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Christian Müller

The Power of the Pen: Cadis and their Archives

From Writings to Registering Proof of a previous Action taken

Abstract: This study is about cadis' archives and their institutional importance from a long-term perspective. It combines information on the cadi's archive as reported in documentary sources from the middle of the eighth century onwards with an analysis of surviving legal documents and with juridical discussion on the legal status of writing as proof of a past action in *fiqh* literature in a strictly chronological approach. Putting these rather disparate elements together reveals a fundamental change in the use of writing an attestation and the cadi's archive during the period of time considered here. The refusal by ninth-century jurists to see a judge being bound to conduct a lawsuit by writings from their predecessor's archive was eventually replaced by accepting cadis' certificates as a means of proof. This legal change involved the tenth-century sophistication of attesting as a witness in two stages, where a written attestation implied that the witnesses had a legal obligation to provide an oral account of the matter at hand to the cadi. Hence, documents from a cadi's archive acquired the function of a 'living' archive that could safeguard subjective rights for long periods of time.

This study explores the importance of cadis' archives for the evolution of judicial institutions in the pre-modern Islamic world. Earlier studies have considered the existence of cadis' archives (*dīwān al-qāḍī*) as a rather limited phenomenon¹ that only changed when Ottoman court registers were introduced. This was mainly because historians of the Middle East had a host of Ottoman court registers (Arabic: *siğill*, Ottoman: *sicill*) at their disposal from the sixteenth century onwards,² whereas systematic cadis' records were unknown before that period. The availability of source material—or rather the lack of it—contributed to the widespread belief about a growing gap between the theory and practice of Islamic law since its beginnings as a jurists' law in the eighth century. Historians of Islamic law considered Ottoman records to reflect legal practice as opposed to legal theory,

1 For a short description, see Tyan ²1960, 191f, also see Masud/Peters/Powers 2006, here 21f. and Schacht 1964.

2 For a brief survey, see Faruqi 1997, 9: 539a–544b, and Akgündüz 2009.

which insisted on oral proof such as acknowledgements, testimonies or judicial oaths.³ This had two consequences for the study of judicial archives. First of all, the mention of testimonies in judicial proof documents, i.e. the *šuhūd al-ḥāl* in Ottoman court registers, was considered to be a legal fiction that did not reflect any practice of performing orally an attestation, nor as being of any performative consequence.⁴ Secondly, as written proof was not part of legal theory in the eighth century, the non-existence of archives seemed coherent in a world where the theory and practice of Islamic law (still) went hand in hand with each other. According to this view, later archives only illustrate the gap between legal theory that accepted only oral proof and judicial practice based on written archives as proof-instruments. In the following, I challenge these assumptions by describing the changing notions of the ‘cadi’s archive’, the documents it contained and its legal function, using three types of sources in the process: (1) literary references on cadis’ archives, (2) preserved documents and (3) legal doctrines on the law of evidence.

An important objection to the idea of non-existing judicial archives in Islamic society before the Ottoman period came from Wael Hallaq, a scholar of Islamic law. In his article from 1998,⁵ he asserted the existence of cadis’ court archives as a ‘formal institution that was kept systematically [and] was taken for granted by all members of the legal profession’.⁶ Schematically, his study of literary sources centres around three terms: first, the *dīwān al-qāḍī*, meaning the ‘totality of records kept by the cadi (Arabic: *qāḍī*, pl. *quḍāh*)’; second, the *qimaṭr*, a box where the cadi kept documents under seal; and third, the *siḡill*, the document as a physical object, which Hallaq understood as a ‘register’. As we will see, literary sources support Hallaq’s general statement on the existence of *qāḍīs*’ archives.⁷ They do not reveal much about an archive’s function, however—either as a depository for current or discarded documents or as a ‘living’ archive that provided legal arguments from former judgements on current affairs, for example. To be able to answer such questions, we need to trace the evolution of ‘judicial archives’ on the basis of surviving documentary evidence and compare these with a functional approach to what is, or might be, an ‘archive’. Did the archival material cover ongoing affairs that were passed on to the cadi’s successor? Or even

³ For a discussion of this point, see Johansen 1997, 333–376, particularly 333–335.

⁴ Tyan ²1959. According to Tyan, Ottoman authors accepted writing as proof. Also see Johansen 1997.

⁵ Hallaq 1998, 415–436.

⁶ Hallaq 1998, 429.

⁷ See Tillier 2009 for the Abbasid period up to the middle of the tenth century.

more importantly for the institution, did the archive also contain older documents, providing long-term security for their legal validity?

Since Hallaq's article was published, our knowledge of pre-sixteenth-century legal documents has increased considerably. The data used in this article comes from the CALD database (Comparing Arabic Legal Documents), which allows us to make detailed textual comparisons.⁸ This advanced dataset provides a new perspective on judicial practice in general and on *qāḍīs*' procedures in particular, the latter involving oral testimonies and written attestation complementarily to establish the rights and duties of litigants. Arabic legal documents involving testimonies by witnesses are scattered throughout time and space. What they all have in common is that they are authentic specimens of legal texts reflecting the legal practices for which they were initially issued. They originate from different regions of the Islamic world spanning from Central Asia and the Middle East to Muslim Spain. In quantitative terms, the number of preserved legal documents rose over time from just a few specimens in the early centuries to several hundred from the twelfth and thirteenth century onwards. Far from belonging to one archive, their provenance and the reasons for keeping them vary considerably. Early papyri were mostly deposits found on Egyptian soil. Later documents were kept by religious institutions like the Şafawīd shrine in Ardabil, Christian monasteries and church institutions, while others belonged to depositories of unused or discarded papers such as the Cairo Genizah. With some possible exceptions, most of these documents were used privately before being disposed of or put away in an archive for safekeeping. At the moment, we are not aware of any particularly large sets of judicial archives from the pre-Ottoman period.⁹ Nevertheless, the authentic specimens that are known to us provide us with valuable information on the form and uses of legal documents at the time they were made and through the ages, which can inform us about the utility of judicial archives. By combining such information with literary evidence and legal doctrine in a strictly chronological perspective, we are able to discern various steps in the evolution of judicial archives in Islamic society.

⁸ I gratefully acknowledge support by the ERC FP7 project 'Islamic Law Materialised' (ILM). CALD contains roughly 2,400 Arabic documents from the eighth to the sixteenth century. A detailed description of the corpus is in preparation.

⁹ See the article by Jürgen Paul in this volume.

1 Archives, documents and early legal doctrine

The fact that *cadis* kept important documents in a special box (*qimaṭr*) is attested by sources from the Umayyad and early Abbasid period.¹⁰ We also know of early juridical dissent on the status of documents in the *cadi's dīwān* in the mid-eighth century.¹¹ Literary sources mention the term ‘*cadi's archive*’ (*dīwān al-qāḍī*) when referring to documents handed down from judge to judge in the Abbasid Empire from the ninth century onwards.¹² Several tenth- to thirteenth-century letters of appointment from Abbasid caliphs refer to the *cadi's* archive and his task of guaranteeing former judgements as an important aspect of a *cadi's* work. In their ways of defining the *cadi's* office, these letters clearly belong to the same Abbasid tradition, with the caliph nominating chief judges whose judicial role was anchored in Islam as a religion.¹³ One may argue that the Mamluk author al-Qalqašandī (d. 821/1418) cited these letters to tie in with this bygone Abbasid tradition. Over these three centuries, however, changing terminology highlights a shift in judicial practice as juridical thinking and legal practices advanced. The *cadi's* task of ‘not changing any former judgements’ from the tenth-century letter of appointment reappears in twelfth- to thirteenth-century letters in new terms: ‘ratifying formerly ratified judgements’.¹⁴

The documents kept in the *cadi's* archive according to a description by al-Ḥaṣṣāf (d. 261/874) and the Abbasid nomination letters were known as ‘*siğillāt*’ and were issued after the *cadi* had passed his judgement.¹⁵ In Umayyad al-Andalus, the practice of registering *cadis'* sentences went at least back to the judge Muḥammad b. Baṣīr (d. 198/813–4).¹⁶ In early times, the administrative term *siğill*—from Latin

10 Tillier 2009, 400f.

11 Tillier 2009, 370f., n. 25, with reference to doctrinal differences between Abū Ḥanīfa and Ibn Abī Laylā.

12 *Ibid.*, 50, 329–330, 402ff., Hallaq 1998, 427–429.

13 See Qalqašandī 1913–19, 10: 276–291, for letters issued by the caliphs al-Ṭā'ī (r. 974–999 CE), al-Mustaršid (r. 1118–1135 CE) and al-Nāṣir lil-Dīn Allāh (r. 1180–1225 CE). All three mention the task of carefully keeping the archive (Qalqašandī 1913–19, 274, 284, 291) and the necessity of safeguarding prior judgements (*ibid.*, 273, 285, 290). See Hallaq 1998, 426.

14 Qalqašandī 1913–19, 273, 290 (letters under al-Mustaršid and al-Nāṣir lil-Dīn Allāh); for the early letter, see Qalqašandī 1913–19, 284 (letter under al-Ṭā'ī).

15 See Tillier 2009, 403f.

16 See Ḥuṣānī 1982, 75, Nubāhī 1948, 48 and Müller 1999, 151.

sigillum—was not just limited to cadis’ written judgements alone,¹⁷ but it is difficult to assess its exact use within future court litigations today. As Muslim jurists did not consider ‘a writing’ as legal evidence in general, the papers in the cadi’s archive will simply have helped him to recall the details of ongoing cases. After the cadi’s death (or loss of office, as the case may be) neither his word nor his papers were legally valid proof of his judgements unless their validity was attested by witnesses.¹⁸ The long-established habit of cadis calling upon individuals to act as occasional legal witnesses of decisions turned into permanent assistance during audiences with the cadi in the early ninth century,¹⁹ the same period when the cadi’s call for attestation (*iṣhād*) in order to have written proof of his own court decisions is first mentioned in the context of maintaining a *siġill* or registration (*taṣġīl*).²⁰

At that time, however, a *siġill*, or court register, was not in itself regarded by a cadi’s successor as written proof of an action. The newly appointed cadi could not use any documents he had found from his predecessor to pass a *ḥukm* (judgement) in ongoing cases without having to hear the witnesses again.²¹ In his widely accepted work *al-Mudawwana*, the ninth-century author Saḥnūn (d. 240/854) cites Mālik’s doctrine (d. 179/795):

The cadi could not use the testimony effected under his predecessor and noted in his papers for a concordant decision without any testimonial proof of its current validity (*bayyina*). His predecessor, if still alive, could not confirm the fact since he had acted as a judge and would not have been accepted as a witness. The person concerned then had the possibility of swearing that the testimony from the cadi’s papers was not the one used against him. If he refused to make this oath, the testimonies were ‘validated against him’ (*umḍiyat ‘alayhi tilka al-ṣahādāt*) and the assignee swore to confirm his claim. The testimonies were then certified and the new cadi was able to adjudicate in accordance with his predecessor’s decision.²²

The non-binding character of written attestations from the former cadi’s documents played a decisive role in a famous ninth-century trial concerning the well-known scholar Baqī b. Maḥlad (d. 276/889), which was held in Muslim Spain. Confronted

¹⁷ Some ninth-century *siġills* concern tax leases; see Frantz-Murphy 2001 with nos 12, 16, 17, 23, 25, 27, 28, 31 and 34 stating that they are a *siġill*. If tax-lease *siġills* were issued by tax administrators, then *siġill* was either a generic term used by the early Arab administration for any official ‘notification’, including cadis’ documents as well, or the cadi issued these tax-lease documents in addition to other court notifications and the term was then limited to judicial use.

¹⁸ See Johansen 1997, 346, 352.

¹⁹ Tyan ²1960, 246.

²⁰ For Umayyad Spain, see above regarding the cadi Muḥammad b. Baṣīr (d. 198/813–4); for the Abbasid Empire, see Johansen 1997, 346, n. 75.

²¹ See Tillier 2009, 411f. with reference to Ḥaṣṣāf 1978 and Šāfi’i 2010.

²² Saḥnūn n.d. 5: 145–146 (cited in *kitāb al-qaḍā’*).

with a large number of negative testimonies about Baqī's blasphemy made by hostile jurists, which would inevitably have led to the scholar's condemnation, the ruler was advised to dismiss the acting judge. This he did, and the succeeding judge never renewed the attestations, which saved the accused scholar from the death penalty.²³ This case corroborates the doctrine that a written notice of a testimony could only be used by the judge who had heard the witnesses, not by his successor. The same attitude about writing not counting as proof of a testimony is reflected in the well-known doctrine of 'one judge writing to another judge' (*kitāb qāḍin ilā qāḍin*) to inform him about an ongoing case, which was only accepted as legally valid if accompanied by witnesses' statements.²⁴

At that stage of procedural law, any mention of attestation in authentic documents referred to the *cadi* having heard witnesses and accepted their testimony as proof. Several eighth- to ninth-century documents mention a witness's attestation (*ṣahāda*) as part of its text written by a single hand. The eighth-century parchments from Ḥurāsān (now Iran) name witnesses before the final date²⁵ in a similar way to Egyptian papyri of the same period.²⁶ A new style appeared several decades later, when the formula 'this was attested' (*ṣuhida 'alā dālika*) closes the text following the date, albeit without any witnesses' names being mentioned. Some documents ended there,²⁷ but in other ninth-century specimens of the same type, the witnesses added their names in their own handwriting.²⁸ This document type asserts that its content had been confirmed by a witness-proof and the additional witness signatures might refer to later repeated attestations. None of these documents refer to a *cadi*'s judgement (*qaḍā'* or *ḥukm*), so they are not *siḡill* documents. They may correspond to other types of documents kept in the *cadi*'s archive, however, since judges issued documents along with a copy for the litigants and kept one specimen in their own archive (*dīwān al-qāḍī*).²⁹ What needs more research at the moment is

23 See Müller 2000, 169, with further indications.

24 Johansen 1997, 354f., Tillier 2009, 366–399.

25 Khan 2007; document nos 5, 7, 11, 12, 14 (*mukātaba*, 160/777), 20 and 21, all between the years 138–160/755–777. No. 29 begins with *ṣahida 'alayhi* followed by names, but without any date.

26 See Cahen/David-Weill 1978, document no. 24, dated 123/741, edition, p. 152, and David-Weill 1971, document no. 16, edition pp. 12–13, dated 156/773.

27 Khoury 1993, document no. 40, edition pp. 77–78 (Berlin 11975, dated 232 AH/847 CE). Also: Ber_7902 (202AH), CaiN_173 (297AH), Chi_17657r (275AH), PhiPe_16320 (242AH) and VieAp_10489 (276AH).

28 For some examples of documents signed by witnesses, see Ber_7515 (276AH), CaiM_15649 (268AH), CaiM_17493 (272AH), CaiM_17494 (293AH), CamMb_134 (280AH) or PhiPe_16413/7 (268AH).

29 See Hallaq 1998, 420, n. 27 for some literary sources.

whether or not unattested documents found their way into the *cadi*'s archive as well as attested ones. The earliest known deeds that were personally signed by witnesses go back to the year 180/796.³⁰ Not all sale contracts were signed at that time, however. The phenomenon of witnesses signing documents after attestation coincides with attributing the status of 'honorable witness' (*šāhid 'adl*) to a small group of people accredited by the *cadi*, which excluded large parts of the Muslim population.³¹ At present, it is hard to say exactly when witnesses had to sign their names after making an attestation and what types of documents this step was required for.

Although writing was not regarded as legal proof of an action and needed confirmation by a witness's testimony, the documents the *cadi* kept in his archive served to safeguard individual rights since confirmation by witnesses might have been problematic in another city. In the year 221/836, the *cadi* of Basra refused an order to transfer deeds (*šikāk*) from his archive to the *cadi* of Bagdad for confirmation (*taṭabbut*) since the documents ante-dating his period in office were confirmed by testifying in his presence as valid proof (*bayyina*) and a transfer might have annulled some of the rights concerned, which would have conflicted with his duty as a judge.³²

From our sources, it is very clear that no written attestations from the '*dīwān al-qāḍī*' had the status of legal proof required for a *ḥukm* during the third/ninth century; it only had indicative value.³³ This certainly limited the use of the *cadi*'s archive. How, then, could judicial archives become important as an institution that preserved the validity of former judgements? The answer lies in a development of legal doctrine concerning witnesses' testimonies that took place after the ninth century.

We have more detailed information on *cadis*' documents for the tenth century. In the context of Islamic law and following a description in Ṭaḥāwī (d. 321/935), we may translate the term *siḡill* as 'notification (of a judgement)'. His examples of *cadis*' *siḡillāt* mention conjointly material and procedural facts on which the final decision was based. The winning party was entitled to a *siḡill* as an 'argument' (*ḥuḡḡa*) of the decision (*qaḍā'*),³⁴ terminology repeated in later texts. The second copy stayed with the *cadi* in case he needed it.³⁵

³⁰ See Houry 1993, no. 64 (VieAp_1151) and CamMb_59, both of which were lease contracts.

³¹ Tyan ²1960, 239f. In Egypt this was introduced in 174/790.

³² See Tillier 2009, 646–647.

³³ See also Tillier 2009, 411f., referring to Ḥaṣṣāf 1978; and al-Šāfi'i, *K. al-Umm*, for the second process under the successor.

³⁴ Ṭaḥāwī 1974, 1084. For some examples of *cadis*' notifications, see *ibid.*, 1084–1121.

³⁵ *Ibid.* See also Müller 1999 and Hallaq 1998 for a similar practice in Muslim Spain.

In tenth-century Muslim Spain, various judicial magistrates (*ḥukkām*, sing. *ḥākim*: ‘those that adjudicate’) could issue a registration (*tasḡīl*).³⁶ These *tasḡīl* documents in *mālikī* legal tradition shared most elements as described by Taḥāwī without being limited to a *cadi*’s decision. According to Ibn al-‘Aṭṭār (d. 399/1008), all *tasḡīl* documents begin with an official call for a testimony, ‘*ašhada ...*’, include procedural and material facts followed by a decision (*naẓar*) and finally the attestation of it.³⁷ The document itself is termed ‘*siḡīl*’.³⁸ Here, again, the winning party may demand a *siḡīl* over his right³⁹ as an ‘argument’ that supported the decision.⁴⁰

2 Enhancing the value of documents as proof of an action

As has been said above, Islamic law did not accept writing as proof of an action in the period with which we are concerned here, and early documents merely served as personal *aide-memoires* regarding what had happened in the past, including witnesses attesting an action, which the *cadi* at the time had accepted as proof. How could a written attestation refer to the past on the one hand, but also lead to an oral testimony that a *cadi* could accept as proof in the future? In other words, how was it possible to turn the act of writing an attestation into an instrument with which to create long-lasting proof?

This enhancement of the utility of written documents occurred when the notion of ‘testimony’ (*šahāda*) was formally divided into two distinct steps, namely ‘taking a testimony upon oneself’ (*tahammul al-šahāda*) and ‘performing a testimony’ (*adā’ al-šahāda*), an evolution of legal doctrine that most probably took

³⁶ See Ibn al-‘Aṭṭār 1983. Even military or administrative officials were able to notarise a *siḡīl* in cases that did not require a *ḥukm*; *ibid.*, 607. See also Ibn Sahl 1997, 90, who mentions the eleventh-century case of a magistrate who became a *cadi*.

³⁷ See Ibn al-‘Aṭṭār 1983, 130, 515, 519, 524, 528, 531, 545, 584, 588, 599, 611, 615, 618, 620, 626, 635 and 638 on the beginning of *tasḡīl* documents as opposed to ‘deeds’ (*waṭā’iq*) without any procedural elements; *ibid.*, *passim*. *tasḡīl* formularies include procedural facts like raising the claim, its acceptance by a judge, final considerations or *ḥukm* and its attestation by witnesses. They copied material facts from relevant documents.

³⁸ *Ibid.*, 591, 622, 631.

³⁹ *Ibid.*, 514, etc.

⁴⁰ *Ibid.*, 599, 609: to obtain a ‘*ḥuḡḡa*’. Ibn al-‘Aṭṭār sometimes states the exact number of *tasḡīl* copies, one being for the *dīwān*: three copies (*ibid.*, 131, 527) and two (*ibid.*, 549).

place in the tenth century.⁴¹ In the first step, the witness took upon himself an individually binding obligation to attest to certain facts personally. He mentioned this by writing ‘I attested’, or less personally ‘he attested’, followed by his name. In the second step of ‘performing a testimony’, the witness made an oral testimony in the cadi’s presence, which the cadi could then accept as proof of an action. A witness only needed to be ‘honourable’ when performing a testimony, not when accepting the call to make a testimony.

As a result of this evolution in legal doctrine, the words ‘I attested’ no longer referred to the proof the witness in question had furnished at the cadi’s court, but only signified the first step in the procedure: the witness’s legal obligation to testify. Since witnesses effectively acted as notaries, claimants could present any notarial document in court and be sure that the ‘notary’ would show up to testify orally if required to do so by the judge. Thus, attestations on documents constituted potential oral proof, not—as in the past—notification of proof of an action provided by a witness. Documents show us that this shift in legal practice occurred in the tenth century, when judges began to write the words ‘I attended to this’ on top of documents signed by witnesses or they affirmed that they had ‘confirmed the validity’ of the documents.⁴² The only possible explanation of this change in protocol is that witnesses’ signatures no longer included the aspects of judicial verification and acceptance as proof. Since earlier documents never bear such annotations by cadis, we may assume that the words ‘he attested’ then implied the cadi’s acceptance of the witnesses’ statements as proof.

What consequences were there for cadis’ written decisions, and how were they rendered performative for future litigation? As has been said before, tenth-century *siġill* formula documents reflect a solution to the above-mentioned legal problem, namely that a cadi could not confirm his own actions after having closed the court session. Since no authentic annotated specimens have been preserved from this period, however, it is uncertain whether such tenth-century court registers were simple notifications of past events or already served as instruments for obtaining proof of past action in later litigations.

Most formulae cited by al-Ṭaḥāwī in the early tenth century refer to the attestation of cadis’ documents (*mā šahida ‘alayhi*),⁴³ whereas the later *tasġil* formula by

⁴¹ Müller 2010, 65f.; Müller 1999, 180; the distinction is absent from juridical manuals of the ninth century.

⁴² For an early example, see LonNo_4684_8 from the year 384/994.

⁴³ ‘*hādā mā šahida ‘alayhi*’, Ṭaḥāwī 1974, 1084: ll. 11–14, 1095: ll. 6–7, 9–10, 1100: ll. 5–6, 1104: ll. 4–5, 1118: l. 5, 1120: ll. 3–4; *hādā mā šahida ‘alayhi al-šuhūd al-musammūn fī hādā l-kitāb šahidū ġamī’an anna al-qāḍī fulān ašhadahum bi-madīna ... annahu ṭabata ‘indahū* 1084:

Ibn al-‘Aṭṭār always began with the standard *iṣhād* phrase, referring to the *cadi*’s call for witnesses. In the middle of the tenth century, a *cadi* verified the content of a *siḡill* written by his secretary until the term ‘he attested’ (*ṣahida*) then wrote the call for attestation himself (*iṣhād*) and had the document (!) attested.⁴⁴ If meant to formulate a testimony for future performance, the document’s text necessarily interlinks actions, rights or obligations directly with the person concerned, either in his favour (*lahu*) or at his charge (‘*alayhi*). Authentic documents mention the step of calling upon a witness at charge of a private person since the beginning of the tenth century⁴⁵ and at the charge of a judge since the eleventh century.⁴⁶

Later, when *cadi-iṣhād* documents were used as instruments to furnish proof of an action, the testimony of court procedure not only mentioned the *cadi*’s appeal for attestation (*aṣhada*), but that he ‘appealed to attest at his charge’ (*aṣhada ‘alayhi*),⁴⁷ or even more explicitly, ‘at the charge of his soul’ (*aṣhada ‘alā nafsihi [al-karīma]*).⁴⁸ This kind of testimony confirms the *cadi*’s responsibility for the legality of court procedures, and the witnesses could attest to this in the future. Since neither the tenth-century *iṣhād* formula used by al-Ṭaḥāwī and Ibn al-‘Aṭṭār, nor other sources⁴⁹ consistently refer to the *cadi*’s obligation, *siḡills* may not have served as instruments for providing proof at that time. The earliest known authentic *siḡill* document, which dates back to 494/1101, uses the phrase ‘the judge had called for it [the document] to be attested’ without including any signatures from witnesses.⁵⁰

ll. 11–14, 1095: ll. 9–10, 1100: ll. 5–6, 1104: ll. 4–5, 1118: l. 5, 1120: ll. 3–4, and for a non-*tasḡil* document, see 1122. Only once: *hādā kitāb aṣhada ‘alayhi al-qādī fulān al-ṣhūḍ al-musammīn fīhi*, 1095: ll. 6–7.

⁴⁴ See Ibn al-‘Aṭṭār 1983, 642, for the Cordoban judge Muḥammad b. Abī ‘Īsā (d. 339/950–1). This does not necessarily imply a notarisation by a witness over the *iṣhād*.

⁴⁵ See Ber_13002 (304AH).

⁴⁶ See the Fatimid *cadis’ iṣhād* document from 429AH, originally preserved by the Karaite community in Cairo, published by Gottheil 1907, 467–539 with edition, 472–478.

⁴⁷ Early ones are from Yarkand and Ardabil, see LonSy_6 (503AH) in the form of a *qadi*’s disposition (*yaqūl al-ḥākim*); see Gronke 1986, 489, for witnesses no. 2-5; also witnesses: *aṣhadanī al-qādī*, see Ardabil Ards_5 (599AH) and Ards_8 (604AH), Gronke 1982, 158 and 218; for a reference in the text *al-ḥākim al-muṣhid ‘alā ḥukimihi wa-qaḍā’ihī aṣhadahum ‘alā dālika*, Ards_5, *ibid.*, 156, line 23

⁴⁸ See below for thirteenth-century documents.

⁴⁹ al-Ḥuṣānī (d. 361/971) only cites the *iṣhād ‘tumma saḡḡala fihā wa-aṣhada’* for the *cadi* Muḥammad b. Baṣīr (d. 198/813–4), Ḥuṣānī 1982, 75, whereas the fourteenth-century author al-Bunnāhī added to the same report the obligation ‘*fa-saḡḡala fihā wa-aṣhada ‘alā nafsihi*’; see Nubāhī 1948, 48. On Bunnāhī/Nubāhī, see Lirola Delgado/Puerta Vilchez 2012, 282–286.

⁵⁰ See Gronke 1986, no. 1, pp. 479–480, line 2.

Interestingly enough, another document of the same origin bears witnesses' signatures indicating the *cadi's* *iṣhād*.⁵¹

As the rare authentic documents do not cover all aspects of complex legal evolution, we can only note a few milestones here: the absence of marginal notes in eighth- to ninth-century documents indicates their use as simple notifications. Annotations by *cadis* since the tenth century illustrate the practice of the two-step testimony. Moreover, the above-mentioned early eleventh-century *cadi-iṣhād* document supported the use of specimens as documents providing proof long after the *iṣhād* formula had appeared in notarial manuals (*ṣurūt*). Here, again, we cannot exclude the loss of earlier documents of this kind.

3 Cadis' archives

We must assume that these changes in notarial and judicial practices heavily influenced the function and organisation of *cadis'* archives. As historical settings differed in time and space, and the smooth functioning of the *cadi's* court depended on political authorities and stability, the following observations, based on glimpses from sources, can only indicate the general importance of the *cadi's* archive in specific cases.

Keeping an archive was a task that distinguished a *cadi* from other officials with judicial functions. As mentioned above, receiving the previous *cadi's* archive was important for incoming Abbasid judges, whose role was to preserve people's rights.⁵² In Umayyad al-Andalus, various magistrates (*ḥukkām*) acted as judges, but only the *cadi* kept an archive (*dīwān al-quḍāt*) and certain fields of law were reserved for the *qāḍī's* jurisdiction;⁵³ the noting (*tadwīn*) of orphans' property could only be done in this *dīwān al-quḍāt*, for example.⁵⁴ Compared to early Mālikī tradition as described by Saḥnūn, the tenth-century *cadi's* archive represented a major shift in legal practice: debts that had been recorded (*mudawwan*) in the *dīwān al-quḍāt* by a predecessor without notification of an acquittal could only be cleared from this record by judicial procedure.⁵⁵ This illustrates the

⁵¹ See Gronke 1986, document no. 6.

⁵² See above.

⁵³ Müller 2000, 168, along with Ibn Sahl (d. 486/1093), who drew on older sources; Ibn Sahl 1997, 331.

⁵⁴ Ibn Sahl 1997, 91f., citing Ibn Ziyād (d. 312/924).

⁵⁵ See Müller 2000, 168, along with Ibn Sahl 1997, 1001; the muftis lived at the beginning of the tenth century.

legal value of such entries in the *dīwān*, which served as an institutional archive beyond the mandate of the *cadi* who had originally established the facts.

Early sources report that Abbasid documents were stored in closed boxes (sing. *qimaṭr*) that were only accessible to the *cadi* or his fiduciaries. When a new *cadi* took office, he checked his predecessor's archive, looking at a register from each box that listed the names of beneficiaries and the overall document number in the box, written by two individuals who checked the archive.⁵⁶ Later authors confirm the existence of a registry facilitating access to information. According to the Transoxanian jurist al-Samarqandī, who probably lived during the eleventh century, an annual inventory (*ḡarīda*) summarised all the archived documents and listed them according to specific types. If they were still relevant, documents were to be re-registered in the inventory the following year.⁵⁷

Our sources mention a variety of documents kept in a *cadi*'s archive, not only certificates on the *cadi*'s judgements (*siḡillāt*), documents of 'presence' (*maḥādir*) and deeds (*waṭā'iq*).⁵⁸ Authentic specimens of some of these types of document have survived to this day, but it is difficult to correlate these with the descriptions of the *cadi*'s archive since practices changed and the external form of the documents changed as a result. These documents were only able to serve as the basis of legal evidence in future litigations once writing authenticated by witnesses had become an 'instrument of proof'. However, not every case was solved by a formal judgement (*ḥukm*), which might have left room for wider use of written documents by succeeding *cadis*. Thanks to the preservation of authentic judicial *iṣhād* documents, the internal functioning of the *cadi*'s archive becomes clearer to us from the thirteenth century onwards.

4 The 'judgement archive' and its 'documents of proof' (thirteenth–fifteenth century)

With the enhanced use of documents as instruments to provide proof of past action, the *cadi*'s archive with its different types of documents arranged and filed in weekly or monthly intervals⁵⁹ must have considerably grown in size over the

⁵⁶ Tillier 2009, 403f.

⁵⁷ See Hallaq 1998, 427f.

⁵⁸ See Tillier 2009, 403f., Hallaq 1998, 426–429, along with Qalqašandī 1913–19, 10: 274, 284 and 290.

⁵⁹ See Hallaq 1998, 429.

years. Systematic recopying of the archive only makes sense if the legal value of its documents is preserved, which would mean reproducing authentication by judges and witnesses as well. If this seems impossible for all the cadi's papers, we have good reason to assume that legal validity was specifically assured for a section of the corpus of official documents called the 'archive of adjudication' (*dīwān al-ḥukm*) in thirteenth-century sources, with cadis' documents on ongoing and finalised cases. The term appears in the twelfth century⁶⁰ and is cited as a specific branch in the appointment letter during the reign of Caliph al-Nāṣir li-Dīn Allāh (r. 1180–1225 CE) and in the cadi's manual of the Ayyubid author Ibn Abī l-Dam (d. 642/1244).⁶¹ Its *maḥāḍir* and *siḡillāt* documents were collected every week and stored in the cadi's box (*qimatr*), a repository for books and documents for the cadi's exclusive use, after having being filed and stamped.⁶² According to the manual, the incoming cadi had to systematically go through the *siḡillāt* and other documents from the *dīwān al-ḥukm* that were handed down from his predecessor. If he found that only one or two of the four original witnesses to a procedure were still alive, he had to renew the certification (*iṣḡāl*).⁶³ This procedure of assuring authentication of rendered judgements might correspond to the cadi's task of 'ratifying what the judges before him had ratified', which appointment letters mention.⁶⁴ Although no original *iṣḡālāt* from the Ayyubid period are known at present, the practice of periodically renewing *iṣḡāl* is confirmed by entries found in Ottoman registers.⁶⁵ In conformity with earlier examples, Ibn Abī l-Dam's *iṣḡāl* model cites the establishing of facts as legally valid and confirmed by judgement, but also clearly expresses the cadi's responsibility in the call for witnesses,⁶⁶ as was required for attestation. His description of documents and the

60 See *dīwān al-qaḍā' wal-ḥukm*, Qalqašandī 1913–19, 10: 290, in a letter of appointment issued between 1118 and 1135 CE.

61 See Qalqašandī 1913–19, 10: 283, specifically '*dīwān ḥukmihi*'; on his archive and its various documents in general: '*dīwānuhu*', *ibid.*, 284, which earlier letters of the tenth and early twelfth century call *dīwān al-qaḍā'*; *ibid.*, 274, and *dīwān al-qaḍā' wal-ḥukm*, *ibid.*, 290; on *dīwān al-ḥukm*, see Ibn Abī l-Dam ²1982, 122.

62 Ibn Abī l-Dam ²1982, 123. For a definition of these document types, see *ibid.*, 553. See Hallaq 1998, 435.

63 Ibn Abī l-Dam ²1982, 123.

64 Qalqašandī 1913–19, 10: 273 and 290.

65 On Saladin's endowment deed for the Ṣalāḥiyya convent in Jerusalem and its repeated certifications, see 'Asalī 1983 and 1985, 1: 83–100, based on the Jerusalem *siḡill* no. 95 from 2nd Ḍū l-Ḥiḡḡa 1022/13.1.1614.

66 *Hādā mā aṣḥada 'alā nafsihi bihi sayyidunā al-qādī*, Ibn Abī l-Dam ²1982, 555.

judges' authentication of *iṣḡāl* corresponds to later Mamluk documents.⁶⁷ It does not, however, refer to the validation of earlier procedures in a *cadi's* certificate (*siḡill*), known at present only from Mamluk documents.

The Mamluk *cadi's* certificate (*siḡill*) certified the *cadi's* ruling (*ḥukm*) over the legal validity (*ṣiḥḥa*) of all its content, which might be highly complex, including court documents from various judges, past and present, and consecutive certifications (*iṣḡālāt*).⁶⁸ A *siḡill's* complexity was due to differences in notarising proceedings concerning (case a) the *cadi's* own court session, the procedure of establishing facts from witnessed documents or based on ratified *cadis'* documents, or (case b) the confirmation of former judgements. Witnessed documents notarised the first step in providing proof by means of a witness's testimony (*taḥammul al-ṣahāda*). To use these in litigation, the judge questioned the witnesses and accepted their testimony (*adā' al-ṣahāda*) as a way of 'establishing facts' (*tubūt*). He then ratified the document with his well-known motto (*'alāma*) and called witnesses for attestation of the procedures leading to facts being established and eventually to a judgement on the matter in question. *Cadis* from different cities used a ratified *cadi's* document of this kind—at least in ongoing cases—as a means of establishing facts without having to call on witnesses to testify about facts or legal procedures. The *cadi* ratified the document with his own motto a second time and called his own instrumental witnesses to vouch for the legal procedure. He did not mark the earlier signatures with a note confirming that a testimony had been made, however.⁶⁹ Such procedures did not necessarily lead to a formal judgement by the *cadi*,⁷⁰ but whenever the judge passed a judgement, it became effective (*tanfiḍ al-ḥukm*) after attestation (*iṣhād*). In some complex cases, the *cadi* referred to various certified documents as arguments that led him to his judgement, along with other established facts.⁷¹ When it became necessary to corroborate a former judgement by a different judge through *iṣḡāl* (case b), the *cadi* took an existing document on such a previous judgement as the basis for rendering it effective (*tanfiḍ al-ḥukm*). This procedure probably asserted the authenticity of the former document and its signatures, which was possibly done

⁶⁷ 'After verification, the *cadi* wrote the date and *ḥamdala* in the space that the secretary had left in the text'; Ibn Abī l-Dam ²1982; 567 (this court record ended with a *ḥukm*, but the author did not call it *iṣḡāl* or *siḡill*).

⁶⁸ See Asyūṭī 1996, 2: 327. Pace Hallaq 1998, 420.

⁶⁹ See Müller 2013, 329–383, for details of ongoing cases.

⁷⁰ See Müller 2006.

⁷¹ See the example of the Ḥaram document no. 355 summarising documents that the *cadi* had used for the case; in Little 1998, 93–193.

by a procedure called ‘testifying a testimony’ that did not require the *cadi* questioning instrumental witnesses again, who might be dead or absent. No *cadi* was supposed to annul any of his predecessor’s judgements unless new evidence had appeared in the meantime that made this step necessary. The difference between hearing witnesses to establish facts and render a judgement, notarised as judicial *iṣhād*, and certifying a predecessor’s judgement in the form of *iṣḡāl* becomes obvious in the introductory formula and the forms of authentication that were used.⁷² Authentic documents from the Ḥaram Corpus in Jerusalem,⁷³ the Aleppan Scroll and from Cairo’s archives confirm these descriptions. Wherever documents include *iṣḡāl* certifications that were renewed periodically, the primary *cadi-iṣhād* refers to rendering the *qāḏī*’s judgement (*ḥukm*) based on facts, followed by one or more *iṣḡāl* procedures.

A Mamluk *cadi*’s certificate (*siḡill*) could combine all these elements—various *cadis*’ certificates and judgements—to create a single document and rule for its legal validity. It could either contain all the certifications needed for a complex court case or certify several documents collated together with their originals.⁷⁴ When preparing such a *siḡill*, the *cadi* scrutinised all these documents (*kutub*) not only from a legal perspective, but in terms of their establishment as facts and consecutive ratifications leading up to his own approval (*ittiṣāl*).⁷⁵ Contrary to what has been said on Ayyubid practice, the Mamluk description avoids mentioning the need for personal testimonies from surviving instrumental witnesses for this last step. When the *cadi* decided to validate the *siḡill* prepared by his secretary, the judge had to ensure that cited documents had been meticulously transcribed and collated (*muqābala*) by the secretary and a second witness using the originals to form the *siḡill*. He then had to ‘pronounce the establishment [of its content] as fact’ (*nāṭiqan bi-ṭubūtihā*) to make it a *ḥuḡḡa* for all it contained at that moment and for the future as well. It was the *cadi*’s task to combine older attestations into a unified ‘argument’ that became an instrument capable of providing legal proof of past actions. The issuing judge, named in detail after a long

72 ‘[T]his is what he ‘takes as grounds for’ (*bihi*) what he has attested’ (*hādā mā aṣhada bihi ‘alā naṣiḥi al-karīma*). In the *iṣhād*, the formula runs: ‘this is what he has attested’ (*hādā mā aṣhada ‘alā naṣiḥi al-karīma*). Things were not as clear in the Ayyubid period: Ibn Abī l-Dam (c.1982, 555) cited the above-mentioned *iṣḡāl* formula in a model document, but gave the *iṣhād* formula as the *iṣḡāl* standard (553).

73 The Ḥaram document no. 333 copied the successive *iṣḡāl*-notices belonging to a *waqf*-document; see Müller 2013, 76, with certifying judges mentioned; *ibid.*, 242–245.

74 On the details of a Mamluk *cadi*’s certificate (*siḡill*), see Asyūṭī 1996, 2: 323–325, with the two types.

75 Asyūṭī 1996, 2: 324. For a different understanding of *ittiṣāl*, see Johansen 1997.

ḥamdala (not the *basmala*) and introductory formula, ratified the *siğill* with his ‘*alāma*’ at the top of the document, then wrote the date and *ḥasbala* with a particular broad pen in the spaces left for them by his secretary, and called for witnesses to certify the procedure. These certification marks distinguished the Mamluk *siğill* from contemporary *iṣḥād* documents, which were limited to procedures taking place in the *cadi*’s court up to a first judgement.

Authentic examples of Mamluk *siğills* confirm this description in the *cadi*’s manual. A twenty-metre-long scroll from the archives of an Aleppan family was one such *siğill*.⁷⁶ Issued in the fifteenth century, some of its certified documents go back over a hundred years, with various descriptions of authentications in former procedures and uninterrupted series of *iṣḡāl* notices (*maḍmūn iṣḡāl*) linking the past *cadi*’s certificate to the latest document. The *iṣḡālāt* notifications on the verso side (non-edited) have no connection with the document on the recto side. Written on originals kept in the *cadi*’s archive, each *iṣḡāl* of the predecessor’s judgements consisted of an independent document using formulae, titles and eulogies for the issuing judge, which witnesses attested and signed. If necessary, the scribe glued new sheets to the existing scroll.⁷⁷ When a *cadi* referred to earlier *iṣḡāl* procedures in a certificate (*siğill*), he used the shortened *iṣḡāl* notice (*maḍmūn iṣḡāl*) with the judge’s name, place of office and *iṣḡāl* date, but without any eulogies or witnesses’ names.⁷⁸ Other original registration documents (*iṣḡālāt*) were part of larger transactions, like the properties transferred to the foundation of the last Mamluk sultan, al-Ġawrī.⁷⁹ Any *siğill* might become the object of later *iṣḡāl* procedures.⁸⁰

5 The *cadi*’s ‘living archive’

For the Mamluk period, we have a large variety of witnesses’ documents at our disposal that notarise all kinds of legal steps, ranging from simple witnessed inspections and attestations to records and judgements. These concerned a broader section of the population, as illustrate inventories of personal estates for inheritance

⁷⁶ Edited by Saghbini 2005. Today, the scroll is 20 m long and 30 cm wide.

⁷⁷ The joint for a new sheet was called *waṣl*; on certification of such joints, see Gronke 1982, 123, 182, 199, 221f., 248, 301, 351f., 430f.

⁷⁸ See the Aleppo scroll. Different independent *iṣḡāls* on the verso, not edited.

⁷⁹ ‘Abd al-Laṭīf 1957, 293–420.

⁸⁰ See ‘*bi-gamī’ mā nusiba ilayhi fi iṣḡālihi ... al-musaṭṭar bi-zāhir ṣadr al-siğill al-musaṭṭar bāṭinahū*’, in: BerHo_6948 (Aleppan scroll), forth notification verso, ed. by Saghbini 2014, 40 (Arabic text).

cases. An incoming *cadi* could use all the witnessed documents from his predecessor's term of office after calling on the original witnesses to attest to their validity in his own court of law. These sources of information allow us to reconstruct judicial procedures in detail,⁸¹ but it is still unclear whether such witnessed documents actually became part of the *cadi*'s own archive—and in which section they were put if this really did happen—as hard evidence is lacking.⁸² In a more general manner, manuals describe ways to notarise *iṣḡālāt* based on documents of acknowledgement confirmed by making an oath, or on attestations by witnesses with the inclusion of a *cadi*'s formal judgement (*ḥukm*).⁸³ The function of the lost judicial archives⁸⁴ for 'rendering justice' becomes clearer if such a bottom-up perspective is taken.

Long-lasting instruments for providing proof like *siḡillāt* or other certified documents continued to be kept in the *cadi*'s archive for years. Mamluk practice probably followed the earlier Ayyubid institution to a large extent, but it is difficult to retrace the gradual changes and ruptures that occurred in detail. It seems beyond doubt, however, that Mamluk judges also renewed older *cadis*' judgements by *iṣḡāl* to render them effective from time to time. The systematic verification of whether or not instrumental witnesses were still alive, as described for incoming *cadis* in the Ayyubid period, seems less certain, however. There are several reasons for this. First, a procedure of this kind is not mentioned in any of the detailed descriptions that have come to light so far. Second, Mamluk *cadis* always issued *iṣḡāl* documents 'on demand', according to the sources. This may seem like a stock phrase, but court procedures cost money—who would want to pay for them without a specific call for one by a party to a dispute? Third, certain formulae suggest that proof-providing documents served as 'witness' for the legal facts they contained (*al-ṣāhid bihā*).⁸⁵ This rendered oral testimonies unnecessary for documents whose authenticity was beyond doubt. It is unclear exactly when such procedures began to be adopted, but we may assume that certified documents from the *cadi*'s archive would fulfil such a condition. Repeated Mamluk certifications (*iṣḡālāt*) would not systematically ensure authentication by living witnesses, but confirmed the validity of a past judgement, either by judges of the other four accepted law schools or during litigation, and rendered such a judgement effective.

81 For this, see the study of the Ḥaram documents, Müller 2013.

82 Regarding the argument that the Ḥaram documents were not a systematic court archive, see Müller 2011, 435–459.

83 Ġarāwānī 2010, 332–333.

84 See Jürgen Paul in this volume.

85 This formula appears in documents from the late fifteenth century. For an example, see Reinhardt 2003, 157 (the Arabic text is on line 35f.).

Thus, Mamluk *siğills* were cadis' certificates in the form of scrolls containing several 'certifications' (*isğālāt*), but no 'registers' or register entries showing systematic archiving. They were either kept in the archive or handed to the parties concerned. Manuals describe in detail how the original (*aşl*) of a court procedure kept in a box (*qimatır*) by the cadi was used to issue further documents for the parties. This could be done in two different ways: either as a copy (*nuşa*) that reproduced all the marks of authentication left by the ruling judge and his witnesses or as a 'cadi's certificate' (*siğill*).⁸⁶ A 'copy' of it could only be issued at the same time as or shortly after the original was notarised, as otherwise neither the cadi nor his witnesses would be available.⁸⁷ This restriction did not apply to cadis' certificates, though. The cadi therefore had a 'living archive' at his disposal from which he could issue legally valid documents. Authenticated *siğills* served as an 'argument' (*huğğ'a*) in future claims or litigations, which led to continuous reciprocation between archived originals and handed-out copies for arguing legal cases, which might lead to new original documents being produced concerning cadis' decisions.

Mamluk cadis' documents only survived in the hands of private families, Christian ecclesiastical institutions or the central *waqf* administration. The cadi's archive—the source of his power to safeguard long-term subjective rights by rendering former judgements effective and issuing *siğill* certificates—did not outlast the changes that occurred as a result of introducing Ottoman court records and their different definition of the judicial *siğill*, however.

6 Ottoman court records (fifteenth–sixteenth centuries)

When the Ottomans took over Egypt in 1517, a number of important changes took place in terms of judicial organisation and record-keeping that stirred up the population when initially introduced.⁸⁸ An Ottoman court register (*siğill*) generally recorded different types of legal documents such as attestations, acknowledgements and litigation records upon validation by the judge in a chronologically arranged

⁸⁶ See Asyūṭī 1996, 2: 326f. and Ğarāwānī 2010, 333, editing ms Berlin Or. 2011, entitled *Kitāb al-kawkab al-mušriq fi l-warāqa*, *ibid.*, 16.

⁸⁷ Seen from that perspective, the *isğāl* documents from the Monastery of St Catherine on Mount Sinai are 'copies' with authentication marks concerning procedural steps.

⁸⁸ See for this Ibn Iyās 1974.

register called a *defter*.⁸⁹ Each entry was followed by the names of instrumental witnesses (known as *šuhūd al-ḥāl*) who assured its validity, not necessarily the legality of the court procedure. Independently notarised proof-related documents (*ḥuğğa*, Ottoman: *hüccet*) that were destined for the parties concerned were very similar to those from the Mamluk era in terms of their juridical formulations and requirements such as witnesses' signatures.⁹⁰ They differed by beginning with the place of adjudication (*maḥkama šar'iyya*) of a city and its acting judge. The latter ratified documents of this kind using a notation called '*unwān*' at the top left above the *basmala*,⁹¹ a practice already used in earlier Seldjuk documents from Anatolia and the Ardabil documents. Each Ottoman document serving as proof of a past action was registered and could be traced back to a dated entry in the court register, even if the judge had changed or several deputy judges were acting at the same court of law. Thus, the court register allowed the validity of each document presented for a claim to be verified.

The mentioning of a place of adjudication in the Ottoman documents acting as proof of a former *cadi's* actions illustrates the change from a personalised 'cadi's certificate' to a 'court certificate' where the legal institution itself (*maḥkama*) was emphasised. When legal certificates were issued by a court of law that kept a record of them, and not by the *cadi* himself, then any periodical replacement of the officeholder had far less impact on legal life than in the past. Ottoman court registers with their chronologically arranged entries allowed cases to continue under newly appointed judges without earlier attestations of authenticity or truth having to be repeated. None of the register entries on legal titles needed a long and specific reference to the certifying *cadi* and his place of adjudication as this was determined by the archiving; the whole court register functioned as a *siğill* (certificate) verifying the judge's actions during a court session. Therefore, any entry in an Ottoman court register could be the basis of an authentic, proof-related document handed out to the parties in a dispute, and inversely, documents acting as proof of past action

89 Okawara 2015, 21, highlights the changes in early Ottoman court registers of the Arabic provinces. The Ḥamā court register no. 3 of 942/1535 begins with '[t]his is a register to record *siğills* (*ḥādā daftar al-siğillāt*)', *ibid.*, with the bound volume being referred to as *daftar* and its content as the *cadi's* certificates (*siğillāt*). This hesitation to use the term *siğill* for the register did not last long. After the year 977/1569 with an example from Aleppo '[t]his is a register to be preserved (*ḥādā siğill maḥfūz*)', almost all court registers of Bilād al-Šām that conserved their first page were called *siğill*, *ibid.*

90 See Müller 2012 for a comparison; on *hüccets* in Ottoman court registers see Akgündüz 2009, 212–216.

91 Veselý 1972, 312–343; 332 here.

could be incorporated into a court register.⁹² No chronological registers of ongoing affairs that were of value as proof prior to the Ottoman court register are known at present. Obviously, Ottoman register entries were not periodically re-authenticated after the witnesses' death, as Ibn Abi l-Dam had postulated for the Ayyubid *diwān al-ḥukm*. Judgements needed to be rendered effective from time to time, however, possibly to defend them against other claims. This new way of handling court records was introduced in every Arab province in the Ottoman Empire during the sixteenth century, and Mamluk *siğills* concerning long-term property titles or foundations found their way into the new Ottoman court registers.⁹³ This type of court register kept a record of all legally significant actions undertaken at the *cadi's* court, including those that recorded stages preceding a final judgement. This is what made the older Mamluk *siğill* scrolls obsolete, not the use of documents as instruments to provide proof as such, which continued to function much the same way as before. As a result, Mamluk court archives with their scrolls stored in boxes were replaced by Ottoman Sharia court records in the form of register books.

7 The *cadi's* court of law as an institution

These glimpses of archival practices and the history of *cadis'* certificates from pre-modern Egypt and other parts of the Islamic world provide new elements that help us to understand the *cadis'* long-ranging historical role. The importance of a *cadi* did not depend primarily on his individual personality, but on an institution that was based on the jurists' law and its interpretation of Islam's normativity, bypassing and crossing political boundaries. The *cadis'* 'power of the pen' allowed them to notarise the subjective rights of the population and its rulers during ongoing litigations and long-term cases. The *cadi's* archive proved essential to fulfil this role in a Muslim society. With the development of procedural law, especially the two phases of testimony and the *cadi's* call for attestation by witnesses since the tenth century, *cadis'* documents became instruments for obtaining proof of past actions—and not only for the acting judge as in early time, but for his successors as well. The different uses made of the *cadi's siğill* over the

⁹² On the legal value of the Ottoman *siğill*, see Michel 2005, 225–252; 229–230 here. On the subject of noting on a proof-related document that its *ḥukm* was considered by the *cadi's* court, see Müller 2012, 451.

⁹³ See above for the certification of the *waqfiyya* of Ṣalāḥ al-Dīn for the Ḥanqāḥ al-Ṣalāḥiyya in Jerusalem, as reproduced in *siğill* no. 95 on 2nd Dū l-Ḥiğga 1022/13.1.1614; ed. 'Asali 1983 and 1985, 1: 83–100, also including Ottoman certifications.

years highlight this development. Early on, a *siğill* was a notification of a court decision that required the original witnesses to be questioned again by the new judge, possibly in a lighter procedure, but without difference to other documents from the archive. From the tenth century onwards, cadis' certificates (*siğillāt*) combined the use of notarial documents with the attestation of court procedure. At the latest when the cadi's call for the procedure to be attested engaged his own responsibility, such an attestation about the legality of the previous procedure allowed any of his acting cadi-colleagues to confirm the former judgement without repeating the earlier procedures. When done systematically for all *siğillāt* from the archive and by drawing on the earlier cadi's responsibility for arranging a legally valid procedure, as described for the Ayyubid period, the cadi's archive turned into an instrument for obtaining institutionalised judicial proof.

In this period, any earlier gap between legal theory and practice was reduced or closed altogether as the *fiqh* rules of oral testimonies by witnesses determined the way in which rights and judgements should be notarised and how they should be validated by succeeding cadis. The legal conformity of certified judgements was a strong argument against them being turned over by another cadi, as the law insisted in principle on respecting prior judgements if they were still legally valid. Endowment deeds illustrate that only the repeated certification of their conformity to sacred law guaranteed it had remained effective throughout the centuries and could continue to be so. Making copies of certified originals of *siğills* kept in the cadi's archive was therefore a widespread practice and was not just limited to the Mamluk state.⁹⁴

The cadi's archive contained current certificates and those issued by the judge's predecessors. His power over such a 'living archive', which could prolong the validity of earlier legal proof to the present day, distinguished a cadi from other magistrates and state officials. To achieve this, the cadi did not act alone, but—and not only in the Mamluk era—was assisted by a group of witnesses—often professional notaries—whose role it was to guarantee the legality of notarisation and court procedures. Although the way in which the cadi's archive functioned changed with the introduction of Ottoman court registers, which were housed by the Sharia courts (*maḥkama šar'īyya*), the role of a cadi still persisted. Documentary analysis reveals no antagonism between procedural law on oral proof and proof-related documents recorded in Ottoman court registers. From a systemical point of view beyond historical diversity, the institution of the cadi's court consisted of three pillars: (1) the judge as a person, (2) accredited witnesses

⁹⁴ A thirteenth-century *waqfiyya* copy from the Central Asian town of Bukhara mentions its collation with the *siğill*. See Arends/Khalidov/Chekhovich 1979, edition of this part 47–60.

acting as notaries, and (3) the *cadi's* archive. We may therefore consider the *cadi's* capacity of safeguarding legal rights as his power over an 'institutionalised memory'⁹⁵ based on law.

The overall importance of *cadis* throughout Muslim history, also illustrated by thousands of biographical notes on *cadis* in biographical dictionaries (*ṭabaqāt*), was based on their role as the head of an institution that applied the sacred law to earthly situations, among other normative references. As the jurists' law (*fiqh*) limited the *cadi's* investigative power and did not define any executive functions, the *cadi's* role in settling conflicts often depended on a collaboration with other officials in ways that were determined by political and administrative rules that differed from one historical setting to another.⁹⁶ As for the longevity of the *cadi's* court of law as a pivotal institution throughout the ages and in several Islamic empires, any lack of executive competences seemed less relevant than the preponderant prerogative of validating and preserving subjective rights thanks to the *cadi's* power of adjudication based on testimonies by accredited witnesses and access to his archive of documents.

8 List of documents cited with a sigle*

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Ber_11975 (232/847): Berlin, Papyrussammlung, ed. Khoury 1993, 77f., no. 40

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⁹⁵ See Johansen 1997, 349: 'mémoire institutionnelle du tribunal'.

⁹⁶ For an example of such a collaboration between the *cadi* court of law and police forces, see Müller 2017.

* The sigles adopted in CALD (see n. 8) refer to where a document is conserved, not to editions: the first three letters for the city, any fourth capital letter to its institution, any fifth to a sub-collection or distinctive inventoring marks, followed by its inventory number.

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