Shari'a Courts in the Ottoman Empire Before the Tanzimat

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This article describes the history, features and functions of the Islamic law courts in the Ottoman Empire before the Tanzimat era. After briefly surveying of the roots of this institution in pre-Ottoman settings, the article focusses on how Ottoman administrators and juridical experts built on this legacy. Later, the article discusses the modern scholarly literature on the court in a way to reflect on its prevalent tendencies.

Introduction

This article aims to portray the historical evolution, institutional set-up and judicial-administrative functions of the Islamic courts of law in the Ottoman Empire before the Tanzimat period (1839–1876). In line with this orientation, we offer here a detailed and context-sensitive characterisation of this venue that, according to many Ottomanists, not only played a critical role in the day-to-day administration of the polity but also served an important ideological purpose by rendering justice to the sultan's subjects.

The article begins with a brief survey of pre-Ottoman courts of law and their judicial practices since their Ottoman counterparts find their historical roots in these institutions. The second part of the article focusses on how

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The Medieval History Journal, 22, 2 (2019): 203–228

DOI: 10.1177/0971945819897437

Ottomans adopted and built on this legacy according to their own needs and circumstances. Our emphasis will be on the temporal and location-based variations within the polity, factors that tend to get neglected in many depictions of the Ottoman judicial system and institutions. Finally, the article also takes a historiographical look at the modern scholarly literature on Ottoman courts of law and discusses the prevalent inclinations in research concerning these institutions. More specifically, we reflect on widely shared dispositions in the relevant scholarship on the court and explore future avenues of research on Ottoman judicial practices and institutions.

Pre-Ottoman Courts[1]

Due to the lack of historical documentation, little direct information exists on Shari'a (or *qāḍī*) courts during the earlier parts of Islamic history.[2] In the relative absence of court records, most of our knowledge on Islamic judicial institutions and practice before the fifteenth century comes from literary sources, in particular biographical dictionaries of the *qāḍī*s (*ṭabaqāt*), historical texts, *belles-lettres* and *fiqh*-related texts including chapters on deontology of the judges (*adab al-qāḍī*) and *fatwā* collections.

The term court (*maḥkama*) does not exist in the Qur'an or prophetic traditions (*aḥadith*), though these sources contain references to the *ḥukm*, judgement, derived from the root *ḥ-k-m*. In fact, the earliest uses of the term might have appeared in the jurisprudential texts only after the eleventh century.[3] Other common terms for the place and institution of adjudication include *bāb al-qāḍī*, *majlis al-qāḍī*, *majlis al-ḥukm* and their variations.

Historical sources indicate that the Prophet and the first caliphs often resolved disputes among early Muslims. Some have claimed that they also sent individuals with judicial responsibilities to distant locations as their representatives. Early Umayyad rulers held their own courts and

[1] Unless otherwise noted, this section uses the relevant articles in the *Encyclopedia of Islam*, especially 'Maḥkama,' 'Mazālim,' 'Qāḍī,' 'Qāḍī 'Askar'; as well as Powers, 'Judges', vol 2: 423–25; Schacht, *An Introduction to Islamic Law*; idem, *The Origin of Muhammadan Jurisprudence*; Tyan, *Histoire de l'organisation*; Hallaq, *The Origins and Evolution*.

[2] On documentation pertaining to pre-Ottoman courts see, among other studies, Khoury, *Chrestomathie de papyrologie arabe*; Gronke, *Arabische und persische Privaturkunden*; Sijpesteijn, Sundelin, Tovar and Zomen, *From al-Andalus to Khurasan*; Müller, 'A Legal Instrument in the Service': 173–91.

[3] Atar, 'Mahkeme'.

Muʿāwiya (d. 680 CE) was likely the first Umayyad caliph to appoint the *qāḍī*s in the garrison towns of Kufa, Basra and Fustat. By the end of the first century of Islamic history, *qāḍī*s were serving in major urban centres of the new Islamic empire.

There is an extensive literature on the qualifications of judgeship. In general terms, all Sunni schools appear to agree that the *qāḍī* should be knowledgeable in law, its practice and associated disciplines (such as algebra, necessary for the appraisal and division of inheritances). In addition, he had to be exemplary in moral matters and religious conduct. Technically, there exists no specific prescription in the Qur'ān or the *hadith* literature that excludes women from holding the office, yet they are disqualified from deciding cases involving *ḥudūd* (crimes with fixed, Qur'ānic) penalties. In the literature of most Sunni legal schools, the position of *qāḍī* is generally restricted to males though some Ḥanafī jurists entertain the possibility of female *qāḍī*s in certain circumstances.

The settings and circumstances in which the earliest *qāḍī*s heard and resolved disputes are not clear, nor do we know much about what specific procedures they followed or who assisted them. It is likely that they continued the traditions of pre-Islamic arbitrators (*ḥakam*), and most lacked formal legal training. Yet, most *qāḍī*s were probably familiar with the Qur'ān, prophetic traditions, and local customs and notions of justice. In the early period, personal discretion (*ra'y*) also played a major role in resolving disputes.

From early on in the Islamic polity, *qāḍī*s were not only responsible for resolving disputes but also had non-judicial functions, which would be the case in the Ottoman polity as well. Eventually these responsibilities came to include, at various times and in varied locales, the collection of taxes, leading public prayers, supervising the accounts of the public treasury and charitable endowments, safeguarding the funds allocated for orphans and even commanding military expeditions. By contrast, during the first three centuries of Islam, we find examples of religious scholars, who refused to serve as *qāḍī*s because, among other reasons, they did not wish to be associated with the government.

During Umayyad times, both caliphs and provincial governors appointed *qāḍī*s. In the Abbasid period, however, when the caliphs held centralised sway in Baghdad, the caliphs made appointments directly. The Fatimids, the Umayyads in Spain and the Ottomans would all continue the practice of appointing judges directly from the capital.

From early on, the jurisdiction of the *qāḍī* was limited to the town or region over which he was appointed. Some of the judges were local people and knew the social environment intimately. In the mid-ninth and early tenth centuries, the Abbasids began appointing prominent individuals with strong connections to the central government, and with no ties to local communities, to most jurisdictions. Many of these *qāḍī*s administered a number of urban centres within their jurisdiction.

Muslim political and military authorities often participated in judicial administration, especially when the latter had political or security implications. A good example of this tendency is the institution of the *mazālim*, comprised of the caliph and/or his representatives, such as viziers, governors, military leaders, high-level bureaucratic functionaries, in addition to ranking *qāḍī*s and influential *muftī*s. The *mazālim*, tribunals that were primarily, if not exclusively, responsible for hearing and responding to complaints about the abuse of governmental authority as well as state and social security, first appeared in the early Abbasid period. Although a clear separation of the jurisdictions of *qāḍī* courts and the *mazālim* never existed, in general the *mazālim* followed rules of judicial procedure that were not as strict as those followed in *qāḍī* courts, especially in relation to norms for witnessing and punishment.[4]

As the ruler had the prerogative to discipline (*siyāsa*) for the good of society, he could appoint military and administrative authorities to exercise jurisdiction over administrative abuse and security-related incidents, which often led them to handle many types of criminal activity. Many Islamic polities developed parallel institutions under different names that allowed the military and administrative authorities to impose discretionary punishments. In the Ottoman Empire the Imperial Council (*dīwān al-humāyūn*) served many functions of the *mazālim*.

In the court, *qāḍī*s enforced the legal doctrines of a specific law school (*maḍhab*). In general, the governments preferred the *qāḍī*s to belong to the ruler's own legal school. Invariably, however, the *maḍhab* affiliation of the political authority and local populations differed. In such cases, the rulers often appointed several *qāḍī*s to the same jurisdiction who belonged to different schools. In many polities, the chief *qāḍī* belonged to the official school of the polity.

[4] Nielsen, *Secular Justice*; Tillier, 'The Mazalim in Historiography'.

According to pre-modern Islamic jurisprudential traditions, the court is a single-judge institution, though the *qāḍī* may choose to consult with qualified jurists (*muftī*s). Every *qāḍī*, even if delegated by another *qāḍī*, pronounced judgement without appeal unless (a) the *qāḍī* was not legally competent to pass judgement or (b) the judgement clearly contradicted a Qur'ānic statement, a widely transmitted *hadith* or the consensus of Muslim jurists.[5]

After the earliest times, the *qāḍī* had various helpers, although the specific functions of these individuals must have become articulated only gradually. References to specific court functionaries in the mediaeval period include the scribes (sing. *kātib*) and officials who maintained order during proceedings (*sāhib al-majlis*, *naqīb*, *bavvāb*, *ḥājib*, *mubaṣṣir*). Other adjuncts delivered the orders of the *qāḍī* and brought witnesses to his presence (*muḥḍir*) and divided the estates of the deceased among their heirs (*qāsim*). In addition, court officers checked the backgrounds and trustworthiness of the litigants' witnesses (*muzaqqi*), and the *qāḍī*'s deputies or temporary replacements (*nā'ib*).

According to jurisprudential expectations, adjudications were to be open to the public. Therefore, the *qāḍī*s often set up court in mosques or venues in or adjacent to marketplaces. *Qāḍī*s could hear disputes in their residences too, which required them to provide unimpeded access to the community to parts of their houses. References to buildings used exclusively as courthouses, however, do exist. Historically speaking, the jurisdiction of a court could include rural and urban spaces small enough to permit access by short-time travel.

Maḥkama in the Ottoman Empire: History and Institutional Evolution

We possess significantly more information about the court in the context of the Ottoman polity due to the availability of court archives.[6] Also called '*majlis al-shar*'', '*maḥfil al-shar*'', or '*maḥfil al-qāḍā*', the location of the

[5] See Powers, 'Appeal'; Müller, 'Judging with God's Law on Earth': 159–86.

[6] As a general rule, large compilations of pre-modern court archives are available only for the Ottoman Empire. However, the Ḥaram archive in the Islamic Museum in Jerusalem comprises a collection of about 900 documents, a significant portion of which was the work of a single late fourteenth century Shafi'i *qāḍī*.

court was on a site within the judgeship (*qāḍā*) over which the *qāḍī* had jurisdiction, usually in the largest urban centre. In the Ottoman context, the word *qāḍā* refers to a territory, namely the administrative unit to which a judge was appointed, with the central administration determining/altering the relevant boundaries. In large and populous urban centres, such as Istanbul, Bursa and Damascus, multiple courts might function within a single *qāḍā*.

The earliest history of the Ottoman court is not well known though references to Ottoman *qāḍī*s exist in the earliest narrative sources, including Āşıkpaşāzade, *Tevārīḫ-i Āl-i Osman* and many others. According to Āşıkpaşāzade (1393–1484), during the reigns of Orhan (d. 1362) and Murad I (d. 1389), trustworthy religious scholars served as *qāḍī*s, though the institutional setting that they were part of is not clear. Later, sources indicate, religious specialists from outside of the Ottoman domains, presumably from Karaman in central Anatolia and other places, entered the profession and manipulated the law by abusive and exploitative practices. (Yıldırım) Bayezıd I's (d. 1403) efforts to curb their venality by threats (including burning them alive) and setting fees for specific court services might represent some of the first attempts to bring the judicial actors under the control of the political authority.

The creation of the office of the *qāḍī 'askar* during the reign of Murad I (1326–1389) marks an important point in the constitution of early Ottoman legal hierarchies. Later on, after the annexation of the city of Istanbul, during the period of Mehmed II (1432–1481), the offices of the *qāḍī 'askar* and the *qāḍī* of Istanbul were separated. Shortly afterwards, the sultan created the office of the *qāḍī 'askar* of the Balkans and that of the *muftī* of Istanbul, who would later be named *shaikh al-islām*.[7] Clearly, we need more research to map out the institutional evolution of the judicial hierarchy in the first Ottoman centuries.

In general, the Ottoman courts administered Hanafi jurisprudence and state-issued *qānūn*. In the larger cities of Greater Syria (such as Damascus and Aleppo), where Shafi'i populations had a considerable presence, the state did authorise the activities of Shafi'i judges but they could only resolve family disputes.[8] In Amid or modern-day Diyarbakır, although a Shafi'i court did not exist, the state appointed Shafi'i *muftī*s to resolve

[7] Repp, *The Müfti of Istanbul*.

[8] Masters, 'Ottoman Policies toward Syria': 11–26.

legal disputes.[9] The establishment of Hanafi courts in newly annexed lands must have led to the promotion (or 'imperialisation') of the Hanafi *maḍhab* in Ottoman domains.[10]

The *qāḍī* 'had the power to administer *ta'zir* [discretionary] punishments and to imprison debtors'.[11] However, he must have relied on the assistance of the local military authorities, such as governors, sub-governors and their representatives. It was necessary to submit cases involving military-administrative authorities, state interests and public security to the Imperial Council in Istanbul. According to Mehmet Akif Aydın, two other venues in the capital, the Friday council (*jum'a dīwānı*), comprised of the grand vizier and the *qāḍī 'askar* of Anatolia and the Balkans, and the Wednesday council (*charşamba dīwānı*), composed of the high-level *qāḍī*s in and around of Istanbul, assisted in the adjudicative work-load of the Imperial Council.[12] It was also common for the viziers to hear and resolve complaints while travelling in the countryside or during military expeditions, again probably in consultation with local judicial officials. From the seventeenth century onward, archival sources more clearly reflect the role of the provincial governors' and sub-governors' councils in the administration of justice. Certain cases brought to the attention of the provincial military-administrative authorities via petitions (*'arḍḥāl*) suggest that the provincial councils, which likely involved the local *qāḍī*s, might have taken on a role akin to that of the Imperial Council in Istanbul.[13]

Though often functioning in a particular location, such as a mosque, a spot in the marketplace or the residence of the *qāḍī*, the court could be mobile as well. For example, in disputes involving estate divisions, heirs could invite court officials to private residences to determine and register their shares. In cases involving land disputes, court personnel might convene in locations where they could inspect the contested boundaries and hear the testimonies of witnesses who lived close by.

Jewish and Christian communities had their own venues and mechanisms for dispute resolution, although Shari'a courts commonly adjudicated disputes involving all-Jewish or all-Christian litigants. Nevertheless, disputes involving Muslim and non-Muslim litigants were

[9] Aykan, *Rendre la justice à Amid*: 163–73.
[10] Hanna, 'The Administration of Courts': 44–59.
[11] 'Maḥkama': 2–3.
[12] Aydın, 'Osmanlı'da Mahkeme'.
[13] Aykan, *Rendre la justice à Amid*: 64–77.

adjudicated in the Shari'a courts. Corporate bodies, such as darwish orders (*ṭarīqat*), guilds, janissary corps, Muhammad's descendants (*sayyid*), could resolve disputes involving their members on their own.

The *qāḍī*s were graduates of a gradated system of colleges (*madrasa*s) that provided religious-legal education at different levels of sophistication. After completing their studies, *madrasa* graduates could elect to pursue two career paths: teaching (in a *madrasa*) or judgeship. In the latter case, the candidates often received additional on-the-job training before their appointments, as assistants or lower-level associates of high-ranking judicial officials. Furthermore, their official inclusion of the pool of prospective *qāḍī*s required the formal support of the ranking members of the Ottoman religio-legal establishment, including the *shaikh al-islām*, *qāḍī 'askar*, and prominent *qāḍī*s, *muftī*s and *madrasa* professors. The latter possessed the privilege of periodically submitting to the central administration new names for candidates for inclusion into the judicial hierarchy, supposedly based on the candidates' merits. Various sources indicate, however, that high-ranking '*ulamā*' commonly rewarded their undeserving kin or sold their nomination allotments to underqualified candidates. Switching teaching and judgeship careers was also common for qualified individuals, especially after the seventeenth century. In fact, according to eighteenth-century documents, during this period most new entries into judgeships came from former low-level *madrasa* instructors.[14]

From early in the history of the polity, the Ottomans developed a layered hierarchy in judicial administration. While the *shaikh al-islām* headed the religious establishment headed since about the mid-1500s, the two highest-ranking judges of the Empire (the *qāḍī 'askar* of the Balkans and the *qāḍī 'askar* of Anatolia) played major roles in the appointment and dismissal of judges of various levels of seniority. The *qāḍī 'askar* of Anatolia took charge of the *qāḍī*ships in Anatolia, while the *qāḍī 'asker* of Rumelia/the Balkans was responsible for the *qāḍī*ships in the Balkans, Crimea and Northern Africa. Between the late fifteenth and the eighteenth centuries, the numbers of *qāḍī*ships under the administrative (but not judicial; see below) supervision of the Balkan and Anatolian *qāḍī 'askar*s ranged between 250 and the high 400s in each case.[15] Given the economic and demographic changes that might occur in particular districts, the central

[14] Kuru, 'Kazasker Ruznamçelerine Göre': 158–67.

[15] *Ibid*, chapter 2: 259–76.

administration commonly split up single *qāḍī*ships or merged multiple *qāḍī*ships into a single one, thus impacting the relevant revenue streams. Until the mid-1500s, the *qāḍī 'askar*s nominated the candidates for lower-level jurisdictions for the ruler's approval. The nominations for higher-level jurisdictions required the endorsement of the grand vizier as well. After the mid-sixteenth century, nominations for lower-level posts came to require the *shaikh al-islām*'s (rather than the grand vizier's) endorsement. Around the same time, the *shaikh al-islām* took over the responsibility of nominating candidates for higher-level *qāḍī*ships as well.[16]

The *qāḍī*ships in the Balkans, Anatolia and Egypt had separate administrative hierarchies.[17] As the system matched seniority and knowledge in legal practice with visibility, prominence and income, the graduates of higher-ranking madrasas and more experienced *qāḍī*s served in wealthy and prestigious judgeships. The latter included important urban centres, such as Istanbul, Bursa, Damascus, Cairo or locations with religious significance, most notably, Mecca and Medina. This hierarchy of judgeship, however, did not mean that the judicial decisions of higher-level judges could overturn those of their lower level colleagues. Thus, the hierarchical order among *qāḍī*ships and the *qāḍī*s who held them was not judicial but administrative in nature, solely indicating the differences in the revenue streams generated and variations in the terms of appointment. Higher-level *qāḍī*ships had relatively shorter durations.

In the pyramidal structure of the learned hierarchy, the amounts designated as the daily salaries for the *qāḍī*s occupying this or that post indicated the *qāḍī*ships' relative positions in the judicial system. In principle, the size of the population of the jurisdiction at issue determined the symbolic sums designated as the daily salaries for the relevant *qāḍī*s. In addition, population size determined the overall tax yields of *qāḍī*ships, and in the sixteenth century, the judgeships of Istanbul, Mecca, Medina, Edirne, Bursa, Cairo, Damascus and Jerusalem were the highest and most prestigious positions, with daily salaries of 500 *aqcha*s. Important provincial centres, such as Adana, Aintab, Amid, Belgrade, Sofia and Erzurum, boasted elevated status as well. These *qāḍī*ships and posts at the same rank, with a symbolic salary of 300 *aqcha*s per day, represented a career step just before the highest level *qāḍī*ships. Finally, small-town

[16] Aydın, 'Osmanlı'da Mahkeme'.
[17] *Ibid.*

qāḍīs constituted the lowest level of this hierarchy, their symbolic daily salaries varying from 25 to 150 *aqcha*s per day.[18]

It was possible for the status of a *qāḍī*ship to change over time. In fact, early eighteenth-century documentation indicated that most formerly 300 *aqcha*-level judgeships had acquired 499 *aqcha* status at this time.[19] Such increases in rank were not necessarily commensurate with population growth; thus, the salary-based ranking system did not reflect the actual incomes of the *qāḍī*s at various positions.

In the earliest years of the polity, *qāḍī* appointments did not have specific time limits.[20] By the end of the sixteenth century, however, the average appointment was for about 3 years. Subsequently reduced over time, by the late 1600s, the duration of office ranged from 12 to 20 months, depending on the status of the *qāḍī*ship. However, the complaints of local populations and provincial officials could lead to premature dismissals.[21]

While the majority of the judgeships were in the hands of active *qāḍī*s, it was possible, especially after the seventeenth century, to assign a small number of judgeships for longer periods or even without term limits to high-ranking members of the religious-judicial hierarchy, presumably in recognition of their merit. In addition, this arrangement might provide additional sources of income to deserving others in need of financial support, in particular those who were old, sick or retired. These types of assignments, excluded from the *qāḍā*s in regular assignment rotation, constituted about 8 per cent of about 6,200 assignments in the early eighteenth-century Balkans.[22] In many such assignments, but especially those granted to high-ranking, old or sick individuals, the assignees usually sent substitutes (*nā'ib*s) to their posts.

Most *qāḍī*s in rotation spent their careers alternating between periods of service (*ittiṣāl*) and waiting (*infiṣāl*) for new appointments while out of office. Over the centuries, because of the increasing number of candidates for a relatively stagnant number of jurisdictions, the appointment durations declined and the waiting times increased significantly. While the waiting period was about 2 years by the early 1600s, in the first half of the

[18] Veinstein, 'Les Ottomans'; Repp, *The Mufti of Istanbul*; Zilfi, *The Politics of Piety*.

[19] Kuru, 'Kazasker Ruznamçelerine Göre': 56–75.

[20] Aydın, 'Osmanlı'da Mahkeme'.

[21] *Ibid.*

[22] Kuru, 'Kazasker Ruznamçelerine Göre': 80–94. There is not much research on these types of assignments.

eighteenth century the average duration was 29–30 months and most *qāḍī*s in the Balkans spent 25–48 months in between appointments.[23] While out of office, the *qāḍī*s had to spend their time in Istanbul, attending the weekly councils of the *qāḍī 'askar* that they were attached to for further training and supervision (*mulāzamat*). Likely, they received no pay during this period, which put many of them under significant financial stress.

In addition to his judicial functions, the Ottoman *qāḍī* was also responsible for administering the municipal affairs of his jurisdiction, such as maintaining public roads, supervising the financial affairs of local mosques and pious endowments, overseeing guild activities and regulating local prices. Furthermore, *qāḍī*s kept an eye on local military-administrative authorities and tried to protect subjects from abuse. Finally, we know that the *qāḍī* played a role in the collection and transfer of local taxes and in the mobilisation of troops for military expeditions.

The *qāḍī*, as a judicial and administrative authority sent to his jurisdiction by the imperial centre, was responsible for administering Islamic law and enforcing imperial orders and regulations. However, the legitimacy of his actions depended on local expectations of propriety and fairness as well. Presumably, he thus mostly acted in ways that met the social, cultural and political expectations of the communities he served. After all, according to Lawrence Rosen, an important feature of Islamic law is its ability to accommodate local perceptions and worldviews.[24] Moreover, Ottoman judges had financial reasons for being sensitive to communal expectations: The *qāḍī*'s income from court fees (see below), which likely constituted the bulk of his earnings, depended on local perceptions of his fairness. Potential clients might avoid the court altogether or prefer a court in a neighbouring district, depending among other matters, on the reputation of the judge, although 'court-shopping' was not legal.

Other Court Functionaries

With the exception of the *qāḍī*, recruited from outside of the jurisdiction in which he served and regularly rotated, court functionaries often included local individuals who were knowledgeable and experienced in

[23] *Ibid*, 138–40.

[24] Rosen, *The Anthropology of Justice*; idem, *The Justice of Islam*.

legal affairs. These individuals could serve in a particular court for long periods and provided institutional continuity to the court's operations, or so one might expect. One such functionary, the deputy judge (*nā'ib*), could hear disputes and pronounce judgements in the *qāḍī*'s absence. It was common for the *nā'ib*s to travel within the *qāḍā* and hear the complaints of those who could not reach the *maḥkama*. Some *nā'ib*s specialised in specific functions such as dividing inheritances according to Islamic rules of inheritance.[25]

It was the *kātib*'s responsibility to record the court's operations, keep and maintain the court's ledgers, and prepare legal-administrative documentation for the court clients' use. Courts with large workloads might have multiple scribes, sometimes under the supervision of a head scribe. Other court functionaries held designations such as *chūkadār* (messenger), *muḥẓır* (who summoned individuals to court) and *mubāshir* (bailiff).[26] Apart from their official designations, however, we have little information about the specific duties of these men.

Chosen from locally trained scholars, the provincial *muftī*s (*kenār müftīleri*) were technically not part of the court personnel, but their functions overlapped with and directly influenced the working of the court. It was the *muftī*'s charge to formulate legal opinions (*fatwā*s) that could guide each trial to a conclusive verdict. Although, their opinions did not have a binding power, their *fatwā*s frequently determined the outcome of a trial in favour of the parties who presented them. From the seventeenth century onward, the provincial *muftī*s were nominated by the recommendation of the *shaikh al-islām*, and appointed by the Sultan, the term of office remaining indefinite.[27] As the *muftī*s were local people, they must have had a propensity to interpret the law in fashions consistent with local expectations. At the same time, the *muftī*s inculcated in the community, the rules of Islamic law according to the locally accepted *madhhab*.[28]

In his *Encyclopedia of Islam* (1st edition) entry on *maḥkama*, Joseph Schacht considers the witnesses to proceedings (*shuhūd al-ḥāl*) among the 'most important auxiliary officials' of the court.[29] This situation justifies

[25] Veinstein, 'Sur les *nâ'ib* ottomans': 247–67.
[26] Cf. Jennings, 'Kadi, Court, and Legal Procedure': 133–72.
[27] Aykan, *Rendre la justice à Amid*: 168.
[28] *Ibid*, 168–70.
[29] Schacht, 'Maḥkama': 2.

a more elaborate reflection on their involvement in legal proceedings. These individuals, whose names appear at the end of judicial entries in the Ottoman court records, primarily authenticated the transactions documented in the court records for future reference. Given the precarious position of written documentation in Islamic legal practice (see below), it was their act of witnessing that ensured the binding authority of the court's actions, decisions and contractual agreements. In principle, witnessing was open to all Muslims and many of those present at court might act as witnesses, simply because of their presence on site. Even so, recent research on the court records of the Anatolian town of Kastamonu indicates that people of influence, high status and good reputation often and repeatedly served as witnesses, especially in cases related to communal concerns or crime-related issues.[30] The authors of the present article have never run into female names among the *shuhūd al-ḥāl*.

Income Generated by the Court

Although since early Islamic history, *qāḍī*s had received administrative stipends and regular salaries from the coffers of the local political authority, the income of Ottoman *qāḍī*s and other court personnel must have been at least partly due to fees they collected for specific court services. The latter included registration, inheritance divisions, notarial services and corresponding with higher authorities. Given information available in the sultanic law books (*qānūnnāma*s) and other sources from different periods, previous scholars have compiled the fees for specific court services, reproduced in Table 1.

The figures presented in Table 1 indicate, perhaps unrealistically, that court fees did not change much between the fifteenth and nineteenth centuries, although prices in Istanbul increased about seven- to eight-fold in the same period.[31] Perhaps, after the sixteenth century, court personnel informally or illegally adjusted their fees in response to inflation and to compensate for increasingly shorter tenures and longer wait times between appointments.[32]

[30] Coşgel and Ergene, *The Economics of Ottoman Justice*.
[31] Özmucur and Pamuk, 'Real Wages and Standards': 301.
[32] 'Maḥkama'; Zarinebaf, *Crime and Punishment in Istanbul*: 143–44.

Table 1. Court Fees Prescribed for Different Services (in *aqchas*)[33]

Services	15th century	Late 16th century	Late 16th-early 17th century	1644–5	1676–7	Early 18th century	Dec. 1780
Manumission of slaves (*i`tāk*)		–	62	66	–	62	–
Registration of marriage (*nikāh*)	32 for virgins 12/15 for previously married	–	25 for virgins 15 for previously married	25	25 for virgins	25 for virgins 15 for previously married	–
Inheritance (*mīrās*)	20 for every 1,000 *aqchas* of estate value	25 for every 1,000 *aqchas* of estate value	15 for every 1,000 *aqchas* of estate value	15 for every 1,000 *aqchas* of estate value	15 for every 1,000 *aqchas* of estate value	15 for every 1,000 *aqchas* of estate value	–
Notary service (*ḥüccet*)	32	26	25	25	25	25	25
Signature (*imzā*)	12	–	12	12	12	12	12
Regisration fee (*sicil-i ḳayd*)	7	8	8	12	8	8	8
Letters to administrative and judicial authorities (*mürâsele*)		8	6	8	6	6	6

Source: Tables 3–4 in Metin Coşgel and Boğaç Ergene, *The Economics of Ottoman Justice: Settlement and Trial in the Sharia Courts* (Cambridge: Cambridge University Press, 2016), 80 based on a variety of sources.

Note: The fees presented in the table include the share for *qāḍī* and other members of the court.

[33] In addition to fees identified in Table 1, the court charged fees for registering tax-farming contracts and divorces, and for the supervision of local tax collection too; cf. Uzunçarşılı, *Osmanlı Devleti`nin İlmiye Teşkilâtı*.

In fact, we do not know how much the court functionaries *actually* charged for their services, beyond a few clues. The estate inventories in the court records constitute a rare form of documentation that explicitly reveals how much the court charged for its services, in this particular case, dividing the estates of the deceased among their heirs. Boğaç Ergene has suggested that in the late 1600s and in the eighteenth century, the courts in Çankırı and Kastamonu charged about 3.4 per cent of the gross value of the estates at issue, which is substantially higher than what official prescriptions dictated.[34] Furthermore, the rate varied substantially among individual inventories and might reach 7 per cent in Kastamonu and seven-and-one-half per cent in Çankırı. On the other hand, a document written by the chief scribe of the eighteenth-century court of Diyarbekir/Amid indicated that during 44 days (2 December 1796 to 16 January 1797) the court collected 2,835 *ġurush*. This sum corresponded to the payments for various types of documents issued by the court.[35] According to the historian Naima, in 1646 Bursa and Thessaloniki judgeships were on the market for 10,000 *ġurush* each, and Damascus and Yenişehir (in the Balkans) judgeships went for 19,000 *ġurush* apiece: Naima considered the price for Damascus to be too high compared to the revenues generated by the local court.[36]

Other relevant observations regarding the revenue generated by the court comes from Aleppo. In particular, Abraham Marcus has suggested that *qāḍī*s claimed 10 per cent of the sum awarded in litigations in late eighteenth-century Aleppo, payable by the winning parties,[37] which is consistent with contemporary European observations on various courts' operations. If the court did indeed charge fees for litigation, strictly speaking, this practice would have contravened jurisprudential prescriptions.[38] In addition, it might have generated a pro-plaintiff bias in its operations, a tendency that Daniel Klerman has observed in English common law courts in the early modern period.[39] After all, such a practice would have generated incentives to adjudicate more disputes, and judges may have encouraged plaintiffs to bring their disputes to court.

[34] Ergene, *Local Court Provincial Society*: 89.
[35] Aykan, *Rendre la justice à Amid*: 50.
[36] İpşirli, *Tarih-i Naima*, volume 4: 1760–61 and 1784.
[37] Marcus, *The Middle East on the Eve of Modernity*: 106.
[38] Cf. İbn-i Abidin, *Reddü'l Muhtar ale'd-Dürrü'l Muhtar*: 447–51.
[39] Klerman, 'Jurisdictional Competition'.

Farming-out *qāḍī*ships by the original appointees to local *nā'ib*s may have been common since the sixteenth century, although the central government occasionally tried to limit this practice because excessive demands for revenue extraction must have generated excessive pressure on the populace. In many such arrangements, the *qāḍī*s did not travel to their jurisdictions but received payments from those who assumed their judicial responsibilities.[40] Farming out *qāḍī*ships was so common in the late 1700s that the government issued directives urging the *qāḍī*s to choose their representatives only from among honest and qualified individuals. This advice gives us an idea about the complaints that Istanbul frequently received on this matter. Finally, in 1799 the government required the *qāḍī*s to travel to their jurisdictions and personally assume their responsibilities.[41] This process of selling offices has strong parallels with the French case, in particular the example of the *présidiaux*, where the venality of offices accelerated from the second half of the seventeenth century onward.[42]

Court Records

Often called *qāḍī sijill*s or *shari'a sijill*s, the court registers constitute the courts' archives. Earliest extant registers date from the fifteenth century for the Anatolian towns of Bursa and Kayseri, and from the early to mid-sixteenth century in select Arab cities. Currently, hundreds, perhaps thousands, of registers exist in the libraries and archives of formerly Ottoman territories, in particular Turkey. While these provide an immense amount of historical information about the court's work in different corners of the empire, many *qāḍī*ships, especially rural and small units, have left small numbers of registers or none at all. Perhaps their archives, or at least significant portions of the latter, suffered loss or destruction. In addition, in some locales and especially in early periods, keeping court records may not have been a high priority.[43]

The court registers contain documentation directly related to the court's legal actions and notarial responsibilities. Here we find summary

[40] 'Maḥkama'; Tak, 'Diplomatik Bilimi Bakımından': 39–46 and *passim*; Yurdakul, *Osmanlı İlmiye Merkez Teşkilâtı'nda Reform*.

[41] Yurdakul, *Reform*: 140 and 301–02.

[42] See Blanquie, *Justice et finance sous l'Ancien Régime*; see also Soleil, *Le siège royal de la sénéchaussée et du présidial d'Angers*.

[43] 'Sidjill, In Ottoman Administrative Usage': 539–45.

accounts of litigations, copies of contracts and amicable settlements, records pertaining to inheritance divisions, suretyship, manumission of slaves, support after divorce and guardianship. In addition, the registers also contain documents sent from other venues in relation to the court's fiscal, administrative and municipal responsibilities. These include orders and communication pertaining to tax collection, military mobilisation and maintenance of order and security. In addition, we find certificates of appointment concerning *qāḍī*s, *nā'ib*s, governors or sub-governors, *mudarris*es, *muftī*s, court scribes and even neighbourhood *imam*s. For some of the largest cities of the polity, such as Bursa and Cairo, there exist specialised court registers, often devoted solely to documentation concerning estate divisions.

Here, we should note that ever since the 1940s, historians exploring court-produced documentation for legal research in the Ottoman context have tended to focus almost exclusively on the evidentiary limitations of these sources in litigation, specifically in comparison to oral testimonies.[44] Even so, this approach overlooks the functions of court records outside the court and thus, minimises the notarial importance of the court's work for the day-to-day and informal interactions of local people.[45]

Employing doctrinal sources, Baber Johansen and Émile Tyan have suggested that in the mediaeval period, litigants submitted files to the judge for his initial pre-trial examination. Only afterwards did the judge summon the parties for a court hearing.[46] In the Ottoman context, a comparable pre-trial procedure is unlikely. However, a close examination of the documents produced by court scribes gives insights into how these men produced the court's archives, and elucidates the functions served by the latter.[47] Accordingly, court processes and subsequent documentation required separate forms of authentication, fulfilled by various types of witnesses. For example, one group called *ta'rif* helped the court officials to correctly identify the litigants. Special witnesses to litigation, called *shuhūd al-'udūl*

[44] Tyan, *Le notariat*; Brunschvig, 'Le système de la preuve en droit musulman': 201–19; Johansen, 'Formes de langage et fonctions publiques': 333–76. For an exception, see Udovitch, *Partnership and Profit*.

[45] On the notarial functions of the Ottoman court see, Kurz, *Das* Sicill *aus Skopje*; Aykan, *Rendre la justice à Amid*. In the European context, the literature is vast, see Burns, *Into the Archive*; Nussdorfer, *The Brokers of Public Trust*.

[46] Tyan, *Le notariat*; Johansen, 'Formes de langage'.

[47] Aykan, *Rendre la justice à Amid*: 144–52.

(or *'udūl* in short), supported the truthfulness of claims and statements made by litigants during legal proceedings. There were also witnesses who testified to the trustworthiness and reliability of the *'udūl* through a procedure called *ta'dil* and *Tazkiah*. Finally, and as already mentioned, *shuhūd al-ḥāl* kept their eyes on court proceedings in their entirety.

After each trial or agreement enacted in court, the scribe (*kātib*) recorded the details of the proceedings in a fashion consistent with pre-established legal formularies. The court registers are compilations of such records, sometimes in thousands per volume, often containing months or years of a particular court's paperwork. It is likely that preliminary drafts preceded the final version of every entry in the registers, composed by a scribe during or immediately after proceedings. Court clients often received copies of these entries (sing. *hujja*) bearing the judge's seal. Because these documents were notarised by judges, they must have served tangible, possibly evidentiary, functions in the daily affairs of those who possessed them. If or when used in legal procedures in court, however, they were further authenticated by eyewitness testimonies. In court registers, each page contains the copies of several entries, sometimes written by different hands and in a roughly chronological order. When a particular register contains recordings from various years, this situation may indicate compilation well after the session, perhaps to reconstitute scattered registers.

Historiography and Agenda for Future Research

When compared to many of their counterparts who focus on other pre-modern Islamic settings, Ottoman legal historians are fortunate because they have access to numerous registers from many sub-periods and locations within the polity. Thus, we have opportunities for legal research not possible for most non-Ottoman settings. Yet, while many Ottomanists have mined the court records for socio-economic information, research on court practices is still relatively underdeveloped.[48] Since the late 1970s and the 1980s, a few researchers, including Ronald Jennings, Haim Gerber

[48] Including, İsmail Hakkı Uzunçarşılı and Mümtaz Yaman as early as in the 1930s, Mustafa Çağatay Uluçay, İbrahim Gökçen, Halil İnalcık and Mustafa Akdağ in the 1950s, 1960s and 1970s, and Suraiya Faroqhi at a later period. See Uğur, 'Şer'iyye Sicilleri'; Cf. Agmon, 'Women's History and Ottoman Sharia Court Records: 171–209.

and Aharon Layish, have explored the *sijill*s to learn about the institutions and practices that produced them. However, only in the last two or three decades has the exploration of the court's archives for *legal* research become popular among a relatively large cohort of specialists.

In terms of the issues covered and the methodological choices made, the existing literature on the Ottoman court shows certain tendencies.

1. Paradoxically, widespread access to volumes of court ledgers has generated some adverse consequences: Since the key primary source of historical research for the Ottoman court is the *sijill*s, reflections on the diplomatics of these documents tend to overshadow the discussions of the court and its processes. In fact, many studies on Ottoman legal practice involving the court's operations include detailed descriptions of the source-base that they rely on, including the sizes and physical qualities of the ledgers, the numbers and types of documents that they contain and even the ink and type of hand-writing used to produce them.
2. This overreliance on the *sijill*s as the main basis of information leads researchers to attribute various aspects of the documents to the institution and its operations. For example, historians have attributed the order, consistency and formality observed in the court documents as reflecting the nature of the court's legal and administrative work. In historical studies, the court proceedings appear primarily as insular, doctrinally shaped, rule-driven processes that varied little according to cases, court-clients, circumstances, or the judicial or extrajudicial biases of court functionaries.
3. Related to this perception, scholars tend to represent the court officials mainly as legal-bureaucratic functionaries without significant connections to the larger community in which they operated. As a result, modern historians often disregard communal involvement in legal processes. Among forms of dispute resolution, adjudications have received more attention compared to arbitrations (*taḥkīm*) or amicable settlements (*ṣulḥ*), likely because the former fit better with the image of the court as a rule-driven entity, concerned mainly with enforcing the rule-of-law in a fashion impervious to locally shaped perceptions of justice and fairness. Some scholars have even denied the involvement of court officials in amicable

settlements as members of conciliatory bodies, simply because such involvements have not entered the court records, although they do appear in alternative historical sources.[49] This misunderstanding represents another instance of confusing the source with the institution that produced it.

4. Furthermore, scholars have regarded the court as a means to serve an ideological end, to legitimise the dynasty's rule over its domains, namely by protecting the weak from strong and corrupt provincial actors. This characterisation of the court, certainly state-centric, overlooks other potential political functions that this body may have possessed, for example as a medium representing the voices of select local actors and/or communities against the demands and policies of the imperial centre.
5. Methodologically, scholars have not paid much attention to the question of how one should (and should not) explore the court records. In fact, many studies use the court's archive as a databank, with little regard to the manner in which actors produced these documents. In consequence, historians have not sufficiently reflected on the historical circumstances surrounding document composition, nor have they asked how representative the surviving records may have been. According to Dror Ze'evi, anecdotal, impressionistic and selective utilisation of the court's archive has made early depictions of the courts' operations unreliable. In addition, earlier works on Ottoman courts have tended to avoid comparative approaches, by generally focussing on the operations of a single court in a specific, often short, time frame.[50]

In Place of a Conclusion

Given these general observations, it is possible to propose an agenda for future research on Ottoman courts in the pre-Tanzimat period, which might help improve on the existing scholarship. Here are some possible avenues that might be worth pursuing:

[49] See, for example, Gerber, *State, Society, and Law in Islam*: 36; idem, *Oppression and Salvation*, *passim*; Ginio, 'The Administration of Criminal Justice': 191–92, El-Nahal, *The Judicial Administration of Ottoman Egypt*: 185–209. For a detailed historiographical discussion see Ergene, 'Why did Ümmü Gülsüm Go to Court?': 215–44.

[50] Ze'evi, 'The Use of Ottoman Court': 35–56.

1. Presumably due at least in part to fixation on the *sijill*s, the existing scholarship provides little information for settings, for which there exists no or little court-produced documentation. Consequently, we know next to nothing about the institution and practices of the court in small, rural settings and the courts of the pre-fifteenth century remain unknown. For example, while there are many studies on the courts in sixteenth- and seventeenth-century Galata, there are none about those in fourteenth-century Bolu or fifteenth-century Balıkesir, for neither of these towns has generated any *sijill* collections. This discrepancy calls for more attention to alternative historical sources, such as chronicles, literary texts, advice literature or travellers' accounts.
2. As stated, the *qāḍī*s were frequently rotated, while most other court functionaries were locals. Moreover, members of the local community functioned as witnesses, testifying to litigations, contracts prepared or authenticated in the court, and the court's administrative and financial operations. Given this situation, it is realistic to suppose that local, communal expectations of justice, propriety and fairness significantly influenced the court's operations, especially in processes of arbitration and amicable settlements that involved the court or required its approval. Thus, research on the communal nature of the court's operations and the underlying local sensibilities should generate valuable insights.
3. While attempting to reveal the local, communal nature of the court's work, it is imperative to avoid essentialising the 'community' by ignoring the tensions, variations in perspectives and conflicts of interest, which it often embodies. A sophisticated appreciation of the place of the court in specific settings becomes possible only by making serious and credible attempts to figure out how class, gender and confessional identity (among many other factors) shaped the attitudes of various groups towards law, legal practice and court operations. While historians have made anecdotal and impressionistic observations in this regard, systematic, well thought-out efforts to discuss the relevant issues have been rare.
4. Research on the political economy of justice has been rare too, for scholars rarely acknowledge that the court was a revenue source, sometimes subject to selling and subcontracting. Thus, historians have largely failed to consider various strategies by court officials

to maximise their incomes while in office, and the reactions of court clients to these practices. This could be a particularly rewarding avenue for research for the post sixteenth-century period. After all, in those years, *qāḍī*s and other court officials sought (legitimate and illegitimate) ways to make the most of their judicial authority to cope with the effects of increasing competition for positions, shortening tenures and increasing waiting-times between judicial posts. Ottoman legal historians could benefit from insights and research orientations developed in the scholarship on 'Law and Economics' already practised in other geographical areas.[51]

5. Furthermore, the court's relationships to—and interactions with—other imperial and provincial authorities, such as the Imperial Council and provincial military-administrative functionaries, certainly require more attention. Historians should focus on the divisions of legal-administrative labour among entities concerned with Ottoman justice, the overlaps among the jurisdictions of different bodies concerned with these matters, and the changes in these linkages occurring over time. If the court was indeed a part of the Ottoman judicial-administrative hierarchy, and there is no reason to challenge this claim, it is worth examining how it functioned in relation to the other components of the system.
6. In addition, few historians have attempted to make temporal and location-based comparisons in the functions, operations and judicial ideologies of the court. More specifically, can we be sure that contemporary courts in different locales demonstrated identical or even comparable judicial and administrative inclinations? Moreover, what can we say about courts in different periods? *Sijill*-researchers have commonly cited the findings of their colleagues who have used the archives of different courts (or of the same court in different periods) to make claims regarding the relative consistency (or lack-there-of) among the judgements and actions of the courts at issue. However, such a comparative orientation would be better served if based on research involving consistent methodological choices and approaches.
7. Addressing temporal and locational variations in court operations requires researchers to adopt consistent, systematic research

[51] Coşgel and Ergene, 'Law and Economics': 114–44.

strategies involving both qualitative and quantitative techniques. While qualitative orientations entail attempts to adopt specific methodologies of document reading and comparison, potentially useful quantitative techniques call for the definition of appropriate categories of analysis, using the information in the *Sijill*s, and an ability to constitute large-scale data sets appropriate for synchronic and diachronic explorations.

Declaration of Conflicting Interests

The authors declared no potential conflicts of interest with respect to the research, authorship and/or publication of this article.

Funding

The authors received no financial support for the research, authorship and/or publication of this article.

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