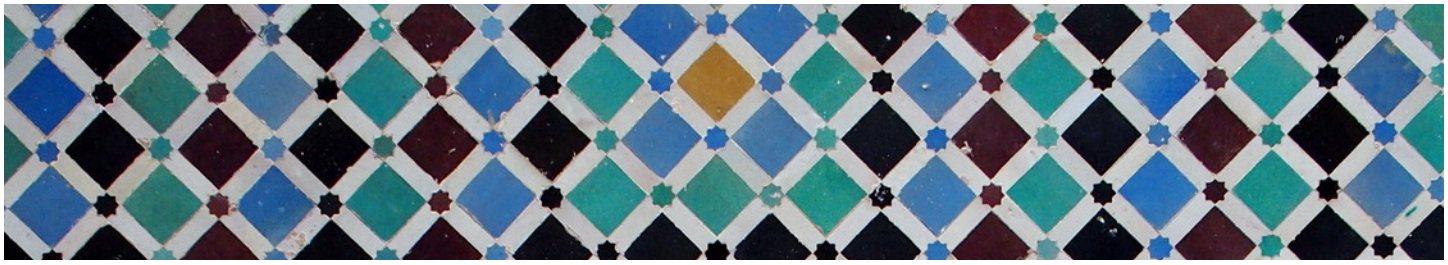

The Diversity of Ottoman Legal Discourse: Overlapping Property Claims and the Land Regime in the Ottoman Empire

Session IV-07, 2022 Annual Meeting
On Friday, December 2 at 11:00 am

PANEL DESCRIPTION

This panel draws upon recent developments in Ottoman legal history to underscore how diverse actors drawing upon a range of textual authorities affected the complexity and variety within the Ottoman land regime of the early modern period. Between the fifteenth and the nineteenth centuries, agrarian

production was the single greatest source of wealth and by extension political power in the Ottoman Empire. Land tenure, taxation, and law were therefore fundamental to the functioning of the empire and these are areas of interest which have animated scholarship for the past century. Although the empire encompassed great social, cultural and ecological diversity, our current understanding of its land regime emphasizes the distinctive mīrī system as the essence of the Ottoman land regime—even though this system functioned only in the core regions of the empire, namely the Balkans and Anatolia. The mīrī system apportioned usufruct rights to peasants, but asserted the ownership of land for the sultan acting in the name of the public treasury. This mīrī-centered view of the land regime relies on a unitary, centralized, and hierarchical conception of early modern Ottoman political economy and produces a limited and distorted view of Ottoman socio-political structure and its land regime. In contrast, the papers in this panel seek to broaden the perspective and nuance this view by exploring how overlapping property rights on land were negotiated with recourse to a variety of normative sources by a diverse range of individuals and groups in the core and peripheries of the empire. Papers 1 and 2 examine the two sides of a single debate on the tax status of waqf lands in Egypt in the mid-sixteenth century by analyzing a series of fatwas penned by Ebu's-su'ūd (d. 1574), the chief jurisconsult of the empire (paper 1), and the Ḥanafī and Shāfi'ī legal treatises composed by two Egyptian scholars, Ibn Nujaym (d. 1563) and al-Ghayṭī (d. 1576), in response (paper 2). Paper 3 explores the legal norms and strategies deployed by Christian monasteries in the Balkans to preserve their landholdings between the sixteenth and nineteenth centuries. The final paper analyses the works of the Damascene jurist, Ibn 'Ābidīn (d. 1836) to elucidate how Ottoman kanunnames and the subsequent fatwas that interpreted them emerged as the widely accepted legal sources for the land regime in Ottoman Syria.

DISCIPLINES

History

PARTICIPANTS

- Dr. Malissa Taylor -- Presenter
- Dr. Cihan Yuksel -- Chair
- Dr. Christopher Markiewicz -- Organizer, Presenter
- Dr. Abdurrahman Atcil -- Organizer, Presenter
- Prof. Evgenia Kermeli -- Presenter

PRESENTATIONS

- Dr. Christopher Markiewicz
  Ottoman Fatwas and the Controversy on Taxing Egyptian Waqf Lands in the

Sixteenth Century

In the middle of the sixteenth century, an enormous controversy erupted between Egyptian scholars and Ottoman officials concerning whether lands controlled by endowments (waqf, singular) were subject to taxation (kharāj). The controversy was so significant because approximately 40% of Egyptian agricultural lands were controlled by endowments in the sixteenth century even as the enormous agricultural productivity of Egypt also accounted for a major revenue source for the Ottoman imperial treasury. Modern scholarship has taken great interest in this controversy since the legal treatises it precipitated—penned by legal luminaries such as Ibn Nujaym (d. 1563)—demonstrate so convincingly the considerable evolution of Hanafi law on fundamental questions over several centuries, as well as the early modern consensus that coalesced around the positions of a number of jurists active in the Arab provinces of the Ottoman Empire. Notwithstanding these insights, exclusive focus on the works of Arab jurists obscures the diversity of Hanafi legal thought on this consequential question. This presentation explores the Ottoman juridical position on the Egyptian waqf controversy by examining a series of fatwas formulated by Ebu's-su'ūd (d. 1574), the chief jurisconsult of the empire, to buttress the Ottoman imperial edicts which established taxation on waqf lands. Rather than seeking to impose unilaterally a new legal regime in Egypt in the form of Ottoman dynastic law (kanun), Ottoman authorities necessarily engaged with Egyptian scholars in the mutually comprehensible legal language of the sharī'a. Although the Egyptian scholars and Ottoman officials reached diametrically opposed positions, both groups grounded their arguments in well-established juridical positions. Such an approach to governance entailed a prominent place for the accepted learned genres through which scholars articulated positions of political, social, and economic import. In this context, the fatwa emerged as a useful instrument for articulating and defending imperial policy since the opinions expressed in it could distill complex legal positions clearly and succinctly while also resting upon an enormous reservoir of legal thought worked out over centuries. Beyond this, the formulae of imperial policy—sultanic edicts and kanun—actively incorporated the juristic language and shar'ī principles worked out through fatwas and scholarly epistles to ground their positions within a widely recognizable, if still contestable, framework of the sharī'a.

- Dr. Abdurrahman Atcil
  Jurisprudence as the Language of Opposition in Early Modern Egypt: Egyptian Scholars and Ottoman Tax Reform

  After capturing Egypt in 1517, the Ottoman sultan Selim I (r. 1512–1520)

promised to recognize all property rights from the Mamluk era—private properties, endowments, tax immunities, salary assignments, etc. would continue as they had been. However, around 1550, the Ottoman government reversed its course. It sent a decree, accompanied by supporting fatwās from the chief jurist Ebussuud (d. 1574)—discussed in another paper in this panel—stating that all agricultural lands were now to be taxed uniformly: the government would collect its share (kharāj) from the dues paid by peasants regardless of the status of the land, whether public (mīrī), private (mulk), or endowment (waqf), with none of the previously recognized exemptions. This move met steep opposition. I focus on the responses of two Egyptian jurists: the Ḥanafī scholar Ibn Nujaym (d. 1563) and the Shafiʿī scholar Muḥammad b. Aḥmad al-Ghaytī (d. 1576). Both wrote treatises defending the status of the lands of Egypt, especially endowment lands, from the perspective of their own schools. They indirectly engage Ebussuud's fatwās, argue the unlawfulness of imposing kharāj on endowment lands in Egypt, and call on the Ottoman government to retract its decision. I analyze the treatises to show how Ibn Nujaym and al-Ghayti constructed their arguments against the new Ottoman policy, revealing that their take on the Islamic jurisprudential tradition was quite different from Ebussuud's. Each jurist selectively used the vast body of the opinions of the past authorities of their own school and explained, redefined, and qualified existing jurisprudential concepts in novel ways to support his position. Based on this case, I suggest that the language of jurisprudence served as a flexible tool for the expression of diverse views, one that imbued one's discourse with authority and offered a shared framework within which scholars who represented diverse interests could interact. It was also effective—when the reform laws were finalized in 1553, endowment lands preserved their exemption from the government kharāj.

- Prof. Evgenia Kermeli
  Retaining and Expanding Monastic Waqf Land in the Early Modern Ottoman Empire

  Monastic waqf landholding and its exploitation in the Ottoman Empire followed the trajectory of ottoman Hanafi jurisprudence and imperial legislation. From the first attempts to regulate Christian land waqfs through Mehmet the Conqueror's jurisconsult Molla Khusrev to their successful legalization by the efforts of Suleyman the Magnificent's şeyhülislam Ebu's-su'ud, monastic land waqfs, they not only retained their economic role in their regions but managed to expand their influence beyond their immediate environs. This paper using primarily examples from the monastic communities of Mount Athos and exploring archival material in ottoman Turkish and early modern Greek, will

discuss the legal culture of monastic communities and the methods they employed to defend and expand what they consider their God-sent burden, their landed endowed properties. Through court cases heard locally in the presence of the kadi, or the Imperial Divan and the Synod, we will attempt to unravel the variety of legal norms and tools used by the monks to defend "their" right against local aggressors, tax collectors and daily cultivators and their strategies, until the promulgation of the Ottoman Land Law of 1858. Moreover, through these court cases, we will follow the transformation of land use from the 17th to the 19th centuries.

- Dr. Malissa Taylor
  Ibn ʻĀbidīn and the widening consensus on miri land law: where does one find the law of miri land?

  Recent scholarship on law in the Ottoman Empire has introduced new paradigms highlighting the complexities of legal practice. The intersection and flow of authority through administrative personnel, imperial orders, registers, kanunnames, and the textual genres of the fiqh has shifted our understanding of how law was established and applied in the period from the sixteenth through nineteenth centuries. The field has likewise gained a new appreciation for the dynamism of legal structures in this period. As an area of Ottoman legal practice long known to have a hybrid character, the Ottoman law governing miri land (the land that the Ottomans claimed for the treasury) is particularly well suited for further illuminating this dynamism and the complexity of intersecting sources of authority. This paper combines a reading of multiple works by the famous jurist Muḥammad Amīn ibn ʻĀbidīn (d. 1836 CE) with a number of provincial Ottoman fatwas to illustrate two significant trends in the evolution of miri land law. First, specific kanunnames were increasingly recognized as the prevailing authority on miri land, regarded by ibn ʻĀbidīn as well as muftis in Rumelia and Anatolia as overriding local custom or previous scholarly opinion. Second, in Rumelia and Anatolia, equally important was an interpretive tradition of the kanun established by prominent muftis—some but not all of whom were ṣeyhülislams—that gave guidelines for applying and extrapolating the relevant kanuns. Although this interpretive tradition was integral to rulings in Turkish-language fatwas, it remained obscure in Damascus. The paper concludes that well before the 1858 Land Law the empire's legal scholars and bureaucrats were moving toward a greater consensus in the application of miri law based on adherence to a particular selection of kanunnames, but the halting nature of this trend reflected the workings of circuits of knowledge as much as ideological commitments or local issues of political economy.

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