Vol. 2, 201, 212, 220, 227. Ibn ʿAwd, Ahmad Ibn Muḥammad (1430 or 31–1509): al-Taʿlīq: yawmīyāt Shihāb al-Dīn Aḥmad Ibn Ṭawq, 834–915 H/1430–1509 M: mudhakkirāt kutubat bi-Dimashq fi awākhir al-ʿahd al-ʿAṣriyah, 885–908 H/1480–1502 M, edited by Jaʿfar Muhājir, Damascus: IFead, 2000–2007, 1, 119. Ibn Ṭūlūn, ‘Ibn al-Wardā, 117. al- Buṣrawī, ʿAlī Ibn Yūsuf (1439–1499): Tārīkh al-Buṣrawī: ṣafāḥāt majhūlah min tārīkh Dimashq fī Aṣr al-Mamlūk, min sanat 871 H li-ghayat 904 H, edited by Akram Ḥasan al-Ulabī, Damascus; Beirut: Dār al-Maʿmūn lil-Tūrāṭ, 1988, 119.
expanded their jurisdiction to cover various cases where sharīʿa's “formalistic attitude to proof and evidence prevented the application of justice.” For instance, the ḥājib sat in judgment in divorce cases, because the qadi courts required four eyewitnesses to prove adultery. Siyāsa theorists criticized the qa-dis’ formalistic system of proof, and went so far as to legalize judicial torture, a method considered illegitimate in sharīʿa. Indeed, this criticism is implicit to al-Maqrizi’s account; had the cheating merchants not been “punished” by the ḥājib, as explicitly recommended by Ibn Taymiyah, justice would never have been served. By claiming royal jurisdiction for mixed affairs, diplomats, sultans and jurists placed mixed cases in an area of legal practice where the major biases of traditional Islamic justice could be circumvented. Ibn Taymiya’s disciple Ibn Qayyim and mālikis such as Ibn Farḥūn (1358–97), rationalized court procedure by stressing the importance of written and circumstantial evidence and by allowing the judge to rely on signs and indicators, and not only the word of witnesses. Indeed, Ibn Qayyim went so far as to reform his own school’s views on the issue, and to claim that nothing in the ḥanbalī tradition prevented Jews, Christians and Zoroastrians from acting as witnesses for mixed cases and, in cases of necessity, even in lawsuits concerning Muslims.

3.7 Conflict Resolution in and out of the Courtroom

Venetian descriptions of Siyāsa lawsuits offer a new perspective on these problems and on Mamluk legal attitudes towards non-Muslims. According to the treaties, Siyāsa courts heard mixed cases, but how did they deal with the proof and testimony provided by Franks? For travelling merchants, proving claims in the courtroom was fundamentally a matter of producing written evidence. To secure proof of their transactions, merchants had both Islamic and Western notaries at their disposal. But was the legal value of their deeds equal? Could Islamic courts accept Latin deeds? Conversely, could a Venetian notary acknowledge the trustworthiness and probity of an Islamic contract?

Thinking about legal pluralism in the Mediterranean as the ability to switch between Islamic and foreign courts, but in which the former was simply a...
second-best option, is to oversimplify the nature of justice. Many mixed conflicts were solved out of court, Siyāsa trials being, as far as the Franks were concerned, the keystone of the judicial system. Arbitral, consular and Islamic courts enforced each other, and a common notarial culture was involved at all levels. Notaries provided evidentiary support to settle and prevent disputes and thus helped breach the fundamental limitations of consular justice. Consuls had no jurisdiction over Franks from outside their own nation, nor over the sultan's subjects. When Muslims failed to “honor their agreements,” the Venetian consular court, “not having power over them,” had no choice but to boycott the merchant in question so that no member of the Venetian community could engage in business with them.\textsuperscript{140} Although, on occasion, foreigners voluntarily submitted to the jurisdiction of other consuls, an extantregister of the Venetian consular court of Alexandria suggests that consuls almost exclusively settled internal disputes.\textsuperscript{141} The preferred extrajudicial way to solve cross-national conflict was through arbitration, in which consuls, but also trustworthy merchants formed arbitration panels. Though notarized arbitration emerged mainly for issues among Latins, it should be noted that, to issue their verdicts, arbiters inevitably relied on the customs administration; lawsuits revolved around evidence produced by the Christian scribes (“scribani doane, scribas christianos a centura dicte doane”) and the Muslim ‘udūl (“testes saracenorum”) attached to the customs authorities, and translated by dragomans, mostly Jews.\textsuperscript{142}

All too often, historians have attributed the success of arbitration to a desire to avoid ‘formal’ justice, and this preference for arbitration over litigation has emerged in recent scholarship as the keystone for solving social conflict in late medieval cities. Genoa and its overseas cosmopolitan colonies, for example, witnessed the emergence of mixed arbitration courts similar to those of Alexandria and Damascus.\textsuperscript{143} However, the capacity of notarized arbitration to

\textsuperscript{140} ASVe, CI, N. B. 229, Notary L. de Valle, \textit{Verbali del consiglio}, May 11th, 1402: “cum multci mercatorci saraceni et alis forensis faciant mercata cum mercatoribus nostris ... sed quem super ipsos non possit dare ordo necesse est super mercatores nostrs provideire.”

\textsuperscript{141} ASVe, CI, N. B. 229, Notary L. de Valle, \textit{Verbali del consiglio}, Christ, \textit{Trading Conflicts: Venetian Merchants and Mamluk Officials in Late Medieval Alexandria}, 72.

\textsuperscript{142} ASVe, CI, N. B. 222, Notary A. Vactaciis, f.108r-v, Dec. 22, 1405, ASVe, CI, N. B. 211, Notary N. Turiano, f. 32v, 34v, March 11, 1435. Mixed arbitration was allowed, if voluntary, by some treaties, Ruiz-Orsatti, “Tratado de Paz”, 343, 361. Fleet, “Turkish-Latin Relations”, 609–10 mentions episodes of mixed arbitration.

\textsuperscript{143} Wray, Shona Kelly, “Instruments of Concord: Making Peace and Settling Disputes through a Notary in the City and Contado of Late Medieval Bologna”, \textit{Journal of Social History} 42 3 (2009), 733–760. Kuehn, Thomas: “Law and Arbitration in Renaissance Florence”, in: \textit{Law, family & women: toward a legal anthropology of Renaissance Italy}, 19–74.
enforce the law in mixed contexts presented its own limitations. Arbitration implied agreement by both parties over the election of judges, but there was often disagreement over the nation they should belong to, and the number of arbitrators. A Catalan refused the decision made by two arbiters, on the basis that neither of them was Catalan.\textsuperscript{144} Acrimony could push the parties to enlarge the panel up to eight members. In Alexandria, for contentious cases arbitration courts began resorting to drawing lots to decide the makeup of the panel. Moreover, arbitration was limited to cases in which both parties voluntarily submitted to the court’s decision. Needless to say, decisions by the arbitrators were not always respected by the losing party.\textsuperscript{145}

It may be tempting to view recourse to Islamic courts as being motivated by a need for coercion, and to see Siyāsa tribunals only as courts of appeal when arbitration failed.\textsuperscript{146} This would be a rigid oversimplification, as parties were often not interested in obtaining a satisfactory decision by means that could be considered prejudicial to their reputation. The behavior of a Muslim from Mecca, al-Sharīf Ḥasan, may serve as an example to how solutions stemming from notarial culture could intermingle with the formal authority of Islamic courts. In 1441, two Catalan merchants committed to providing a certain number of goods to Ḥasan, who intended to send them back to Mecca with the seasonal caravan. A Florentine merchant backed the operation as a third-party guarantor by underwriting an Arabic document. The Catalans never honored their agreement, the caravans departed for Mecca and the Florentine was held responsible for the loss. Even though his responsibility as guarantor was clear to all and sundry in the city, both parties agreed to submit the question to a

\begin{thebibliography}
\bibitem{144} ASVe, Notai di Venezia, 14832, Notary I. Dalla Torre, f. 3v, Sept. 17, 1412: “vos non habui nec habeo pro meos judices, qui debent esse quator vel quinque ... et nichil contra nationem catalanorum non habetis ad iudicandi.”

\bibitem{145} For an eight-member panel, partially drawn by lots, ASVe, CI, N, B. 148, Notary P. Pellacan, September 29, 1444. ASVe, CI, N, B. 211, The parties added supplementary members to judge again in case of disagreement with the final decision. ASVe, CI, N, B. 222, Notary A. Vactaciis, f.33r, Sep. 2, 1435. A consul compelled a reluctant party to accept arbitration, yet they were at liberty to choose who would be on the board, ASVe, CI, N, B. 211, Notary N. Turiano, f. 21r-23r, Aug. 16, 1455: “veniatis ad arbitrium mercatorum cuiuscumque nationis quam velitis.”

\bibitem{146} As seems to have been the case in Geniza times, Goldberg, Jessica: \textit{Trade and Institutions in the Medieval Mediterranean: the Geniza Merchants and their Business World}, Cambridge: Cambridge University Press, 2012, 161.
\end{thebibliography}
Latin arbitration court. As a Muslim, Ḥasan had no need to present himself before such a tribunal, yet this choice served his interest in establishing himself in the public eye as someone who would not bring his Frankish partners to the Islamic courts. Given the Florentine’s discontent with the verdict, the case was eventually brought “as usual” before a royal court held by the emir, who had the parties heard again and convicted the Florentine for a second time. Even in that case, the Muslim merchant asked the emir to consult Frankish community about the issue. The Franks gathered at an inn and again had both parties heard, and as a result of this unanimously pronounced a verdict condemning the Florentine for a third time. The episode, which left a long trail of notarized statements and depositions, and where Islamic and Latin documents were used for evidentiary purposes, demonstrates the complexities of administering interfaith justice, and the complementary role of the legal devices involved.\textsuperscript{147} Going beyond mere coexistence, courts proved to be complementary in enforcing verdicts, as did both notarial systems in proving claims by the litigants. In 1444, an eight-member panel dealing with a quarrel allowed the winning party to turn to Islamic justice to enforce the panel’s decision,\textsuperscript{148} and on at least two occasions, Mamluk officials handed a dispute over to the Venetian consuls.\textsuperscript{149}

\textbf{3.8 Merchants at the Islamic Courts: a Lender of Last Resort?}

The consolidation of \textit{Sīyāsa Sharʿīyah} as a doctrinal legitimation of state authority, with its emphasis on utility and public good, set the conceptual groundwork for transferring jurisdiction over Frankish merchants to the royal courts. However, Siyāsa should not to be understood solely as a normative imposition by the sultans, but rather as a solution developed to respond to mixed conflict cases. In this regard, it is interesting to note that, in the first place, Siyāsa justice did not totally override the jurisdiction of the qadi courts. Muslim plaintiffs continued to bring Franks before the qadis for relatively

\begin{flushright}
\begin{itemize}
\item \textsuperscript{147} Arbiters inspected the Arabic deed (“visa quadam carta more saracenorum”) and the consulate registers: “carta testificationis ... in libro actium”, ASVe, CI, N, B. 211, Notary N. Turiano, f.42r-45v, Sept. 9–10, 1455.
\item \textsuperscript{148} ASVe, CI, N, B. 148, Notary P. Pellacan, September 29, 1444, “pro qua executione per partem victorem contra partem tunc victam possit lice peti et implorari ac obtineri iuditium subsidium et favorem maurorum et alterius cuiuscumque generationis.”
\item \textsuperscript{149} ASVe, CI, N, B. 222, Notary A. Vactaciis, f.108r-v, Dec. 22, 1405: “electo et constituto iudice per magistratus alexandrie.” See also the de Negro case discussed below.
\end{itemize}
\end{flushright}
simple cases, in which the judge could call upon the testimony of the ‘udūl. As plaintiffs, however, Franks only had recourse to the Siyāsa tribunals, and by the mid-fifteenth century, Latins mentioned the royal courts in their contracts as the local forum where suits should be filed.\textsuperscript{150} Second, despite clauses defining the competent courts for different groups in fifteenth-century treaties, Siyāsa did not deal with interfaith cases alone, but frequently intervened in disputes among the Franks themselves. Perhaps most significantly, Siyāsa justice broke the unwritten rule that conflicts among Latins should be solved among themselves, without involving the Muslim authorities. The frequency with which these injunctions were disobeyed suggests that, in many cases, Latins considered Siyāsa to be a suitable and even desirable solution for dispute resolution.

3.9 Mixed Cases at the Qadi Court

Although, as we saw earlier, treaties signed after 1360 took mixed cases out of the hands of the qadis,\textsuperscript{151} daily commercial practice could deviate from the letter of the treaties and the doctrine of jurists as Muslim claimants were still in the habit of bringing mixed cases before the qadis. Two Damascene law-suits, dated from 1418 and 1434, can give us some insight into the hybrid solutions resorted to in qadi courts in mixed cases. These cases revolved around testimony provided by a courtier (simār) about exchanges between Muslims and Franks. The simār acted here as a professional witness, almost certainly registered as one of the trustworthy ‘udūl at the court, and the cases were easily solved in favor of the Muslim plaintiffs, as the former was able to certify the transactions previously concluded in his presence before the qadi. In compliance with the procedural norms of shari‘a, he did this by reading the written records he had previously drawn up. As, according to the new treaties, all mixed transactions had to be notarized, a specialized courtier was called upon (“publicum sansarium inter mercatores cristianos et saracenos”). This peculiar simār-dragoman acted as a notary—and therefore appeared in court as a professional witness on behalf of the Franks. This institution illustrates perfectly how interaction generated solutions to some fundamental biases of

\textsuperscript{150} ASVe, Cl, N, B. 83II, Notary C. Del Fiore, f. 15v, Nov. 5th, 1463: “comparendi in quocumque iudicio et officio et coram quibuscumque dominis saracenis ... et universis officialibus mauris.”

\textsuperscript{151} For the 1271 treaty with Genoa, see Holt, \textit{Mamluk diplomacy}, 145–6.
shari’a, such as minority witnessing, without challenging the accepted norms followed by the qadis. In both cases, the simsār was brought forward to testify “more saracenorum” in a separate juridical act, this time before the Venetian notary. In both cases, the defendants were agents of third-party investors and, most probably, had the testimony from the simsār notarized as a disclaimer in future lawsuits.\textsuperscript{152} Finally, one single document makes reference to two Frankish litigants appealing to the qāḍī court. The parties ‘had recourse to Christian justice’ to settle their dispute in Damascus, then turned to the local qāḍī, and eventually to arbitration. The parties litigated over many years and eventually settled the dispute in Cyprus.\textsuperscript{153} The Damascene trials in particular suggest that Muslim claimants preferred to address their legal claims to the qadis, especially when they could rely on evidence produced in due Islamic form. Siyāsā judges heard more complex cases than those that went before the qadi courts, requiring the use of circumstantial evidence, such as written Latin deeds, or documents not supported by certified witnesses.

3.10  Mixed Cases before Siyāsā Courts

In light of accusations by learned men that the royal courts made arbitrary decisions and were contrary to the spirit of shari’a, many authors have seen the ḥājibs as usurpers of the judicial functions of the qadis.\textsuperscript{154} It is doubtful, however, that in transferring mixed cases to the ḥājibs the Mamluks were attempting to promote an arbitrary alternative to shari’a. Venetian sources suggest that only slight differences in procedure were adopted, together with more flexible approaches to proof and investigation. Indeed, when we compare the issues brought before the qadis with those brought to Siyāsā courts, the fundamental difference resides more in the nature of the cases heard and the kind of evidence produced by the litigants, than in their actual approach to Islamic law.

\textsuperscript{152} ASVe, CI, N, B. 230, Notary N. Venier, October 12, 1418, ASVe, CI, N, B. 222, Notary A. Vactaciis, f. 4r-v, Sept. 2, 1435.

\textsuperscript{153} ASVe, CI, N, B. 222, Notary A. Vactaciis, f. 5v-6r, January 8, 1436: “tam coram iudicio cristiano videlicet coram domino consule veneciis [...] quam coram domino er Cadi ipsius civitatis damasci certas lites habuerint et coram etiam quibusdam arbitris et arbitratoribus.” The archivists’ attribution of this fragmentary ledger to A. Vactaciis is incorrect, and needs to be connected with the material in ASVe, CI, B. 122, int. 25. A Venetian was sentenced by the qāḍī Ḥanbalī of Damascus, ASVe, CI, N, B. 83II, Notary C. Del Fiore, Oct. 25, 1463.

\textsuperscript{154} For a critique to these positions see Rapoport, “Royal Justice”, Irwin, “Privatization”, 64–5, Nielsen, Secular Justice, 105.
To the extent that they can be reconstructed through Venetian eyes, the commercial suits heard by Siyāsa judges were of great complexity, often involving forms of evidence and testimony that were difficult to contain within the formalist requirements of the qadis. And indeed, the dozen or so trials reported by Venetian sources suggest that most often, Siyāsa judges did their best to comply, at least externally, with the procedural traditions of sharī‘a.\footnote{For the greater liberty of royal courts to examine documentary evidence: Nielsen, \textit{Secular Justice}, 25–8.}

In one Siyāsa case reported by Venetian sources, Muslim merchants appealed to the ḥājib of Damascus to enact reprisals upon Catalan merchants after a Catalan pirate attacked a ship and seized merchandise belonging to both Muslims and Arabic-speaking Christians. The ḥājib opened a trial that was far from arbitrary in its methods, as it resorted to the principal forms of traditional procedure. As the Catalans were operating mainly through intermediaries, the ḥājib focused on whether the merchandise could be considered Catalan, and therefore be seized. Needless to say, the Venetians and other Franks who were apparently handling the Catalan goods did their best to embroil the judge in a complicated web of transactions. The ḥājib, unlike the qadi, displayed ample executive powers outside of the court, and had an intermediary based in Beirut brought to Damascus to testify. After collecting circumstantial evidence, the ḥājib used coercion to gain a confession. When the merchants did not provide a satisfactory explanation, the ḥājib had everyone sent to jail until they could produce a statement accusing other merchants for the losses incurred by the plaintiffs.\footnote{ASVe, CI, N. B. 230, Notary N. Venier, f. 15r-16r, May 18, 1419: “dimandandole mori alazebo chostoro abia de le robe de catellani,” ibid., 24.} However, the way in which this new evidence was produced suggests a different approach to procedure by the ḥājib: the imprisoned merchants took an oath by swearing on the Gospels held by the Venetian notary-priest. The oath, taken outside of court and presumably handed in written form to the ḥājib, was doubtless accepted by the court, as it succeeded in improving the situation of the defendants. In situations such as these, the interaction between the Siyāsa courts and the Venetian notary did not end with a pronouncement by the judges in mixed cases. To enforce the court’s decisions, Muslim litigants or the ḥājib himself went before the Latin clerk to publicize the decisions made in the courtroom. For example, one Muḥammad Ibn Mūsā notarized a receipt for the money his Frankish opponent was sentenced to pay.\footnote{ASVe, CI, N. B. 83II, Notary C. Del Fiore, f. 24r, May 31, 1426, f.15v, June 14, 1426: “Mahomet ebne Muse morus ... recepisse per sententiam Admirati Alexandrie.”}
Complex rules of procedure were also followed in a mixed suit brought before the emir of Alexandria by two Muslims in 1401. A ship flying a Genoese flag had just docked in the port of Alexandria loaded with Frankish merchants and their cargoes. Unexpectedly, these two Mamluk subjects claimed to be the owners of most of the ship’s freight and demanded that the wages be paid by the merchants on board. A judicial panel deliberated over the lawsuit that followed—a format known in other forms of royal justice as the maẓālim—and included the emir and two qadis. The defendant, a Dalmatian merchant, appeared in court advancing written evidence (the original freight contract notarized in Senj), and he paid for the services of both a translator and an unspecified “attorney” (machademus, ar. muqaddam). The Mamluk judicial machinery involved other actors; the Muslim claimants did not immediately turn to royal justice, but first had judicial officers sent to interview the defendant over the course of several days (“mittentis in zimis per plures dies”). One of the major accusations against Siyāsa—the judges’ habit of selling verdicts for money—is mentioned in this trial; the Frank reported having bribed one of the qadis in exchange for pronouncing a less severe sentence.

3.11 Siyāsa among the Franks

The expanding role of Siyāsa as a commercial jurisdiction soon overstepped the spirit of the treaties, as we saw above; in particular, royal courts took to hearing cases where both parties were Franks, and not just interfaith cases involving Mamluk subjects and protected merchants. Siyāsa trials were frequent in Damascus, perhaps because consular institutions were less developed than in Alexandria. The first mention of such a trial dates back to 1397; Andrea di Sinibaldo, agent of the Portinari Bank, and the Venetian Bartolomeo Lombar-do had set up a partnership in Damascus, however when Bartolomeo died owing money to his partner, the former’s family in Venice rejected the Florentine’s claims. Pressed by his Arab creditors, Sinibaldo brought the issue to the ḥājib, who forced reprisals on the Venetian merchant community.

Appealing to the Siyāsa courts impinged on unwritten customs regarding dispute resolution among Franks. Many complaints by defendants mention

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158 ASVe, CI, N, B. 222, Notary A. Vactaciis, f. 38v-39r, Jan. 18th, 1401: “asserunt se esse parcionables dicte coche ferazium pro medietate et melechi pro 1 tertium.”
159 ASVe, CI, N, B. 222, Notary A. Vactaciis, f. 38v-39r, Jan. 18th, 1401, f. 43r-v, undated (however, drawn up between March 5–9, 1401).
160 ASVe, Senato, Deliberazioni, Misti, 44, f. 56r.
a tacit agreement not to appeal to local justice to resolve disputes among Franks, most particularly when the two parties belonged to the same nation. Siyāsa, however, undermined this agreement; indeed, these courts intervened so frequently that, as the Franks themselves admitted, they became the only possible solution for disputes between subjects under the jurisdiction of different consulates. This was the case for a merchant from Montpellier compelled by the Genoese consul to pay some taxes. Genoa was temporarily under French protection, and this argument was used by the Genoese consul to present himself as a representative of the French king. The French merchant protested that the consul had applied to the ḥājib, “who holds the justice of the sultan in Alexandria” and that he should instead have advanced his claims before the French representative, as, he argued, “my consul has power over those in his funduq. ... and knows better the facts between Frank and Frank than the justice of the Moors does.” The Genoese consul then attempted to “prove before the ḥājib” that the Frenchman was handling Genoese goods, and that he had gone into partnership with Genoese merchants, something the consul could hardly do without the help of Latin records and witnesses.161

By the same token, in October 1460 a Venetian in Damascus appeared before the Muslim authorities accusing a fellow national of several misdeeds, including silk smuggling and illegally trading slaves. The defendant denied the charges and accused the plaintiff of forging evidence, however his principal defense revolved around the argument that “it is against our laws and customs and against the consul’s duties to bring our differences before the Muslim authorities, between Franks and particularly between Venetians.” He reserved the right to protest to the consul for having tolerated this anomaly and apologized “before God and the world and before every merchant present here, that litigation before the Muslims has taken place; not by my doing, but because of you and your commissioners, violating our laws and our authorities’ dispositions.” However theatrical the merchants’ prejudice against Islamic justice might seem, it did in any case sound genuine.162 In 1403, two powerful consulates in Alexandria, those of Venice and Genoa, engaged in a

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161 ASVe, CI, N, B. 222, Notary A. Vactaciis, f. 101r-v, Dec. 8, 1405: “davant la jegp que ten la justiçia dels moros ... senyos de consols e franch que al present son en alexandria los cals coneixeran mells lo fach de franch afranch que non fara la justiçia dels moros,” f. 107v, Dec. 14, 1405: “davant la jegp dalesandria local ten en lo dit loch laiustiçia per lo soldan.”

162 ASVe, CI, N, B. 83II, Notary C. Del Fiore, Oct. 21, 1460: “et cum sie chelsia contra leze et consuetudine nostre et contra la commission del consolo a metter davanti segnierie de mori tal gare et defferentie tra francho e francho e maxime tra venezian e venezian.”
dispute concerning not a single individual, but a larger group of merchants. The Genoese consul refused to elect an arbitration panel to resolve the dispute, and instead sought the justice of the emir, upon which the Venetian consul complained, calling such practice “against all justice and equity.” The Genoese consul reversed this argument by reminding the Venetian consul that the emir and governor “has always been and is the arbitrator and judge between the different Frankish nations, and his decisions and will cannot be disobeyed.” 163 After the emir reached his decision, the losing parties complained that being judged by the Islamic court was “against the law and against justice,” and that it was their fellow countrymen who should preside over such trials. 164

Royal justice was also called upon to intervene in complex financial matters. One of these trials revolved around the close examination of written evidence and accounts. The trial was initiated by the Genoese consul, who, in the process of dealing with the consulate’s finances, clashed with a merchant, Nicola de Negro, over some debts. To twist de Negro’s arm, the consul brought him before the emir of Alexandria, accusing him, in addition to failing to pay his debts, of defrauding the sultan’s treasury. He first publicly accused de Negro before the customs officers; then the case was brought to the emir, in whose house the session took place. The strategy consisted in proving the defendant’s guilt on the basis of account books, something not technically possible at the qadi courts, who would never have taken into consideration written evidence without the support of righteous witnesses. The defendant, in turn, presented official correspondence from the Genoese authorities exempting him from these debts. According to the account furnished by de Negro, the emir found the consul’s claims exaggerated and “not in accordance with the law,” although he declined to make a decision and handed the case, surprisingly enough, to the Venetian consular court. As a subject of Genoa, de Negro had no need to come before a Venetian tribunal. Therefore, he voluntarily submitted himself to the judgment of the Venetians, though “only de iure,” knowing that if the

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163 ASVe, CI, N. B. 229, Notary L. de Valle, March 10, 1403, “et nec nos domino consul Ianuensis cum omnibus nostris mercatoribus contra quantibus equitatis et iustitiam mihi veneritis coram iudicio moresco … contra iuditium dicti armiragii de quacumque re sit vel contin- gerit inter nos et vos dicere non possumus nec ultra voluntatis ipsius armiragii facere non possumus.”

164 As was the case for a trial among people from Gaeta, ASVe, CI, N. B. 211, Notary N. Turiano, f. 8v-9v, September 1, 1434: “contra ius et justicia … secundum mores et consuetudines et legem saracenorum et non secundum … mores christianorum,” ASVe, CI, N, B. 211, Notary N. Turiano, f. 8v-9v, September 1, 1434.
subsequent trial took place before an arbitration court, its decision would not be binding.165

That Mamluk Siyāsa was part and parcel of the adjudication process is difficult to deny in light of its recurring presence in the treaties. However, the different attitudes of Franks towards it can tell us much about Frankish merchants’ actual acceptance of Siyāsa as a competent court. One exceptional example can be found in the case of a Venetian notary turning up at one the Siyāsa hearings on the September 9th, 1422. There he met, as defendants, the Genoese traders in the city, and as plaintiffs the Rhodian consul Giovanni Lacana and the merchant Matteo de Soris. Presiding over the Siyāsa court was a panel composed of the emir, a military official, and the qadi nāẓir al-thagr. The latter was the head of the civil administration of the customs, appearing in contemporary documents as linked to the treasury (Bayt al-māl), and involved in taxation as well as complex financial operations. While some secretaries could be referred to as qadis by their contemporaries, it does not seem that the qadi nazir was a standard religious judge, but rather an administrator entrusted with judicial duties. Mamluk and Venetian sources increasingly designate this and other civil charges as qadis, not by virtue of any particular religious training but in harmony with the idea that officials were responsible for delivering justice.166 Now acting in collaboration with the emir, his role as arbitrator was mentioned in early Mamluk treaties. Four days before turning up before the Siyāsa court, de Soris had appeared before the Venetian notary to file a complaint against the Genoese. In gross, according to Soris, the Knights of Rhodes had seized the goods (saffron) from an unspecified Turkish merchant in the Island. For this reason, the Genoese consul Gabriele Cattaneo was himself held responsible in Cairo and forced to pay the losses. Back in Alexandria, Cattaneo had de Soris stopped at the port’s gates by judicial officers,167 claiming that the saffron was in de Soris’

165 ASG, Governo, Archivio Segreto, Materie politiche, F. 18B–2737B, n. 72: “offerendosse voler provar questo cum li libri de la massaria.”
166 “It seems evident that at least some Muslim jurists of the Mamluk period consider as judges (ḥākim or qāḍī) any major administrative and political officials who impose sanctions or obligations on persons subject to their authority,” Johansen, “A Perfect Law in an Imperfect Society”, 269.
167 “Me habia fato astrenzer davanti larmiraio digando voler che io ge reffaza zerta quantità de denari i qual i dixe esser sta astrecti al chaiero a pagar per certa quantità de zaffaran che el gran maestro de rodo tosse da I turcho per lo passsado metandome in zime per farme retegnir ale porte, voiandome astrenzer che io meta fuora le dite merze. E per che dal dito mio maestro mai non havi simel hordene ...”, ASVe, Cl, N, B. 233, Notary N. Venier, 5 Sept. 5, 1422, f.54v–55r.
possession, which he denied (‘my master never gave me such an order’, he claimed). Probably fearing a condemnatory verdict, on September 5th de Soris sued the Genoese by having a notarial letter of protest drawn up. Indeed, four days later he summoned the same notary again, this time to the Siyāsa hearing, to have the sentence notarized as well. Probably as de Soris himself expected, he was ordered to release 150 loads of raisins belonging to a Rhodian from one of the city’s funduqs. Though the documents are not talkative, we can surmise that he may have called upon the judges to seek redress for the initial losses in Cairo. It may well be that Cattaneo, in turning to the Siyāsa court, was trying to avoid passing through consular or diplomatic channels. In any case for de Soris, the theatrical display of the Siyāsa court issuing a sentence was an event he considered worth notarizing, obviously in support of future legal action elsewhere.

A final example of procedural cooperation between several different instances comes from a deed dated February 12th, 1418. The evidence presented thus far in this section has concerned justice administered by the qadis, ḥājibs and emirs, and referred to trials which occurred at different times and places. In contrast, this Venetian notarial deed was drawn up during one of the Siyāsa sessions in Damascus. The deed is dated “Damasci in domo residentie prefati magnifici domini Azebi prope banchum juris”, that is, at the ḥājib’s house, and it mentions the platform (dikkah) from which the Mamluk officials gave their verdicts. While mosques were the preferred places for qadis to pass verdicts, Muslim jurists indeed advised to perform hearings in private houses so that non-Muslims may attend.\footnote{Müller, “Non-Muslims as part of Islamic law”, 39.} A siyāsah trial has just finished, and the ḥājib has made a decision. A Genoese and a Venetian merchant have applied to the ḥājib and he has found their claims to be just (decernens atque considerans petitione ipsorum [...] justas fore). In consequence, the ḥājib has seized some merchandise held by another Genoese merchant. Circumstantial evidence is mentioned, in the form of correspondence setting out the ownership of the merchandise. As a result, the defendant has been asked to take an oath as to the veracity of the testimony by the plaintiffs, and supported by the correspondence. The ḥājib sticks here to traditional shari‘a procedure, which allowed anyone to take oaths, not only Muslims. For that purpose, he calls upon the Venetian notary to witness the pledge, who holds up the Gospels up while the Genoese merchant swears upon them. This time, the defendant makes it easy for the judge, acknowledging the validity of the plaintiffs’ claims, after which the ḥājib makes a decision “by virtue of his office.” Although formally couched
in the procedural rules of shari‘a, the nature and scope of the justice dispensed in this case clearly evokes the spirit of Siyāsa. Like in the qadi courts, the burden of proof was laid on the oath, rather than on the written document. However, the ḥājib allowed a Latin notary to directly collaborate in the production of the proof to be used in the Siyāsa session. Proceedings were recorded and translated by the Muslim dragoman in the presence of both parties and the notary. On his side, the Venetian clerk drew up his own Latin deed before the same dragoman and two Venetians. In this way, the outcome of a single juridical act could be conveyed to both legal systems.\footnote{ASVe, CI, N, B. 230, Notary N. Venier, f. 10v-11r, Feb. 12th, 1419.}

The participation of Venetian scribes in Siyāsa trials, together with the testimonial role of bilingual simsār, the borrowing of legal concepts, or the way courts enforced each other’s decisions and were accessed across confessional boundaries, all appear to have been responses to the specific problems of dealing with diversity. The instances of legal cooperation examined so far demonstrate that legal relations and collaboration went far beyond mere tolerance and coexistence, as has often been suggested; rather, it required adjustments in procedural matters, and implied a common notarial culture for facilitating transactions between strangers. All too often, legal systems are believed to have been kept fundamentally separate until the eve of European colonization, and that Islamic law maintained biases against non-Muslims, as well as its main formalist traits. However, the kind of legal relations that the late Mamluks maintained with their Latin neighbors breaks with the teleological vision of a stagnant legal system that was only ‘modernized’ in the nineteenth century—with the inevitable adoption of Western legal principles and codification, such as Article 1736 of the Ottoman Majalla, which gave recognition to written documents. The imperceptible, yet significant shift represented by the transition from maẓālim to Siyāsa shows that medieval societies had their own way of managing diversity and mixed cases, and handled legal norms in ways that were compatible with the necessities of conflict resolution. The Mamluks did this without allowing anyone to bypass Islamic courts and without really challenging the shari‘a system of norms.

As close examination of the treaties has shown, the Mamluks inherited some of their predecessors’ solutions for dealing with the affairs of foreigners, and belonged to a much larger koinè of polities facing the same difficulties. It is difficult to imagine why the victorious Mamluks might have otherwise deigned to adopt the \textit{actor sequitur} principle and accept that Muslims be judged by Frankish consuls. If we can only speculate as to the reasons for the rise of Siyāsa
in Mamluk society, we can say with some certainty that the problems associated with foreign merchants played an important part in it. In Mamluk markets and courts, legal change can be observed in the way in which biases against written evidence and minority witnessing were dealt with. New technicalities were introduced, such as a higher standard of notarization, and new patterns of adjudication. To be sure, Siyāsa stirred up a great deal of polemic among the legally learned, for which the intellectual framework was tailored in Mamluk and similar societies. Many voices were raised against Siyāsa, and among them Shams al-Dīn Ibn Ṭūlūn and Tāj al-Dīn al-Subkī, and contemporary historians were all but tender when speaking of the Sultan’s meddling with justice. And indeed, these complaints account for the unprecedented nature of Mamluk Siyāsa. Legal change did not however follow a gradual, predictable pattern, but was contingent upon and circumscribed by medieval exchange in a specific historical context. Indeed, Siyāsa courts were not enhanced, but dismantled by the Ottomans, who instead reinstated a more traditional version of royal justice and placed the biases at the center of their relationship with the Franks.

Notarial casebooks record the remarkable, yet unexpected, emergence of the Islamic Siyāsa courts as an institution capable of enforcing justice not only for mixed cases, but also among Latin Christians. By turning from legal theory to take a closer look at the mixed trials described in this chapter, we can observe how an institution that issued from an Islamic legal background consolidated to settle disputes between strangers. Siyāsa justice, it should be noted, emerged even where such an institution was undesired, and it grew out of an unfavorable juridical tradition. There is perhaps no better proof for the effectiveness of Siyāsa than the fact that we have only come across a single diplomatic misunderstanding regarding the Islamic witness system. During the negotiations leading up to the Florentine-Mamluk treaty of 1481, the Florentine government requested that the word of a Florentine be acceptable as valid in Islamic trials: “should the Florentines be in need of producing witnesses in the market or at court, be the Florentines allowed to present and produce witnesses from all nations, both Christians and Moors, to whom credit should be given.”170 One can imagine the embarrassment of the Mamluk diplomats upon reading the Florentine request; the Mamluks had sponsored Siyāsa judges and their pragmatic trials to cope with the problem, and the request of an official

170 “Nel capitolo secondo de’ Vinitiani, ove si fa mentione di testimoni, si aggiunga et dichiari conceduto a Fiorentini questo, cioè: Che avendo Fiorentini a porre o produrre testimoni in mercati o iudicii, si possa per i Fiorentini porre e produrre et usare testimoni di ogni natione, et così Mori come Christiani; a’ quali si habbi a prestare fede.” Amari, I diplomi, 361.
admission of both witnesses’ equal dignity could only come from inexperienced diplomats—indeed, the request was simply ignored in the final draft. While in Mamluk Syria and Egypt, and for more than a century, there appear to have been no complaints about the witness system, they quickly surfaced in the sources when the Ottoman judges began sitting in justice in the former Mamluk provinces.

The normative framework governing mixed conflict did not answer to a given “rapport de forces,” nor to mere pragmatism. The early Mamluks, in spite of a favorable balance of power—since they had managed to expel the Crusaders and prevent new invasions—indulged in the adoption of some principles of equity governing the adjudication of commercial and mixed cases. And indeed, had clauses on jurisdiction been exclusively dependent upon, allegedly, unfavorable balances of power, Muslim authorities would have handed over commercial or even criminal cases to consulates (a claim that was sometimes advanced). However the Mamluks and later, the Early Ottomans concentrated all jurisdiction on Islamic judges. If in Mamluk times different scribal institutions existed, under the Ottomans they left room for the notarizing qadi alone, and in a very similar manner Siyāsa judges were replaced by Rūmī, ḥanafi qa-dis as the main judicial instance empowered to pass verdict. An orthodox approach to shari’a and the biases against non-Muslims, therefore, was progressively enhanced by the Ottomans, despite the fact that they are often depicted as mere pragmatists who yielded to the granting of privileges and capitulations demanded by Western polities.

Under the Mamluks, the moving forces dictating which forum or procedure should be followed drew, not from political opportunism, but from a repertoire of legal principles, such as the postulates of Islamic governance/Siyāsa and the doctrines of obligation, such as ʿahd and amān. Particularly after the mid-fourteenth century, the technical elaboration by jurists of these legal principles and their application by judges came to dominate the governance of cross-confessional issues. While the Mamluks set the discussion in the field of legal, technical reasoning handled by jurists, Ottoman rulers dismantled the Siyāsa courts and set their own standards concerning the biases against unbelievers. Soon after 1517, issues of witnessing and unbelief not only reemerged, but took center stage in legal and diplomatic interaction.