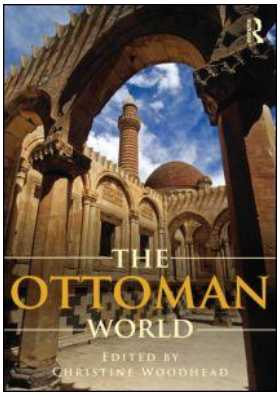

The Ottoman World

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CHAPTER TWENTY-FOUR

THE RIGHT TO CHOICE*

Ottoman, ecclesiastical and communal justice in Ottoman Greece

Eugenia Kermeli

The Ottoman empire as a multilingual, multicultural and multi-ethnic state attracted the attention of European writers, particularly travellers, from the sixteenth century onwards. The personal interests of such writers necessarily varied – from initial analyses of impressive Ottoman institutions such as the janissaries, in order to explain Ottoman success on the battlefield, to discussion towards the end of the empire of the reasons for its downfall. Non-Muslim Ottoman subjects also received a fair amount of attention, the common theme being ways of survival under the unpredictable Ottoman yoke. In contrast, modern historical research which addresses the issue of coexistence of Muslims and non-Muslims in the empire has found this to be mostly peaceful and generally devoid of the social tensions experienced in Europe in the early modern period.

According to Braude and Lewis, the Ottoman empire, as a classical example of a plural society, allowed a great degree of communal autonomy.[1] The famous *millet* system,[2] initiated shortly after the conquest of Constantinople in 1453, classified the empire's *zimmi*s (non-Muslims) into Jewish, Armenian and Orthodox *millet*s, each presided over by its own religious authorities appointed by Istanbul to oversee the empire-wide affairs of the community. This *millet* system as a socio-cultural and communal framework based on religion and ethnicity used to be considered the basis for the nationalism that tore the empire apart in the nineteenth and early twentieth centuries.[3] Notwithstanding traces of 'proto-nationalism' among some non-Muslims from the late eighteenth century onwards, there is now a consensus that such a well-organized *millet* system was a latter-day Ottoman institution 'that had been retrospectively cast into the past in the form of "foundation myths"'.[4]

However, while the existence of an early, official and empire-wide 'system' has been rightly questioned, the issue of essential legal autonomy for non-Muslim communities remains. Although appointment letters show that the Porte allowed the Orthodox patriarchs to adjudicate in cases of Christian family law, marriage, divorce and inheritance, there has been heated historical debate over the extent of jurisdiction of ecclesiastical courts and their power to impose their decisions. The presence of many non-Muslims in the courts of the Ottoman *kadi* (judge) even for family law cases has led historians to question the very existence of separate legal forums for Chris-

tians. Records show that, for whatever reasons, and despite the fact that *zimmi* sources often describe them as corrupt and discriminatory, non-Muslims frequently resorted to Ottoman *kadi* courts. Ronald C. Jennings notes that non-Muslim courts are never mentioned in the *sicil* records of the *kadi* courts, a fact which could lead historians to 'suppose that [the zimmis] had no internal judicial apparatus of their own or at least a very weak one'.[5] This apparent failure of parochial leadership to exert its legal prerogatives has been viewed as a function of Ottoman counter-regulations, of Ottoman equivocation, or of weak communal organization.[6]

From a different point of view, the legal choice enjoyed by Ottoman subjects in their pursuit of justice has been discussed primarily as a privilege granted to the non-Muslim populations of the empire.[7] Scholars such as Aryeh Shmuelevitz, Joseph Hacker and Nicolaos Pantazopoulos have used *responsa* and patriarchal and synodical letters to prove the existence of separate courts operating in the Ottoman empire for Christians and Jews. They have illuminated the points of tension between these separate courts and the *kadi* courts of Islamic law – tensions which emanated from the doctrinal differences and procedural practices of different bodies of law.[8] They have also focused on the level of legal autonomy enjoyed by non-Muslim subjects and on questions posed by scholars' utilization of *kadi* court records. If indeed the *zimmi*s (Christians and Jews) had the right to settle most of their legal affairs in officially and communally recognized *zimmi* courts – when these cases did not cross religious boundaries, involve capital crimes, or threaten public order and security – how can we explain their opting for *kadi* courts, especially in family law cases? In her study of the *kadi* court of Sofia, Rossitsa Gradeva argues that Christians preferred the Ottoman court because it provided better documentation, lower fees, more favourable procedures and a greater likelihood of being able to enforce its rulings.[9] Litigants had access to certain rights if they applied outside their own legal system. For example, Jewish women could get a divorce and claim inheritance.[10] However, these are examples of legal awareness and a legal environment readily offering advice to individuals regardless of their religious or legal status. They do not address the question of the legal autonomy of *zimmi*s or the degree of this autonomy.

ECCLESIASTICAL AND COMMUNAL JUSTICE: SOURCES AND SCOPE

Historical evidence for the study of *zimmi* courts is problematic. For Jewish communities, the communal court records required to balance the information gained from Ottoman *sicil*s (*kadi* court records) have been lost: 'for all intents and purposes there exists today not a single series of Jewish court records'.[11] *Responsa* collections are restricted to a specific community or time period.[12] However, for the Orthodox Church in the Greek lands of the empire, ecclesiastical and communal court records are preserved in considerable numbers in the national and local archives of Greek cities and monasteries. These have been little used.[13] There are many reasons for the silence surrounding these sources in historical discourse. The major hurdle is an ideological one. Even today, some Greek scholars argue vigorously about the privileges given to the patriarch, and his instrumental role and that of the Church in preserving Greek national identity through the *millet* system during 'the long and dark ages of the

Turkish yoke' (*tourkokratia*). For these scholars, patriarchal letters and synodical and canonical orders prove the existence of a centralized system. They also demonstrate the degree of obedience required by the patriarch and offered by his obedient local dignitaries and lay Christians. Thus, the three canonical orders sent by the Patriarch Maximos II some time between 1476 and 1482 to instruct judges and to stress that marriage cases should be judged only by bishops are evidence that a judicial system existed in the fifteenth century.[14] However, the challenge is not to prove the existence of such judicial bodies, but to determine their jurisdiction, to discuss the body of law used, and to explore the degree of interaction between different legal systems in the Ottoman empire.

The appointment documents (*berat*s) of patriarchs and metropolitans allow us to analyse the degree of judicial jurisdiction given by the Ottomans to the Orthodox Church and how this changed over time. Elizabeth Zachariadou, in a study of the earliest Ottoman documents relating to the Orthodox Patriarchate, has questioned the notion of privileges being given to the first patriarch, Gennadios Scholarios, by Mehmed II.[15] She depicts an institution subordinated to and in need of Ottoman executive authority.[16] The majority of ecclesiastical court records date from the seventeenth century, which raises the question of why local bishops began to document their decisions at that point. Was it as a result of a change in their judicial authority or in line with general developments in Ottoman society? Did episcopal decisions carry more weight in litigation processes if used in other courts from the seventeenth century onwards? Did Christians begin to apply more frequently to communal courts, or were they simply more conscious of their rights and better informed on legal procedures? Other issues to explore would be the extent of adherence to the ecclesiastical judicial jurisdiction granted by the Ottomans, and whether local societies and bishops oversaw other civil matters in addition to family affairs and arbitration cases. An investigation of the interaction between *kadi* and ecclesiastical courts, and whether the local bishop accepted the *kadi*'s decisions, would allow us to determine the degree of autonomy enjoyed by *zimmi* courts.

On this last point, we should consider whether *zimmi* courts were simply arbitration bodies or whether they were established courts whose decisions were respected and imposed. The problem modern scholars face in answering this question stems from Austinian legal positivism and the nineteenth-century bourgeois liberal understanding that the word 'law' was restricted to social control exercised by the state, and that the state retained the exclusive right to exercise coercion. In such a case, we could expect to see a linear structure of non-Muslim courts —> *kadi* court (local Muslim judge) —> *divan* court (imperial appeal court). In fact, it is clear that, by excommunication or imposition of fines on local communities, a non-Muslim court actually possessed a considerable degree of coercion. Research also shows that, despite the fact that non-Muslim courts had to accept the decisions of other courts, implementing such decisions was not always possible. Further, litigants did not always follow a linear order, but applied to different forums according to their legal strategy, using the decisions of one forum as a legal tool in another. Thus, non-Muslim legal forums were more than arbitration bodies, and will be considered here as courts even if some of them, especially the communal ones and ecclesiastical courts adjudicating on civil cases, lacked official recognition.

In ecclesiastical courts, canonical and Byzantine law formed the corpus of law utilized by the bishop. In communal courts, we observe regional variations termed 'local

custom' (in Ottoman, *adet*). Most surviving community records are located in the Aegean islands, where for historical and geographical reasons, such as an island's status before conquest and the way an area was incorporated into the Ottoman system, the legal system developed in an idiosyncratic manner. 'Local custom' was a mixture of Byzantine, canonical, Latin/Venetian and Ottoman influences. Unlike ecclesiastical records, which concentrate primarily on family matters, community records are a rich source of cases related to taxation, intercommunal administration, civil matters, family law and even (albeit rarely) criminal law. Here again, researchers have different ideological perspectives. For some, these records are the best examples of a communal organization centred on the Church, functioning as 'pockets of resistance' and as 'fine examples of independent societal bodies taking the lead in the struggle against the oppressors in the nineteenth century'.[17] For others, these are examples of idiosyncratic *insularités*, a result of the interaction between geography and the nature of the Ottoman presence in the region.[18]

The sources available on ecclesiastical justice before the first ecclesiastical court records of the seventeenth century are mainly letters sent to the patriarch from local bishops, or orders from him to local bishops to attend to the affairs of laymen who had requested his arbitration. One of the earliest extant references, concerning a litigation process conducted by ecclesiastical authorities, indicates Greek attitudes to Ottoman rule on the Aegean island of Limnos within twenty years of its conquest.[19] Around 1500, the metropolitan of Limnos wrote to the monastic council at Karyes in Mount Athos concerning litigation over a sheep-run between the dependencies of the Athonite monasteries of Dionysiou and of Pantokrator on the island. The case had been judged by the metropolitan himself with the help of the elders, who are the signatory witnesses in the document. In terms of procedure, the litigants (the representatives of the two monastic dependencies), Kallistos of the Dionysiou monastery and Neophytos of Pantokrator, were present. The elders were summoned and 'under threat, on pain of spiritual punishment', were asked 'for the truth'. On close examination of the charters of both parties, they concluded unanimously in favour of the Dionysiou monastery. Although this must have been the end of the dispute, the metropolitan's letter states that Neophytos of the Pantokrator monastery had been 'unruly' and had threatened to take his case to foreigners – i.e., the Ottoman authorities. It was for this reason that the letter was sent to the monks of Mount Athos, his superiors. The metropolitan urged that there should be no disorder or 'spreading of scandal among the barbarians [the Ottomans]'. The defiant Neophytos was threatened with aphorism (excommunication), the only tool available in the hands of the Church. The witnesses to the case are of interest. Nine Christians and three Muslims – possibly converts – signed the document. Of the nine, five were clearly religious men (priests or monks), one was the son of a priest, and the others had the title 'kyr' (lord), denoting their high position in society. The presence of new Muslims as witnesses does not signify a shared court, but suggests that they remained respected social elders. This letter indicates that, already by 1500, while the justice of the metropolitan was binding on the local community, litigants reserved the right – and sometimes exercised it – to plead their cases to the Ottoman authorities. It was through fear of interference that the ecclesiastical and communal authorities tried to prevent this.[20]

Patriarchal and metropolitan letters and orders concentrated primarily on family law and the internal organization of the Church. Occasionally, ecclesiastical

authorities were asked to intervene in disputes by adopting an arbitration role rather than a formal judicial one.[21] The tool used to persuade wrongdoers was the threat of excommunication, a powerful weapon in pre-modern societies.[22] Only the Ottomans had actual executive power, as indicated in the *berat*s of appointment of patriarchs and metropolitans, wherein the Ottoman administration explicitly defined the boundaries of ecclesiastical judicial jurisdiction.

It is apparent that any privileges given were personal to the patriarch and not to the Church,[23] and that ecclesiastical jurisdiction was restricted to family law only. Here, the sultan recognized *adet* (custom) and did not refer to the *kanun* (administrative law). In a *berat* issued by Bayezid II in 1483, Patriarch Symeon was granted authority to appoint and remove his clergy at will and to inherit from them. The patriarch was to oversee marriage, divorce and inheritance according to their 'custom'. If a lay Christian did not marry or divorce according to religious practices, then he or she could not be accepted in the Church.[24] On inheritance, a *berat* of Süleyman issued in 1525 to Patriarch Ieremias permitted the involvement of the Ottoman provincial authorities if the heirs in a disputed case referred the matter to them.[25] This is the first known mention of the right to judicial choice for the Christians of the empire in inheritance cases.

Seventeenth-century *berat*s further elaborate the patriarch's right to punish. In 1688, the metropolitan of Crete, Athanasios, was granted a detailed appointment order clarifying his financial responsibilities to the Porte, his right to inherit from clergymen and to collect ecclesiastical dues. Additionally, he was allowed to punish priests who refused to pay their taxes to the treasury.[26] This development was related to the change in the tax collection system in the seventeenth century. As local communities were collectively responsible for the payment of their taxes, local bishops functioned as tax collectors in the *iltizam* (tax farming) system.[27] A bishop's right to punish those who defied religious laws on marriage was also upheld: the sultan forbade local Ottoman officials such as *kadi*s, *naib*s (deputy *kadi*s) and dignitaries from imposing fines, a ruling which indicates that there had been encroachment on previously accepted judicial rights of the Orthodox Church.[28] The sultan also forbade similar attempts when the bishop imposed an oath or aphorism in marital disputes.

A further development regarding the judicial authority of bishops was established in the 1704 *berat* of the metropolitan of Crete, in which he was permitted to act as arbitrator between lay Christians who had jointly agreed to submit to his judgement, and to administer oaths as part of Church procedure.[29] The long-established practice of arbitration seen in patriarchal and episcopal orders is here reflected in an Ottoman order.

Clearly, the authority of the Church to adjudicate marriage, divorce and inheritance issues of lay Christians, though established as a personal privilege granted by the sultan to patriarchs and metropolitans from the fifteenth century onwards, did not deter the interference of local Ottoman dignitaries. The numerous warnings against their encroachment included in the *berat*s reflected a continual struggle between the Church and the Ottoman central administration. On the one hand, the administration recognized the Church with limited judicial rights; on the other, it was not willing to limit the individual judicial freedom of its subjects to submit to the legal body of their choice. However, the extension of judicial jurisdiction to include cases of amicable settlement should not be viewed as an establishment of the authority of the Church

over its people. When this occurred, it was an external rather than an internal development. The changes in seventeenth-century Ottoman society and the expansion of the tax-farming system, with religious leaders participating as tax farmers, resulted in the strengthening of local communities, as they were collectively responsible for their obligations to the administration. This then gave the Church and other local elements the opportunity to establish authority over the *zimmi*s, in their role as agents/mediators between the centre and the periphery.[30]

ECCLESIASTICAL COURTS AND CODICES

In ecclesiastical courts, litigants made an oral request to apply to the court and were summoned to appear together, unless one of them presented a written statement instead. Cases were heard by the bishop, accompanied by a number of priests and archons (local elders). The written record of a decision was certified at the end of the entry either by the bishop alone, affixing his seal, or supplemented by the signatures of the witnesses – in their own hand or added by the scribe. All witnesses were male; in one known case a Muslim also signed. The detail of decisions recorded varied according to the nature of the dispute and the degree of questioning by the bishop, who might also allow expert witnesses to assess the statements.[31]

In some cases, confession proved full proof of a claim; observable signs were also accepted as full proof. However, documentation was the most important tool in the litigation process. This could consist of copies of statements, wills and dowry contracts registered in the codex, *hüccet*s (deeds) issued by the *kadi*, or accounting books of trading partners.[32] All documents had equal weight in court. If a document was disputed or was said to have been obtained by force, a minimum of two witnesses were examined, sometimes under threat of aphorism and an oath when there was no other proof.[33] Once a decision was reached and registered, the bishop would write an aphorism to deter anyone who might wish to dispute his decision in future. There is no further evidence of another form of punishment exercised by the metropolitans. However, one reference suggests that they were aware of community punishment. In 1700, a proven adulteress was noted in the ecclesiastical record as having been 'punished by her own community with external punishment'.[34]

The material contained in the ecclesiastical codices provides information on a wide range of personal and family matters, as indicated by the cases registered in the codex of Sisaniou in Macedonia, dating from 1686 onwards.[35] The majority are inheritance-related. Wills were registered in the codex; heirs sought the intervention of the bishop where misunderstandings arose regarding the division of property; under-age children's property was handed over to their guardians after the division; adopted children sought their rights in court. A significant part of the codex is also devoted to financial disputes among trading partners, the earliest dating from 1688, or to the acknowledgment and payment of debts. Only a few cases are related to civil law, for example, disputes over the boundaries of a house. The codex has a few entries on monastic properties, the refurbishing of churches, and debts owed by clergymen. Communal debts and disputes against other communities were infrequently registered, and not before the nineteenth century. This was probably the result of administrative changes following the issuance of the Hatt-i Hümayun of 1839, a Greek translation of which is found in the codex.[36]

Although inheritance is well represented in the code, marriage and dowry contracts are absent, and there are only four cases of divorce, due to fornication, illness of the spouse or abandonment. This strengthens the hypothesis that other codices, perhaps thematic ones, were kept in parallel. This assumption is supported by the contents of the codex of Trikkes in Thessaly.[37] Relating to a relatively small metropolitan see, this codex includes entries on various ecclesiastical and property matters, but the greater part of it is devoted to family law, especially divorce, pre-nuptial gifts, dowry contracts, inheritance disputes, the appointment of guardians, claims of inheritance upon maturity, and wills. The same is true for the codex of Kos (Chios), where, out of 191 notary and judicial decisions, fifty-nine were divorce cases.

We can tentatively conclude that the registration of cases heard in the episcopal courts was voluntary. Litigants applying to the ecclesiastical court received the decision of the metropolitan in a separate sheet. If they then wished to have the decision registered in the codex, as we conclude from a 1735 entry, the registration fee was high (5 *aslan guruş*), perhaps prohibiting the registration of all decisions.[38] Indication of the need to register is stated in some entries in the codex of Sisaniou and Siatistas: 'a copy [of the decision] should be registered in the present Holy Codex, as it is the custom, and it should be sealed to have weight and power in any court [kritirio] internal [communal] and external [Ottoman]'.[39] In cases of *sulh* (amicable settlement), the litigants agreed to provide each other with a *hüccet* obtained from the *kadi* as a further guarantee. Registration in the codex was to be used as proof of the agreement.[40]

This examination of ecclesiastical justice therefore points to a legal body, initially concerned mainly with family law, which from the late seventeenth century acquired greater significance within Orthodox communities. Litigants who sought ecclesiastical court justice were prepared to register episcopal decisions officially in ecclesiastical codices, despite the considerable cost involved. Ottoman recognition of this role of the Church, as reflected in eighteenth-century *berat*s, allowed Christian litigants to use the episcopal court, the decisions of which were binding. Those who wished to strengthen their position further could also register the decision of the non-Muslim court in the *kadi* court. By the late eighteenth century, the Church had succeeded in expanding its jurisdiction to civil law.[41] This was a *de facto* development, resulting from the increased political role given by the Ottomans to the Patriarchate of Istanbul, which in 1766–7 annexed the rival Patriarchates of Ochrid and Pec.[42] This judicial expansion of the jurisdiction of metropolitan courts in the Aegean islands is attested in the many cases of real estate and other civil differences judged by the metropolitan of Paronaxia (the islands of Paros and Naxos) during the entire second half of the eighteenth century.[43] As a result of these developments, the Orthodox Church came to operate antagonistically with the other source of justice available to Christians in the Ottoman empire – i.e., the communal courts.

COMMUNAL COURTS

A number of theories have been proposed to help explain the existence of communal courts in the Greek lands under the Ottomans. These fall into two main groups: those which maintain the uninterrupted continuation of communal institutions from ancient times to the present[44] and those which propose the importance of Ottoman influence on the development of local community councils.[45] Most of the available

sources, dating from the mid-seventeenth century, support the second theory. A further indication of the 'informal' development of Christian communities in Greece is the fact that community courts varied regionally in numbers and organization.

Communal justice was far more complex than ecclesiastical justice. In the Aegean, previous Frankish/Venetian legal practices interacted with Byzantine legislation, 'local custom' and Ottoman influence in an idiosyncratic manner unique to each island. This is a fascinating and as yet unexplored subject. In communal courts the majority of members were community elders, elected annually. Clergymen sometimes participated, but as representatives of the community rather than of the Church. Occasionally, Ottoman dignitaries such as *voyvoda*s or dragomans were members, or appointed local elders as their representatives. As most of these officials were Christians, we would have to examine their role in court to determine whether they participated officially as members of the Ottoman administration or simply as negotiators to eradicate points of conflict.[46] As in ecclesiastical courts, procedure was oral, confession was considered to be full proof, and oath coupled with the threat of aphorism was administered in case of a lack of evidence. Documents were copies from the communal codes, private documents signed in front of witnesses, or any official Ottoman documentation. Community council decisions were generally respected within the community, although community members were free to apply to other courts. Where decisions were contested, appeal could be made to the Ottoman courts or to the *kapudan paşa* (the Ottoman chief admiral), in whose governorate the islands lay. Favourable decisions would be taken back to the communal court for acceptance and registration. As the expense of 'external litigation' was high, it was often agreed beforehand that the party referring a case to the *kadi* would have to bear the costs.

Local community elders used fines to add weight to their decisions. As a further sanction, in a society where community and neighbourly assistance was important, non-compliant members could be deprived of communal protection. In a case from Syros in 1761, a woman named Margarita had been unco-operative and refused to comply with the advice of the *castelano* (clerk of the court) that she remove stones from the front yard of her neighbour's house. The elders decided to hand her over to the Ottoman officials who were visiting the island so that she could be punished and forced to pay a fine. She was also ordered to pay indemnities to her neighbour for his losses. Finally, she would not be defended by any *epitropos* or *proestos* (communal elders) in the Ottoman court, and would have to pay a fine of 20 *guruş* to the representative of the *ağa* (the local tax collector), regardless of the outcome of the case.[47]

Community council records from the Aegean islands detail a wide range of civil law cases, in particular business deals, debt and criminal punishment.[48] They are also a particularly useful source for assessing local–Ottoman relations. This is due, firstly, to the generally more idiosyncratic nature of the Ottoman presence in the islands than on the mainland. Local communities were allowed to continue pre-conquest judicial practices, with the result that a substantial number of extant sources, including adjudication and notarial documents, are preserved. Secondly, since representatives of Ottoman justice were not always readily available on each island, and on account of the 'privileges' granted to these communities, we can trace the interaction between different sources of justice, communal and Ottoman. Most of the islands came under Ottoman rule in the fifteenth century; in 1522 Rhodes was captured from the Knights of St John, and in 1537 Syros, Ios, Paros, Antiparos, Skyros and North Sporades were

added to the province of the *kapudan paşa*. Ottoman sovereignty was established on Chios in 1566 and, in stages, on Naxos by the 1580s.[49] Whether these islands were autonomous areas or were integrated into the Ottoman system (and, if so, to what degree) is a subject of debate.[50]

In the *ahdname*s[51] given to the population of Chios in 1567 and to Naxos, Paros, Andros, Mylos, Syros and Santorini in 1580, the balance between Ottoman and local justices was carefully delineated. For example, new judicial cases could be heard by *sancak bey*is, *kadi*s or *naib*s, but they were not allowed to judge cases which had already been heard in Christian courts and had to accept previously held documentation. If someone appealed against a previous decision, the *kadi* could not interfere, but had to leave the islanders to solve the dispute among themselves. If they chose to resort to the arbitration of a third party, the *kadi* would simply verify the settlement. Wills would be respected, and could not be interfered with by local dignitaries. No one could force Christian women to marry against the (canon) law. If a person had a dispute, he or she would not be prevented from bringing the case to the Ottoman court; neither the *sancak bey*i nor the *kadi* could prevent anyone from petitioning and complaining to the Porte.[52]

In similar fashion to the *berat*s of ecclesiastical authorities, *ahdname*s portray the framework of judicial freedom granted to Aegean islanders. The undisputed authority of local arbitration and the use of legal documentation suggest that the subsequent pursuit of justice in the Ottoman legal system was much more complicated than appears when using only *kadi* court records. The right to apply to any court or arbitration body is established again in the imperial orders and was exercised by Christian subjects even in 'highly self-governed' communities. The right was frequently exercised by islanders, despite the physical effort and high costs involved in having a case heard before the *kadi*, especially for those who had to travel to find the representative of 'imperial justice'.

INTERACTION OF ECCLESIASTICAL AND COMMUNAL JUSTICE WITH OTTOMAN JUSTICE

It is now clear that, contrary to the impression given when using only Ottoman records, non-Muslims often used both their own and Ottoman courts on matters which, strictly speaking, should not have involved the Ottoman authorities. This occurred in cases either where their own systems of justice did not produce the desired result (as often in divorce cases) or where the extra authority of the *kadi*'s court could ensure that a decision was carried out. *Kadi*s were appointed to large and important islands such as Chios, Rhodes, Mytilene, Paros, Andros and Samos. Foreign travellers visiting the islands attested to the fact that sometimes the *kadi* was almost the only Ottoman presence there. The traveller Tournefort reported that smaller islands relied on travelling *kadi*s, who adhered to local custom and accepted the services of community elders. Frequent corsair attacks, or Venetian–Turkish wars in the seventeenth century, often resulted in the evacuation of the *kadi* for safety reasons.[53] The presence of corsairs in the region had further ramifications for the administration of justice. Tournefort notes that the Knights of Malta would occasionally answer the complaints of Catholic islanders against Greeks, and would administer fines or strokes as punishment.[54] The

other source of Ottoman justice on the islands was the *kapudan paşa*, as provincial governor and recipient of most taxes.[55] Cases could be heard on appeal in his council or on his annual tour of the islands. The role of the dragoman (the admiral's Greek-speaking translator), who was instrumental in the preparation and execution of cases, increased towards the end of the eighteenth century.[56]

Since the Church was reluctant to dissolve marriages, spouses applying for a divorce would be advised to reconsider, and the bishop might intervene personally in order to eliminate some of the sources of grievance and prevent separation. Dissatisfaction with this procedure could lead to an appeal to the *kadi*'s court. For example, in 1704 a young woman named Eirene presented her case in front of the metropolitan and the clergymen, and requested separation and divorce from her husband Triantafyllos, claiming that he was cruel and beat her daily. On being summoned to court, her husband was reprimanded, but to no avail. Eirene then 'decided to betray her belief in the church, and although she would be punished by God, she went to an external court [i.e., the *kadi* court] and she was separated from his [her husband's] tyrannical hand'. The bishop subsequently accepted the *kadi*'s ruling and a divorce settlement in which Triantafyllos promised to return to Eirene her dowry and half of the pre-nuptial gifts.[57] This is an excellent example of how ecclesiastical and Ottoman courts could be used to the same end by a non-Muslim. After her initial failure to obtain a divorce from the bishop, Eirene applied successfully to the *kadi*, but she still needed to have her divorce recognized by the ecclesiastical court in order to gain a recognized canonical divorce, which would permit her to remarry without difficulty.

In a dispute registered on Syros in 1763, Linardos Halavazis applied to the *kadi*'s court in an attempt to force his father-in-law to return property previously given as dowry and which the latter had repossessed while the litigant was absent in Istanbul.[58] It is not clear whether Linardos had tried communal justice before taking his cause to the Ottomans, but the executive authority behind the *kadi*'s decision must have been the reason for his application. However, in the islands the *kadi*'s decision could be implemented only by the local, communal administration. In this case, it did so by banning Linardos's non-compliant father-in-law from access to the disputed property under threat of a fine payable to the local Ottoman dignitary, in the certainty that, if necessary, this would be collected.

Sometimes litigants tried their luck in two different *kadi* courts before reaching an agreement. In 1682, in the disputed case of a field left by will to a monastery, the heirs claimed it from the prior of the monastery in the presence of the *kadi* and won. The prior then took the case to another *kadi*, who judged in his favour. The two parties subsequently reached agreement by negotiation between themselves, as the costs of taking the same case to different forums was high.[59]

On the other hand, fear of being taken to the *kadi* sometimes led to injustice. In 1685 a woman called Frosyne appealed to the communal court against a creditor of her deceased husband who, she claimed, had forced her to sign a pledge in the *kadi* court. The local court, taking into consideration that a judicial act was made under duress, promptly rectified it. Equally, both local Ottoman officials, such as *voyvoda*s, and community elders were themselves reprimanded if they violated local custom and/or Ottoman law.[60]

A variety of crimes might be referred to the Ottoman court if they could not be dealt with satisfactorily by communal courts and their punishments. Petty theft and

damage to property and persons were dealt with internally by the communities, who tended to be lenient in order to avoid involving the imperial authorities. However, habitual offenders were turned over to Ottoman justice.[61] Slander was punishable in an Ottoman court if accusations of guilt continued to be made after an accused had been cleared of wrongdoing by the *kadi*. Incidents of bodily harm incurred indemnities, following the prescriptions of Ottoman law. In cases of homicide and rape, kidnapping, prostitution and other sexual crimes, Ottoman officials or their representatives had ultimate authority over judgements.

Finally, communal documents can shed light on the *sulh* procedure observed in the *kadi* court, and particularly on use of written evidence in the Muslim court, where traditionally words and witnesses played a more significant role. In one case, where the *kadi* could not decide after hearing the two parties, he summoned the elders of the community and asked them to investigate the 'letters of the two sides presented to him, and to tell him whatever they knew about the case, so that he would decide'.[62] While Ottoman documents such as the *hüccet* were accepted in communal courts, locals occasionally had problems reading Ottoman, and decisions based on them could be conditional.[63] Many Turkish loanwords, especially judicial and taxation terms, found their way into the Greek communal and ecclesiastical records. Sometimes even full Ottoman phrases were included to avoid any misunderstandings and the subsequent contesting of the decision.[64]

INTERIM CONCLUSIONS

The claim that ecclesiastical and communal courts were no more than legend is clearly disproved by the above discussion of ecclesiastical and communal records. However, the existence of these records raises many other questions. In terms of judicial autonomy it appears that, on the whole, until the eighteenth century, ecclesiastical jurisdiction followed the rights granted by the sultans in the appointment *berat*s of patriarchs and metropolitans, and that it covered primarily family law. Even the expansion of Church jurisdiction to include arbitration cases was initially only granted *de jure* for family-related issues. *De facto*, as we can deduce from patriarchal interventions in civil cases, Christians applied civil disputes to the judgement of clergymen, albeit informally. This ambiguity about rights and responsibilities allowed the patriarchate to take the lead and establish an undisputed authority from the mid-eighteenth century, not only in the traditionally accepted area of family law, but also in civil law. It is not coincidental that Byzantine legal manuals such as the Hexabiblos were published and widely circulated around the same time to 'educate' clergymen on issues of civil law.[65] The political support enjoyed by the patriarchate after the annexation of rival patriarchates and the active involvement of Phanariots in church affairs facilitated the *ad hoc* expansion of ecclesiastical jurisdiction. No research has been done on whether the Ottomans were aware of and fully supported such developments. However, we do know that local Christian communities were not at ease with the expansion of the judicial authority of the Church to civil law, since this was considered a communal responsibility.

Regardless of whether the sultans endorsed or ignored the decisions of the patriarch, in the seventeenth century provincial administrative and taxation reforms began to create more coherent Christian communities. They also allowed local agents, clergy

or laymen to act as mediators between the centre and the periphery and as translators of the communal voice through the *iltizam* system. To some extent, Aegean island communities had already attained this status in the sixteenth century as a result of the idiosyncratic character of Ottoman conquest and presence. Local community councils, although differing in structure according to local custom, judged and registered decisions of law on obligation, succession law, commercial law, property law and even torts against persons. Documentation, being important in the litigation process both inside the communities and in Ottoman courts, produced admirable volumes of notarial and community records. Scholars have identified elements of Byzantine and Frankish/Venetian law, which show that the legal structure and notarial tradition inherited from previous rulers was allowed to continue under the Ottomans. However, a large part of what is termed 'local custom' still awaits proper attention from experts in Ottoman law. Even in such a highly independent legal system, there was clearly an unimpaired legal choice to transfer cases to Ottoman courts; the Ottoman administration and its legal system were utilized in ingenious ways at every stage of litigation. In other words, the level of judicial autonomy local communities enjoyed neither hindered individual freedom of legal choice nor undermined Ottoman law as the law of the land. However, the supremacy of Ottoman law did not necessarily compromise earned legal privileges. Cases were reviewed and decisions of Ottoman dignitaries were cancelled if they were in obvious conflict with local custom.[66]

A second set of unanswered questions is related to the reasons why ecclesiastical and communal court records were codified mostly in the seventeenth century. Christians paid handsomely to have their decisions, witnesses, out-of-court settlements and contracts registered in Christian codices. According to the entries, this was to safeguard the owners of documents from future claims in the Christian or Ottoman courts, or in order to be used as part of their litigation strategy in 'external' and 'internal' justice. We can presume that this was a result of the general legal awareness that Ottoman subjects exhibited from this period onwards. The judicial system became more organized, the *kadi* expanded his jurisdiction even to penal law, and communities and individuals explored the right of appeal to the Porte and registered their complaints in *şikayet defterleri* (registers of complaints).[67] Christians and Muslims seemed to be more legally educated. Many private documents attest to the writing up of contracts in the presence of bishops without a subsequent registration in episcopal codes. However, the question remains as to why certain communities did not codify Christian court decisions or did so very late (around the turn of the nineteenth century). Until detailed regional studies emerge, we can only guess that the legal 'autonomy' of Christians was determined by the degree of Ottoman 'state' manifestation. Thus, in certain Greek lands, such as the mainland, where community organization did not or could not develop beyond its taxation duties, the metropolitan codices were sufficient to supplement the *kadi sicil*s. Other factors to take into account are the influence of existing legal tradition and practices and literacy levels in different areas of the Ottoman empire.

The Christian court records further our knowledge of the function of the *kadi* and the administration of Ottoman justice. Documents written in Greek were presented to *kadi*s not only to establish the identity of the parties and witnesses involved but also as judicially legitimate sources of information.[68] These could include written registration of a previous oral agreement.[69] Christian ecclesiastical and communal court records complement the silence of the *kadi* records regarding the identity of arbitrators

and their function where the names of the witnesses and the terms of the agreement are clearly registered. The system of arbitration was highly developed, with threats of excommunication and fines employed to guarantee acceptance of the decision.

Finally, the Christian archives provide a glimpse of local networks ready to offer legal and other assistance to all Ottoman subjects, regardless of faith or legal status. For instance, it has always been assumed that *kadi*s received a certain amount of local help, given that they changed posts frequently. Local records provide evidence of local community leaders (noted under terms such as *ayan-ı nasara*) assisting travelling *kadi*s on their visits to remote islands and co-operating with local Ottoman dignitaries to uphold morality and to demand the expulsion of undesirable offenders. Similarly, Ottoman dignitaries provided statements to facilitate claims registered in notarial codes. However, there is a lot yet to be done to identify whether social status was a determining factor in achieving legal pluralism. We should note, however, that utilizing any 'legal tool' to attain justice was not a practice exclusive to Christians. Muslims were also aware of the power of certain Christian legal tools and could use these in their pursuit of justice. When in 1784, Şah Sultan sent her tax collector Yusuf Ağa to Andros to collect her dues, he asked for a new evaluation of taxation and requested an aphorism from the local bishop to ensure that the Christian estimators did their job fairly.[70] Examples like this indicate the complex legal environment shared by Muslims and Christians in Ottoman society.

NOTES

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1 Braude and Lewis 1982: 1.

2 According to the *millet* system theory, the head of the Orthodox, Armenian and Jewish *millet* was personally responsible for the affairs of the community vis-à-vis the Porte. They acted as the administrative officer responsible to the state for their community, and to their community for the state, maintaining the fiscal and juridical autonomy of each recognized community. Thus, through this system the Ottoman dealt with their non-Muslims as members of a community, not as individuals.

3 Karpat 1982: 142.

4 al-Qattan 1999: 431; Masters 2001: 61.

5 Jennings 1973: 271; cf. Faroqhi 1987a: 154, 209–10.

6 Shmuelevitz 1984; Pantazopoulos 1984: 103–7; Hacker 1994: 183–4.

7 Fattal 1958; al-Qattan 1999; İnalcık 1982: II, 437.

8 Shmuelevitz 1984: 48–9; Goodblatt 1952: 118–29.

9 Gradeva 2004a; cf. Ergene 2003: 181–4.

10 Shmuelevitz 1984: 66–7, 69; Cohen 1984: 110–39.

11 Hacker 1994: 181.

12 al-Qattan 1999: 432.

13 Many have been published in Greek, but a great number are still in manuscript form. For a detailed bibliography, see Arnaoutoglou, www.geocities.ws/ekeied/. Cf. Kermeli 2007: 167, n. 15, for a partial list.

14 Gkines 1966: 49.

15 Zachariadou 1996.

16 Cf. Konortas 1998.

17 Paparrygopoulos 1858: 219–20; Paparrygopoulos 1896: 5/2, 115; Vacalopoulos: 1976: II, 137.
18 Cf. Vatin and Veinstein 2004: 9–10.
19 Oikonomides 1968: 187–9.
20 Lowry 2002: 38–41, for an alternative reading of this document; cf. Kermeli 2007: 172, n. 23.
21 Kermeli 2007: 173–4, for two cases of arbitration between laymen (one of them involving a Turkish 'lord' and the *kadi*'s court) in the 1570s.
22 Mihaelaris 1997: 269–335.
23 Zachariadou 1996: 94–5. This is in accordance with the Islamic prescription wherein collectivity is not legally recognized.
24 Zachariadou 1996: 158.
25 Zachariadou 1996: 174.
26 Stavrinides 1972–85: II, 312–14.
27 Ibid.: II, 248, 250, 393.
28 Ibid.: II, 313.
29 Ibid.: II, 313–15; Kermeli 2007: 175–6.
30 Kermeli 2008.
31 Kermeli 2007: 192–3, on the law books used by the Orthodox Church in the seventeenth and eighteenth centuries.
32 Pantazopoulos 1984: 117, 67, 80–1, 113–15 respectively.
33 Giannoules 1980: 50; Pantazopoulos 1984: 20.
34 Pantazopoulos 1984: 69.
35 Pantazopoulos and Papastathi 1974: *passim*.
36 Cf. Kermeli 2007: 178ff., for detailed references to the codices discussed in this section.
37 Giannoules 1980.
38 Pantazopoulos and Papastathi 1974: doc. 99, 18–19.
39 E.g., ibid.: 103, doc. 79, dated 1719.
40 Ibid.: 89, doc. 71, dated 1715.
41 Pantazopoulos 1984: 44; Gkines 1960: 237.
42 Pantazopoulos 1984: 44.
43 Lykouris 1954: 219.
44 Paparrygopoulos 1858: 219–20; Vacalopoulos 1976: II.
45 Urquhart 1836: II, 37, 43; Argyropoulos 1859: II, 26, 36–7.
46 Tourtoglou and Paparrega-Artemiade 2002: 14–19.
47 Siatras 1997: 162.
48 Cf. Kermeli 2007: 188–9.
49 Slot 1982.
50 Koukou 1989: I, 47–52; Vacalopoulos 1976: I, 342–6; Vatin 2004: 72–6.
51 There is extensive discussion as to whether *ahdname*s resemble 'capitulations' or were appointing documents (*berat*s). Unfortunately, the Ottoman originals have not yet been found. However, the Greek translation of the 1580 privilege charter given to the Cyclades islands mentioned that Ieronymos Somaripas, Bartholomaios Kampy and Michael Pangalos had petitioned the Porte on behalf of the islanders and were granted a *berat* similar to the one given to Chios. The confusion in terminology and the adaptation of the term *ahdname*, which denotes a covenant, stems from the practice that *ahdname*s, like all documents conferring a privilege, were drawn up in the form of a *berat*. See İnalcık 1971.
52 Slot 1982: 98–100; Kermeli 2007: 184–5. For the Greek translation of the *ahdname* of Chios, see Argenti 1941: 113–17, 208–20.
53 Tournefort 2005: 218. If corsairs approached, the *kadi* of Syros took refuge in a monastery; if the *kadi* was abducted, Syros islanders had to pay his ransom.
54 Ibid.: 145.
55 Cf. Kermeli 2007: 187, n. 116.

56 Sfyroeras 1965: 1–192.
57 Giannoules 1980: 54–5; Kermeli 2007: 190.
58 Siatras 1997: 52–3.
59 Kermeli 2007: 201.
60 Tourtoglou and Paparrega-Artemiade 2002: 31, 51–2.
61 Koukou 1989: 284–6.
62 Sifaniou-Karapa *et al.* 1990: 369–70.
63 Tourtoglou 1980–81: 48.
64 Tourtoglou and Paparrega-Artemiade 2002: 32–3.
65 Kermeli 2007: 192.
66 The power of local custom is evident in the registration of pledging and sale of children in the Ottoman court of Crete, which was accepted by the *kadi* despite being against sharia law; cf. Kermeli 2006.
67 Gerber 1994.
68 For the discussion on the power of documents in the *sicil*s, see Johansen 1997; Peirce 2003; Agmon 2003; Messick 1993.
69 Kermeli 2007: 208–9.
70 Michaelaris 1997: 427.