Law and Legal Change in a Period of Flux in Ottoman History (17th and 18th Centuries)

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Introduction

This paper explores how scholars of the Ottoman Empire have sought to assess changes in Ottoman jurisprudence, legal institutions, and practices during the seventeenth and eighteenth centuries. Recently, Ottoman historians have intensified their efforts to better understand the socioeconomic dynamics and fiscal-administrative structures of this period. Once considered to be an era of general decline and degeneration, now the prevalent tendency is to characterize these two centuries as an age of major transformation and adjustment to new circumstances.

This latest interpretation is based on impressive archival research conducted over the last two or three decades and has found expression predominantly in the fields of social, political, and economic history. However, the scholarly progress achieved in these areas has yet to be reflected in legal historiography. Although academic interest in Ottoman law and legal practice has grown recently, this scholarship has lagged behind other areas in producing a coherent vision of the post-classical period. Broadly speaking, we have yet to provide a comprehensive picture of the ways in which Ottoman law, legal institutions, and practices changed between 1600 and 1800. This paper represents a preliminary attempt in this direction by offering a critical survey of the existing literature, pointing out areas of strength within the sub-field as well as areas in need of deeper, more focused research.

I begin this study with a synopsis of the ways in which Ottoman historians have characterized the socioeconomic and political changes that took place during the seventeenth and

eighteenth centuries. I then discuss in separate sections how they have depicted the jurisprudential transformations and characterized the legal institutions and practices in this period.

I. Ottoman State and Society in the Post Classical Period: A Synopsis

Until a few decades ago, Ottoman historians used to describe the period between 1600 and 1800 as an era of difficulties, a characterization based partly on series of military and diplomatic setbacks suffered in the empire's confrontation with Europe. For the mighty conquest state that constituted the empire during its classical age (roughly, the 1400s to the 1600s), the territorial losses of the eighteenth century, especially, represented signs of trouble. Historians also suggested that the authority of the state waned during this period, when the dynasty faced frequent internal rebellions, endured acts of disobedience, and was forced to engage in political negotiations with once-loyal groups (soldiers, provincial power-holders, religious establishment) that now threatened its sovereignty. Furthermore, economic conditions were deteriorating in response to protracted warfare, powerful inflationary pressures, superior European competition, and a growing tax burden on the population. Global trade patterns shifted from the Mediterranean to the Atlantic, with adverse consequences for Ottoman traders. Historians from earlier generations also observed a general sense of restlessness and insecurity in the countryside that forced peasants to migrate to urban centers and adversely affected agricultural production.

Since the 1990s, this negative characterization of the period has been challenged largely due to intensified research on the post-classical age. There is now a growing consensus that the transformation of the Ottoman state and society during our period can be characterized in more positive terms. For example, some researchers have suggested that, as a conquest state no longer,

the empire matured in administrative terms and developed complex bureaucratic institutions and practices. Politically, the rise of oligarchic networks in the form of "vizier and pasha households" in Istanbul and elsewhere led to power-sharing arrangements at the top of the government and, thus, eroded the dynasty's absolutist tendencies. At the same time, the spread of short- and longer-term tax farming transformed the rural economy by converting state-owned revenue sources (land, in particular) to assets which private entrepreneurs could invest in and profit from. The period also witnessed the spread of regional and interregional commercial relationships, the proliferation of trade routes and commodity markets, the expansion of raw material exports to Europe, and the growth of the production of manufactured goods for domestic markets. Interestingly for the concerns of this paper, some scholars have considered the maturation of the administrative bureaucracy, pluralization of the political system, and expansion of profit-oriented attitudes and market relationships as symptoms of the capitalist evolution and modernization of the empire, analogous to similar processes taking place in contemporary Europe.[1]

The literature demonstrates that multifaceted changes also took place in the provinces. Provincial power-holders took advantage of new tax-farming and trade opportunities in their localities, which enhanced their political influence and helped them to acquire local administrative offices. The older literature considered these developments as related to the center's political weakening during the post-classical age, amounting to political decentralization. More recent scholarship does not dispute that provincial interests gained strength in economic and political terms, but refuses to characterize this development as another symptom of decline. According to Ariel Salzmann, for example, the increasing prominence of

[1] The discussion of the revisionist scholarship is based on the following works: Abou-El-Haj (1991a and 1991b), Barkey (2008), Darling (1996), Faroqhi (1994), Hathaway (2004), Kafadar (1997-8), Genç (2000), Khoury (2006), Pamuk (2004), Tezcan (2011), and Salzmann (1993 and 2004),

the provincial elite in local settings was a consequence of their ability to establish meaningful connections with the Ottoman political and fiscal system and become "Ottomanized" in the process (1993). Although the political center had to recognize their prominence and influence, provincial power-holders also became strongly identified with Ottoman interests, which they increasingly represented at home. Karen Barkey has suggested that the rise of provincial leaders and their growing influence in local administrative affairs may be seen as indicative of modernizing tendencies in provincial governance. These groups, according Barkey, often garnered local respect and legitimacy. When they became involved in administrative processes, they represented not only the state to provincial populations but also the local values, opinions, and sensitivities to the imperial center (2008, ch. 7).

Given these insights on the nature of change in social, economic, and political realms, I now turn to historians' attempts to characterize the developments in jurisprudence, legal practice and transformations during the post-classical period.

II. Jurisprudential Changes in the Post-Classical Period: What happened to *Kanun*?

Jurisprudential changes constitute perhaps the best-studied area in legal scholarship for the post-classical period. Most notably, there seems to be a widely shared (though not universal) conviction in the literature that *kanun*s, widely defined as state "laws" (or "decrees" or "directives"), disappeared or lost importance during this time.

For the concerns of this discussion, some background information is necessary. When Ottomanists discuss *kanun*s, they refer in general to regulations pertaining to criminal penalties, urban and rural taxation, and land use. The origins of *kanun* legislation as an administrative practice are subject to debate; scholars attribute them variously to inner Asia, Persia, or

Byzantium. However, it is widely acknowledged that the content of Ottoman *kanun*s was shaped by local, "feudal" customs and practices in tax collection, land use, and administrative matters that Ottomans encountered in conquered territories (Colin Imber 1997, ch1; 2008), a theme to which I will return at the end of this section. Because these customs and practices differed from one location to another, codes for specific locations and communities could vary significantly (Imber 1997, 44; Heyd 1973, 38-40). And since local practices were also shaped by older legal systems, such as Byzantine law in the Balkans and Western Anatolia, *kanun* law also bears their influence (Imber 1997, 116; Barkan 1952, 194; 1943, lxix).

The relationship between Islamic jurisprudence and *kanun* is a popular research topic among Ottomanists. Scholars such as Halil İnalcık, Ömer Lütfi Barkan, Colin Imber have considered *kanun* legislation as a unique aspect of Ottoman administration that helped the Ottomans compensate for the perceived as deficiencies of Islamic jurisprudential traditions in fiscal, administrative, and criminal law. Relevant here are two assumptions about Islamic jurisprudence: 1) Islamic jurisprudence is an unchanging system that has limited ability to adjust to new circumstances;[2] and 2) Islamic jurisprudence does not provide much guidance or easily implemented prescriptions on many aspects of government or administration.[3] I am not going to

[2] Barkan (1952, 186) suggested that Islamic law was "frozen" ("*donmuş kalmış*") in the time of Muhammad and first caliphs. Imber emphasized the "citational" nature of religious law as a reason for its inherent conservatism. Because jurists felt obligated to cite the works of earlier scholars to justify their own interpretations, according to Imber, the possibility of formulating novel legal interpretations remained limited. As "Divine Law," Imber claimed, the "shari'a" had to remain "self-contained" and "self-legitimating." Consequently, "legal concepts as they had developed in the eleventh century remained unchanged in the nineteenth" (1997, 37).

[3] İnalcık suggests that "after Al-Shāfi'ī, the boundaries of [legal epistemology] were drawn so narrowly that new administrative regulations were left outside of them and became the province of a new 'state law' or 'ruler's law'" (1978a, 559). Heyd (1967, 9) argues that "the criminal law of the shari'a … never had much practical importance in the lands of Islam. Its substantive law is rather deficient: fixed penalties are prescribed for a limited number of crimes only, many are not dealt with at all. Moreover its rules of evidence are so strict that a number of offences cannot be

engage the problems with these assumptions, which can be found elsewhere (Ergene forthcoming).

Given the alleged inadequacies of religious law, prevalent wisdom on the topic suggests that the Ottomans had to adopt a separate, non-religious system of law in order to effectively govern their territories. According to Heyd (1967, 8-9; 1973, 169, 188), *kanun* was based on the sultan's authority, which, technically, did not require the approval of religious authorities (Barkan 1952, 192; 1943, xliii; Heyd 1973, 171). The fact that the earlier *kanunname*s did not contain any reference to religious law suggests, according to many, that *kanun*s were free of major *fikh*-based concerns. Scholars have also suggested that, at a time when the empire was becoming the major Sunni power in the Middle East, the Ottomans sought to reconcile their *kanun*s with *fikh* in order to standardize the legal system. In the sixteenth century the renowned Ottoman jurist Ebu's-Su'ud Efendi (d. 1574) applied concepts, principles, and terminology from Hanafi jurisprudential traditions to the areas of land-holding, taxation, criminal punishment, and charitable endowments in order to recast practices that were part of the Ottoman legal and administrative repertoire in the language of Islamic jurisprudence. His attempts have been seen less as an effort to reform the Ottoman legal system in accordance with *fikh*-based principles than as an attempt to endow them with religious and legal justification (Imber 1997, 269–71).

Nevertheless, according to İnalcık (1978a, 560), the "conflict of the Shari'a and the ruler's law" was an enduring element of the Ottoman administration until the eighteenth century. During the reigns of Mehmed II and Selim I (c.1470 - 1520), rulers established centralized and

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punished adequately." In fact, according to Imber (1997, 38), "[t]he jurists … never intended large areas of the shari'a to function as a practical system of law" and most religious and legal experts in the past saw the science of jurisprudence as mainly an intellectual endeavor and studied it in order to hone their skills in logic and rhetoric. Barkan (1943, xiv) has called religious law "dead-on-arrival" (*ölü doğmuş*), implying that it did not have much practical use from the very beginning.

absolutist governments through *kanun*-based legislative efforts and successfully blocked interference by proponents of religious law. During the reign of Bayezid II (1447 - 1512), on the other hand, the "upholders of the Shari'a" were more successful in resisting the legislative authority of the ruler (Repp 1988, 129). Despite the best efforts of Ebu's-Su'ud, the tension between *kanun*- and *fıkh*-based orientations remained palpable during and after Süleyman's reign (1494 – 1566). One target of the puritanical Kadızadeli criticism directed against the Ottoman sociopolitical order in the late sixteenth and seventeenth centuries was the prevalence of laws and practices that were not sanctioned by Islamic jurisprudence (İnalcık 1978a, 561).

As mentioned, many scholars have suggested that *kanun*-based legislation began to lose ground from the seventeenth century onward and possibly earlier (Heyd 1967, 15). İnalcık claims that the "[f]atwas of the Muftis progressively restricted the law making powers of the nishancis, and the influence of the Shaykh al-Islam in state affairs progressively increased – to such a degree that in 1107/1696 the use of the word kanun side by side with the Sharia was forbidden by a firman of the Sultan" (1978a, 560).[4] Heyd suggests that fines, "the backbone of the penalty system [based on sultanic decrees]," were abolished in many Ottoman provinces in the second half of the seventeenth century. Also, in the newly conquered territories, such as the islands of Crete and Mytilene, non-religious taxes, such as *rüsum-u divaniye* or *tekalif-i'örfiye*, were never imposed (Heyd 1967, 15-6; 1973, 153; Barkan 1952, 191; 1943, xli-xlii).

[4] According to İnalcık, *kanunname*s were regularly prepared not by experts on religious law but by bureaucratic and administrative functionaries of the government--in particular the *nişancı* ("chancellor" or "secretary of the state")--who were responsible for formulating laws in accordance with Ottoman bureaucratic traditions and issuing imperial orders in written form. The "final and official promulgation" of the *kanunname*s lay in the hands of the *Nishanji*, "for he possessed the responsibility of affixing them the tughra by which they were authenticated. It was he who determined whether a kanun remained in force, and whether new [rulings] issuing [sic] from the various departments of the administration were in conformity with the existing corpus of kanuns" (1978a, 562).

In the older scholarship, the decline of the *kanun*s is generally considered a consequence of the increasing popularity of Kadızadeli puritanism in the seventeenth century (Barkan 1943; Repp 1988,131-2), which challenged the legitimacy of the Ottoman sociopolitical order by pointing out the prevalence of laws and practices not sanctioned by Islamic jurisprudence (İnalcık 1978a, 561). Historians considered the Kadızadeli movement to be a response to the growing military, political, and economic difficulties and corruption in the empire during the seventeenth century. Its supporters called for a return to Islam and uncompromising enforcement of Islamic legal principles.

More recently, though, Baki Tezcan has posited that the decline of the *kanun*s was instead related to economic transformations after the sixteenth century, including the unification of Ottoman monetary zones, the rise of an integrated market economy and consequent trade opportunities, as well processes of capital accumulation. "The gradual development of the monetized market economy created new institutions whose regulation fell into the domain of jurists' law (by which Tezcan means *fikh* – BE) as it was this law that had experience in dealing with commercial transactions and business deals" (2012, 30). Also, *fikh*, more so than *kanun*s, provided legal justification for the newly emerging, highly mobile entrepreneurial classes to assert their political rights against the state and protect their wealth from excessive taxation and seizure. Finally, according to Tezcan, the state had to appropriate and utilize the legal tools found in Islamic jurisprudence in order to regulate the affairs of those groups who had benefitted from the expansion of market networks and the political-economic opportunities this development generated. *Fıkh* principles provided these tools.

Somewhat earlier, Rifa'at Abou-El-Haj proposed a slightly different assessment of the relationship between the disappearance of *kanun* legislation and socioeconomic changes in the

post-sixteenth century. According to Abou-El-Haj (1991b, 91), the *kanun*s and provincial *kanunname*s lost their effectiveness as the Ottoman dynasty lost its grip over the political and economic affairs of the provinces, culminating in the rise of the "dynast-run semi-independent principalities." *Kanun*s were required to uphold and legitimize the interests of the dynasty in a system based on "timar mode of production" (1991b, 80). As the central government became increasingly dependent on cash revenues derived from the conversion of public lands into tax-farms, which led to their transformation into quasi-private property, *kanun* orientation and enforcement became increasingly less strict: "The lack of coherence in government management coincided with a flexibility and fluidity in the day to day use of the kanun. By the end of the eighteenth century, government regulation, especially of taxes, took on an *ad hoc* turn that amounted to arbitrariness. No new comprehensive codes were issued during this period" (Abou-El-Haj 1991b, 90).

While the belief that *kanun*-based legislation declined / disappeared after the 1600s persists in current scholarship, it is subject to challenge from multiple perspectives, as I illustrate in the remainder of this section.

Did Kanun Decline/Disappear After the Sixteenth Century?

Some scholars have questioned the claim that *kanun*s disappeared after the sixteenth century. For example, Haim Gerber has argued that in seventeenth-century Bursa *kanun*s were in full force in matters of criminal and land law. Likewise, Dina Rizk Khoury (2001) has recently described how local residents and scholars in Mosul and Basra used *kanun* legislation during the same period. Rather than eliminate it, they sought to bend it according to their own interests and

interpretations. Sabrina Joseph (2012) has made similar claims for seventeenth- and eighteenth-century Syria.

Beyond the empirical question of whether *kanun*s did or did not decline exists a more fundamental, methodological disagreement among scholars over the nature of Ottoman legislation. Gerber and Dror Ze'evi have intimated that the claim that *kanun*s could be selectively discarded at any time is rooted in the assumption that the legal system had a dual nature, one that kept state legislation parallel to but separate from *fikh*-based jurisprudence (Gerber 1994, 61; Ze'evi 2006, 69). In their legislative attempts, according to Gerber, the Ottomans were not simply seeking to fill the gaps left by *fikh* traditions, but critically engaging and reinterpreting them in order to generate a legal system that satisfied their own needs. This is why *kanun*-based principles were too enmeshed in the legal system to simply disappear. Ze'evi has argued more concretely that the "kanun was interwoven with the şeriat with painstaking care within the sphere that legal experts of the time could have accepted as Islamic, inside the boundaries of örf and siyaset" (2006, 69). The perceived differences between *kanun* and *fıkh*-based legal interpretations, Ze'evi insisted (2006, 69-70), should not be understood to represent "two conceptions of law, but rather as evolution within the same legal and cultural sphere. Thus we may assume that those loci where the kanun insists on parting with the şeriat and promulgating a different set of laws are not accidental, but rather replicate the cultural and political dynamics of the period."

Ahmet Akgündüz has offered perhaps the most substantial critique of the tendency in the Ottoman scholarship to differentiate *kanun* legislation and *fıkh* jurisprudence. Akgündüz (1990, 67) suggested that *kanunname*s often contained prescriptions that can be found in *fıkh* treatises and that one important function of the *kanunname* was to implement, if selectively, relevant *fıkh*-

based prescriptions in specific settings. Thus, these documents reflect, among other things, efforts by Ottoman authorities to apply specific *fikh*-based principles to their own circumstances. Accordingly, *kanunnam*es a) exemplify judicial attempts to interpret and reformulate Islamic legal principles for practical purposes and easier enforcement, and b) contain selective endorsement of certain judicial interpretations among others and their enforcement for public benefit (Akgündüz 1990, 64).[5]

The Relationship between the "Social" and the "Legal"

There is also another significant methodological issue that has failed to garner any recognition in discussions focused on the fate of *kanun* during the post-classical age. Those researchers, new and old, who have proposed the decline of the *kanun* after the sixteenth century appear to assume a specific type of relationship between the social (and political and economic) and legal realms. In this relationship the law assumes a secondary, derivative role in the sense that it is acted upon and shaped by external (social, political, and economic) factors. In the earlier scholarship as represented by the works of İnalcık, Barkan, Heyd, and others, the "decline" of the empire and the consequent emergence of a conservative opposition to the regime led to a jurisprudential transformation. Tezcan and Abou-El-Haj characterize the change in a fashion reminiscent of the ways in which the social and the legal are linked in vulgar Marxist interpretations: The

[5] Akgündüz also insisted that the common sources of such legislative actions, i.e., customs, traditions, practices associated with other legal systems, and the notions of *istishan* and *istislah*, are also legitimate, if secondary, sources of Islamic jurisprudence. Prescriptions based on them, if/when they did not conflict with clear legal injunctions (*nass*), had long been included in the compendia of Islamic legal interpretations (Akgündüz 1990, 45 and 53). Finally, Akgündüz (1990, 51 and *passim*) has emphasized that the *kanun*s issued by the Ottoman sultan or his representatives were often checked by legal authorities to confirm that they did not conflict with Islamic legal principles.

emergence of proto-capitalist market relations (in Tezcan's work) and/or relations of production (in Abou-El-Haj's scholarship) causes legal transformation.

In these depictions the "relative autonomy" of the legal sphere and its potentially constitutive nature are not considered. Legal scholars who insist on the "relative autonomy" of the law have proposed that legal practices and institutions may not be adequately explained "by reference to external political/social/economic variables. To some extent they are independent variables in social experience and therefore they require study elaborating their peculiar internal structures with the aim of finding out how those structures feed back upon social life" (quoted in Tomlins 2007, 58). Many legal scholars (including some Marxists), while not denying the links between the social and the legal, nevertheless reject a direct, mechanical correspondence between the two that attributes primacy to either one. In particular, researchers associated with Critical Legal Studies propose an "indeterminacy thesis" which presents the law as both "a shaper of social movements" and an entity that "might be seized by (social forces) and itself reshaped," making it "a decisive terrain for social struggle" (Tomlins 2007, 57).

Next is a related but more empirical question: How much transformation did the empire experience between the 1600s and the 1800s? The connection between the supposed rise of conservatism in the post-classical period and the decline of the *kanun* is largely speculative and may not be subject to empirical substantiation. Even if one can measure changing levels of "conservatism" in the sociopolitical structure (a big if), the connection between the two is by no means obvious: Is the "decline" of the *kanun* a symptom of intensifying conservatism or a consequence of it? Similar questions may be raised about the supposed socioeconomic transformation of the post-classical period. Claims about the emergence of a sufficiently large, unified market that transformed the economy, led to capital accumulation, and generated

economic and political mobility are under-substantiated. In the context of the early-modern Ottoman Empire, the extent of market "unification" is not quantifiable. Nor is it clear how much "unification" is required to be legally transformative. How much capital accumulation necessitates a new legal system? More generally, what distinguishes capitalist commercial interactions from pre-capitalist or "feudal" ones? In the countryside, to what extent did the "timar mode of production" become eradicated and replaced by tax-farms? How prevalent were "dynast-run semi-independent principalities" in the eighteenth century? And so on.

Relevant too are observations that until the end of the eighteenth century, many, and possibly most, Ottoman settings witnessed no major agrarian transformations. For example, Sabrina Joseph and Dror Ze'evi have questioned the claim that the *timar* system was completely displaced by short- and long-term tax-farming during the seventeenth and eighteenth centuries in many parts of Anatolia and the Arab lands. The alleged connections between the spread of tax-farming, the emergence of market-oriented land-holdings, and monetization of the economy also remain largely speculative.

The Problem of Treating the Empire as a Unit of Analysis

The scholarship that insists on the decline of the *kanun* seems to take the Ottoman Empire as a singular unit of historical analysis, instead of treating the polity as an amalgam of diverse power relationships, institutional configurations, and legal-administrative-financial practices. There are many examples of this tendency in Ottoman historiography. The suggestion that the *kanun* declined after the sixteenth century presupposes a uniform and largely consistent process in different corners of the empire. Recent research in various provincial contexts, however, has revealed how varied provincial populations' experience with legal structures and institutions

could be. In this regard, *sicil*-based research focused on the Islamic court's operations in multiple provincial contexts has made the most advances, I am proud to say. These studies have demonstrated the variability of the legal and administrative functions performed by provincial courts in different settings. Parallel, if more limited, observations have also been emerging in *kanun*-focused scholarship. For example, Dina Rizk Khoury (2001) has demonstrated for seventeenth-century Basra and Mosul that the "state law" was formulated and reformulated in conversation with provincial interests, legal scholars, and power holders. This experience differs significantly from what Molly Greene (2000) has observed for Crete, where legal practice more explicitly reflected classical *fikh*-based formulations in land-use, possession, and taxation.[6]

One aspect of the pre-modern legal and administrative modalities is especially relevant to our discussion. In her treatment of the topic, Khoury has made the important observation that "negotiation between the center and the periphery is a hallmark of the traditional government" (2001, 305), and that the specific circumstances in which negotiations took place could affect provincial institutions and practices to a significant extent. In this case as well, the issue is related to a more basic methodological problem: How should we characterize the *kanun*? As Snjezana Buzov (2005, 1-2) has also pointed out, the common depiction of *kanun* as "the sultan's law" or "the legislation of the ruler's will," creates the impression that the central government was the primary agent in defining the content of the law based on its own needs and expectations. However, and if as suggested in the literature the Ottomans used *kanun*s to accommodate local customs and practices, *kanun*s should be considered also as local law, representing communal expectations and definitions of justice and legitimacy at least to some

[6] In seventeenth- and eighteenth-century Syria, Sabrina Joseph (2012, 142) argues, while local jurists were keen on protecting "the integrity of the sharia," they also played "an integral role in upholding Ottoman kanun."

extent.[7] Given this aspect of the *kanun*, it is difficult to characterize the temporal changes in *kanun* legislation in a uniform, empire-wide fashion.

III. Organizational, Procedural, and Penal Changes: The Case for Legal "Modernization" in the Seventeenth and Eighteenth Centuries

Earlier, I mentioned the recent inclination to depict the socioeconomic and political transformation experienced in the seventeenth and eighteenth centuries as a form of indigenous modernization. To some extent aspects of this orientation have also become visible in works that focus on legal and law enforcement processes. For example, Rossitsa Gradeva has recently proposed the emergence of an "embryonic hierarchy" in the provincial judicial structures in the post-classical period that placed lower-level qadis under the supervisory control of major judge-ships (2006, 297). This suggestion should be considered in the context of the well-established understanding among legal scholars that no hierarchical relationship existed among provincial qadis in regards to their judicial operations and responsibilities.[8] In this sense, a judicial hierarchy, if indeed one appeared during our period, may represent a bureaucratic transformation that was relatively centralized, uniform, and, thus, consistent with legal and administrative modernization.

Gradeva's interpretation of the possible changes in the judicial hierarchy is in conversation with Michael Ursinus' work on the provincial governor's judicial responsibilities. According to Ursinus, Ottoman governors had definite (though not-well-recognized) judicial responsibilities in their jurisdictions. In particular, he has argued, the council of the provincial

[7] This tension between alternative functions of *kanun* has not been well explored in the literature. Although Heyd (1973, 168-9) briefly notes in his discussion two meanings of the term '*örf* ("customs" and "royal authority"), he does not explore the issue.

[8] There was, however, a hierarchy of income, based on education, experience, and seniority.

governor (*divan-ı vali*, v*ali divanı*) heard and decided a wide variety of cases on its own and also acted as an appellate body, essentially making it responsible for supervising the functions of the courts within provincial boundaries.[9] According to Gradeva the supervisory functions of the high-ranking qadis in provincial centers may have been due to their association with the governor's council. It was as members of the council, Gradeva argued, that these high-ranking qadis gained oversight responsibilities "vis-à-vis their colleagues in smaller places, especially in matters regulated by kanun and in charges of malpractice leveled against lower-ranking Sharia law officials, and in their occasional functioning as an appellate institution for decisions of local kadis" (2006, 296).[10]

In a recent dissertation, Başak Tuğ (2009, ch.2) has argued that the appellate structures and judicial hierarchy that Gradeva and Ursinus proposed for provincial contexts were only aspects of a broader transformation of the Ottoman judicial administration during the post-classical period. This transformation also involved the direct and frequent involvement of the imperial center, in particular the Imperial Council headed by the grand vizier, in the administration of justice. More specifically, the central government made an effort to collect, evaluate, and respond to petitions (*arzuhal*) for justice from the provinces, which led to the establishment of what Tuğ calls "a more centripetal control" over legal system and processes (2009, 240, *passim*). Because of all these developments, the judicial system "became more

[9] This attribution of judicial functions to the provincial divan is unusual in Ottoman scholarship since the scholarship has tended to separate the judicial hierarchy from the provincial executive-administrative branch and depict the military-executive authorities' involvement in legal processes as exceptional and/or illegitimate.

[10] It is important to emphasize that Ursinus himself does not characterize the judicial functions and responsibilities of the governor and/or his council as a feature of the post-classical period. According to him, the judicial roles that provincial governors played in the Ottoman context was a continuation of the *mazalim* practices identified in pre-Ottoman polities, in particular Mamluk society. For Gradeva, however, the embryonic judicial hierarchy that she proposes in her study appears to have been a later development.

crystallized and more professional" in the eighteenth century, which also undermined the autonomy of the local, lower-level qadis and reduced their overall significance in the judicial system (ibid).

A number of objections may be raised against these interpretations. First, the empirical basis of some of the claims mentioned above is relatively thin. For example, Ursinus's work is based on a single complaint register (*şikayet defteri*) that belonged to the *kaimakam* (lieutenant governor) of Rumelia and only covers a couple of years. In fact, there are very few examples of analogous archival evidence from other settings.[11] If the military-executive officials' involvement in judicial processes became systematic in the post-classical period, one would expect this to have generated abundant documentation from all parts of the empire.[12]

In regards to appeal processes and the supervisory functions of high-ranking qadis, provincial governors, and/or the imperial center, the available documentation also does not provide a very clear picture of how the system functioned. It is true that groups and individuals regularly petitioned the governor and/or imperial center when they felt dissatisfied with the actions of local officials, including the qadi. But official responses to these petitions varied. In many cases the imperial center or provincial governors forwarded the complaint back to original authorities and ordered them to reconsider the issue based on available information, rather than imposing specific judgments. Thus, instead of representing an appeal process or signifying the center's or governor's supervisory judicial responsibilities, this practice might be read as reflecting a desire that local disputes be resolved locally. It is plausible that certain types of

[11] James Baldwin (2010, 21, 36-7, *passim*) mentions in his dissertation the existence of similar records from eighteenth-century Egypt.

[12] Ursinus suggests that unlike the court records, which were kept in one location and passes on to subsequent qadis, governors and/or their representatives brought their records with them when they were transferred to other locations. In the process, these records were often lost, damaged, or destroyed.

conflict required the center's more direct involvement and even prescriptions for resolution. These included, in particular, conflicts over revenue sources, assignments, and entitlements, about which the central bureaucracy often provided directives to local authorities after consulting their own records and archives (Baldwin 2010, ch.2). In some such cases, local authorities themselves played an important role in redirecting the dispute in question to the center for clarification and/or instruction. Such instances do not appear to resemble appellate processes.

Finally, it was indeed possible for court cases based on specific disputes to be heard by different qadis at different times. In some instances, however, although the source of contention remained the same, variations in the technical formulations of the dispute may have generated multiple, yet technically different, litigations, which could have been taken to the same qadi or a different one. The latter possibility represents a form of forum shopping, which was common in the Ottoman Empire and is not necessarily indicative of appellate processes.

Ultimately, the proof of the pudding is in the eating: I know of no instance--nor does Gradeva provide an example--where a supposedly higher-ranking qadi (in terms of his judicial authority) declared invalid or null a prior decision of a lower-ranking one upon review. If there was a hierarchy in the provincial judicial system, as Gradeva suggests, why do we not observe such instances in our sources? More generally, and this relates Tuğ's contention, we still lack adequate qualitative and quantitative evidence to make a convincing argument that the imperial center's involvement in judicial processes changed in the post-classical period. The archival material in our possession from earlier and later periods prevents us from making any systematic comparisons.[13]

[13] It should be pointed that other researchers specializing in our period characterize the relationship among qadis of different rank and the governor differently. In his Ph.D. dissertation on eighteenth-century Amid, for example, Yavuz Aykan rejects Gradeva's proposition that

The possibility of "modernization" has also been raised with respect to Ottoman penal processes. In her work on crime (2010), Fariba Zarinebaf has argued that, much like some of its European contemporaries, the Ottoman state developed an "increasing ability to discipline and punish" during the eighteenth century (2010, 111). Among other things, the state implemented surveillance tactics, such as population surveys of specific neighborhoods, as methods of social control (2010, 128-30). Also, "the aim of the penal system changed from corporal punishment to correction, isolation, and rehabilitation" (2010, 173). These claims are relevant to Zarinebaf's contention that the "Ottoman modernization effort actually started in Istanbul in the late eighteenth century" (2010, 1). However, a number of reviewers of Zarinebaf's work have suggested that many of the author's claims that constitute the basis of her modernization argument, including the system's concern with rehabilitation and the decline of capital punishment, require further substantiation (Ergene 2011; Hanley 2013; Peters 2012).

IV. The Possibility of Local Justice and the Political Economy of Law Enforcement

If it is true that the post-classical period witnessed the emergence of new political and financial configurations and relationships, these must have influenced legal practice and policing. What I have in mind is not necessarily a unidirectional relationship between the "social" and the "legal"

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higher-ranked qadis could review the decisions of lower-ranking ones in their provinces (Aykan 2012, 82). After reviewing Ursinus's interpretation of the judicial responsibilities of the governor, he also opts for the more established depiction of the division of labor between the qadi and the governor originally proposed by Heyd. According to Aykan (and Heyd), the governor of Amid was responsible for the maintenance of security in his jurisdiction and application of criminal penalties as decided by the court. He could ask the qadi to hear a case and could even send an observer to the trial, but it was ultimately the qadi who was responsible for applying the law and deciding the cases. Not that governors never became involved in dispute-resolution processes alongside or independent from the qadis; but these instances were not necessarily required by the judicial system in the post-classical period.

as exemplified in *kanun*-focused studies, but a mutually influential interaction or series of interactions. There are multiple ways in which we can think about this relationship. The first relates to what Karen Barkey has called the emergence of "regional governance regimes" in the provinces. The second concerns economic pressures on judicial and administrative authorities and the possible consequences of fiscal changes in revenue extraction.

The Possibility of Local Systems of Justice

According to Karen Barkey (2008, 242), one important aspect of our period was the emergence of "regional governance regimes" in the provinces. These "regimes," formed by prominent local families, represented "locally based regional networks of rule" that often monopolized provincial positions and resisted, at least partially, the imperial center's attempts to interfere with provincial affairs (2008, 243). However, following Ariel Salzmann's insights on the topic (1993), these "regimes" should not be seen as completely independent of Istanbul, since their direct and indirect ties to the center constituted the base of their financial strength and political legitimacy. In particular, their access to government sources (often converted to tax-farms) and their control of provincial administrative positions helped separate them from their local rivals. This being said, their claims to leadership were also locally constituted and their members, according to Barkey, "promoted social consciousness, leadership…, [were] involved in the affairs of the community… and became patrons who protected and punished in what seemed to be just ways" (2008, 262).

Here, then, is the question: If these regional regimes "punished and protected in what seemed to be just ways," as Barkey suggests, did these practices lead to the creation of what we might call local systems of justice that were independent of, alternatives to, or in (relative or

complete) control of the provincial courts? To be clear, it is unlikely that such regimes emerged in every corner of the empire. So even if they did effect change in legal and penal processes, this would have been limited to areas where these regimes appeared. Nevertheless, the question is still an important one for the concerns of this study.

We can imagine many ways in which local power-holders may have influenced local legal processes. One would have been the co-optation of court functionaries to act in conformity with the regimes' interests. This would have been relatively easy to accomplish for some court functionaries. We know that most provincial court personnel, with the exception of the qadi, were local people. Thus, they were likely to have been cognizant of local power configurations. In certain settings, they may have served as conduits connecting the court to local centers of power. True, the qadis themselves were often outsiders to the regions in which they served, and regularly rotated from one position to another. In this sense, they were potentially more independent from local centers of influence. At the same time, we can also expect that they remained sensitive to regional expressions of power. For one thing, qadis frequently relied on local court functionaries to get the "lay of the land," so to speak, that is, information on local characters and relationships, which is why their opinions and inclinations about local matters may have been influenced by their personnel. Moreover, they would have had reason to adapt to existing power configurations and relationships. The hostility of the local power-brokers could make life very difficult for a qadi, threatening his livelihood or even his physical person (Ergene 2003, ch. 9).

It is also important to remember that the qadi was not the only local source of religious legitimacy. Many provincial communities had their own stock of native *ulema*. Provincial muftis were often chosen from local families. It makes sense to assume that "locally based regional

networks of rule," wherever they existed, would have made inroads among these influential and important segments of the community. If so, it would be naïve to think that qadis could monopolize the claim to religious legitimacy and use it to resist pressure from local power-holders.

To push this line of thinking to the next level, one wonders if the "regional governance regimes" with claims to local legitimacy and *ulema* support had the ability to assume control over some of the court's judiciary services. One wonders, for example, if local power-holders were not better positioned to administer justice in specific types of disputes. At the most extreme, we can imagine that some of the local dynasts established their own courts or analogous institutions that rivaled the sharia court. James Baldwin (2010, ch. 5) discusses in his recent research examples of what he calls "unofficial" justice in eighteenth-century Cairo, whereby powerful, influential, and highly respected local figures heard disputes and resolved them, independent of not only the courts of law but also well-established rules of litigation and evidentiary standards. This independence from legal procedural expectations actually made "unofficial" justice, according to Baldwin, relatively flexible and effective in the eyes of many locals.

It is important to remember that, in theory, an important responsibility of the qadi was to protect the commoners from abuse by local power-holders. This was one of the ways he helped legitimize the dynasty in the eyes of its subjects. In settings where "local systems of justice" were established, however, this aspect of the qadi's functions may have diminished or disappeared. The question, then, is how the qadi may have resisted local pressure if he were inclined to do so. Presumably, he could have petitioned the imperial center, complained about the actions of local power-holders, and sought support. Yet, in settings where "regional

governance regimes" existed, it is not clear what the center could have done to change the situation. One important condition where such regimes emerged was that the center had limited ability to impose its own will on local power-holders. Alternatively, a qadi may have attempted to exploit existing or potential rivalries among local groups and/or lineages. In an environment where the influence of the center was diminished, strategic alliances with select, regional allies may have provided some relief for judicial authorities.

Economic Pressures, Fiscal Transformation, and Law Enforcement in the Provinces

There is a significant disconnect (and opportunity for future research) in the literature between the economic dynamics of the period and the ways in which these may have complicated legal and law enforcement processes in the provinces. On one hand, the seventeenth and eighteenth centuries witnesses high inflationary pressures. According to Özmucur and Pamuk (2002, 301), prices in Istanbul increased about five to six times during this period. On the other hand, the increasing number of legal and administrative personnel in an environment of limited administrative positions put pressure on the system to accommodate the employment needs of state functionaries. We know, for example, that qadis' terms of appointment became shorter and the wait times between posts increased during our period. We should assume similar difficulties for military-executive authorities. In this general state of affairs, the changes in the modes of revenue extraction (wherever this happened) must have further complicated the collection of certain types of revenue, including those based on legal practice and law enforcement. Given the lack of systematic research on this topic, what follows below represents a speculative attempt to characterize the relationship between the economic and fiscal dynamics of the period, and legal and law enforcement practices.

Ronald Jennings (1978) was possibly the first to mention the potential overlap between the jurisdiction and responsibilities of the qadi and those of the provincial governor in law enforcement. In ideal circumstances, their relationship was based on a neat division of labor: The qadi judged and the governor enforced the law. One wonders, however, how this division of labor held in times of economic trouble. The pressure for income maximization during a period of increasingly shorter tenures could have led both parties to try to expand their revenue sources and potentially infringe on one another's responsibilities. For example, there is evidence that governors and their representatives played greater roles in dispute resolution, independent of the qadis. In some cases, qadis complained about their interference, which could constitute a threat to their potential sources of income. According to these reports, military-executive officials heard complaints and decided them (Ergene 2003, 170-188). This might be the case particularly in criminal disputes. As many researchers have noticed, court records from the post-classical period contain relatively few criminal cases, which might suggest that military-executive authorities took over criminal adjudications (Ginio 1998). My current research in the context of Kastamonu indicates that the already low proportion crime-related cases in the court records further declined between the late seventeenth and late eighteenth centuries, which could be interpreted as a sign of further divorce of the court (and, thus, the qadi) from criminal procedures.

In addition, one also wonders how the transition from prebendal forms of taxation to tax-farming influenced law enforcement processes. In the prebendal system, sources of revenue (in particular, land) were assigned to military personnel in return for military service during times of war, and law-enforcement responsibilities in peace times. For the latter service, prebendal authorities were compensated from the fines levied in their jurisdictions, which were considered

as components of the revenues prebendal assignments generated. According to Coşgel et al (2013), the system motivated prebendal authorities against under- and over-enforcement of the law because the former reduced revenues generated by the fines and the latter, which would have caused excessive fines, threatened other revenue sources (in particular, taxes), portions of which prebendal authorities also claimed. Balancing revenues generated by the fines and taxation was one way the prebends maximized their income.

The question is how this system was transformed as the prebendal form of revenue extraction became replaced by short- and long-term tax-farming in the agrarian sector, wherever and whenever this happened. In those locations where sipahis disappeared, who took over the law-enforcement responsibilities? Was it the tax-farmers? Since "fines are part of the revenue produced by the land" [*cürm-ü cināyet toprağa tābi'dir*], one might expect the tax-farmers to have claimed fines for themselves since they were part of the revenue source in which they invested.[14] If tax-farmers took over policing in their jurisdictions, as at least one historian has claimed (Kiyotaki 2006), how did their inclinations in law enforcement differ from those of the prebendal authorities? Did they have similar motivations against under- or over-enforcement? Did these motivations vary among long-term tax-farmers, short-term tax-farmers, and their subcontractors?[15] Or perhaps the vacuum left by the prebendal authorities was filled by other

[14] As mentioned, some scholars have suggested that fines disappeared in the post-classical period. It is difficult to determine to what extent this is true. There is no evidence that the government expressly banned fine collection, and given the financial needs of the time one can understand why not. After all, fines constituted a revenue source that contributed to the overall profits of tax-farms.

[15] The duration of the tax-farming contract as well as the durations of the sub-contracts must have influenced these individuals' tendencies to under- or over-enforce the law. In cases of longer-term tax-farming contracts such as *malikane mukataa*s (life-term tax-farms), one can imagine that the tax-farmers were not interested in sacrificing their long-term interests to their short-term benefits by seeking over-enforcement. However, in the majority of the *mukataa*s the tax-farmers did not personally take over the direct management of their revenue sources, but sub-

parties, such as the governor and/or his representatives. Given the civilian background of many tax-farmers, perhaps we should assume that the role of the remaining local military-executive authorities expanded.[16] In this last regard, our sources indicate that the appropriation of fines generated tension between tax-farmers and local military-executive authorities in some locations. For example, a series of archival documents published by Talat Yaman (1941) demonstrate how the tax-farmers of the copper mines of Küre (located in north-central Anatolia) and the surrounding villages that provided laborers for mining, often complained to Istanbul that local military-administrative authorities were claiming the fine revenues for themselves. Although Yaman's documents emphasize the fact that fines belonged to tax-farmers, they do not reveal the role, if any, of tax-farmers policing and/or-law enforcement. Nor do other historical sources indicate if local authorities, when subjecting provincial populations to such payments, were in fact seeking compensation for the services they actually performed.

Finally, I would like to address the issue of corruption: Related to economic pressures and change during our period, archival and narrative sources for our era contain widespread claims of corruption in legal and law-enforcement processes, including bribery. These claims are based on practices that cannot be easily justified by the standards of governance formulated earlier in Ottoman history. There is no way to know if indeed "corruption" became more prevalent during our period compared to earlier times. As a number of researchers have pointed out, claims of corruption could be exaggerated and reflective of political tensions among different

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contracted them to local agents for shorter periods. Thus, the short-term considerations of the sub-contractors may have led to excessive fining.

[16] If this were the case, could it have something to do with the decrease in the crime-related disputes in the court records? Perhaps *sipahi*s were more inclined to take criminal disputes to the court than to governors.

socioeconomic groups (Abou-El-Haj 1991a). If corruption did become more prevalent, however, it may have been a consequence of the economic pressures and fiscal/institutional transformation experienced between the late sixteenth and eighteenth centuries. There are opportunities for exciting research here. It would be fascinating to explore what "corrupt" practices became prevalent during our period and their consequences. In addition to frequent claims of bribery, nepotism, false-witnessing and the like, contemporary sources mention, for example, how qadis, in an effort to increase their income, forcefully interjected themselves into inheritance divisions, though their involvement was technically required only when heirs asked for their help or the heirs included minors, whose interests needed to be protected. How might this fascinating tendency have influenced inheritance divisions? Did they become more consistent with *fikh*-based conventions in areas where local custom differed from legal prescription? More generally, can the court's (sometimes forceful and illegal) involvement in these processes be seen as part of a more general expansion of the court's role in social and economic relationships? Did Ottoman society become more legalistic over time in part because the courts were becoming increasingly motivated for "business"?

Also, how did changing legal and law-enforcement processes redefine what was considered to be normal, accepted, and/or legitimate? Did new discourses on "corruption" emerge? This does not necessarily mean that older definitions disappeared during our period. On the contrary, they probably remained influential and prescriptive, which is why we see them frequently mentioned in the official rescripts of justice (*adaletname*s). At the same time, one also wonders how those agents of law and state who adopted "new" practices defined what should be considered as legitimate in a new age. Overall, what were the alternative and conflicting

definitions of corruption in a time of major socioeconomic, political, and, yes, legal transformation?

Concluding Remarks

The essay surveyed the existing literature on Ottoman jurisprudence, legal institutions, and legal practices. We have seen how the historians of the Ottoman Empire have attempted to characterize changes in these realms during the seventeenth and eighteenth centuries. In particular, some scholars have suggested that *kanun*s disappeared (due to factors that earlier and more recent generations of researchers disagree on) and a judicial hierarchy with supervisory and appellate functions became crystallized. Another possibility, paradoxically, is that relatively autonomous regional systems of justice emerged and that economic pressures and novel modes of revenue extraction significantly influenced legal practices and law enforcement. Overall, the information presented in the literature does not constitute a neat or internally consistent picture of legal change. Moreover, many suggestions about the nature of legal change require further substantiation to be convincing.

At the same time, this paper has provided clues about the ways in which Ottomanists have thought about legal issues and located the sources of change. In this regard it is interesting to observe that the earlier generation of researchers associated legal change with the rise of religious conservatism that accompanied imperial decline, while they were writing in a political environment that linked civilizational progress with secularism. Later, as the decline thesis lost credibility and historians grew more inclined to imagine other models of socioeconomic and political transformation, capitalism and/or modernization became popular tropes of change, the influence of which also appeared in legal research. The problem is that these tropes were often

deployed rather superficially in the Ottoman context, with little attempt to depict indigenous forms of capitalism and/or modernity as complex, multilayered phenomena with distinctive social, cultural, and intellectual roots. On the contrary, recent efforts to identify the traces of capitalism and/or modernity in the eighteenth century (or earlier) often come across as affected and defensive ("Ottomans were quite capable of developing capitalism/modernity on their own"), based largely on symptomatic observations on isolated instances rather than systematic analysis. Finally, many of the attempts to define legal change in the post-classical period assume a simplistic relationship between the social and the legal and often treat the Ottoman world as if it were a relatively homogeneous unit of analysis, reminiscent of a nation-state.

If there were changes in legal and law enforcement practices during the seventeenth and eighteenth century, I believe that they were dispersed, inconsistent, and locally negotiated. I do not reject the possibility that jurisprudential and organizational transformations did in fact take place during the post-classical period, though how we should characterize them is not clear to me. I am inclined to believe, however, that major shifts also took place in legal practice and law enforcement at the provincial level, based on the transformations in power relationships that involved the central government, local power-holders, and judicial authorities and also based on the changes associated with the economic circumstances of the period and new modes of revenue extraction. Obviously, we need further, regionally focused research to better understand these developments.

Bibliography

Abou-El-Haj, Rifa'at Ali (1974). "The Ottoman Vezir and Paşa Households 1683–1703: A Preliminary Report." *Journal of American Oriental Studies* 94: 438-447.

——— (1991a). *Formation of the Modern State: The Ottoman Empire, Sixteenth to Eighteenth Centuries*. Albany: State University of New York Press.

——— (1991b). "Power and Social Order: The Uses of the Kanun." In *The Ottoman City and Its Parts: Urban Structure and Social Order*, edited by D. Preziosi, et al., 77- 99. New Roschelle, New York: A.D. Caratzas.

Akarlı, Engin Deniz (2006). "Law in the Marketplace: Istanbul, 1730-1840." In *Dispensing Justice in Islam: Qadis and Their Judgments*, edited by M. K. Masud, et al., 245-270. Leiden Boston: Brill.

Akgündüz, Ahmet (1990). *Osmanlı Kanunnameleri ve Hukuki Tahlileri*. vol. 1. Istanbul: FEY Vakfı Yayınları.

Aykan, Yavuz (2012). "Les acteurs de la justice à Amid et dans la province du Diyarbekir d'après les sicil provinciaux du 18e siècle." Ph. D. diss., École des Hautes Études en Sciences Sociales.

Baldwin, James E. (2010). "Islamic Law in an Ottoman Context: Resolving Disputes in Late 17th / Early 18th-century Cairo." Ph.D. diss., New York University.

Barkan, Ömer Lütfi (1943). *XV ve XVI'ıncı Asırlarda Osmanlı İmparatorluğunda Zirai Ekonominin Hukuki ve Mali Esasları*. İstanbul: Bürhaneddin Matbaası.

_____ (1952). "Kanunnameler." In *Islam Ansiklopedisi*, vol. 6, 185-95. Ankara: Milli Eğitim Bakanlığı Yayınevi.

Barkey, Karen (2008). *Empire of Difference: The Ottomans in Comparative Perspective*. Cambridge: Cambridge University Press.

Buzov, Snjezana (2005). "The Lawgiver and His Lawmakers: The Role of Legal Discourse in the Change of Ottoman Culture." Ph.D. diss., University of Chicago.

Coşgel, Metin M., Boğaç Ergene, Haggay Etkes, and Thomas J. Miceli (2013). "Crime and Punishment in Ottoman Times: Corruption and Fines." *Journal of Interdisciplinary History* XLIII: 353–376.

Darling, Linda (1996). *Revenue-Raising and Legitimacy: Tax Collection and Finance Administration in the Ottoman Empire, 1560-1660*. Leiden; New York: E.J. Brill.

Ergene, Boğaç A. (2003). *Local Court, Provincial Society, and Justice in the Ottoman Empire: Legal Practice and Dispute Resolution in Çankırı and Kastamonu (1652-1744).* Leiden: Brill.

_____ (2011). "*Crime and Punishment in Istanbul, 1700-1800* by Fariba Zarienbaf." *Journal of American Oriental Society* 131: 639-641.

_____ (forthcoming). “Qanun and Sharia.” *In The Ashgate Research Companion to Islamic Law*, edited by Peri Bearman and Rudolph Peters. Burlington, VT: Ashgate.

Faroqhi, Suraiya (1994). "Crisis and Change, 1590-1699." In *An Economic and Social History of the Ottoman Empire*, edited by H. İnalcık. Cambridge: Cambridge University Press.

Genç, Mehmet (2000). *Osmanlı İmparatorluğu'nda Devlet ve Ekonomi*. İstanbul: Ötüken.

Gerber, Haim (1994). *State, Society and Law in Islam: Ottoman Law in Comparative Perspective*. Albany: State University of New York Press.

Ginio, Eyal (1998). “The Administration of Criminal Justice in Ottoman Selanik (Salonica) during the Eighteenth Century.” *Turcica* 30: 185-209

Gradeva, Rosistsa (2006). "On Judicial Hierarchy in the Ottoman Empire: The Case of Sofia, Seventeenth - Beginning of Eighteenth Century." In *Dispensing Justice in Islam: Qadis and Their Judgments*, edited by M. K. Masud, et al., 271-298. Leiden: Brill.

Greene, Molly (2000). *A Shared World: Christians and Muslims in the Early Modern Mediterranean*. Princeton: Princeton University Press.

Hanley, Will (2013). “*Crime and Punishment in Istanbul, 1700-1800* by Fariba Zarinebaf.” *Journal of World History* 24: 693.

Hathaway, Jane (2004). “Rewriting Eighteenth-Century Ottoman History." *Mediterranean Historical Review* 19: 29-53.

Heyd, Uriel (1967). “Ḳānūn and Sharī‘a in Old Ottoman Criminal Justice.” *The Israeli Academy of Sciences and Humanities Proceedings* 3: 1-18.

Heyd, Uriel (1973). *Studies in Old Ottoman Criminal Law*. Edited by V. L. Ménage. Oxford: Clarendon Press.

Imber, Colin (1997). *Ebu’s-Su‘ud: The Islamic Legal Tradition*. Stanford: Stanford University Press.

_____ (2008). “The Cultivation of Wasteland in Hanafī and Ottoman Law.” *Acta Orientalia Academiae Scientiarum Hungaricae* 61: 101-112.

İnalcık, Halil (1978a). "Ḳānūn.” In *Encyclopedia of Islam*, 2nd ed., vol. 4. Leiden: E.J. Brill.

_____ (1978b).“Ḳānūnnāme.” In *Encyclopedia of Islam*, 2nd ed., vol. 4. Leiden: E.J. Brill.

Jennings, Ronald (1978). “Limitations of the Judicial Powers of the Kadi in Seventeenth Century Ottoman Kayseri." *Studia Islamica* 50: 151-184.

Joseph, Sabrina (2012). *Islamic Law on Peasant Usufruct in Ottoman Syria: 17th to Early 19th Century*. Leiden: Brill.

Kafadar, Cemal (1997-8). "The Question of Ottoman Decline." *Harvard Middle Eastern and Islamic Review* 4: 30-75.

Khoury, Dina Rizk (2001). "Administrative Practice between Religious Law (Shari'a) and State Law (Kanun) on the Eastern Frontiers of the Ottoman Empire." *Journal of Early Modern History* 5: 305-330.

Kiyotaki, Keiko (2006). "The Practice of Tax Farming in the Province of Baghdad in the 1830s." in The Frontiers of Ottoman Studies, edited by Colin Imber and Keiko Kiyotaki, 91-107. London: I.B. Tauris.

Özmucur, Süleyman and Şevket Pamuk (2002). "Real Wages and Standards of Living on the Ottoman Empire, 1489-1914." *Journal of Economic History* 62: 293-321.

Peters, Rudolph (2012). "Review of Fariba Zarienbaf, *Crime and Punishment in Istanbul, 1700-1800*." American Historical Review 117: 640.

Repp, Richard (1988). "Qanun and Shari'a in the Ottoman Context." In *Islamic Law: Social and Historical Contexts*, edited by Aziz Al-Azmeh. London: Routledge.

Salzmann, Ariel (1993). "An Ancien Régime Revisited: Privatization and Political Economy in the Eighteenth-Century Ottoman Empire." *Politics and Society* 21: 393-423.

——— (2004). *Tocqueville in the Ottoman Empire: Rival Paths to the Modern State*. Boston: Brill.

Tezcan, Baki (2012). *The Second Ottoman Empire: Political and Social Transformation in the Early Modern World*. Cambridge: Cambridge University Press.

Tomlins, Christopher (2007). "How Autonomous Is Law?" *Annual Review of Law and Social Science* 3:45–68

Tuğ, Başak (2009). "Politics of Honor: The Institutional and Social Frontiers of 'Illicit' Sex in Mid-Eighteenth-Century Ottoman Anatolia." Ph.D. diss., New York University.

Ursinus, Michael (2004). *Grievance Administration (Şikayet) in an Ottoman Province: The Kaymakam of Rumelia's 'Record Book of Complaints' of 1781-1783*. New York: Routledge Curzon.

Yaman, Talat (1941). "Küre Bakır Madenine Dair Vesikalar." *Tarih Vesikaları* 1: 266-282.

Zarinebaf, Fariba (2010). *Crime and Punishment in Istanbul: 1700-1800*. Berkeley: California University Press.

Ze'evi, Dror (2006). *Producing Desire: Changing Sexual Discourse in the Ottoman Middle East, 1500-1900*. Berkeley: University of California Press.