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Women, Family Law, and Social Change at Tokat’s Şer’î Court: 1876-1909

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Introduction

Until recently, Ottoman historians did not view the family as a unit worthy of social scientific inquiry. This attitude is changing. A new generation of scholars is using local court records to assess family history according to its own disciplinary measures and methodologies. As a result, new studies show how family networks and relations are key to understanding social, political, and economic developments in the provinces outside the home. Emulating Iris Agmon’s work on late Ottoman Haifa and Jaffa,¹ this pilot study samples microhistorical evidence from three of Tokat’s court registers. In particular, the study focuses on changing patterns of legal behaviors among women during the Hamidian Period (1876-1909). These changes corresponded to shifts in litigation tactics among non-sedentary or religious minority populations. The comparison is apt because other court users, such as refugee immigrants, non-Muslims, and itinerant soldiers, had to adjust to a new framework of governmentality that was as similarly unfamiliar and intrusive to them as it was to women.

Using selections from the town’s şer’î court records, I will examine the social backgrounds of litigants and use specific cases to reveal larger truths about the dynamics of household formation, family investment strategies, and conflict resolution in nineteenth-century Tokat. The provincial, small town focus of this article is intended to serve as a counterpoint to recent works on family history situated in the urban contexts of Istanbul, Aleppo, and Cairo.² I will also argue that Tokat’s family history is a suitable vehicle through which to explore other social issues in the Hamidian Era such as economic growth, technological change, and heightened political turmoil. Tokat’s families were the focal points of many changes during the late nineteenth century -- despite they city’s contemporary reputation as a quiet provincial capital and market town.

¹ Iris A.g.m.on, Family and Court : Legal Culture and Modernity in Late Ottoman Palestine. Syracuse, NY: Syracuse University Press, 2006.
In order to show these patterns, I used a modified sampling method. For the Hamidian Period, Tokat’s şeri‘i court records are comprised 6,554 pages contained in 30 separate volumes – an amount of reading too large to complete outside a period of more sustained study. My method of sampling required me to read an average of fifty pages from three different and chronologically distinct registers, Tokat Şeriye Sicilleri 81 [henceforth abbreviated as TŞŞ] (years 1885-1886), TŞŞ 89 (1893-1898), and TŞŞ 99 (1901-1906). As a result of this method the current study must be characterized as preliminary rather than complete and exhaustive.3

Universal Changes in şer‘i Legal Practices between the Tanzimat and Hamidian Periods

The small sample revealed significantly large changes to patterns in litigation and courtroom practice. As mentioned above, only some of these changes were procedural. Community members, such as women, were participating in court procedures at different rates, for different purposes, and by different means. For example, women increasingly worked through male relatives to engage the new post-Tanzimat, male-notable dominated bureaucracy of land regime and finance. I will first discuss three changes that distinguished şer‘i court practices as a whole from the Tanzimat Period4 (1839-1876) to the Hamidian Period (1876-1909):

1. During the Hamidian Period, discussion of nizamî and religious court decisions outside of the şer‘i court were more likely to occur than in the preceding Tanzimat Period. Claimants mentioned proceedings at other jurisdictions such as trade courts, district councils, courts of first instance, and appeals courts more frequently than during the Tanzimat Period.5 This was likely for several reasons. First, the nizamî courts were proliferating in number across Anatolia during the Hamidian Period. Second, şer‘i court officers were being trained directly and indirectly in nizamî court practices through schooling, work, and training manuals (Rubin 2011). As a result, şer‘i court officials were increasingly receptive to the findings and procedures of other jurisdictions.

2. Increasingly, written evidence became persuasive to court officers at the şer‘i court of Tokat. That is, claimants pressing suits in regards to prior official transactions fell under pressure şer‘i court officers to reproduce official records of such proceedings. This new requirement reflected both the growing presence of the Ottoman state in the provincial context. Through their offices, bureaucrats such as land officers, tax clerks, and municipal authorities documented all kinds of economic, social, and political intercourse, and it seems that şer‘i court officials were aware of these records. If claimants could not provide the documenta-

3 I plan to produce a series of fuller studies of specific themes of actor engagement before the court (women, non-Muslims, tribes, and redif soldiers) as I read the larger array of registers in the months and years to come.


5 For a reference to the bidayat court of first instance, see TŞŞ 81:1.1 (27 Şubat 1301).
tion requested, they might face the burden of proof from witnesses. The shifting of such burdens of proof could alter the outcomes of cases in favor of those who could produce reliable, first-hand witnesses.

3. More stable patterns of settlement emerged among Tokat’s refugee and immigrant tribes in the late nineteenth century. The provision and settlement of refugee tribes during the earlier period between the Crimean War and This stabilization occurred for several reasons. First, many tribal chiefs became integrated into local and provincial power structures. Second, unlike during the Tanzimat Period, there is evidence that local tribal courts operated with şer’î norms, guidelines, and practices. Third, the sales of servants and slaves from tribes to Tokat’s notable households disappears from the court records in TŞS 81. Fourth, court record descriptions of tribal names and origins are more precise, designating tribal names and places of origin in Circassia, Crimea, the Caucasus, Dağestan, and the Kars region.

These universal shifts in şer’î court practice from the Tanzimat Period to the Hamidian Period show subtle but important changes to the paternalistic power of the state and patriarchal norms of the provincial society. First, as mentioned in items one and two above, litigants who possessed official documents of transactions were increasingly likely to win proceedings. Accordingly, any group that was less likely to gain access to the state’s burgeoning number of bureaucratic institutions was less able to reproduce the official documents needed to press effective legal claims. This was a major blow to the şer’î court’s traditional pose as an equalizer of social and gender differences. Men – either Muslim or non-Muslim – led new Tanzimat and post-Tanzimat state institutions exclusively, so women and members of seminomadic tribes of either gender faced very basic new questions of access to official and now evidentiary legal documents. In other words, prior to the Hamidian Period, women and tribal members had had the ability to use şer’î courts as one stop court shopping venues for a range of legal claims. The papering of legal claims across a range of state bureaus meant that men residing in sedentary communities – and particularly conservative religious notables – had better, gendered networking connections in terms of both state employment and access.

Women continued to use Tokat’s şer’î courts at high rates throughout each of the three registers covering the period, but the patterns of usage changed. Tanzimat-era court records show women as entrepreneurs, laborers, and lenders, in other words, full participants in the economic life of the town. The latter two registers, TŞS 89 and TŞS99, portray women strictly as domestic legal actors constrained to asking the court for maintenance payments (nafaka), marriage contracts, divorces, and the return of misappropriated inheritances shares.

On the third point, the impact of tribal “legal” sedentarization is unclear. Presumably, the normalization of tribal relations with the state affected other groups of rural Tokatlıs in profound ways. For example, rural non-Muslim villagers – who were few in number during this period due to Tokat’s patterns of urbanization – were increasingly subject to the administrative and legal oversight of tribal leaders. A number of records indicate that tribal leaders brokered and regulated transactions between members and non-Muslims. However, it is unclear whether the incorporation of tribal elements into the local bureaucratic fabric affected Tokat’s social relations and habits.7

Changes in şer’i Court Practice between the Tanzimat Period (1839-1876) and TŞS 81 (1885-1886)

In a previous work entitled *Ottoman Notables and Participatory Politics*, I assessed the emergence of Tanzimat district councils and local bureaucratic branches as meeting points between state aims for reform and local needs for land registration and political confirmation. The provincial Tanzimat reforms confirmed the wealth and power of Tokat’s local elites in exchange for their support in enacting a modest reform items. TŞS 81, produced within ten years of the end of the Tanzimat, in many ways resembled it counterparts from this earlier reform era. However, subtle changes were occurring in the family law.

For example, in Tokat’s Hamidian-era şer’i court, it appears that in some cases women were able to initiate divorce proceedings without explicit cause or grounds, whereas in others, they had to demonstrate cause, such as non-maintenance or abandonment. An example of the former is the case of Ayşede daughter of Halil, resident of the Müslihiddin Quarter and Gürgi Village, who was able to sue for divorce on the grounds of mere incompatibility (*... beyinemizde vukubulan imtizacsızlık dolayı*). Ayşede conceded that her ex-husband Mumcuoğlu damadi Mehmed b. Ebikber had paid fulfilled his initial bridewealth payment (*mehr-i müeccel*) of 175 kuruş, and she agreed to return the money and waive an interest payment of 80 kuruş in an effort to facilitate the break up. The court’s willingness to grant such divorces might have coincided with changing views in wider Ottoman society regarding love, marriage, and divorce. Nihan Altınbaş pointed out in a recent article that many traditional marriages were prearranged without the couples in question meeting beforehand, and many Ottoman feminists challenged the wisdom of such a double-blind process. How could such a forced arrangement guarantee love and fulfilment to a well rounded modern?9 Allowing for divorce on the simple grounds of incompatibility averted the labelling of blame or guilt, thereby allowing the partners in ill-conceived matches to dissolve their union without undue acrimony.

7 This will be an area of inquiry within the larger series of longitudinal studies I propose.  
8 TŞS 81:2:2 (4 m 1304)  
Men and women alike also sought to benefit from the liberalization of maintenance payment distributions. Samakoğlu’s wife Hefne daughter of Abraham of Savukpınar-i Müslim Mahallesı asked for community maintenance funds due to the prolonged absence of her husband Boros son of Sahak. Boros may have immigrated to another country. Each month she was to be given a few 100-piece gold mecidiye (beher mah bir aded yüzliğ-i mecidi-yi altuni), and the total recorded was to be kept on the books as a debt to her absent husband. The record leaves no word as to what would happen in the likely event that Boros did not return.

It is unclear whether these seeming victories for women’s rights were sustained into later periods. What is clear is that the recognition of incompatibility and non-support for cause of divorce reflected a subtle change in social attitudes about the proper role men and women in marriage. In the Hanefi legal tradition, abandonment was the only proper cause for divorces initiated unilaterally by women, so the acknowledgement of women’s right to sue for divorce on other grounds indicated a rearrangement of societal priorities.

**Patriarchy and the Legal Issues of Tribes**

The impact of Caucasian tribal migration into the environs of Tokat might have changed social norms towards rural women. In TŞS 81, Tokat’s refugee and immigrant tribes still represent an unsettled and dynamic element of provincial society. Some tribal members appear to have been involved in the theft of animal stock, although the context of cases makes clear that others joined the illicit trade as well. Theft cases were murky, and they seem to allude to unclear tensions among social groups. Sarraf Fehmioglu Ahmed b. Mehmed b. Abdullah of Yaşmeydan Quarter accused the absent Kazgancı Ohanes veled-i [“son of” for non-Muslims, henceforth abbreviate as v.] Atom of selling him a stolen horse 41 days beforehand that the latter had bought from another Muslim man. In a follow up case, we learn that the horse had actually been taken by the District Financial Secretary (mal muhasebeci) Osman Rauf Efendi b. Ali by law of abandonment (iltikat). Ahmed Ağa had been having the animal grazed in Yalacık Mountain. He was actually able to procure the return of the horse on the basis of witness testimony. The instability of stock rearing must have effected women in a disproportionate fashion, since much of their labor related to animal care. Disruptions to exchange networks of milk, meat, and animal hair adversely affected homemspun industries.

Only one entry about the fifty pages of TŞS 81 dealt with the vexing issue of Caucasian slavery. The infrequency of court record entries on this subject in TŞS

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10 TŞS 81:38:65 (9 n 1303) For a possibly analogous example from TŞS 89, see TŞS 89:15:49 (19 r 1312).
11 TŞS 81:8:5 (25 r 1303)
12 TŞS 81:10.9 (9 r+a 1303) Also, see TŞS 81.13.17 (17 c 1303) for the case of Besmek Village’s Çукkaoğlu Vartiris v. Serkiz v. Matus vs. Muhad Village’s Yüzbaşıoğlu Ismail b. Ali.
might speak to an attempt by local state officers and the şer’i court to curtail discussions of slaveholding as the Hamidian Period wore on. Again, it is unclear what impact a potential rights debate on Caucasian slavery might have had on re-conceptualizing women rights and notions of family. Broadly speaking, the şer’i court of Tanzimat-era Tokat recognized the right of tribal chiefs to hold slaves who had been taken in the Caucasus prior to migration. However, in the one case found in the first fifty pages of the register, the court found in favor of the slaves’ freedom from their master on the basis of their claims to prior manumission by the Russian Empire. While migrating through Fındıçık in Erbaa Nahiyesi in hicri year 1297 (m. 1879-1880), Garip Bey b. Kalmuh Bey of the Circassian Altıkesik Tribe encountered some of his former slaves. He had originally entered the Ottoman Empire in h. 1287 (m. 1870-1871) with eight male and female slaves. When they arrived in Samsun, the slaves fled and resettled in the rural environs of Tokat. Garip Bey, represented in court by his son Ahmet, asked for them to be returned when they happened upon the slaves in the countryside. As defendants, the slaves claimed that they had received Russian passports before leaving the Caucasus, and the court ordered Garip Bey and his son Ahmet to desist from their claims. This was two years after the last alleged encounter in h. 1301 (m. 1883-1884). There might have been prior litigation and court shopping we did not know about in the case.

Non-Muslim Agents and New Bureaucrats

Other noteworthy aspects of TŞS 81 are the prominence of new seemingly professional non-Muslim agents. Many of them worked at court as the advocates of Muslims. The Armenian Bıçakıyan Oskıyan v. Kifürk of the Terbiye-i Kebir neighborhood acted as agent (vekil) in an intra-family dispute over the inherited land from the estate of the Butcher Mehmed Ağa b. Elhac Osman. Other advocates who figured prominently into the latter two registers were the Rum Greek Lazaroğlu Yovani v. Nikola and the Armenian Tanielian Manuk v. Begos. As can be seen in Figure 1: Identity Markers among Plaintiffs in TŞS 81, non-Muslims like Muslim women used the şer’i court much less frequently than Muslim men in this period. However, non-Muslim men were less likely to use intermediaries and advocates – a fact stressed by the existence of non-Muslim professional agents.

Only one entry attests to the existence of a relatively new bureaucratic office in Tokat, the Treasurer of Orphans (eytam müdiri) mekremetlû Ahmed Şakir Efendi b. Yahya. The Treasurer of Orphans assumed the former role of the head administrator of Tokat in registering and guaranteeing the estates of absent, mentally ill, or minor persons. Ahmed Şakir Efendi appears in one entry to set the terms of a loan (idane) for an orphan’s inheritance. The office was intended to regularize the management of such loans so that no corrupt or undue manipulation could take place.

13 TŞS 81:35:57 (23 ş 1303)
14 TŞS 81:42.77 (19 b 1303)
Figure 1: Identity Markers among Plaintiffs in TŞS 81

<table>
<thead>
<tr>
<th>Type of Case</th>
<th>Gender or Religion Marker of plaintiff</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Sedentary Male</td>
</tr>
<tr>
<td>beyinat Declaration of Ownership</td>
<td>1</td>
</tr>
<tr>
<td>Divorce</td>
<td>2</td>
</tr>
<tr>
<td>Honor Violation</td>
<td>1</td>
</tr>
<tr>
<td>idane Loan</td>
<td>1</td>
</tr>
<tr>
<td>Inheritance – Debt Collection</td>
<td>1</td>
</tr>
<tr>
<td>Inheritance – Reallocation of Shares</td>
<td>1</td>
</tr>
<tr>
<td>Inheritance Dispute</td>
<td>1</td>
</tr>
<tr>
<td>Inheritance – Sale of Property</td>
<td>1</td>
</tr>
<tr>
<td>Marriage Contract</td>
<td>1</td>
</tr>
<tr>
<td>Official Appointment</td>
<td>3</td>
</tr>
<tr>
<td>Preemption of Land Purchase</td>
<td>1</td>
</tr>
<tr>
<td>Property Sale</td>
<td>1</td>
</tr>
<tr>
<td>Religious Conversion</td>
<td></td>
</tr>
<tr>
<td>Slaveholding Dispute</td>
<td></td>
</tr>
<tr>
<td>sulh Mediation</td>
<td>1</td>
</tr>
<tr>
<td>takas Exchange of Assets</td>
<td>1</td>
</tr>
<tr>
<td>Theft Accusation</td>
<td>4</td>
</tr>
<tr>
<td>vakif Foundation Business</td>
<td>11</td>
</tr>
<tr>
<td>vekalet – Legal Representation</td>
<td>1</td>
</tr>
</tbody>
</table>

In addition, there were a total of twenty inheritance inventories, including those of 14 Muslim male civilian, 4 Muslim male military, one Muslim female, and one tribal male inheritance. Guardianship (vesayet) and maintenance payments (nafaka) were requested for the widows and relatives of 10 Muslim civilian male, one Armenian male, and one Circassian male decedents.
Changes to şer‘î Court Practices in TŞS 89 (1893-1898)

Women faced a new cadre of court officers and bureaucrats by the time of recording in TŞS 89 in the mid 1890s. One of the most notable differences between TŞS 81 and TŞS 89 is absence of itemized inheritance inventories in the latter. The state placed the duty to record Tokat’s inheritances in the charge of a Divisor of Inheritances who filled a separate notebook (defter-i kassam). The office of Divisor was not new, but such separation in scribal function represented the elevation of yet another court office to a high position in the local bureaucracy. Nonetheless, the şer‘î court continued to remain very active in settling disputes and transactions arising from inheritance cases.

Among the most common types of inheritance-related cases in the TŞS 89 were the assignation of idâne loans from the inheritances of minor wards. These cases reveal some important trends in court bureaucratization and public use. First, a bureaucratic officer – the Treasurer of Orphans (eytam müdiri) had grown in prominence in the records since TŞS81. The first 50 pages of that notebook contained only one such case, whereas the TŞS89 contained many. The Treasurer helped to lay out the terms of one, two, and five-year fixed rate loans.

The elevation of the office of Treasurer of Orphans might have infringed on the prerogatives of other social institutions. For example, it appears that widows were hesitant to appear before the Treasurer to secure interest bearing loans for their minor wards. Women were still granted guardianship rights for minor children of deceased husbands, but it was often elder male relatives and neighbors who acted as guardians in the registering of idane loans.¹⁵ What patriarchal tendencies may have created this change in usage patterns by women. The correlation itself may indicate comports well with a general distancing of women from court matters during the Hamidian Period. One reason for this distancing might have been a perception that the Treasurer of Orphans – and the Hamidian-era local bureaucracy in general – was all too willing to disturb and modify the informal arrangements of decedents and their survivors in sensitive matters of inheritance. When Ceraman Mehmed Ağa b. Abdürrahman died, he attempted to bequeath a third of his estate for burial costs and prayers. However, the state warden (vasi-yi miri) Yusuf Ağa protested it as a violation of the rights of absent heirs, but several witnesses confirmed the family’s claim of a legitimate request for an elaborate burial. The court chastised Yusuf Ağa for his preemptive sequestration of funds.¹⁶

¹⁵ For a few examples, see the idane loan contracted by the vasi grandfather Elhac Hafiz Mehmed Efendi on behalf of his minor granddaughters TŞS 89:9:30 (23 z 1311) as well as the loans of Hamsicioğlu Abdullah Ağa TŞS 89:9:31 (3 s 1312) and Tuzcu Ali’s grandson Ali Efendi b. Süleyman, vasi of the minor wards of the Armenian Hekimoğlu’s daughter Vrone bint-i Kaspar 89:10:33 (5 s 1312). In each of these cases, Muslim male guardians were acting as vasi or designated agents on behalf of female vasi in business transactions before the Treasurer of Orphans. Prior to the creation of the office, most female vasi would have secured idane loans before the şer‘î courts themselves.

¹⁶ TŞS 89:12:40 (25 s 1312)
Changes in şer’î Court Practices from TŞS 99 (1901-1906)

One of the major changes in the notebook TŞS 99 is the new practice of transcription of testimony into separate paragraphs under main entries. This new practice indicates that by the second turn of the nineteenth century it was no longer enough for witnesses simply to declare their agreement with plaintiffs or defendants. Scribes recorded witness testimony separately below the relevant case, and witnesses would state explicitly how their observations might have had bearing on the case. Witnesses also had to specify whether they were eyewitnesses or character witnesses. After the list of five or so witnesses was presented, other sections would verify whether witnesses were trustworthy (tezkiye) and which litigant had the burden of proof. Professional agents (vekil) were also required to prove their credentials from this period. It is unclear whether this more methodical way of taking testimony disadvantaged women, but a key issue again is whether women had equally large and well connected social networks as men. The requirement to present witnesses often meant the difference between winning and losing a case.

In this particular notebook, opinions (fetva) from Tokat’s mufti figure quite prominently. It seems that other bureaucrats concerned with the emerging body of Ottoman civil regulation tapped the mufti to enforce new provisions of family law. For example, Çağuşoğlu’s daughter Nazike bint-i Ebi Bekir of Tokat’s Beybağı Quarter was able to secure an annulment of her wedding by claiming that — successfully as it were on the basis of witness testimony — she was too young to marry at age 15. This again seems to have been an instance of a prearranged marriage of strangers, and the young woman had not consented to her brother’s negotiations for her bridewealth payments. This case shows that the norms of married behaviors were changing for men and women in the period.

Government bureaucrats continued to intervene in the family lives of Tokat population in ever more critical and thorough ways. For example, as Tokat’s home and neighborhood-based handicraft production declined, men were seemingly more able to mobilize themselves for job searches outside the home while women were increasingly constricted to the cultivation of hearth, home, and family. Simultaneously, due to the patriarchal climate of elite town circles, a male-dominated cadre of notable councilors and bureaucrats appear to have deterred women from pursuing legal matters related to business and trade. Therefore, we see a trend in the record whereby women pursued business through the filter of male relatives, rather than going to the şer’î court directly themselves as had been common practice well into the Tanzimat Period. Hence, the reforms toward “modernization” reified patriarchal ideas circulating in the Ottoman discourse on

17 For an example of the new witness testimony recording and tezkiye procedures, see TŞS 99:1-4:1. Please note that this notebook’s entries were unnumbered, so numbering started anew for each page. Witness and tezkiye paragraphs were included with the prior main text.

18 See the case of Tahir Efendi, TŞS 99:2:1 (undated).

19 TŞS 99: 5-7:1 (2211319)
gender roles, reform, and modernity. As intermediaries for women, male relatives had their own motives and agenda, and the trend led to an uptick in disputes over agency (vekalet) and guardianship (vasiyet) as a result.

**Hamidian-Era State Paternalism and the Reformed şer’î Legal Order: Some Preliminary Conclusions**

This paper sampled court cases from the Hamidian Period to reveal important changes to the balance of legal habits of people in Tokat. In particular, the changing legal habits of women may have reflected large-scale changes in social norms and values, changes that went deeper than a superficial reshuffling of bureaucratic arrangements or procedures. The changes reflected a wider debate about the merits of patriarchy and the nuclear family and the implementation of policies to that effect vis-à-vis the central state and local society. Therefore, the circumscription of provincial women’s legal lives through increased regulation and formality may have corresponded to the paternalistic agenda of the late Ottoman state. In the case of Tokat, the arsenal of state power included not only the bureaucratization of court and administrative offices but also a regulatory environment that encouraged the building of alliances with leading male figures such as merchants and notables.

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