I. INTRODUCTION

It is a commonplace that qadā' constitutes one of the institutional elements of Islamic law. Like iftā' and hisba it is bound to a variety of theoretical and practical preconditions in order to be operative. With regard to the application of law —and this is the essential function of qadā'— we may assume that a corpus iuris in any legal system is confronted with specific social and political conditions. We even may go further and propose an interdependence between law and society. In the same way as law, that is the totality of ideal norms, determines and influences human acts, so human beings in their turn tend to determine law by interpreting it or by creating new rulings. It is just this dialectical process, which preserves a legal system from growing out of touch with the demands of society. In Islamic law the institution of qadā' holds an important key position between theory and practice and is, from the theoretical point of view, essential for keeping the above mentioned process in motion. In which way however, did the functioning of qadā' actually take place in the history of Islamic law?

Attention in this study is not so much directed to the content of judicial decisions, but to the social and political preconditions for the exercise of qadā'. If qadā' is an integral part of the society, then there must be an administrative and educational infrastructure as well as a climate of tolerance and respect for judicial pronouncements. From this point of view the exercise of qadā' basically depends on three essential factors:

1. Existence of a judicial staff responsible for the Islamic parts of the population.
2. Qualification of the judges in the field of Islamic law.
3. Independence of the judges in a state system, which claims to be nomocratic.

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In order to enter a field which has not yet been the object of researches the study is limited to qadāʾ in fourteenth century Syria. It is based on a variety of biographical works and chronicles, particularly the monumental work al-Wafī bi'l-wafayāt of Khalīl b. Aybak as-Šafadī (d. 764/1363), ad-Durar al-kāmina of Ibn Ḥajar al-ʿAsqalānī (d. 852/1448) and al-Bidāya wa'n-nihāya of Ibn Kathīr (d. 771/1369). As eyewitnesses, they supply authentic material about Syrian judges in the fourteenth century. Although of course not all the material is authentic and the biograms are structured in a somewhat stereotyped way, it is possible to get an idea of the qualities and activities of the judges.

II. EXISTENCE AND DISPERSION OF ISLAMIC JUDGES

In one of his works, al-Maqrīzī¹ points out that the application of Islamic law in the Mamluk empire has been restricted by another legal system, the Yāsā of the Mongols. According to his reports, the Mamluk ḥājib in the middle of the fourteenth century extended his competence to all fields of law. This, however, seems to stand in sharp contrast with what other sources of that time and region show. Apart from the fact that the reports of al-Maqrīzī in this respect may not be regarded as reliable,² eyewitnesses as as-Šafadī, Ibn Kathīr and as-Subkī mention a number of facts, which point to the existence of an Islamic administration of justice in Syria.³ The most striking fact common to almost all contemporary sources is the high number of Islamic judges.

Out of the bulk of biographies in the afore mentioned prosopographical works and chronicles 236 judges could be identified exercising the office of qadāʾ once or several times in fourteenth century Syria. 79 of them were chief judges, particularly in Damascus and Aleppo, and 67 functioned as deputies. Certainly this is only the smaller part of all Islamic judges, because we know from the sources that there are further qādis, who cannot however be completely identified. If we consider the number of Muslim inhabitants in

³ Syria has to be understood in a broad sense embracing all those parts of the Mamluk empire, which are in the east of Sinai and the north of Ḫījāz.
the Syrian territories at that time—which may be estimated at about 500,000—and the fact that many qādis—particularly those in the smaller towns and villages—lasted in office a rather long time (14 years on average), then this amounts to a proportion of at least 1:15000. Compared with the very high proportion of 1:1000 aimed at but not reached in present-day Germany this points at a tightly-knit judicial network. We have to take into account furthermore that a lot of conflicts, which at present time are solved by courts, in fourteenth century Syria could be settled out of court or fell within the competence of concurrent jurisdictional institutions like iftā’ and hisba.

Another feature of the judicial network is the dispersion of judges. Although we observe a considerable concentration of judges in the large cities, Damascus⁶ and Aleppo⁷, we also find qādis in other places scattered all over Syria. Important towns like Ṭārābulus, Ḥamāt, Hims, Ba‘labakk⁸ and al-Quds⁹ were places of permanent judicial activity as well, but the number of Islamic judges in these towns fell significantly below those in Damascus and Aleppo. With regard to the large extension of the Syrian territories it is

⁴ It is a regrettable fact that there are no reliable statistics concerning the population of fourteenth century Syria. According to Ottoman statistics of the sixteenth century Damascus and Aleppo, the greatest cities in Syria, had about 60,000 inhabitants respectively (Lapidus, I., Muslim cities in the later Middle ages, Cambridge, 1967, 79). Supposing that the population of Damascus and Aleppo represented about one fifth of the whole Syrian population, the number of the Syrian inhabitants did not exceed 500,000 at that time. We also have to consider that the population increased and that there was a high rate of mortality because of the plague in the middle of the 14th century. On the other side the number of 236 qādis certainly does not represent the whole number of qādis as can be seen from many judges mentioned incidentally without being completely identifiable.

⁵ The average length of tenure has been calculated on the basis of 86 qādis about whom we have detailed informations concerning the tenure of office. In order to get the qādis/inhabitants proportion, the average number of 14 has been related to all 236 judges and to a period of 100 years. As mentioned above, we must consider, however, that there are further qādis. So, for example, the chief judges and judges (altogether 169) normaly have 2, sometimes even 3 deputies, but the sources only mention 67 explicitly. Furthermore it is important to know, that most of the judges exercised qādī’s in several places, but it is mainly their judicial activities in Damascus and Aleppo that are described in detail in the sources and therefore have been considered in the abovementioned calculation. The average length of tenure in cities or towns other than Damascus or Aleppo amounts to 23 years and this number even increases if we consider the Ḥanafīs, Ḥanbalīs and Mālikīs only.

⁶ See Appendix 1.
⁷ See Appendix 2.
⁸ See Appendix 3.
⁹ See Appendix 4.
¹⁰ See Appendix 5.
¹¹ See Appendix 6.
¹² See Appendix 7.
important to note that qādis were appointed also to little towns and villages like Šafad, Khalil, Nābulus, Ghazza, ‘Ajlūn, Shayraz, az-Zabādānī and al-Karak. Altogether are mentioned 30 cities, towns and villages and there are further places not mentioned explicitly.

As to the law schools, the dispersion of qādis is somewhat different. Whereas the Šāfī‘i qādis, who represent the vast majority of the judges (55%), came to appear in nearly all towns and villages, the Ḥanafīs, Mālikīs and Hanbalīs, representing 19%, 13% and 13% respectively, were raised to the bench only in a few towns mentioned above. Ḥanafī judges are found in 6 towns, Mālikī and Ḥanbalī judges in 5 and 3 towns respectively. There was, however, a tendency to reduce the influence of the Šāfī‘is in favor of the other madhhabs. This tendency to establish parity between the law schools, reflected in the constitutional jurisprudence of al-Qarāfī, already became perceptible in thirteenth century Egypt. After the establishment of four chief judges in Cairo in 663/1264 and some years later in Damascus, the monopoly of the Šāfī‘is and to a certain degree of the Ḥanafīs was removed also in Aleppo, Ta'rābulus, and Hims. In 748/1347 Sharaf ad-Dīn al-Maqdisī became the first Ḥanbalī judge in Ḥalab. The first Mālikī judge in that town, appointed before 767/1366, was ʿĀlmād b. Yāsīn b. Muḥammad ar-Rūbaḥī. The Šāfī‘i judgeship in Šafad was coupled with a Ḥanafī and a Mālikī one according to some chronicles, but this is not confirmed by the biographical material.

13 For all these towns, see Appendix 8.
18 Ibrāhīm b. ʿAlī b. Ibrāhīm b. Khaṣnām, d. 1305, Ḥanafī (Ibn Ḥajar, Durar, 1/43/106); Muḥammad b. ʿAbdalʿazīz b. ʿAbdarraḥīm b. ʿAlī = Aḥmad ad-Dīn Abū Ḥayyān, d. 1363, left the Šāfī‘i madhab for the Mālikī madhab (Ibn Kafir, Bīdāya, 14/304; Ibn Ḥajar, Durar, 4/135/3905).
19 Ibn Kathīr, Bīdāya, 14/290; Ibn Qāḍī Shuhba, Taʾrīkh, 1/184,503.
III. QUALIFICATION

The more or less detailed descriptions in furū‘ and ādāb al-qādî literature concerning the preconditions of qadā‘ seem to postulate a high level of qualification. The emphasis, in the first place, is made on ījtihād as a high category of qualification, meaning that the qādis have to be skilled in subjects such as Qur’ān, ḥadīth, fiqh, usūl, khilāf, ‘arabiyya, nāhw, etc. A realistic point of view, however, moved the jurists to keep the door open for all those aspirants of qadā‘ who failed the hurdle of ījtihād. In fourteenth century Syria it was a generally accepted opinion that only a small number of scholars really deserves the denomination mujtahid and that therefore non-mujtahids too must be allowed to apply Islamic law. Several subcategories of ījtihād have been developed since the 10th. century and thence formed the theoretical basis for the actual standard of qualification.

In fact, there existed only a few scholars in fourteenth century Syria who were regarded by their contemporaries as mujtahid. No doubt Ibn Taymiyya, one of the most outstanding figures in that time, belonged to the small circle of mujtahids, but he never assumed the office of qadā‘. Among the qādīs we only find one scholar reaching the level of ījtihād: the renowned chief judge of Damascus Taqī’-d-Dīn as-Subki. He remained in office for 17 years and represented the Shafi‘i madhhab in Syria up to his death in 756/1355. All the other 235 judges, however, were deemed more or less qualified jurists but not mujtahids in the narrow sense of the notion.

This being a matter of fact, it nevertheless appeared to be sufficient for the functioning of the judicial order. More than 90% of the qādīs, whose biograms contain details about their qualification were proficient fiqh experts and familiar with the bulk of prescriptions in the furū‘ works. It becomes clear that the focal point of the qādī’s education lies in the field of fiqh followed by ḥadīth (30%), usūl al-fiqh (18%) and ‘arabiyya (15%). Other subjects as nāhw, tafsīr, qirā’a, bayān, farā’id, ta’rikh, adab, kalām, manṭiq and hisāb play a marginal role.

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22 Ibn Ḥajār, Durar, 3/134-42; Ṣafadī, Wāfi, 21/253-65/180; Ibn Ṭūlūn, Quṣṭā, 101-2; Ibn Kathīr, Bidāyā, 14/162, 252.
This tendency is not only confirmed by the existence of more than 100 law colleges alone in Damascus—an-Nu‘aym23 gives a full list of them—but also by the categories and number of the teachers, who formed the intellectual basis of the qādis. The largest group consists of fuqaha’, some of them prominent, like Taj ad-Dīn b. al-Firkāh,24 his son Burhān ad-Dīn, an-Nawawī,25 Ibn ‘Abd as-Salām,26 Ibn al-Wakīl,27 Zayn ad-Dīn al-Fāriqī,28 Ibn al-‘Aţţār29 and numerous teachers who were themselves qādis.30

The second group concerning hadith teachers underlines the impression that hadith much more than Qur‘ān represents an integral part of the qādi’s education. According to the biographical data, Aḥmad b. ‘Abd al-Dā‘im,31 Ibn Aḥlīl-Yusr32 and al-Hajjār33 are supposed to be hadith lecturers for not less than 38 judges.34 The third and fourth place is held by the usūlīs35 and

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35 The most important usūlīs are: Muḥammad b. ‘Abdarrāhmana b. Saffādī ad-Dīn al-Hindi, d. 1315 (Ibn Ḥajār, Durar, 4/132-3/3895; Ibn Kāthīr, Bīdāyā, 14/74-5); Aḥmad b. Ya‘qūb b.

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respectively. At least 50% of the qādis, in their turn, assumed teaching posts in one or several law colleges in Syria and in some cases the appointment as qādi was directly connected with the appointment as teacher. We may assume that the accumulation of offices largely contributed to keeping a close connection between theory and practice.

The afore mentioned criteria are suitable, to a certain degree, to indicate the general juristic education of the judges. Biographical reports, however, concerning the works composed, read or memorized by the qādis give an idea of the concrete legal material with which the judges seemed to be well acquainted. Compared with the impressive multitude of legal literature produced up to that time, it seems to be a rather small selection of furū‘ and usūl works, that the judges of fourteenth century Syria usually heard or memorized. Certainly there were a few proficient experts who mastered the whole of usūl and furū‘; studied many works and even composed commentaries or other legal works, but that is not the rule with regard to the judges. The general repository of positive law appeared to be, in the Shāfi‘ī madhhab, small manuals like the Tanbih of ash-Shûrāzî, the Minhâj al-jalībin of an-Nawawî and the Ḥāwi of al-Qazwînî. Other furū‘ works are mentioned here and there, but they did not rank among the standard works. Interestingly, in the field of usūl al-fiqh the Shāfi‘īs tended to exceed the madhab boundaries reclining in the first place upon the Mukhtasar of the Mâlikî Ibn al-Ḥâjibî, an usūl work which obviously was deemed authoritative in that time by all law schools except the Ḥanafîs. Only in the second place they made recourse to the Minhâj of the Shāfi‘ī al-Bayḍâwî (d. 692/1293). The Ḥanafîs and Mâlikîs usually read, heard or memorized the Ḥidâya of al-Marghinânî and the Muwatta’ of Mâlik b. Anas respectively. Most of the Ḥanbali judges were well acquainted with Ḥanbali works as the Muqni’ of Ibn Qudâma or the Muḥarrar of Majd ad-Dîn b. Taqmiyya, but they sometimes tended to study or comment works of other law schools as well. The vast furū‘ spectrum of Ḥanbali fiqh works resulting from a considerable openness to other law schools blurred the madhab boundaries anyway.

Ahmad b. Ya'qûb Jamâl ad-Dîn b. as-Ṣâbûnî, d. 1331 (Ibn Ḥajîr, Durar, 1/357-8/837; Ṣafadî, Wâfi, 8/276/3701); the above-mentioned judges Ibn az-Zamîlakâni, Jalâl ad-Dîn al-Qazwînî, Tâj ad-Dîn as-Ṣubîkî, Ibn Khâṣîbi Jîbrîn and Shams ad-Dîn al-Īsfahânî are also mentioned as usūl teachers.


37 That at-Tanbih was commonly used at this time in Syria and Egypt appears not only from the qâdi biograms (12x) but also from many other biograms (Ibn Ḥajîr, Durar, vol. 1, n.° 1232, 1259, vol. 2, n.° 1611, 1666, 1710, 1924, 2144, vol. 3, n.° 2637, 2864, 2902, 3109, 3263, 3438, vol. 4, n.° 3689, 3778, 3833, 3878, 3892, 4177, 4437, 4458, vol. 5, n.° 4889, 4919, 5170).
To analyze in which way judicial decisions can be deduced from the basic legal material, is not the subject of this paper. It can be pointed out, however, that at least one third of the Syrian qādis—and probably much more—was familiar with one or several fiqh and/or usūl works and that this legal material, in one way or another, formed the basis for judicial decisions.

IV. INDEPENDENCE OF QĀDĀ’

The political and economical independence of the qādis certainly represents one of the essential preconditions of qādā’. In order to carry out their office independently, the judges, in the first place, had to be free of interferences of political rulers who usually tended to influence the judicial decisions in one way or another. Indeed, there is abundant material in the biographical works indicating this conflict between the qādis as part of the ‘ulamā’ class on one side and the Mamluk rulers on the other. According to some opinions in Western literature the qādis appeared to be the losers in this conflict, being totally exposed to the intrigues of the Mamluks.

Admittedly, now and then disobedient qādis have been made compliant by the political rulers, but in the long run, it appears to have been the other way round. Qādis as well as other ‘ulamā’ were heavily involved in economical and political affairs attacking illegal taxes or preventing attempts to confiscate endowment properties. Exposed to a considerable pressure the political rulers in several cases made concessions and issued decrees supporting the interests of the ‘ulamā’.

The most important instrument of controlling the qādis’s activities was the traditional right of the sultans to appoint and dismiss the judges. The biographical sources make clear, however, that the actual use of that instrument in fourteenth century Syria may not be overemphasized. In fact, the political impact on qādā’ by way of appointment or dismissal was rather limited. The following points possibly confirm this opinion:

1. Nearly all qādis were recruited from the lawyer class. Only one member of the ruler class, Amīr Ghālib, actually became judge. But he proved to be unable to carry out his office.

Haarmann, U., *Der Arabische Osten*, 252-3.
as a rule, had to be members of the *fuqahāʾ* class (*taʿāifat al-fuqahāʾ*). This not only confirms the qualification of the judges, but also suggests that the political rulers to a certain extent were prevented from arbitrary appointments. The formulation «somebody introduced someone into the *fuqahāʾ* class», frequently used in the sources, makes clear that there were distinct boundaries between different groups in the Mamluk society and that the *fuqahāʾ* formed one of them. As has already been noted, the *fuqahāʾ* were connected with each other by a variety of educational as well as family ties forming a coherent unity. This is not to say that the lawyers constituted a homogeneous bloc of shariʿa experts unanimously conspiring against the political rulers. In fact, the *fuqahāʾ* class was divided into subgroups represented by the four law schools, which sometimes violently competed with each other. So in a letter of Najm ad-Dīn at-Ṭarsūṣī directed to the Sultan it is reported that the Hanafī chief judge in Damascus was striving for a monopoly of the Hanafis in the Mamluk Empire at the expense of the other law schools. The general contentiousness among the lawyers can be observed in a lot of disputes recorded in the chronicles. But in spite of these rivalries occurring also within the law schools the boundaries between the *ahl ad-dawla* and the *fuqahāʾ* proved to be strong enough to impede encroachments from the political side. The specific structure of the *fuqahāʾ* class very often enabled the lawyers to preselect the candidates, who afterwards were appointed by the sultans.

2. It is a fact to be traced back to the very beginning of Islam that the political rulers are entitled to appoint the judges. On the other hand, we frequently observe the phenomenon that the candidates refused to accept the appointment, be it that they felt unqualified, be it that they feared to be involved into mundane affairs. This reserve also can be ascertained in fourteenth century Syria where 16 persons, that is about 7%, refused to become judges after the appointment. The political rulers had the right of appointment, but they generally were not allowed to force the candidates to accept the appointment.

3. In the same way as the political rulers were entitled to appoint the judges, the *qādis* in their turn had the right to appoint the deputies. In other terms, at least 25% of the *qādis* listed in this study have not been appointed by the sultans and governors but by the judges and chief judges. As mentioned above, we have to consider that the number of 67 most probably doesn’t reflect

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the real number of deputies, because every judge normally had 2, sometimes even 3 deputies. This would mean that there were 340-510 deputies instead of 67 deputies mentioned explicitly in the sources.

4. In 4 cases the Shāfi‘i chief judges in Damascus extended their competence by appointing not only deputies but also independent judges. So ‘Alā‘ ad-Dīn al-Qunawī appointed Abū Bakr b. ash-Sharīshī in Ḥims.\(^{44}\) Somewhat earlier Muḥammad b. ‘Abdallāh b. ‘Isā was appointed by Taqi‘d-Dīn as-Subkī in the same town.\(^{45}\) His son, Tāj ad-Dīn as-Subkī, chose his relative Qutb ad-Dīn as-Subkī to become judge in Ba‘labakk.\(^{46}\) In Ḥusbān it was Badr ad-Dīn al-Hakkārī who was appointed by al-Balqīnī.\(^{47}\)

5. More than half of the qādis were related with at least one another qādi in Syria. No doubt nepotism played an important role in selecting the candidates. It becomes clear that qaḍā’i tended to be the preserve of influential families each dominating or co-dominating a certain region in Syria. So in Damascus it was the scholarly dynasty of the Subkīs followed by the Akhnā‘īs, Qazwīnīs, Sharīshīs and Banū Jamā‘a who mostly assumed the office of qaḍā‘ for the Shāfi‘i madhhab. Some Ḥanafī qādis in Damascus belonged to the Kūfī family whereas the Maqdisīs, Murtāwīs, Banū Ḥamza and Banū Munajjī dominated the Ḥanbālī jurisdiction. In Aleppo it was the Banū Hirmās for the Shāfi‘īs and the Banū ‘Adīn for the Ḥanafīs who controlled qaḍā‘ for their madhhab respectively. In a third town, Ḥamāt, the Bàrizīs possessed the monopoly of qaḍā‘ for the Shāfi‘īs. Out of all law schools represented in Syria, only the Mālikīs didn’t succeed in establishing a powerful qāḍī family and this certainly accounts for the weak position of that madhhab in the judicial administration.

6. Another important factor of appointment, closely connected with nepotism, was succession. In 28 cases, jurists became independent judges after being deputies and very often these deputies were related with the retiring predecessor. By appointing the deputies judges in many cases anticipated the appointment of their successors.

\(^{45}\) Ibn Hajar, Durar, 4/112/3742; Ibn Qādī Shuhba, Ṭabaqāt, 3/59/618.
\(^{46}\) Ibn Hajar, Durar, 4/147-8/3942; Ibn Kathīr, Bidāya, 14/300; Ibn Qādī Shuhba, Ta‘rikeh, 3/240.
\(^{47}\) Ibn Hajar, Durar, 4/85-6/3773; Ibn Qādī Shuhba, Ṭabaqāt, 3/165-6/698.
7. In a few cases it is the excellent qualification or reputation of a scholar which caused the political ruler to appoint him.

Altogether we have 106 cases, in which members of the fuqahāʾ class—and not the political rulers—appointed the judges or prepared the ground for an appointment. On the other hand, there are only three qādis being compelled to assume the office and 9 qādis who were appointed after a new ruler had seized power.

In principle the same applies to dismissals. We have 229 cases in which qādis left the office for one reason or another but only in 11 cases the dismissals have been pronounced on political grounds. So, for example, in 709/1309, 759/1358 and 792/1390 some qādis have been removed from office because of the change of power. On the other hand, in 156 cases the tenure of qaḍāʾ ended because of death, voluntary resignation or promotion. Ten judges have been dismissed because of injustice and many other qādis have been involved in the procedure of dismissal. With regard to the remaining 52 cases we don’t have any information about the reasons of dismissal, but the afore mentioned figures may be taken as representative for the low extent of political interference.

Apart from appointments and dismissals there is another aspect of qaḍāʾ concerning the qaḍī’s economic dependence. Usually the judges were paid regular salaries and this also applies to the qādis of fourteenth century Syria, even though in one case the sultan refused to pay the salaries. With regard to the considerable amount of the salaries one should suppose that bribery was a common means to obtain a profitable qaḍī post. Nevertheless, the sources remain silent about such a practice, although this certainly doesn’t reflect the whole truth. What we definitely know is that some judges waived the salary and exercised qaḍāʾ gratuitously. Other qādis remained economically independent in so far as they exercised a lucrative profession in addition to qaḍāʾ.

The jurisdictional activities of Muslim scholars extended to a variety of legal fields as appears from fatāwā collections and other documents. This most
probably applies to the qādis as well. It is clear that the prosopographical literature hardly provides material about the substance of judicial pronouncements. Nevertheless, there can be observed a tendency as to which areas of the law are concerned and, particularly, which fields of the law attracted the attention of the political rulers. Whereas the large majority of the cases concerning deviation from the madhhab opinion, apostasy, endowment and other fields of the law is ruled by the qādis independently, only in some few cases the political rulers were involved. These being extraordinary cases of particular public interest makes one believe that the bulk of judicial decisions dealing with day-to-day issues was free from any political influence.

V. CONCLUSION

The main purpose of this study was to demonstrate that there existed an efficient judicial system in fourteenth century Syria entirely determined by Islamic law. On the basis of numerous biographical sources and chronicles it has been proved that the essential preconditions of qaḍā', that is number, qualification and independence of the judges, have been fulfilled to a considerable extent in that time and region. Although this is only a short study requiring further, more detailed examination, we may propose that there was a clear tendency towards the application of Islamic law in a judicial frame. Altogether 236 judges, chief judges and deputies dispersed all over Syria have been detected in the sources. Most of them represented the Shāfi‘i madhhab followed by the Ḥanafis, Ḥanbalis and Mālikis. Almost all of them were trained in Islamic law in at least one of the numerous law colleges in Syria and many of them memorized or were familiar with the most important furū‘ and usūl works current at that time. The fact that many qādis in the same time assumed teaching posts in a law college suggests a close connection between theory and practice. The appointment of the judges, in theory a prerogative of the political rulers, in fact was in the purview of the qādis themselves. Whereas in 106 cases the appointment was influenced by the qādis in one way or another, only in 12 cases arbitrary decisions of the political rulers are noticeable. Other restrictions

55 Ibn Ḥajar, Durar, 1/335-7/794, 1/391-2/928; Ibn Kathîr, Bidâya, 14/96, 122, 177, 218, 250, 273, 275, 310.
56 Ibn Kathîr, Bidâya, 14/234.
57 Ibn Kathîr, Bidâya, 14/98-9,254, 256, 294; Ibn Ḥajar, Durar, 4/231-41/4182.
of the judicial independence by way of dismissal, bribery or tampering with judicial pronouncements appear to have been limited as well.

APPENDIX I

JUDGES OF DAMASCUS

APPENDIX 2

JUDGES OF ALEPPO


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APPENDIX 3
JUDGES OF TARABULUS


APPENDIX 4
JUDGES OF Hamat

1374 (see above); Ahmad b. Ya'qūb al-Ghamārī, d. 1394 (Ibn Hajar, Durar, 1/359/839);  
Ismā’īl b. Muhammad b. Muhammad b. ‘Ali b. ‘Abdallāh Sharaf ad-Dīn Abū’l-Walīd, d. 1369 (see above); Sulaymān at-Turkmānī, d. 1335 (Ibn Hajar, Durar, 2/264-5/1871);  
‘Umar b. ‘Abdal‘azīz b. Muhammad b. ʻAhmad b. ‘Abdallāh Kamāl ad-Dīn al-‘Adīm, d. 1320 (see above); Muhammad b. ʻAhmad b. ‘Abdallāh b. Muhājir Shams ad-Dīn al-Ḥalābī, d. 1363 (see above); Muhammad b. ‘Umar b. ‘Abdal‘azīz b. Muhammad b. Ahmād Nāṣir ad-Dīn, d. 1351 (see above); Muhammad b. Yahyā b. Sulaymān at-Tilmisānī = Jamāl ad-Dīn al-Maghribī, d. 1392 (see above); Māḥmūd b. Muhammad b. ‘Abdallāh Nāṣir ad-Dīn, d. 1359 (Ibn Hajar, Durar, 5/105/4777);  

APPENDIX 5
JUDGES OF ḤIMṢ


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Muḥammad b. ‘Abdalqādir, d. 1324 (see above); ‘Uṯmān b. Muḥammad b. ‘Abdarrahîm Fakhr ad-Dīn al-Bārizî, d. 1330 (see above).

**APPENDIX 6
JUDGES OF BA’LABAKK**


**APPENDIX 7
JUDGES OF AL-QUDS**


APPENDIX 8

JUDGES OF OTHER TOWNS

ṢAFAD: al-Ḥasan b. Ramaḍān b. Ḥasan Ḥusām ad-Dīn al-Yāfī’ī al-Qarmī, d. 1345 (see above); ‘Abdalqāhir b. Muḥammad b. ‘Abdalwāḥid, d. 1339 (Ṣafadī, Wāfi, 19/54–8/50; ibid., Aʿyan, 2/107; Ibn Ḥajar, Durar, 3/7-9/2476); Kutubī, Ḥāfat, 2/367); Muḥammad b. ʿĀbd al-Muḥammad b. ʿIsā, d. 1325 (Ṣafadī, Wāfi, 2/145-6/503 with a supplement in MS Istanbul, Nuru Osmaniye 3191, F.59B-60A; ibid., Aʿyan, 2/413; Ibn Ḥajar, Durar, 2/435-6/3437; Subki, Ṭabaqāt, 5/227); Muḥammad b. ‘Uthmān b. Abī Bakr, d. 1339 (see above); ‘Umar b. Muḥammad b. al-Ḥākim b. ‘Abd ar-Razzāq Zayn ad-Dīn, d. 1348 (see above); ‘Ali b. ‘Abdarrahmān b. al-Ḥusayn ‘Alāʾ al-Dīn al-‘Uthmānī, d. 1348 (Ibn Ḥajar, Durar, 3/129/2765); Muḥammad b. Abī Bakr b. ‘Ayyāsh b. ‘Aṣkr Ṣād ad-Dīn al-Khāṭārī, d. 1367 (see above); Muḥammad b. ‘Abdalḥaq b. ‘Isā Shams ad-Dīn al-Khāṭārī, d. 1346 (see above); Nāṣir b. Maḥsūr b. Ṣharaf at-Ṭaghlibī az-Zurʿī, d. 1328 (see above).


NĀBULUS: Sālim b. Abīl-Hijāj b. Ḥamīd b. Sāliḥ Abūl-Ghanāʾīm Majd ad-Dīn, d. 1305 (see above); ‘Ali b. Sālim b. Rabiʿa Diyāʾ ad-Dīn, d. 1331 (see above); ‘Umar b. ‘Abdarrahḥīm, d. 1333 (see above); Muḥammad b. ‘Abdal Khalīl b. Abī Bakr al-Hakkārī, d. 1384 (see above); Muḥammad b. ‘Uthmān b. Abī Bakr, d. 1339 (see above); Muḥammad b. Muḥammad b. Aḥmad b. ‘Irāhīm b. Yaḥyā b. Abīl-Majd Ṣharaf ad-Dīn Abūl-Fath, d. 1344 (Ibn Ḥajar, Durar, 4/276-7/4287); Nāṣir b. Maḥsūr b. Ṣharaf at-Ṭaghlibī az-Zurʿī, d. 1328 (see above).

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‘AJLŪN: Ahmad b. Muḥammad b. Shajra Shīḥāb ad-Dīn, d. after 1345 (see above); ‘Abdalqāhir b. Muḥammad b. ‘Abdalwāḥid, d. 1339 (see above); ‘Ali b. ‘Alī b. Sālim b. Rabi‘a Diyā’ ad-Dīn, d. 1331 (see above); Muḥammad b. ‘Uthmān b. Abī Bakr, d. 1339 (see above).


Fāris Muḥyī’-d-Dīn Abū Zakariyā’, d. 1324 (Ibn Ḥajar, Durar, 5/189/5002; Ibn Kathīr, Bīdāya, 14/115); ‘Alī b. Saḥīm b. Rābi’-a Ḍiyā’ ad-Dīn, d. 1331 (see above); Sulaymān b. ‘Umar b. Sālim, d. 1333 (see above); Nāṣir b. Manṣūr b. Sharaf at-Ṭaghlībī az-Zur‘ī, d. 1328 (see above).


PRIMARY SOURCES

Ibn Ḥajar al-’Asqalānī, ad-Durar al-kāmina fi a’yān al-mi’a ath-thāmina, Cairo, 1966.
Jazarī al-’, Ghāyat an-nihāya fi tābaqāt al-qurrā’, Cairo, 1933.
Ibn Taghribirdī, an-Nuṣūr az-zāhir fi mulūk Mīṣr wa’l-Qāhirā, Cairo, 1963.
Ibn Ṭūlūn, Quṣūt Dimashq, Damascus, 1956.
Ibn al-Wardi, Tatimmat al-mukhtaṣar fi akhbār al-bashar (= Ta’rīkh b. al-Wardi), Cairo, 1869.
Māqrīzī al-, ar-Sulūk li-ma’rifat duval al-mulūk, Cairo, 1934-58.
—, Nakt al-himyān fi nukat al-’umyān, Cairo, 1911, ed. Aḥmad Zaki Pashā.
—, al-Wāfi bi’l-wafayāt, MS Istanbul, Nuru Osmaniye, No 3191, 3192.
—, al-Wāfi bi’l-wafayāt, MS Istanbul, Aya Sofya, No 4036.
—, al-Wāfi bi’l-wafayāt, MS Tunis, al-Maktabra al-wataniyya, No 2930.
—, al-Wāfi bi’l-wafayāt, MS Gotha, Landes-und Forschungsbibliothek, No 1733.
—, al-Wāfi bi’l-wafayāt, MS Cairo, Dār al-kutub, Ta’rīkh 2410.
Subkī as-, Tāj ad-Dīn, al-Tabaqāt ash-shāfi’iyya al-kubrā, Cairo, 1967.
The relationship between theory and practice in Islamic law can be examined in several ways. With regard to the substance of Islamic law one could ask in which way are or can the rulings of the shari'a be applied. Another question concerning the external aspects of the shari'a could be, to what extent do the political situation, the judicial administration, the education system and other socio-political factors allow a shari'a conforming jurisdiction. Qadis who are not qualified, whose competence is reduced by the political rulers or whose judgements are influenced by political interests, are not able to exercise qadâ' in the frame of the shari'a.

The examination at hand therefore aims to reconstruct the socio-political background of a number of qadis in eighth/fourteenth century Syria. On the basis of several biographical works containing detailed and authentic descriptions of more than 200 Syrian qâdis it shall be demonstrated that there existed the essential preconditions for exercising qadâ' in that time and region. As a result of this study, which possibly throws light on a new aspect of qadâ' in the Mamluk Empire, one may propose that the qâdis, along with other 'ulamâ', form a separate body within the Mamluk state system which on one side appears to be strong enough to resist political encroachments and, on the other, provides for and profits from a high level of legal education.

RESUMEN

La relación entre la teoría y la práctica en el derecho islámico puede ser examinada desde distintos puntos de vista. Por lo que se refiere a la sustancia del derecho islámico, se puede plantear la pregunta de cómo las normas de la šari'a son o pueden ser aplicadas. Otra pregunta relativa a los aspectos externos de la šari'a es hasta qué punto la situación política, la administración judicial, el sistema educativo y otros factores socio-políticos permiten la existencia de una jurisdicción conforme a la šari'a. Los cadíes que no tienen las cualificaciones necesarias, cuya competencia se ve limitada por los gobernantes o cuyos juicios se ven influidos por los intereses políticos, no pueden ejercer el cadiazgo en el contexto de la šari'a.

El análisis llevado a cabo en este artículo tiene como objetivo reconstruir el contexto socio-político de los cadíes en Siria durante los siglos VIII/XIV. A partir de los datos de varios diccionarios biográficos que contienen descripciones auténticas y detalladas de más de doscientos cadíes sirios, se demuestra que existían las pre- condiciones esenciales para ejercer el cadiazgo en aquella época y región. Se argumenta que los cadíes, junto con otros ulemas, formaban un cuerpo específico dentro del sistema estatal mame-
luco que, por una parte, era lo suficientemente fuerte como para resistir intervenciones políticas y, por otro lado, suministraba un alto nivel de formación legal y se beneficiaba al tiempo de él.