# Building Sovereignty in the Late Ottoman World: Imperial Subjects, Consular Networks and Documentation of Individual Identities

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ABSTRACT
Building Sovereignty in the Late Ottoman World: Imperial Subjects, Consular Networks and Documentation of Individual Identities

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This dissertation examines the formation of Ottoman sovereignty in the nineteenth and early twentieth centuries at the disciplinary intersection of international law and history. As an attempt to break away from a strictly territorial understanding of sovereignty as a fixed legal construct, it explores shifting definitions of sovereignty within and across the boundaries of the Ottoman Empire as well as its semi-autonomous provinces. It argues that Ottoman sovereignty was constantly re-defined by inter-imperial rivalries, jurisdictional politics and the formation of modern subjecthood and citizenship in the emerging arena of international law during the period in question.

Exploring what it meant to be an Ottoman and a foreigner in the Ottoman Empire during this period, I argue that subjecthood; nationality and citizenship often appear as instrumental categories incidentally utilized by ordinary individuals when deemed necessary. A careful examination of the Ottoman passport regime, on the other hand, proves that there already existed a prolonged process of experimentation on individual documentation and movement controls during the second half of the nineteenth history. Studying a collection of identity cards and passports, I argue that individual documentation was more important for some subjects than others, who needed to maintain and negotiate their identities under overlapping structures of multiple sovereignties. A careful analysis of various case studies, from former Ottoman Bulgaria to never-Ottoman Dutch Indonesia, demonstrate that disputed claims to nationality and foreign protection in one locality were often connected to the enhancement or loss of Ottoman sovereignty elsewhere and can only be understood beyond the geographical and disciplinary constraints of area studies.

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**List of Abbreviations**

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| BOA | Basbalanlik Osmanli Arsivi<br>Prime Ministry Ottoman Archives, Istanbul |

Collections:

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| YEE | Yildiz Esas Evraki<br>Yildiz Palace Collections |
| BEO | Bab-i Ali Evrak Odasi<br>Sublime Porte Collections |
| A.MKT.MHM | Mektubi Muhimme Kalem Evraki<br>Important Correspondences, Sublime Porte |
| A.MTZ | Mumtaze Kalemi<br>The Office of Autonomous Provinces |
| HR.H | Hariciye Hukuk Kismi<br>Foreign Ministry Legal Division |
| HR. MKT. | Hariciye Mektubi Kalemi<br>Foreign Ministry Correspondences |
| HR.SYS | Hariciye Nezareti, Siyasi Kismi Belgeleri<br>Foreign Ministry, Political Documents |
| HR.HMS.ISO | Hariciye Nezareti, Hukuk Musavirligi, Istisare Odasi<br>Foreign Ministry, Legal Advisors, Office of the Legal Counsel |
| DH. SN. THR | Dahiliye Nezareti Sicill-i Nüfus İdare-i Umumiyesi Belgeleri (Tahrirat Kalemi<br>Interior Ministry, General Directorate of Population Administration<br>Correspondences |
| I. DUIT | Iradeler, Dosya Usulu Iradeler Tasnifi<br>Sultan’s Commads |

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## Introduction

The Nineteenth century positivist doctrine of international law recognized the legal personality of sovereign states alone, while leaving quasi-sovereign political entities, imperial agents and indigenous peoples outside its scope of analysis.[1] More significantly, however, in-built assumptions of the positivist school of international law excluded non-European states from its purview, even when these political formations were indisputably sovereign political entities. "Both outside the scope of law and yet within it," these states were perceived as lacking international legal capacity even when they simultaneously possessed it.[2] Even though positivist doctrine considered sovereign statehood as the precondition of membership in international society, it justified the imposition of European extraterritorial jurisdiction in non-European states, which were yet to adopt specific forms of domestic legal institutions. Emblematic of a colonial mindset, such a formulation of international law made it obligatory on non-European states to carry out comprehensive legal reforms in order to meet the standard of civilization assumed by their European counterparts and confront extraterritorial jurisdiction within their sovereign territories during the nineteenth and early twentieth centuries.[3]

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[1] Positivist legal theory found its most systematic development in the writings of Jeremy Bentham and John Austin and made territorial sovereignty central to international law in contrast to naturalist doctrine of law which recognized the sovereign authority of non-territorial entities. Stephan Krasner, *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press), 1999. Martti Kostenniemi, *The Gentle Civilizer of Nations: Rise and Fall of International Law 1870-1960,* (Cambridge, UK; New York: Cambridge University Press, 2002).

[2] Anthony Anghie, *Imperialism, Sovereignty and the Making of International Law,* (Cambridge: New York, 2004), p.81

[3] Lauren Benton, "From International Law to Imperial Constitution: The Problem of Quasi-Sovereignty" *Law and History Review*, 26, 3, (2008): 597. Empire, Japan and China well illustrates the exercise of European extra-territorial jurisdiction in the late nineteenth and early twentieth centuries. Despite being de facto territorial entities, they were not categorized by international jurists as de jure sovereign states because they fell short of newly formulated standards of sovereignty: territoriality, recognition and positive legal

While sovereign statehood became the organizing principle of this newly emerging international order, renowned jurists of the nineteenth century offered varying taxonomies of statehood depending on their civilizational quality. For John Westlake (1828-1913), some states, despite being sovereign entities, lacked good breeding and hence were prone to intervention by other powers.[4] Henry Wheaton (1785-1848) emphasized the exclusionary logic of international law and argued that the international community of states emerged out of a common stock of juristic ideas.[5] For Wheaton, international law was only applicable to a distinct set or family of civilized nations. Lassa Oppenheim (1858-1919) described international law as the body of customary and conventional rules, which were considered legally binding by civilized states in their intercourse with each other, and offered a similar dichotomy between a family of nations and states that remained outside of it.[6] Hence, membership in the society of states, which Charles Armstrong defines primarily as a legal construct, rested on shared values, legal systems and a standard of civilization; and excluded entities that were considered to lack these attributes.[7]

In this wide spectrum of states, stretching from sovereign, civilized and European polities to stateless, uncivilized and barbaric ones, the Ottoman Empire was often portrayed as an anomaly.

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equality. In all these states the abolition of extra-territoriality took place after long processes of legal institutionalization.

[4] John Westlake, *The Collected Papers of John Westlake on Public International Law* (Cambridge: Cambridge University Press, 1914), 6 in Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (Cambridge, UK; New York: Cambridge University Press, 2004), 5.

[5] Henry Wheaton, *Elements of International Law, With a Sketch of the History of the Science* (London: Fellowes, 1836), 50-51.

[6] Lassa Oppenheim, *International Law: A Treatise* (New York, Bombay, Calcutta: Longmans Green and Co, 1912), 4.

[7] David Armstrong, *Revolution and World Order: the Revolutionary State in International Society*, (Oxford: Clarendon Press; New York: Oxford University Press, 1993), 31.

In the writings of these legal experts, the Ottoman Empire was recognized as a sovereign state, which was yet to achieve the standard of civilization attained by European powers. Similar to other non-European states such as China, Japan or Iran, the Ottoman Empire was subject to European intervention despite being a sovereign power.[8] It was also considered to have a particular status among other non-European sovereign entities. Westlake, for example, described the Ottoman Empire as "a singular anomaly" as it was admitted to the public law of Europe with the Congress of Paris in 1856, and hence, to the political system of Europe. The ambiguous legal personality of the Ottoman Empire, both within and outside the international order, preoccupied the legal thinking of various international lawyers during the period in question. More significantly, the long history of capitulations and consular courts in the Ottoman Empire attracted the scholarly attention of such leading jurists who considered it almost as a model for the practice of extraterritorial jurisdiction[9] in other political entities under the impact of European imperialism.[10]

[8] Turan Kayaoglu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire and* China, (Cambridge [U.K.]; New York, N.Y.: Cambridge University Press, 2010), Francis Jones, *Extraterritoriality in Japan and the Diplomatic Relations Resulting in Its Abolition, 1853-1899*, (New Haven: Yale University Press: London: Oxford University Press, 1931). Wesley R. Fishel, *The End of Extraterritoriality in China* (Berkeley, Los Angeles: University of California Press, 1952). Japan freed itself of this extraterritorial jurisdiction in the 1890s, Turkey in 1923, Egypt in 1936 and China in a gradual process that stretched from 1924 to 1946. Extraterritoriality in this context refers to one state's claim to exclusive jurisdiction over its own citizens within another state's territory.

[9] For a better understanding of the Ottoman capitulations see Halil Inalcik, "Imtiyazat: The Ottoman Empire", *Encyclopedia of Islam*, vol.2 1178-95, Feroz Ahmed, "Ottoman Perceptions of the Capitulations: 1800-1914," *Journal of Islamic Studies*, 11 1 (2000): pp 1-20, Linda Darling, "Capitulations," *Oxford Encyclopedia of the Modern Islamic World*, 4 vols. Ed. John L. Esposito, (Oxford, 1995), vol. 1 pp. 257-260, Edhem Eldem, "Capitulations and Western Trade," in *Cambridge History of Turkey*: *The Later Ottoman Empire 1603-1839*, vol. 3 ed. Suraiya N. Faroqhi, (Cambridge; New York: Cambridge University Press, 2006), 283-336.

[10] Umut Ozsu, "The Ottoman Empire, The Origins of Extraterritoriality and International Legal Theory" in Florian Hoffmann and Anne Orford, eds., *The Oxford Handbook of the Theory of International Law* (Oxford: Oxford University Press, 2016): 123–37. Also see Aimee Genell, "Empire by Law: Ottoman Sovereignty and the British Occupation of Egypt, 1882-1923" (PhD diss., Columbia University, 2013).

Recent scholarship has traced the historical evolution of positivist international law through the framework of European colonialism and inter-imperial rivalries, and has shown the limits of sovereignty-based understandings of the discipline. Even though this much-needed move did away with the Eurocentric premises of international law, authoritative categories of nineteenth century legal positivism are yet to be abandoned in historical analysis. The agency of non-European states, which were partially or completely excluded from the European state system, in the emergence of an international order and the evolution of the discipline calls for further investigation.

Lauren Benton rightly argues that sovereignty is more often "a myth than a reality", an image carefully curated by polities as a manifestation of their own power.[11] It is formulated by states in order to control their borders and claim the exclusive right to make laws and execute them in their territories. In fact, imperial borders are porous and imperial sovereignty is layered and varied across imperial territories. In contrast to the assumption that sovereign statehood was the foundation of nineteenth century international order, a belief that goes back to the Treaty of Westphalia of 1648 as the genesis of the discipline, sovereignty was constantly contested, negotiated and re-defined by inter-imperial rivalries, surveillance and control of legitimate means of movement, regulation of trade routes, and (re)-definition of subjecthood and citizenship within and across the boundaries of the empire.[12] Benton underlines the need to re-think the theoretical implications of sovereignty, and more importantly, to "retell its history."[13]

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[11] Lauren Benton, *A Search for Sovereignty*, (New York: Cambridge University Press, 2010): 279.

[12] Lauren Benton, *A Search for Sovereignty*, Also see Anthony Anghie, *Imperialism, Sovereignty and the Making of International Law*, Marti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960*, (Cambridge: Cambridge University Press, 2005). For an alternative account of sovereign statehood as a shifting historical process, see Mary Lewis, "Geographies of Power: The Tunisian Civic Order, Jurisdictional Politics, and Imperial Rivalry in the Mediterranean, 1881-1935), *The Journal of Modern History* 80 (December, 2008).

[13] Benton, Ibid. 279.

My dissertation, *Building Sovereignty in the Late Ottoman World: Imperial Subjects, Consular Networks and Documentation of Individual Identities*, is an attempt to retell the history of sovereign statehood in the Ottoman Empire in tandem with a newly emerging international order during the late nineteenth and early twentieth centuries. In an attempt to go beyond sovereign statehood as a legal construct, it seeks to historicize its formation and development in the Ottoman Empire in relation to inter-imperial dynamics, jurisdictional politics, definition of Ottoman nationality and documentation of individual identities. It perceives sovereignty neither as an abstract notion nor as a fixed concept, but explores its fractured and uneven qualities in the Ottoman Empire as well as in the semi-autonomous sub-polities that emerged out of its own territorial possessions during the second half of the nineteenth century.

The vast body of nineteenth century literature on international law demonstrates the extent to which the Ottoman Empire and its semi-autonomous provinces attracted the interest of international jurists in their respective efforts to tackle the question of sovereign statehood.[14] These sources provide significant insights for understanding the development of positivist legal norms and an international legal doctrine during this period. How the Ottoman Empire and its semi-autonomous provinces were examined in these sources may introduce us to some of the key questions that informed the legal thinking of nineteenth century jurists and the various ways in which they dealt with questions of sovereign statehood and extraterritoriality. While these sources are certainly valuable in many aspects, I find it necessary to work against them in order to be able to break away from the exclusionary logic of nineteenth century legal positivism, and hence its disciplinary constraints.

[14] Gerry Simpson, "Something to Do with States" in Florian Hoffmann and Anne Orford, eds; *The Oxford Handbook of the Theory of International Law*, 578.

As an attempt to explore Ottoman sovereignty across the disciplinary divide between international law and history, the aim of my study is two-fold. First, I investigate how Ottoman jurists and diplomats appropriated and reacted against the positivist legal norms about sovereign statehood during the nineteenth and early twentieth centuries. Informed by Becker Lorca's call for giving agency to "semi-peripheral international lawyers," I explore how Ottoman jurists re-interpreted positivist legal norms and contributed to the development of international law as a transregional discourse.[15] Rather than seeing the evolution of international law in a progressive trajectory, that is to say, gradually extending from European to non-European states, I argue that a new legal consciousness emerged in the empire during this period. Ottoman legal scholars, diplomats and bureaucrats developed a keen understanding of the positivist legal norms and concepts and appropriated them in their efforts to resist against European political intervention in the empire.

This new legal awareness of positivist law was in fact part of a broader process of legal transformation towards the creation of a uniform legal environment during the *Tanzimat* era.[16] Departing from the existing legal system, which was characterized by multi-layered spheres of

[15] Becker Lorca, "Universal International Law: Nineteenth-Century Histories of Imposition and Appropriation" *Harvard International Law Journal*, 51 no: 2, (2010): 475-552. Becker Lorca, *Mestizo* International *Law: A Global Intellectual History 1842-1933* (Cambridge, United Kingdom: Cambridge University Press, 2014).

[16] Tanzimat (*re-ordering*) was series of reforms promulgated between 1839 and 1876. It started with the 1839 *Hatt-ı Şerif of Gülhane* (Noble Edict of the Rose Chamber) which guaranteed life and property rights, instituted tax regulations, outlawed execution without trial, and other liberal reforms to Muslim and non-Muslim subjects alike. 1856 *Hatt-ı Hümayun* (Imperial Edict) reiterated the reforms announced by the 1839 Edict and promulgated reforms in the courts and the penal system. At a time of increasing European intervention in the empire, the Tanzimat reforms mainly targeted European powers and emphasized the ideal of equality among all subjects. For the translation of 1839 and 1856 Edicts see J.C. Hurewitz, *The Middle East and North Africa in World Politics*, vol. 1 (New Haven, CT: Yale University Press, 1975), pp. 269-271 and 315-318. Also see Halil Inalcik, "Application of the Tanzimat and its Social Effects" *Archivum Ottomanicum* V (1973), pp. 97-128, Butrus Abu-Manneh, "The Islamic Roots of the Gulhane Rescript," *Studies in Islam and the Ottoman Empire in the Nineteenth Century* (Istanbul: ISIS, 2001).

particularisms, the Tanzimat reformers were mainly preoccupied with the construction of a uniform legal environment.[17] These reforms were aimed at creating a rational legal order by assuring property rights, contractual freedoms and formal equality among imperial subjects regardless of their religious or ethnic affiliations.[18] The centralization and bureaucratization of the state apparatus and the court system was hence a political strategy towards eliminating intermediary sources of power and proposing, instead, the ideal of a self-referential legal environment characterized by a direct relationship between the state and imperial subjects.[19] The reception of Western legal codes and institution of secular courts were directly related to state efforts to comply with the civilizational standard imposed by European powers and diminish the power of consular courts in the empire. [20] Even though the growing interest in Ottoman legal studies immensely contributed to our knowledge on the evolution of the court system, legal codification and the settlement of criminal, civil and property disputes among different legal venues, the field of international law, which was inextricably connected to the broader process of

[17] Caglar Keyder, "Law and Legitimation in the Empire," in *Lessons of Empire: Imperial Histories and American Power* (Social Science Research Council), ed. Craig J. Calhoun, Frederick Cooper, and Kevin W. Moore, (The New Press 2006), 117.

[18] Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford; Calif: Stanford University Press, 2003): 5-6

[19] Huricihan Islamoglu, "Modernities Compared: State Transformations and Constitutions of Property in the Qing and the Ottoman Empires," *Journal of Early Modern History*, 5 (4), 2001, 353-86

[20] The reception of Western codes started with the adoption of the French Commercial Code in 1850 in order to provide a legal basis for the intensifying commercial activity between the empire and the foreign traders. This was followed by the reception of the Code of Procedure in 1861 and of the Code of Maritime Commerce in 1863. Niyazi Berkes argues that the reception of these codes not only marked the establishment and strengthening of secular courts alongside their *sher'i* counterparts, but also provided rules for cases, which were considered to be lacking in *fiqh*. The criminal code was replaced by a new one in 1858, which was heavily based on the French Penal Code of 1810. The Penal law of 1840 was a combination of Islamic precepts and laws adapted from the French Penal Code of 1810. The Penal Law of 1858, however, is under the direct influence of its French counterpart. . Family law and law of inheritance showed strong resistance against foreign influence and remained unchanged until 1917. Niyazi Berkes, *The Development of Secularism in Turkey*, (Montreal: McGill University Press, 1964), 160.

legal transformation in the empire, rarely generated profound scholarly interest. In fact, the reception and appropriation of positivist law by Ottoman legal experts and reformers played a critical role in how they envisioned and executed domestic reforms, and in turn informed their thinking in the evolution of the discipline as a transregional discourse.

Against this background, I then focus on how Ottoman sovereign statehood was conceived through the institution of a secular notion of Ottoman nationality and a series of legal reforms and practices, which defined its conditions and requirements in accordance with positivist legal norms. Recent scholarship on sovereignty and extraterritoriality in the Ottoman Empire provided significant insights on the nineteenth century reforms for curtailing the influence of European states extending consular protections to growing numbers of foreign protégés and non-Muslim Ottomans.[21] These studies have shown that these reforms were primarily aimed at knowing and distinguishing among imperial subjects and hence restricting the breadth of extraterritorial jurisdiction in the empire. My dissertation seeks to contribute to these studies by focusing on how the Ottoman government tried to document and verify individual identities and institute Ottoman nationality in order to exert state sovereignty in line with the precepts of positivist international law. In an attempt to understand the fractured and uneven qualities of Ottoman sovereignty, I focus on cases of disputed nationality and jurisdictional politics as an arena of continuous conflict between state and non-state actors. Rather than studying the series of legal reforms and practices, I investigate the complicated ways through which state sovereignty was contested by the claims of ordinary subjects, which often brought local governors, foreign consuls and the newly emerging

[21]Salahi Sonyel, "Osmanli Imparatorlugu'nda Koruma Sistemi ve Kotuye Kullanilmasi," *Belleten* C. 79, S. 212 (April 1991): 360. Belkis Konan, "Osmanli Devletinde Yabancilarin Kapitulasyonlar Kapsaminda Hukuki Durumu" (PhD diss. Ankara University, 2006), Maurits van den Boogert, *Capitulations and the Ottoman Legal System: Qadis, Consuls and Beraths in the 18th Century* (Leiden, NLD: Brill, N.H.E.J., N.V. Koninklijke, Boekhandel en Drukkerij, 2005), Cihan Artunc, The Protégé System and Beratli Merchants in the Ottoman Empire: The Price of Legal Institutions, Working Paper, Feb 2013.

bureaucratic cadres in the empire up against one another in their respective efforts to resolve quotidian conflicts.

In his comparative study of sovereignty and extraterritoriality in Japan, the Ottoman Empire and China, Turan Kayaoglu explores the abolition of extraterritoriality in these countries after a series of reforms towards legal centralization.[22] Even though Kayaoglu's study enables one to re-think the history of sovereignty and extraterritoriality in a global/comparative framework, its scope of analysis is limited to the series of legal reforms carried out by each government, which led to the abolishment of extraterritorial jurisdiction in their own territories. In fact, we still know very little about what extraterritoriality meant in practice, how consular courts operated, who made use of them and how.[23] Ordinary subjects jockeying between different legal venues, that is to say Ottoman and consular courts, and how they articulated their claims in relation to modern notions of subjecthood, nationality and citizenship provide new possibilities for re-thinking sovereignty and extraterritoriality in a historical framework.

Contrary to the general tendency to study sovereign statehood and extraterritorial jurisdiction within the bounded space of empire-states, the geographical scope of my dissertation goes beyond the territorial possessions of the Ottoman Empire during the late nineteenth and early twentieth centuries. At a time of increasing mobility across imperial borders, I argue that identities were negotiated by different groups of imperial subjects both at home and abroad as well as in the semi-autonomous provinces of the Ottoman Empire. A through study of individual appeals to the Ottoman state for naturalization and expatriation reveal how disputed claims to nationality in one

[22] Turan Kayaoglu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire and* China.

[23] For the functioning of British consular courts in Alexandria see Will Hanley "Foreignness and Localness in Alexandria: 1880-1914" (PhD diss., Princeton University, 2007).

locality was often connected to the enhancement or loss of Ottoman sovereignty elsewhere.[24] Studying the emergence of Ottoman subjecthood and citizenship, and documentation of individual identities in a transregional framework also shed light on how Ottoman consuls, despite their limited capacity, played a critical role in the exertion of Ottoman sovereignty, both as a symbolic gesture and political strategy, during this period.

Chapter 1 offers a historiographical critique and asserts that there existed a chronological gap between European and Ottoman studies dealing with extraterritoriality and international law. Whereas the former sees the Peace of Westphalia of 1648 and the emergence of its key principles such as sovereign equality, balance of power and a policy of non-intervention as a turning point in the evolution of international law;[25] the latter exclusively focuses on the Paris Treaty of 1856 and the formal admission of the Ottoman Empire into the European state system.[26] Even though the Westphalian origins of the inter-state order has recently been called into question, the chronological asymmetry between Ottoman and European studies is still there. It obscures the interconnectedness of the Ottoman and European empires, and more importantly, avoids seeing

[24] This also opens up new possibilities for re-thinking the formation of sovereign statehood in the Ottoman Empire in comparative perspective. Alan Mikhail and Christine Philliou, "The Ottoman Empire and the Imperial Turn," Comparative Studies in Society and History, 54, 4 (October 2012): 721-745.

[25]Even though the Peace of Westphalia signified the beginning of a new era in international law based on sovereignty, Stephane Beaulac convincingly argued that it in fact constituted a myth that enabled international lawyers to explain the genesis of the discipline. Stephane Beaulac, *The Power of Language in the Making of International Law: The Word Sovereignty in Bodin and Vattel and the Peace of Westphalia* (Leiden: Brill, 2004).

[26] M.S. Anderson, *The Great Powers and the Near East, 1774- 1923*, (London: Edward Arnold, 1970), H. Bull, *The Anarchical Society: A Study of Order in World Politcs* (London: Macmillan, 1977), G. W. Gong, *The Standard of Civilization in International Society (Oxford: Clerondon Press, 1984)*, H. McKinnon Wood*, "*The Treaty of Paris and Turkey's Status in International Law", *American Journal of International Law* (1943), pp. 264-274, H. Temperley, "The Treaty of Paris of 1856 and its Execution*", Journal of Modern History* (Vol. 4, 1932), pp. 287-414, For a critique of this literature see Nuri Yurdusev and Esin Yurdusev, "Osmanli Imparatorlugu'nun Avrupa Devletler Sistemine Girisi ve 1856 Paris Konferansi," in Soysal ed. *Çağdaş Türk Diplomasisi: 200 Yıllık Süreç*, 137-147.

the evolution of international law as a transregional discourse. On the other hand, Ottoman studies continue to put undue emphasis on the Treaty of Paris and the formal admission of the Ottoman Empire to the Concert of Europe without paying enough attention to investigate what this move really meant in practice.[27]

By providing a brief historical background, this chapter illustrates how Ottoman diplomatic relations and treaty making practices with European states were similar to those that took place among European powers and asserts that the Ottoman and European empires already established a common legal language as early as the sixteenth century. It then focuses on the definition of international law as a separate field of study in the Ottoman Empire and asserts that the rapid increase in the number of translated works on international law alludes to the emergence of a new kind of legal awareness where Ottoman translators continuously meditated between original and translated texts and were exposed to this newly emerging network of knowledge.[28]

Chapter 2 makes an in-depth analysis of Ottoman legal treaties on international law and focuses on the works of Etienne Carathéodory, Ali Sahbaz Efendi and Ibrahim Hakki Pasha in order to understand how Ottoman legal scholars appropriated and then reinterpreted the main precepts of positivist law during the period in question. Even though the works of European jurists and how they considered the Ottoman Empire has generated some scholarly interest, we still know

[27] The formal admission of the Ottoman Empire to the European states system in 1856 did not automatically led to the abolition of the Capitulations. Ali Pasha, who represented the Ottoman Empire at the Paris Peace Conference, for instance, contended that the Capitulations were in fact contrary to the general principles of the law of nations and demanded their immediate abolition. In Feroz Ahmed, "Ottoman Perceptions of the Capitulations, 1800–1914," *Journal of Islamic Studies* 11, no. 1 (2000): 1–20

[28] Henry Bonfils, "Manuel de Droit International Public was translated by Mahmut Esad Efendi as *Hukuk-i Beyneddüvel* in 1881, Ahmet Selahattin's translation of Bonfils was published in in 1907, whereas Yusuf Ziya Pasa's translation of Bluntschli's treatise on international law was published in 1880. The content of these translated volumes will be further discussed in the following chapter.

very little about how Ottoman legal scholars and diplomats dealt with positivist legal norms such as sovereign equality, standards of civilization, the balance of power and policy of non-intervention. How these scholars recognized the legal personality of the Ottoman state, to what extent and in what capacity they developed a distinctly non-European understanding of international law are some of the questions I will explore in this chapter.

The formation of imperial citizenship is often seen as a defensive strategy initiated by the Ottoman bureaucratic elite against growing European influence in the Empire, and there is no comprehensive study of how individual identities were categorized, verified and documented in the late nineteenth and early twentieth centuries. Chapter 3 studies the Ottoman state's efforts to assume the exclusive right to determine, verify and document identities, and regulate movement through a newly instituted passport regime. It gives a brief outline of recent studies dealing with the emergence of identity cards and passports, and expands on the euro-centric focus of these studies, which tend to leave the adjacent Ottoman Empire outside their scope of analysis. Even though these studies assume that the emergence and development of the passport regime coincide with the First World War, I argue that a careful examination of the Ottoman passport regime proves that there already existed a prolonged process of experimentation on individual documentation and movement controls during the second half of the nineteenth history. Studying a collection of identity cards and passports, as well as individual appeals to the Ottoman state for the acquisition of these documents, this chapter illustrates how individual identification acquired an instrumental role in the formation of Ottoman nationality and sovereignty.

The second part of this chapter explores how passports were used as an instrument for claiming state sovereignty during the period in question. By using the newly established semi-autonomous Bulgarian Principality (1878-1908) as a case study, it examines the relations between

the Bulgarian agents of the gate – *Bulgaristan Kapukethudaligi* – in Istanbul, and the Ottoman Commissariat - *Bulgaristan Komiserligi* – in Sofia in their respective efforts to exert exclusive control over populations moving across their territories through passport controls.

Chapter 4 focuses on the emergence of Ottoman Nationality Law in 1869, which recognized all persons domiciled in the Ottoman territory as citizens of the empire unless they could prove the contrary, and strictly prohibited Ottoman subjects from taking foreign nationality without the consent of the imperial center. As an attempt to abolish extra-territorial jurisdiction in the empire, the Nationality Law ushered in a new definition of state on the basis of territorial sovereignty and generated an all-embracing ideal of imperial citizenship.

Rather than focusing on the 1869 Law, however, this chapter explores cases of disputed nationality in order to understand how ordinary individuals pursued their own interests by claiming the nationality of one state against the other. It provides an alternative framework to understand the scope and the execution of the 1869 Law by focusing on cases of disputed nationality and jurisdictional politics as an arena of continuous conflict between Ottoman and British courts during the last quarter of the nineteenth and early twentieth centuries. It studies the nationality claims of Ottoman and foreign subjects jockeying between different legal forums to settle property disputes, claim inheritance, demand tax exemptions or escape from criminal charges imposed by the Ottoman or consular authorities. It explores what it meant to be an Ottoman and a foreigner in the Ottoman Empire during the period in question and demonstrates that subjecthood; nationality and citizenship often appear as instrumental categories incidentally utilized by ordinary individuals when deemed necessary.

It is also important to note that international law jurists of the time were not directly concerned with nationality determination but treated the issue in relation to the principle of

reciprocity and extraterritorial jurisdiction. Even though these jurists considered nationality as a matter of internal legislation, the status and just treatment of subjects living under the sovereignty of another state constituted an important focus for their studies. The status of European protégés in the Ottoman Empire and their claims to consular protection as well as the status of Ottoman subjects abroad who appealed to Ottoman consular authorities for acquiring similar protections against their host governments provide new possibilities for re-thinking the formation of modern subjecthood in tandem with the newly emerging principles of positivist law.

While the previous chapter investigates the protégé system and everyday workings of the British consular courts in the Ottoman Empire, Chapter 5 explores how Ottoman consuls provided similar protections to subjects claiming to be Ottoman nationals abroad. It examines the Ottoman nationality claims of Hadhrami Arabs who acquired Ottoman passports from Ottoman consuls stationed in Batavia, Bombay and Hyderabad, and argues that their claims for Ottoman citizenship by virtue of birth and descent were in fact related to the concomitant extension of Ottoman sovereignty in and around the province of Yemen in the Arabian Peninsula, which turned Hadhramaut, the homeland of the Hadhrami overseas community, into an Ottoman enclave, if not a formal possession of the empire in the late nineteenth century. The study of Hadhrami Arabs and their attempts to keep their operations in their established trade networks across the Indian Ocean rim under Ottoman consular protection alludes to a rather nuanced understanding of day-to-day conflicts over the formation of imperial citizenship, and shows the extent to which Ottoman officials, somewhat mimicking their European counterparts, were extending protections over the Hadhrami émigré community. The case not only enables us to break away from strictly territorial understandings of sovereignty and hence reveals the entangled histories of these empires, but also

makes clear the limitations of approaching the question of imperial citizenship within the territorial boundaries of empire- states.

## Chapter I

## International Law and the Emergence of a European State System: The Ottoman Case Revisited

The growing interest in Ottoman legal studies has tremendously contributed to our understanding of the political and socio-economic transformation in the empire. Studies dealing with the court system, criminal, civil and property disputes, and codification of laws allowed Ottoman scholars to go beyond state-centered accounts and gave agency to ordinary subjects who pursued their self-interest in the legal pluralism of the empire. Despite the abundance of ground breaking research in Ottoman legal history, however, the field of international law rarely generated profound scholarly interest. Some studies exclusively focused on the Ottoman treaty negotiations with European powers, which inevitably narrowed the field down to pure diplomatic and political history.[29] Others focused on the history of capitulations, and economic and jurisdictional privileges granted to the European protégés, which, often, aside from a few of exceptions, reinforced the narrative of Ottoman decline.[30] Even though the field of international law had provoked renewed

[29] Roderic H. Davison, *Nineteenth Century Ottoman Diplomacy and Reforms* (Istanbul: ISIS Press, 1999), Ismail Soysal ed, *Çağdaş Türk Diplomasisi :200 Yıllık Süreç* (Ankara, Türk Tarih Kurumu, 1997), Sinan Kuneralp, *Recueil des traités, conventions, protocoles, arrangements et déclarations signés entre l'Empire Ottoman et les puissances étrangères, 1903-1922*, (Istanbul:Éditions Isis, 2000), Rifa'at 'Ali Abou-El-Haj, "Ottoman Diplomacy at Karlowitz," *Journal of the American Oriental Society* 87, 4 (1967), 498- 512, for a revisionist study of Ottoman imperial diplomacy see Dogan Gurpinar, *Ottoman Imperial Diplomacy: A Political, Social and Cultural History*, (London ; New York : I.B. Tauris ; New York, 2014.

[30] For a better understanding of the Ottoman capitulations see Halil Inalcik, "Imtiyazat: The Ottoman Empire", *Encyclopedia of Islam*, vol.2 1178-95, Feroz Ahmed, "Ottoman Perceptions of the Capitulations: 1800-1914," *Journal of Islamic Studies*, 11 1 (2000) pp 1-20, Linda Darling, "Capitulations," *Oxford Encyclopedia of the Modern Islamic World*, 4 vols. Ed. John L. Esposito, (Oxford, 1995), vol. 1 pp. 257-260, Edhem Eldem, "Capitulations and Western Trade," in *Cambridge History of Turkey*: *The Later Ottoman Empire 1603-1839*, vol. 3 ed. Suraiya N. Faroqhi, (Cambridge ; New York : Cambridge University Press, 2006), 283-336.

attention in world history, particularly in relation to the questions of sovereignty, subjecthood and imperialism, Ottoman studies have yet to explore to what extent positivist legal norms of international law were received by the Ottoman ruling elite and used for claiming imperial sovereignty during the late nineteenth and early twentieth centuries. The disciplinary gap between a strictly doctrinal understanding of international law, and Ottoman legal practice and diplomacy still prevail. More significantly, the practice of Ottoman imperial sovereignty within an emerging definition of an international law and order need further exploration.[31]

The growing literature on the development of modern international law and the European state system has a lot to offer to Ottoman scholars. This section seeks to explore how Ottoman studies can benefit from this renewed scholarly interest in the field. Even though studies dealing with the development of modern international law and European state system historicized the evolution of the discipline through a global scope of analysis, and focused on the dynamics of nineteenth century imperialism, there is still a general neglect of the Ottoman Empire. These studies often see the Ottoman Empire as an anomaly, which was formally admitted to the European state system with the Treaty of Paris in 1856, while at the same time it continued to be a subject of European extraterritorial jurisdiction. Ottoman scholars reiterated this viewpoint without exploring its practical implications. What this shift really meant in practice, whether it played a transformative role in shaping the relations between Ottoman and European powers in the late nineteenth century, to what extend the newly emerging principles of modern international law during the nineteenth century provoked interest among Ottoman bureaucrats and legal experts or were used by ordinary subjects for claim-making are some of the questions awaiting further investigation.

[31] Lauren Benton, Not Just a Concept: Institutions and the "Rule of Law," *Journal of Asian Studies*, Vol. 68, No. 1 (Feb., 2009), pp. 117-122

In addition to this disciplinary disconnect between international law and history, there exists a chronological gap between European and Ottoman studies. Whereas the former see the Peace of Westphalia of 1648 and the emergence of its key principles such as sovereign equality, balance of power and a policy of non-intervention as a turning point in the evolution of international law;[32] the latter exclusively focuses on the Paris Treaty of 1856 and the formal admission of the Ottoman Empire into the European state system.[33] Both assumptions are problematic in their own right, and such chronological asymmetry obscures the interconnectedness of the Ottoman and European empires. This chapter argues that the Ottoman Empire was a significant player in European politics and had already established diplomatic relations with European powers from the 16th century onwards, and therefore cannot be excluded from scholarly studies dealing with the evolution of international law and the European state system. The limited focus on Ottoman membership in European Concert avoids seeing the interaction between Ottoman and European powers in a continuous trajectory. A careful examination of Ottoman treaty relations with European powers, however, reveals that the Ottomans were well aware of European customary law long before the nineteenth century, and played an important role in the development of modern international law and European state system.

[32]Even though the Peace of Westphalia signified the beginning of a new era in international law based on sovereignty, Stephane Beaulac convincingly argued that it in fact constituted a myth that enabled international lawyers to explain the genesis of the discipline. Stephane Beaulac, *The Power of Language in the Making of International Law: The Word Sovereignty in Bodin and Vattel and the Peace of Westphalia* (Leiden: Brill, 2004).

[33] M.S. Anderson, *The Great Powers and the Near East, 1774- 1923*, (London: Edward Arnold, 1970), H. Bull, *The Anarchical Society: A Study of Order in World Politcs* (London: Macmillan, 1977), G. W. Gong, *The Standard of Civilization in International Society (Oxford: Clerondon Press, 1984),* H. McKinnon Wood*, "*The Treaty of Paris and Turkey's Status in International Law", *American Journal of International Law* (1943), pp. 264-274, H. Temperley, "The Treaty of Paris of 1856 and its Execution*", Journal of Modern History* (Vol. 4, 1932), pp. 287-414, For a critique of this literature see Nuri Yurdusev and Esin Yurdusev, "Osmanli Imparatorlugu'nun Avrupa Devletler Sistemine Girisi ve 1856 Paris Konferansi," in Soysal ed. *Çağdaş Türk Diplomasisi: 200 Yıllık Süreç*, 137-147.

This chapter seeks to work against this chronological asymmetry and put both scholarships on the same historiographical map. In order to be able to do so, I first deconstruct the myth of Westphalia, which until recently had dominated European studies. I then give an analysis of Ottoman treaty relations with European powers and assert that there already existed a common legal language between the empire and its European counterparts long before the nineteenth century. I argue that international law principles, which are believed to have been established with the Treaty of Westphalia, in fact, took longer to be formed than is usually assumed, and were being used in treaty negotiations between Ottoman and European powers during this period. I will then shift my focus of attention to the nineteenth century and do a close reading of the leading philosophers of international law such as William Hall, Henry Wheaton and John Westlake to better understand their perception of the Ottoman Empire according to the civilizational standards assumed by European powers. I investigate to what extent the ideals promoted by these thinkers were received by Ottoman legal experts when international law became a distinct field of study during the nineteenth century. Arguably, these writings provided a new vocabulary for Ottoman bureaucrats for negotiating imperial sovereignty at a time when the real power of the empire was diminishing during the late nineteenth and early twentieth centuries. On the other hand, these accounts also enable us to better understand how European powers saw the Ottoman Empire as a model for shaping their relations with other non-European entities possessing varying degrees of sovereign power.

Fixed doctrinal understandings of modern international law principles, believed to emerge with Westphalia, overlook the political, socio-economic and religious dynamics that affected the gradual (and imperfect) development of the discipline. More significantly, such approaches propelled Ottoman scholars to anachronistic understandings of the issue often confined to the

question of when and how, if ever, the empire was accepted as a member of the European state system and complied with the principles of modern international law, which are often assumed to be in conflict with Islamic state ideology. Nevertheless, any attempt at historicizing the evolution of international law and states system reveals that the discipline itself had always been an arena for political conflict and negotiation, in which the Ottoman Empire was a significant player, as were its European counterparts.

### The Myth of Westphalia and the Question of Sovereignty

International society has three distinct usages, each signifying a different type of obligation and membership.[34] First is the idea of universal society propagated by the Chinese Empire, Roman Empire and medieval Christendom. Even though no truly universal society ever existed, the idea carries a universal claim to hegemony. Second is the idea of a great community of mankind of which natural law and custom are seen to be the foundation of society. According to this idea, natural law cuts across different groups, and every human being, hence political entity, is considered a member of this community. Third is the idea of a society of states, i.e., the Westphalian conception of international society. In this category, membership is solely based on the condition of sovereignty. Sovereign states approve certain laws and practices through which they claim independence and maintain their international relations. Despite their essential differences, all formulations can be seen as attempts to find some common ground for organizing international relations.

[34] David Armstrong, *Revolution and World Order: The Revolutionary State in International Society* (Oxford: Clarendon Press, 1993), pp. 12-41, David Armstrong, Theo Farrell and Helene Lambert eds. *International Law and International Relations* (Cambridge ; New York : Cambridge University Press, 2007), pp. 50-52.

The Peace of Westphalia is seen as the symbolic origin of international legal order. In his essay "The Peace of Westphalia 1648-1948" Leo Gross asserted that 1648 put an end to the so-called *ancien régime* in Europe and created "a new system characterized by the coexistence of a multiplicity of states, each sovereign within its territory, equal to one another, and free from any external earthly authority."[35] It is generally assumed that Westphalia replaced the church or the empire with the sovereign state as the primary source of legitimate authority and established equality among sovereign states. Regardless of a state's actual power, all sovereign states are considered equal in this system. Since there is no superior authority above sovereign states, the guiding principle of the Westphalian system is to maintain the balance of power among different powers. These sovereign states also saw themselves as members of an international society responsible for protecting the articles of the peace regardless of religious distinction. Most significantly, the peace initiated a new concept of international law different from the law of nations or natural law. This new understanding of international law consisted of voluntarily accepted principles by sovereign states. The contemporary definition of international law, i.e. "a body of rules and principles, contained in various sources, including treaties and customs, which the subjects of international law have accepted as binding on them either in their relations with one another per se, or in those with other juristic or natural persons", rests on this conceptual understanding of Westphalia.[36]

[35] Leo Gross, "The Peace of Westphalia" *The American Journal of International Law*, Vol. 42, No. 1 (Jan., 1948), pp. 20-41

[36] Ademola Abass, Complete International Law: Text, Cases, and Materials, (Oxford; New York : Oxford University Press, 2012), p. 7

Nevertheless, recent scholarship has effectively challenged the belief that the Peace of Westphalia had ushered these principles into modern international law.[37] In his comprehensive account of the Thirty Years War and the Treaty of Westphalia, Osiander argues that international relations theorizes against the backdrop of a largely imaginary past and Westphalia is in fact a product of a nineteenth century fixation on the concept of sovereignty.[38] Even though the war generally considered to be fought between two parties, i.e. the Habsburg dynasty and the Roman Catholic Church on one hand, and Denmark, the Dutch Republic, France, Sweden and the German princes on the other, the conflict was rather complex in nature. Scholars of international relations falsely saw Westphalia as the origin of state sovereignty and the re-ordering of the European state system. These scholars argued that the peace led to the formal recognition of modern states system in Europe and established the idea of sovereign equality. Osiander argues that such false readings of Westphalia stem from anti-Habsburg propaganda during the century, which was later to be taken for granted by scholars of international law and relations, and to some extent, by legal historians. Contrary to this general assumption, the peace did not necessarily establish a sovereign states system but only gradually led to the development of a system of mutual relations among autonomous political units.

[37] Edward Keene, *Beyond Anarchical Society: Grotius, Colonialism and Order in World Politics* (Cambridge, UK ; New York, NY, USA : Cambridge University Press, 2002). Keene especially puts emphasis on C.W. Koch's ideas on the Peace of Westphalia, which underwent little change in 200 years after his first publication and impacted the core elements of current thinking on international law. Koch mainly argued for the formation of a legal order which initially started with the Peace of Westphalia and was continuously reaffirmed with subsequent treaties until the French Revolution. According to Koch, Westphalia signified a turning point as it recognized the territorial supremacy of German states and hence constituted a balance of power in Europe. Koch's idea of a European political system which originated with the Peace of Westphalia affected later works and gained canonical importance. Christophe Koch, *Histoire abrégée des traités de paix entre les puissances de l'Europe depuis la paix de Westphalie*, (Bruxelles : Meline, Cans et Compagnie, 1837-38)

[38] Andreas Osiander, "Sovereignty, International Relations and the Westphalian Myth," *International Organization* 55, No. 2 (2001), pp. 251-287

The idea of the sovereign state was originally established much earlier when Bodin's theory of absolute and undivided sovereignty was first published in his *Six livres de la République* in 1576.[39] Furthermore, the treaties of Münster, signed between the Dutch Republic and the Kingdom of Spain; and Osnabrück, signed between the Holy Roman Empire, the Kingdom of France, Sweden and other allies, were not aimed at creating a new international system but were the outcome of settlements through which each signatory moved with the sole intention of advancing its own interests. In this respect, the peace treaties of Westphalia were based on an already existing tradition of peace treaties rather than initiating new norms. On the other hand, balance of power, another key principle, also believed to emerge with Westphalia, was not in fact introduced until the Treaty of Utrecht, ending the War of Spanish Succession in 1713.[40] Put back into historical context, it becomes clear that none of the principles attributed to modern international law by legal scholars can be found in the peace treaties of Westphalia. Westphalia did not introduce the basic principles of international law, i.e. sovereign state equality, non-intervention, balance of power and religious neutrality, but prepared the conditions that only gradually led to the emergence of a new international order in Europe.

Aside from such anachronistic readings of Westphalia, it is also significant to consider how the term "Westphalian sovereignty" acquired a canonical prominence in the field. Westphalian sovereignty is primarily based on territoriality and the exclusion of external actors from domestic authority structures. According to this understanding, sovereignty is disrupted when external powers attempt to exert control over domestic affairs. The principle of non-intervention was first articulated by Emer de Vattel, who argued that no state had a right to interfere in the domestic

[39] Jean Bodin, *Six livres de la République* (Paris: Fayard, 1986)

[40] Osiander, "Sovereignty, International Relations and the Westphalian Myth," 262.

affairs of other states. Writing in response to the Spanish conquest of the Inca Empire, Vattel argued "the Spaniards had violated all rules when they set themselves up as judges of the Inca Atahualpa."[41] Vattel's understanding of sovereign equality and non-intervention equally appealed both to European and non-European states, including the Ottoman Empire.

Nevertheless, such ideal principles associated with Westphalian sovereignty were constantly challenged by political conflicts. Describing international law as "organized hypocrisy", Stephen Krasner asserts that European claims over the minorities of Ottoman and Habsburg Empires during the nineteenth century should be seen as one of the most overt examples of how the principle of non-intervention, usually attributed to the European sovereign state system, was effectively challenged by European powers themselves.[42] Krasner demonstrates that there existed a constant tension between ideals promoted by international law and political claims over sovereignty. European claims for establishing political control and extraterritorial jurisdiction over non-European powers, and various responses to European imperialism, both political and legal, can only be understood in relation to this dynamic of difference.

Indeed, there existed a constant dynamic between the ideals promoted by international law such as the equality of sovereign states and the policy of non-intervention on one hand, and

[41] Emmerich de Vattel, *Law of Nations; or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns* (New York: AMS Press, 1773), 110: "... If that prince had violated the law of nations with respect to them, they would have had a right to punish him. But they accused him of having put some of his subjects to death, of having had several wives, &c - things, for which he was not at all accountable to them; and, to fill up the measure of extravagant injustice, they condemned him by the laws of Spain." Vattel's book is considered as the first systematic account presentation of modern international law with a particular emphasis on state sovereignty and the principle of non-intervention despite his strong belief in natural law. Vattel's emphasis on the principle of non-intervention especially appealed to Ottoman legal experts and diplomats. For a detailed discussion on the subject, with a focus on Ali Sahbaz Efendi, please see the following chapter on Ottoman Legal Imagination.

[42] Stephen Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, N.J.; Chichester : Princeton University Press, 1999), p. 155, 194. Also see Krasner, *Power, the State, and Sovereignty: Essays on International Relation*s (London: New York : Routledge, 2009).

European claims for acquiring rights for extraterritorial jurisdiction and negotiating unequal treaty agreements with non-European states on the other. The nineteenth century doctrine of sovereignty and European imperialism initiated a shift from the principles of natural law and the universal order, and imposed in its place a civilizational divide among different states, which accordingly remained either inside or outside the state system. Even though we have some knowledge about how non-European powers initiated reforms to close the civilizational gap assumed by their European counterparts, we still need to further explore how states, both European and non-European, made use of the inconsistency between such ideal principles and practices of extraterritorial jurisdiction and unequal treaty systems.

**Working across the chronological divide: The Ottoman concept of international law before and through 1856**

If Westphalia can be considered as the starting point of neither the historical development of the modern international law nor the sovereign states system, then what to make of the historiographical divide and its exclusionary logic? Vattel's above-mentioned quote very well illustrates how the experience of colonialism informed European legal experts and contributed, albeit incidentally, to the evolution of key principles of modern international law. It is true that the colonial encounter played a central role in the formation of legal doctrines. As Anthony Anghie illustrates, the development of international law was in fact an endless process of creating a gap between Europe and non-Europe, the former considered to be a civilized entity with universal values, whereas the latter was seen as particularistic and uncivilized.[43] Anghie argues that the

[43] Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge, UK; New York : Cambridge University Press, 2007), 100: "The history of the sovereignty doctrine in the nineteenth century, is a history of processes by which European states by developing a complex vocabulary of cultural and racial discrimination, set about establishing and presiding over a system of authority by which they

concept of sovereignty is not a European construct that emerged with Westphalia, but is improvised out of the colonial encounter. The European states system, its exclusion of non-European entities and justification of extraterritorial jurisdiction are the outcome of the colonial encounter and are maintained by this civilizational dynamic of difference. This also explains the shift from the principles of universalism and natural law to positivist international law, which no longer asserted a system of law universally applicable to all persons but imposed a system of sovereign states, which comprised the civilized family of nations.

Even though Anghie's emphasis on European colonialism opens up a new venue to re-think the development of the discipline, there is still a general neglect for the role of adjacent non-European empire-states and their deeply rooted political and diplomatic relations with European powers.[44] While scholars of international law anachronistically trace the origins of the discipline back to Westphalia, Ottoman studies predominantly focus on the formal admission of the empire into the European state system in 1856 and do not pay enough attention to Ottoman diplomatic relations with European powers before the nineteenth century.[45] This chronological asymmetry

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could develop the powers to determine who is and is not sovereign." In this respect, non-European states existed without having an international legal personality and were members of international society to the extent that they were able to enter into treaty relations with European powers.

[44] Anghie primarily focuses on European colonialism and briefly touches upon anti-colonial resistance in Asia and Africa. Despite its critical analysis of the doctrine of sovereignty and positivist notions of international law in the nineteenth century, the eurocentric focus of the discipline still prevails in Anghie's work.

[45] Turan Kayaoglu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire and China* (New York, N.Y. : Cambridge University Press, 2010), 104: Kayaoglu describes Ottoman rulers attempts for claiming territorial sovereignty as an "elusive dream" as European states continuously refused such claims from 1856 to 1914. Making a distinction between international system and international society, Kayaoglu argues that 1856 marked the Ottoman Empire's inauguration to European international society. Similarly Aral notes that the admission of the Ottoman Empire to European state system paved the way for the involvement of Ottoman legal experts in international law. Similarly, Pazarci stated that the Ottoman jurists started codification of international law after the Treaty of Paris. H.B. Aral, "An Inquiry into the Turkish "School" of International Law," The European Journal of International Law, Vol.16, No.4 (Oct. 2005), p.771 and H. Pazarcı, *Uluslararasi Hukuk Dersleri* (Ankara: Ankara Universitesi Siyasal Bilgiler Fakultesi 1985), Vol.1, p.65. Both quoted in Mustafa Serdar Palabiyik, "The Emergence of the Idea

avoids seeing the interconnectedness of Ottoman and European empires and excludes the former from the evolution of the states system. In an attempt to bring these two scholarships under the same scope of analysis, I will illustrate how Ottoman diplomatic relations and treaty making practices with their European counterparts were in fact akin to those that took place among European powers, often featuring a similar legal vocabulary, from the seventeenth century onwards.

The profound emphasis in much scholarship on the Islamic state ideology obscures the extent to which Ottoman diplomacy was affected by the newly emerging principles of international law such as sovereign equality, diplomatic reciprocity or the idea of law of nations. Thomas Naff, for instance, goes even further to claim that during the nineteenth century, the Ottoman Empire remained "essentially a medieval Islamic state in objectives, organization, and mentality."[46] According to this viewpoint, the Ottomans failed to reconcile a Muslim rationale for foreign relations with the political and economic needs of their time, and eventually became dependent on European international law for survival.

Even though the distinction between *Dar al-harb* (abode of war) and *Dar al-Islam* had been the *raison d'etre* of the Ottoman *ghazi* ideology, and animated the rhetoric of Ottoman diplomacy, it is hardly possible to claim that the Ottomans had ever been fully committed to Islamic principles in treaty making. The military defeats of the seventeenth century initiated the

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of International Law in the Ottoman Empire before the Treaty of Paris (1856)", *Middle Eastern Studies*, 2014 50:2, p. 234-235.

[46] Thomas Naff, "The Ottoman Empire and the European State System" in The *Expansion of International Society*, eds. Hedley Bull and Adam Watson, (Oxford: Oxford University Press, 1984), 144. Naff also argued that when the Ottoman Empire was finally admitted to the European state system in 1856, all other non-Ottoman Muslim entities were colonized by European powers and were then integrated into the state system. In fact, there is need to be more careful about such blunt comparisons as the legal status of the Ottoman Empire and Muslim entities under European colonial rule were essentially different.

development of diplomatic communication and personnel for treaty negotiations with European powers.[47] Ottoman peace negotiations during this period also necessitated the emergence of a new legal vocabulary, which can neither be described as being purely Islamic nor European.

A close reading of certain treaties demonstrate that the Ottoman bureaucrats and legal experts were already familiar with European customary law and often used European customary law principles as early as the seventeenth century. The Treaty of Karlowitz between the Ottoman and Habsburg empires in 1699 was based on the principle of *uti possidetis* (as you possess), which confirmed that the then-current territories of each power would remain under their possession by the end of the war. This practically meant that the Ottomans recognized the territorial integrity of other European powers, and hence recognized their claim to sovereignty. Despite agreeing on the principle of *uti possidetis*,[48] the Ottoman delegation also pushed for another principle; *quid pro quo* (something for something) during the peace negotiations and acquired exclusive possession of the province of Timisoara, a land between Hungary and Transylvania, from the Habsburgs. A careful examination of the negotiations leading to the Treaty of Karlowitz reveals that despite the lack of expertise in diplomacy, the Ottoman delegation had in fact displayed a profound understanding of European legal principles and managed to use them for their territorial demands quite successfully.

On the other hand, the Treaty of Karlowitz was agreed to last for 25 years between the Ottoman and Habsburg empires, and to be binding indefinitely with Venice and Poland.[49] The

[47] Abou-El-Haj, "Ottoman Diplomacy at Karlowitz," p. 499.

[48] Uti possidetis was also the first article of the Treaty of Passarowitz in 1718 in Palabiyik, "The Emergence of the Idea of International Law in the Ottoman Empire before the Treaty of Paris (1856)", p. 237

[49] Caroline Finkel, *Osman's Dream, The History of the Ottoman Empire 1300-1923* (London: John Murray, 2005), p. 322.

provision was clearly at odds with the Islamic ideal of permanent state of war, which had hitherto determined the foundation of Ottoman diplomacy. The treaty was justified by Ottoman diplomats who asserted that "peace is the continuation of war by other means."[50] Even after Karlowitz, which heralded a new phase in Ottoman diplomacy, Ottoman negotiators continued to endorse Islamic ideology in treaty making.

The evidence suggests that the Ottomans were quite successful in blending a strictly doctrinal Muslim rationale with European customary law and created a common legal language with European powers long before the nineteenth century. Ottomans' consent for bilateral treaties, and their willingness to get into peace negotiations without time limits reveal that the Ottomans had never been excluded from European politics but played an equally prominent role in the development of the legal principles of European international law. Diplomatic relations and treaty agreements with European powers should better be understood in a continuous spectrum with already established customary practices, which acquired universal recognition long before the formal admission of the empire to the European state system in 1856.

While the main tenets of modern international law such as the equality of sovereign states, the policy of non-intervention and religious tolerance were still in the making in the aftermath of Westphalia, they were recognized in Ottoman treaties and used for claim making. When the Ottoman Empire declared war against France after the invasion of Egypt in 1798, the imperial center had issued a memorandum that argued that the French invasion was against the law of nations.[51] In another document, it was argued that France "had totally forgotten about the law of

[50] A. Abou-El-Haj, "The Narcissism of Mustafa II (1695-1703): A Psychohistorical Study" *Studia Islamica* No. 40 (1974), p. 123

[51] Palabiyik, p. 240. Full text of this memorandum is available in Cevdet Pasa, *Tarih-i Cevdet*, Vol.6, p.408–12

nations and invaded a territory which belonged to another state." In both documents, the Ottomans emphasized France's violation of the European law of nations and the idea of territorial sovereignty in order to justify a declaration of war.

A secret alliance between the Russian and Ottoman empires in 1805, on the other hand, indicates that Russia was primarily interested in preserving the European balance of power *(Avrupa'da muvazane-i mulkiyenin husul ve istikrarina)* and hence protect the existing law of nations.[52] It is clear that the Ottoman ruling elite not only recognized the European law of nations and had a good understanding of its newly emerging principles but also saw the empire to be a member of the European state system. The frequent references to *hukuk-i milel* (law of nations) and *hukuk-i duvel* (law of states) in Ottoman documents demonstrate that the Ottoman diplomats delicately used international law to justify war, and preserve the empire's territorial integrity and political interests.[53]

The formation of positivist international law is in fact a dynamic process in which political conflicts between the Ottoman Empire and European powers, among others, played a prominent role. The political controversy over the Ottoman Straits and international treaties between the Ottoman and European powers over the issue provide a rather nuanced understanding of how principles of international law were shaped in accordance with competing imperial interests. When Russian ships entered the Straits unannounced in 1799, Selim III's grand vizier alerted him to the urgency of getting in touch with the Russian Embassy: "the *reis effendi* ought to take this

[52] Ibid. 241

[53] After the Napoleonic invasion of Eygpt, the Ottoman declaration of war against France employed the term *hukuk-i milel*, whereas the memorandum issued after the Battle of Navarino in 1827 used the term *hukuk-i duvel*. *Tarih-i Cevdet*, (Istanbul: Matbaa-yi Amire, 1874): c.7 421-422 and *Lutfi Tarihi* (Istanbul: Dersaadet Yayinevi, 1910); 92 in Seha L. Meray, "Devletler Hukukunda Bazi Terim Meseleleri," *Ankara Universitesi SBF Dergisi*, 11 n.4 (1956): 54-55.

opportunity to remind the Russian interpreter in an amicable way of international rules of conduct and of the reasons for the clauses in the treaty (with Russia) governing this matter. It is contrary to the canons of international law that a war fleet should enter a foreign port without prior notification and without specifying the number of vessels."[54]

The status of the Straits continued to pose a problem when the Ottomans guaranteed exclusive use of the Straits to Ottoman and Russian warships in case of general war, allowing no foreign vessels of war to enter into the Straits under any pretext. The control of the Ottoman Empire over the Straits was later to be re-established in the London Straits Convention in 1841, as they were agreed to remain under Ottoman sovereignty and be closed to all warships in time of war.[55] The convention attracted the scholarly attention of Henry Wheaton, the renowned jurist of the nineteenth century, who asserted that the treaty eventually incorporated into the written public law of Europe the issue of territorial jurisdiction over adjoining seas of the Ottoman Empire: "The treaty of 13th July 1841, relating to the entrance of the Dardanelles and Bosphorus by foreign ships of war confirmed that foreign vessels of war would not be admitted to the Straits by the Ottoman Empire. The second article of the treaty stated that the Ottoman sultan reserved the faculty of granting *fermans* for allowing the passage of light-armed vessels in the service of diplomatic legations of friendly powers. The treaty then incorporated into the written public law of Europe

[54] Naff, "The Ottoman Empire and the European State System," p. 159. The right of transit to Russian ships through the Straits was in fact granted by the Ottoman Sultan in an alliance signed between the two powers in 1798 against Napoleon's invasion of Egypt. The Russo-Ottoman alliance was renewed in 1805 in order to expel the French from the Eastern Mediterranean. The above quote is about the unannounced transit of Russian ships from the Straits.

[55] The Straits Convention of 1841 was signed by France, Britain, Russia, Austria, Prussia and the Ottoman Empire and agreed that the Bosporus and the Dardanelles would be closed to warships in time of war and peace. The first article "prohibited the ships of foreign powers to enter the Straits of the Dardanelles and of Bosphorus; and that, so long as the Porte is at peace, His Highness will admit no foreign ship of War into the said Striats." in Hurewits, *Diplomacy in the Near and Middle East: A Documentary Record*, vol.1 (Princeton, N.J.: Van Nostrand, 1956), 123.

the issue of territorial jurisdiction over adjoining seas as applicable to the interior waters of the Empire."[56] Wheaton also argued that so long as the shores of the Black Sea were possessed by the Ottoman Empire, it should be considered a *mare clausum*, and there was no reason to question the right of the Empire to prevent other nations from navigating the passage of foreign vessels. Even though Russia's territorial acquisitions at the shores of Black Sea made Russia entitled to free navigation of the Dardanelles and the Bosphorus, Wheaton concluded, this did not extend to ships of war.

The international controversy over the Ottoman Straits demonstrates first, how the Ottoman ruling elite used international law principles as a common point of reference as seen in the case of Selim III's declaration in 1799 and how the European balance of power shaped treaties as in the case with the London Straits Convention of 1841. Wheaton's analysis of the 1841 Convention as a document of critical importance incorporating the issue of territorial jurisdiction over adjoining seas demonstrate how political conflicts between Ottoman and European powers led to the formulation of certain general rules of European international law as summarized in legal treaties. Only when the relationship between doctrine and practice is carefully analysed, can the anachronistic reading of such cases be avoided and the Ottoman Empire finally gain some agency in shaping the fixing and the eventual recognition of modern international law, which is often seen in the exclusive domain of the European states.

## Global History, International Law and the Ottoman Empire

[56] Henry Wheaton, *Elements of International Law* (Boston: Little, Brown, 1866), pp. 221-222. The second article stated "It is understood that in recording the inviolability of the ancient rule of the Ottoman Empire mentioned in the preceding article, the Sultan reserves to himself, as in the past times, to deliver *fermans* of passage for light vessels under the flag of war, which shall be employed as is usual in the service of the missons of foreign powers." in Hurewitz.

The arguments above take their cue from recent studies that have proven the Eurocentric accounts of the origins of international law to be wrong, and aim to situate the case of the Ottoman Empire in a broader framework of analysis. The development of treaty relations and the emergence of a common legal vocabulary between the interconnected worlds of the Ottoman and European empires starting from the sixteenth century can only be understood through a global history of international law. Only then, can the conventional accounts which exclusively focuses the formation of a European states system and its gradual expansion to the rest of the world in a progressive path of development be replaced with a revised understanding of the discipline which pays equal attention to the role of non-European states and autonomous communities.[57]

Horowitz's study of international law and state transformation in China, Siam, and the Ottoman Empire is one of the rare accounts that historicize the development of the European state system in the nineteenth century in comparative perspective.[58] Following the career of John Bowring, a British diplomat, in the Ottoman Empire, Siam, China and Japan, Horowitz shows how the experience of a British diplomat was carried from one place to the other; and played an influential role in the development of British extraterritorial jurisdiction and the partial integration of these states into the European state system. Horowitz convincingly argues that the integration of Siam into the international state system bears significant resemblances to the treaty agreements of 1838-1840 in the Ottoman Empire and those of 1843, 1858 and 1860 in Qing China. More significantly, Horowitz asserts that the relations with the Ottoman Empire had become a testing

[57] Bardo Fassbender and Anne Peters eds. *The Oxford Handbook of the History of International Law* (Oxford, United Kingdom : Oxford University Press, 2012).

[58] R.S. Horowitz, "International Law and State Transformation in China, Siam and the Ottoman Empire," *Journal of World History,* 15, no: 4 (2004): 445-486.

ground and provided a model for European powers in their respective attempts to enter into treaty relations with, and intervene in the domestic affairs of non-Christian Eurasian governments.[59]

Horowitz's study opens up a new venue to re-think the development of international law and foreign intervention in the Ottoman Empire in a comparative framework. Contrary to the general assumption that sees the Ottoman Empire as an anomaly both possessing and yet lacking an international legal personality, Horowitz explores the legal status of the Ottoman Empire in tandem with other non-European states under the pressure of European imperial expansion during the nineteenth century. In their respective attempts to adopt themselves to the newly emerging international system, these empire-states had in fact gone through a somewhat similar process of legal and financial reform and administrative centralization in order to be able to comply with the standard of civilization imposed by their European counterparts.

Even though Horowitz's study makes one better understand how the principles of modern international law and European claims for extraterritoriality were gradually shaped abroad, his scope of analysis still privileges British imperial ambitions for acquiring control in these regions under the rubric of modern international law. In other words, the role of the Ottoman Empire, Siam and Qing China in shaping this new understanding and practice of the international state system still remains ambiguous. Horowitz' study pay some attention to the writings of renown philosophers of international law such as Vattel and Wheaton, and looks at how they classify such non-Christian Eurasian empire-states in the matrix of the European state system. And yet, to what extend there existed an understanding of these principles in non-European states or how non-European legal thinkers tackled issues of extraterritorial jurisdiction and their partial inclusion in the state system still remains unknown. Even though Horowitz forces us to think about the

[59] R.S. Horowitz, "International Law and State Transformation in China, Siam and the Ottoman Empire," 447.

development of modern international law and state system in relation to European imperialism through a comparative framework, the Ottomans, Chinese or Siamese legal experts, government officials, or ordinary subjects have yet to gain agency in his analysis. The quest for catching up with the "civilized" states and becoming an equal member of the state system through a series of reforms as a defensive strategy against growing European imperialism continues to dominate Horowitz' comparative account, while the voice of such local agents remain unheard.

Turan Kayaoglu's book on the rise and decline of British extraterritoriality in Japan, the Ottoman Empire, and China also attempts to make a comparative study of legal imperialism.[60] Kayaoglu studies the development of territorial sovereignty during the nineteenth century and explores how the claims of non-European states to domestic jurisdiction were denied in tandem with European colonial expansion. Kayaoglu mainly focuses on the series of legal reforms undertaken in China, the Ottoman Empire and Japan for the abolition of extraterritoriality. He provides a detailed account on the Meiji legal reforms in the 1880s, the legal transformation in Republican Turkey during 1920s and the Guomindang's legal re-organization in China, which paved the way for the end of British extraterritoriality. Despite its comparative scope of analysis, however, Kayaoglu's book continues to see the developments in these states as a defensive strategy developed against British legal imperialism, and, in doing so, he remains faithful to an essentially Eurocentric narrative. He continues to see the formal admission of the Ottoman Empire to the European state system with the Treaty of Paris of 1856 as a turning point but fails to explain its practical implications for the empire. Once again, Ottoman diplomats, bureaucrats, judges, legal scholars or ordinary subjects are absent and his analysis is mainly based on treaty negotiations

[60] Turan Kayaoglu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire and China.*

between the Ottoman Empire and European powers without enough attention to historicizing the development of international law in the Ottoman Empire.

When international law become a separate field of study in the Ottoman Empire; to what extent Ottoman bureaucrats made use of the principles of international law when negotiating with European powers; how these newly emerging principles were translated into the Ottoman Empire, which had, unlike Qing China, Japan or Siam, been continuously in contact with European powers and already established a common legal language as early as the sixteenth century; and where the Ottomans saw themselves in the civilizational taxonomy of states assumed by European powers are questions that need to be further explored beyond the Eurocentric bias of the discipline.

**The European Jurist and the Making of a Discipline**

Nineteenth century positivist jurists of international law based their arguments on the notion of the primacy of the state. According to positivists, sovereign states were the principal actors of international law and they were only bound by the rules of conduct that they consented to. As opposed to the naturalist understandings of international law, which see the laws of nature as the governing principle of relations among states, positivists argued that states are subjected to man made laws only, i.e. treaties or customary practices of sovereign powers.[61]

Positivism gained currency with European imperialism and signified a shift from broad moral principles to a new international order of civilized states, which had legal obligations only towards one another. In lieu of a universal international law, which equally applied to European and non-European communities, positivist jurists argued for a distinction between civilized and

[61] Charles Henry Alexandrowicz, *An Introduction to the History of the Law of Nations in the East Indies: (16th, 17th and 18th centuries)* (Oxford : Clarendon Press, 1967).

uncivilized states, and claimed that international law only applied to sovereign states which comprised the civilized family of nations.[62]

For Henry Wheaton, a well-known jurist and diplomat of the nineteenth century, international law is the exclusive province of civilized states. It is based upon the community of ideas possessed by Christian states of Europe, which were part of "an international community that emerged out of a common stock of juristic ideas."[63] John Westlake, a contemporary legal scholar of Wheaton, describes this newly emerging international regime as "admitting outside states to parts of international law without asserting them to the whole of it," and argues that all jurists should have a taxonomy of states depending on the their respective degrees of civilization.[64] Westlake continued that consular jurisdiction enjoyed by European powers in the Ottoman Empire constituted a "singular anomaly" as the Ottoman Empire was admitted to the public law of Europe and also to European political system. Indeed, the status of non-European entities, which were only partially admitted to the international system, posed a significant problem to the positivist international jurists of the nineteenth century. The already existing treaties between European and non-European powers contradicted the exclusionary scope of international law assumed by positivist jurists.

In his nineteenth century treatise on the foreign powers and British jurisdiction, William Hall divided Eastern countries into two categories for international purposes.[65] Sovereign states

[62] Anghie, *Imperialism, Sovereignty and the Making of International Law*, pp.35-37

[63] Wheaton, *Elements of International Law*.

[64] John Westlake, *Chapters on the Principles of International Law* (Cambridge University Press, 1894), p. 82..

[65] William Hall, *A Treatise on Foreign Powers and Jurisdiction of the British Crown*, (Oxford: Clarendon Press, 1894), p.122

like the Ottoman Empire or Persia, Hall argues, demonstrate varying degrees of capacity to comply with the Western ideas; but are sufficiently developed to maintain diplomatic relations with European powers. On the other hand, there were the barbarous communities, which can occasionally get into treaty agreements with European powers but cannot be considered to have the qualities of a true state and hence were not part of the international system. For Westlake, the case of the Ottoman Empire presented an anomaly as European and American states continue to enjoy consular jurisdiction to protect the rights of their own subjects although the empire had been admitted to the public law of Europe and European political system.

A close reading of treaties written by renown positivist jurists such as William Hall, John Westlake and Henry Wheaton reveals that the assumed distinction between civilized and uncivilized states within the newly emerging international system was in fact a product of European legal imperialism of the nineteenth and early twentieth centuries. These jurists were often challenged by already existing treaty relations between European and non-European states and emphasized doctrines of recognition and quasi-sovereignty to be able to justify the exclusionary bias of the discipline. All of these jurists considered the case of the Ottoman Empire with utmost scrutiny not only because of its already existing diplomatic relations with European powers but also because it provided a model for European powers as they started to claim extraterritorial rights in other non-European states during the nineteenth century. As Ozsu rightly argues, European and American legal experts of the nineteenth century placed the Ottoman Empire in a wide spectrum of states between the sovereign and civilized European states and stateless extra-European nations, and considered the empire as a laboratory for the practice of

extraterritorial jurisdiction, which would soon to be exported to other states under European imperialism.[66]

### "Translator as a Diplomat": International Law from the viewpoint of an Ottoman Legal Scholar

How were the newly emerging principles of public international law and the state system received by Ottoman bureaucrats, diplomats and legal scholars? Which books were translated into Ottoman Turkish and to what extent did they provoke interest among Ottoman intellectuals or were they used in diplomatic practice? Lydia Liu's eye-opening study on the translation and circulation of Henry Wheaton's *Elements of International Law* in China during the nineteenth century provides significant insights into the development of an understanding of international law concomitant with China's opening to foreign intervention.[67] The translation, known to the Chinese as *Wanguo Gongfa*, took place as part of several other translation projects including Woolsey's *Introduction to the Study of International Law* (1878), Hall's *Treatise on International Law* (1903), Marten's *Guide Diplomatique* (1877), and Bluntschili's *Das moderne Völkerrecht der zivilisierten Staaten: als Rechtsbuch dargestellt* (1879). Even though the relationship between a translated text and its use in diplomatic practice is never self-evident, it is possible to assume that the translation of such international legal treatises provided the Qing foreign office a new vocabulary which

[66] Umut Ozsu, "The Ottoman Empire, The Origins of Extraterritoriality and International Legal Theory" in Florian Hoffmann and Anne Orford, eds., *The Oxford Handbook of the Theory of International Law* (Oxford: Oxford University Press, 2016): 123–37.

[67] Lydia Liu, *Tokens of Exchange: Problem of Translation in Global Circulations* (Durham [N.C.]: Duke University Press, 1999): 127-165.

allowed them to use the newly emerging principles of international law for their own benefit in a time of profound military weakness.[68]

In fact, the impact of Wheaton's book was not limited to East Asia.[69] A copy of Wheaton's *Elements of International Law* also existed in the library of Ottoman Translation Bureau (*Tercume Odasi)*, which was established in 1821 in order to translate major works from European languages. As the Ottoman Empire gradually integrated into the international states system, the personnel of the Translation Bureau assumed critical positions in the Ottoman bureaucracy.[70] Even though the overall impact of Wheaton's book in the Ottoman Empire is impossible to measure, the records of the Ottoman Translation Bureau library indicate that it was checked out by Kirkor Odyan Efendi,[71] a leading bureaucrat of Armenian origin at the Ottoman Ministry of Foreign Affairs and a member of Ottoman Council of States, also known for his contributions in the preparation of Ottoman constitution (*Kanun-i Esasi*) as an advisor to Mithat Pasa.[72]

Similar to the Qing Foreign Office, the translators at the Ottoman Translation Bureau were in charge of reading and translating foreign works during the nineteenth and early twentieth centuries. To quote Liu, the translation and circulation of Wheaton's *Elements of International Law* and other books across various geographies signifies "coming-into-being of a global

[68] Horowitz, 459.

[69] Wheaton's *Elements of International Law* was published in French in 1848, in Spanish in Mexico in 1854 and in Italian in 1860.

[70] Donald Quataert, *The Ottoman Empire, 1700-1922* (Cambridge, UK; New York: Cambridge University Press, 2005), p. 81.

[71] Sezai Balci, "Osmanli Devletinde Tercumanlik ve Bab-i Ali Tercume Odasi", (Ph.D. Diss., Ankara University, 2009).

[72] Musa Kilic, "Tanzimat Doneminde Osmanli Hariciye Nezaretinin Ermeni Memurlari," http://dergiler.ankara.edu.tr/dergiler/18/1687/17983.pdf, 109.

universal," and constituted circulatory networks of translated knowledge in modern international law. The translator, whom Liu describes as a diplomat, played a critical role in the making of this "global universal", of which the Ottoman Empire had well formed a part.[73]

The translation of Wheaton's book is considered to be a turning point in China's foreign relations. The impact of Wheaton's book in the Ottoman Empire, on the other hand, was rather limited as it was never translated into Ottoman Turkish but only circulated among Ottoman legal experts. Nevertheless, the rapid increase in the number of translated works on international law during this period alludes to the emergence of a new kind of awareness in the empire where Ottoman translators continuously meditated between original and translated texts and tied the empire to this newly emerging network of knowledge.[74]

The list of books on international law and diplomacy at the library of the Ottoman Translation Bureau may give a general idea about the extent to which there existed an understanding of contemporary issues in the formation of an international legal regime among Ottoman bureaucrats. Besides Wheaton's *Elements of International Law*, the library also included Marten's *Droit des Gens* (1843), Vattel's *Droit des Gens* (1863), Felix's *Droit International*, Clerg's *Guide des Consulate*, and Thier's *Histoire au Consulat.*[75]

[73] Lydia Liu, *Tokens of Exchange: Problem of Translation in Global Circulation,* 128: Liu argues that the translator, who acted literally and figuratively as a diplomat, became central for the emergence of a global universal which she describes as a series of contested moments in colonial and cultural encounters.

[74] Henry Bonfils, "Manuel de Droit International Public was translated by Mahmut Esad Efendi as *Hukuk-u Beyneduvel* in 1881, Ahmet Selahattin's translation of Bonfils was published in in 1907, whereas Yusuf Ziya Pasa's translation of Bluntschli's treatise on international law was published in 1880. The content of these translated volumes will be further discussed in the following chapter.

[75] Sezai Balci, "Osmanli Devletinde Tercumanlik ve Bab-i Ali Tercume Odasi," p. 135.

Vattel's *Law of Nations* was translated into Ottoman Turkish by Halis Efendi on the order of Koca Husrev Pasa as early as 1837.[76] The Ottoman translation included the last two books of the total four volumes on the law of war and peace. The translation included a table of contents and an end note by the translator, who asserted that the treatise was written by "*Vattel nam bir zat-i pür-kemalat*" (eminent person named Vattel) and discussed *kanun-i tabi* (natural law) as it relates to the acts of sovereigns.[77] Vattel's book might have appealed to the Ottoman ruling elite, as he was an advocate of natural law and considered sovereign equality and non-intervention as the basis of international relations. Another treatise on the issue was written in 1848 by Baron Schlechta Ottokar, who was a dragoman at the Austrian Embassy in Istanbul. His book is a translation of several international law treaties in German. Both treaties, according to Palabiyik, played a critical role in the introduction of laws of war and peace in the Ottoman Empire and train Ottomans for diplomatic practice.

The translation of international law treatises was not limited to the employees of the Ottoman Translation Bureau. The foundation of the Faculty of Law at *Darulfunun* and growing interest in the field of international law not only accelerated the rapid translations of recently published treaties into Ottoman Turkish but also led to the emergence of textbooks written by Ottoman legal scholars. Kemal Pasazade Said Bey and Cebrail Gregor's *Hukuk-i Duvel* and Yusuf Ziya Pasa's *Hukuk-u Beynedduvel*, a translation of Bluntschili's *Das moderne Völkerrecht der zivilisierten Staaten: als Rechtsbuch dargestellti*, were both published in 1881.

[76] E. de Vattel, *Hukuk-u Milel*, trans. A. Muhammed, (National Library of Turkey, 06 Mil Yz A 1275, 1255 [1839]); O. Schlechta, Kitab-ı Hukuk-u Milel, 2 Vols. (Vienna: Matbaa-i Viyana, 1264 [1847–48]) both quoted in Palabiyik, pp. 243-247.

[77] Ibid. The translation belongs to Palabiyik.

The first original account on international law was written in 1884 by Hasan Fehmi Pasa, who started his career at the Ottoman Translation Bureau and then taught at the Faculty of Law.[78] His book *Telhis-i Hukuk-u Duvel* (Summary of the Law of Nations) takes cue from the works of Vattel, Bluntschili and Calvo, and included an original 52-page section on Ottoman capitulations. Hasan Fehmi's book was also used as a textbook at the Faculty of Law and was re-published after the 1907 Hague Convention[79]. Ibrahim Hakki's *Tarih-i Hukuk-u Beynedduvel* (History of the Law of Nations)[80] and his student Ahmet Selahattin's *Hukuk-ı Beyn el-Düvelin Mukaddemât-ı Nazariye ve Safahat-ı Tekamüliyesi* (Theoretical Introduction and Evolutionary Phases of the Law of Nations)[81] are also known to be original legal treatises written by Ottoman scholars.[82]

The Ottoman translations of legal works during the late nineteenth and early twentieth centuries demonstrate a virtually synchronic quality with the publication of their originals. Henry Bonfils and Paul Fauchille's fourth edition of *Manuel de Droit International Public* was rapidly translated in two different versions by Mahmut Esat Efendi and Ahmet Selahattin, both published in 1908. The Ottoman interest in Bonfils and Fauchille's *Manuel de Droit International Public* emanates from its inclusion of the declarations decided at the Hague Peace Conferences in 1889 and 1907, the first formal settlements of the laws of war and peace in the body of secular

[78] Carter Findley, *Bureaucratic Reform in the Ottoman Empire: The Sublime Porte, 1789-1922*, (Princeton, N.J. : Princeton University Press, c1980), p. 187

[79] Cemal Bilsel, *Devletler Hukuku* (İstanbul : Kenan Basımevi ve Klişe Fabrikası, 1940).

[80] Ibrahim Hakki, *Tarih-i Hukuk-ı Beyneddüvel*, (İstanbul : Karabet ve Kasbar, 1303 [1885 or 1886]) and Ibrahim Hakki, *Hukuk-ı Duvel*, (Darülhilâfe [Istanbul] : Matbaa ve Kütübhane-yi Cihan, 1327 [1911]).

[81] Ahmet Selahattin, *Hukuk-ı Beyn el-Düvelin Mukaddimât-ı Nazariye ve Safahat-ı Tekamüliyesi*, Dersaadet [Istanbul]: Kanaat Matbaası, 1330 [1912]. His other books are; *Berlin Konferansinin Diplomasi Tarihine Bir Nazar* (İstanbul : Tefeyyüż Kitabẖanesi, 1327 [1911]) and *Kulliyat-i Hukuk ve Siyasat* (Istanbul, Araks Matbaasi, Tefeyyuz Kitabhanesi, 1327 (1911).

[82] Original accounts of Ottoman legal scholars will be discussed in the following chapter.

international law.[83] Ahmet Selahattin Bey's translation, which was published in 2000 copies, was used as a textbook on International Law at the Faculty of Law after publication.[84] The eagerness to translate newly published books into Ottoman and include them in the law school curriculum indicate the pressing need among Ottoman scholars and bureaucrats to acquire in-depth knowledge on modern international law, positive legal norms and the states system.

Ahmet Selahattin (1878-1920) was a well-known Ottoman legal scholar, who taught international law and later became the dean of the Faculty of Law at *Darulfunun*. In 1919, he attended the consultative assembly (*saltanat surasi*) as a representative of *Darulfunun* and expressed strong opposition to the possible establishment of a foreign mandate over the empire. In addition to his academic publications, Ahmet Selahattin also wrote articles for daily newspapers such as *Vakit, Tarik* and *Yenigun.* These articles not only familiarized the general public with the key terms and contemporary debates of modern international law but also played an instrumental role in preparing the Ottoman delegation for peace talks in the aftermath of the First World War. Described as the "pioneer" of the Lausanne Peace Treaty, Ahmet Selahattin's writings appealed to a wide range of audiences, academic and otherwise.[85]

A summary of Ahmet Selahattin's *Hukuk-u Umumiye-yi Duvel* (Public International Law) was published by Mustafa Halit, an acquaintance of the former from the Ottoman Council of State,

[83] Henry Bonfils and Paul Fauchille, *Manuel de Droit International Public*, Paris : Rousseau et co, 1914, 7th edition, includes the Hague Conventions of 1889 and 1907 by Paul Fauchille.

[84] *Telhis-i Hukuk-u Düvel: Medhal, Müellifleri: Henry Bonfils [ve] Paul Faucheville*, trans. Ahmet Salahettin, mülahhısı: Abdullah Niyazi, (Deri-Saadet, Necm-i-İstikbal Matbaası, 1326 [1910]), Bonfils' Manuel de Droit International Public was also translated by Mehmet Cemil. Henry Bonfils, *Hukuk-ı Umumiye-yi Düvel*, Mehmed Cemil trans. (İstanbul : Matbaa-yı Jirayir-Keteon, 1325-1329 1909 or 1910-1913 or 1914).

[85] Seha L. Meray, L*ozan'in Bir Oncusu: Prof. Ahmet Selahattin Bey 1878-1920* (Ankara: Turk Tarih Kurumu, 1976)

*Sura-yi Devlet*, in 1910.[86] The book consists of Ahmet Selahattin's translation of Bonfils and Fauchille's *Manuel de Droit International Public* and gives a detailed analysis of the general principles of the discipline. In contrast to verbatim translations of renowned works on international law, the book provides significant insights on contemporary legal issues and debates on the participation of the Ottoman Empire in the state system from the viewpoint of a prominent Ottoman legal scholar. Since the book was also used for educational purposes at the Faculty of Law, it is comprehensive in content and written with utmost clarity. Each issue is explained in historical context and elaborated with contemporary cases.

In the introduction, it was stated that the foundation of international law rests on the formation of a society of states (*Hukuk-u duvelin esasi devletler arasinda musaddik bir cemiyetin vucududur*).[87] The member states of this society may have different levels of civilization but were obliged to organize their international relations in accordance with the law of nations. Integration in the society of states did not deprive states of their individual identities but ensured the preservation of their independence. States like Belgium, Switzerland and Holland, Selahattin Bey argued, owed their survival to this system as they were authorized to equally benefit from the law of nations.[88] Putting emphasis on the principle of sovereign equality, Selahattin Bey maintained that the members of the society of states were all considered to be on par in terms of their rights and obligations regardless of their degree of civilization or financial resources.

Selahattin Bey argued that the Treaty of Westphalia of 1648, the Congress of Vienna of 1815, the Congress of Berlin of 1885, the Brussels Conference of 1895 and the Hague Convention

[86] Mustafa Halit, *Telhis-i Hukuk-u Umumiye-yi Düvel* (Darülhilafe, Istanbul: Darülfünun-u Osmani Hukuk Fakültesi, 1329 [1911 or 1912]).

[87] *Telhis-i Hukuk-u Umumiye-yi Düvel*, p. 8

[88] Ibid. p. 10

of 1907 respectively re-assured the establishment of mutual relations among various sovereign states in harmony with the law of nations. He disagreed with those who ignore the efficacy of public international law by claiming that it had no real power to impose penal sanctions in the absence of a superior authority, common court or a code of law. In response, the author argued that even though the principles of international law were not codified, states complied with a customary code of conduct and treaties among them. Even though Islamic law did not have much in common with Roman, German, French or English law, Selahattin Bey argued, there existed a common understanding of public international law among different states. Despite the absence of a superior court, all states, large or small, were obliged to act in harmony with the law of nations.

To further elaborate his argument, Selahattin Bey referred to various treaties that ensured the legitimacy of public international law. While the Congress of Aix-la-Chappelle of 1818 signed between Britain, Austria, Prussia and Russia formally recognized the legality of public international law and the need to preserve the peace on the basis of treaties; the Treaty of Paris of 1858 had confirmed the need to comply with laws of war during military conflict. Article 40 of the Treaty of Berlin of 1878, on the other hand, stipulated that Serbian subjects would be treated under public international law until the conclusion of a treaty agreement with the Ottoman Empire. The agreement between Britain and America over Alabama of 1871 and the treaty of alliance between France and Chile in 1882, on the other hand, both explained in detail the necessity of committing to international law. It was concluded that all of these treaties prove the legality of public international law although it was yet to be fully developed.[89]

Clearly, the author's understanding of the states system and international law embraced various states with varying degrees of political power as opposed to the exclusionary logic of the

[89] Ibid. p. 79

European states system. He considered all sovereign states that were parties to treaty agreements, from the newly independent Serbia to Chile, within the all-encompassing spectrum of the states system. In the mind of an Ottoman legal scholar, the principles of public international law were not only binding for great powers but all sovereign states which were considered to be equal to one another under the rule of law regardless of their cultural, religious or political differences.

Selahattin Bey strongly opposed the establishment of the Holy Alliance among Russia, Prussia and Austria in 1815, as it overlooked the distinction between law and religion. Presumably, Selahattin Bey's opposition stemmed from the signatories' emphasis on the divine rights of kings and their desire for strengthening Christian values in European politics. Indeed, the second article of the alliance stated that the signatories "consider themselves all as members of one and the same Christian religion" and "the Christian world of which they and their people form a part, has in reality no other sovereign than Him (God)."[90]

Arguably, Selahattin Bey's emphasis on sovereign equality and individual will demonstrated a profound understanding of the positivist conception of international society, where membership was solely based on sovereignty and consent to common legal principles and norms. And yet, Selahattin Bey's reaction to the Holy Alliance signified a deep-rooted disapproval of the growing sense of a European/Christian society of states during the nineteenth and early twentieth centuries. In response, Selahattin Bey argued that all sovereign states were equal and thus entitled to enjoy independence and territorial sovereignty without the interference of other states. The law of nations, Selahattin Bey concluded, should preserve the balance of power among states by protecting their independence.

[90] Ibid. p. 21

The book described three distinguishing features of the states system: (i) the existence of sovereign states, (ii) the establishment of mutual relations among them, and (iii) their willingness to comply with the general principles of international law.[91] For the sake of clarity, the author explained the elements of public international law through a graphic representation. According to his scheme, a state's right of presence was the source of all other entitlements. Then came the right of independence (*hakk-i istiklal*), equality (*hakk-i musavat*), to make war and peace (*hakk-i harb ve hakk-i ahd*), open embassies (*hakk-i sefaret*), develop free commercial relations (*hakk-i serbesti-yi ticaret*), adjudication (*hakk-i kaza),* political rule (*hakk-i teskilat-i siyasiye*), defense (*hakk-i mudafa*) and security (*hakk-i emniyet*).[92]

States were free in their domestic affairs and hence in charge of their relations with their own subjects. As an ardent opponent of extraterritorial jurisdiction, the author asserted that the right of jurisdiction should not be granted to foreigners and, as such, it should be restrained. Sovereign states may waive their right of jurisdiction only in certain autonomous zones such as foreign embassies or foreign vessels of war and commerce. As long as states developed strong constitutional systems, their internal sovereignty (*hakk-i hukumet-i dahiliye*) relied on their independence from the control of foreign powers.[93]

The author saw the policy of non-intervention and preservation of the balance of power as critical for the survival of the state system. The principle of the balance of power was first established, according to Selahattin Bey, with the Treaty of Westphalia, and was consolidated with

[91] Ibid, Introduction.

[92] Please see appendix for Selahattin Bey's graphic representation of the components of public international law. His sketch demonstrates his interest in representing the sources of international law to his students at the Law School in an easily comprehensible manner.

[93] Ibid. p. 83

the Treaty of Utrecht of 1714. It aimed to prevent the brutal rule of kings and emperors like Louis XIV and Napoleon Bonaparte who posed a threat against the European political order. The 1878 Treaty of Berlin was a turning point in the sense that it introduced the principle of concession as a way to preserve power balance among states. The Austrian protection over Bosnia and Herzegovina and British protection over Cyprus were recognized as they were believed to contribute to the balance of power among the signatories of the peace. Even though Austria-Hungary was not itself involved in the war of 1877-8, its protectorate over Bosnia and Herzegovina was seen as instrumental to protect stability in the Balkans against Russian imperial interests in the region. Similarly, British rule of Cyprus was seen critical for ensuring the military support of Britain in case of a potential Russian strike in the future.

In sum, Selahattin Bey's *Hukuk-u Umumiye-yi Duvel* demonstrated a keen understanding in the evolution of contemporary issues of public international law. His discussion of Westphalian sovereignty, the balance of power, and the policy of non-intervention was, besides Bonfils, was also likely to be informed by the works of contemporary legal scholars, some of which were discussed in the previous section. Despite the simplicity of its style, which was adopted most likely as it was targeting students and not just scholars, the book displayed a certain degree of originality as it avoided a verbatim reiteration of Bonfils and Fauchille's account but instead provided an authentic synthesis of case studies in order to explain key legal norms and introduce its readers to the most pressing issues of the time. More significantly, however, the author decisively distanced himself from the exclusionary politics shaping the European states system by discrediting the standard of civilization assumed by European powers. His comprehensive account paid equal attention to the affairs of great powers and weaker states, both considered to be equal before the premises of public international law. Selahattin Bey's translated volume, thus, should be seen as a

humble attempt to frame the Ottoman Empire within the European state system as opposed to the civilizational matrix of the discipline shaped by great power politics. Writing at a time when the Eastern Question had a central place in European power politics and the preservation of the territorial integrity of the Ottoman Empire became a critical issue in international relations, it is to expected that an Ottoman legal scholar would develop such an acute understanding of the discipline and its key norms such as the sovereign equality, non-intervention and balance of power.

Selahattin Bey's articles which later appeared in various newspapers in 1919 allowed him to introduce the main principles of international law to the general public at a time when the possibility of being under an American or British mandate gained considerable support in the empire. His articles not only contributed to the emergence of an informed public opinion on the legal essence of the mandate system, but also acquainted the Ottoman delegation with the most up-to-date principles of international law to be used in the peace negotiations.

Reviewing the proposals for the creation of a mandate system by the newly established League of Nations at the end of the First World War, Selahattin Bey asserted that mandate system was no less of a threat to the independence and sovereignty of the empire than a protectorate. From a legal viewpoint, he continued, the empire cannot agree to a relationship of subordination, but instead required coordination in the state system. In another article, "If I were a delegate," published in the *Vakit* newspaper in 1919, he argued for the necessity of making a peace agreement on the basis of rights rather than the power differential among states.[94] His argument against the establishment of a mandate system was based on the continuation of sovereignty where no foreign state had a right to intervene in the domestic affairs of another.

[94] "Koruyuculuk ve Mandat Akimlari", *Vakit*, 31 Mayis 1919.

Even though the link between doctrinal understandings of international law and diplomatic practice is not always clear, a careful study of Selahattin Bey's career provides valuable insights to understand how his use of international law principles such as sovereign equality, non-intervention and the balance of power guided the Ottoman delegation in the Lausanne peace negotiations. Selahattin Bey's in-depth knowledge of these principles did not only appeal to his students or colleagues but helped to create an informed public opinion against the mandate system. As an academic, translator and a diplomat, Selahattin Bey was one among many contemporaries who not only contributed to the universalization of knowledge on international law but also played an instrumental role in the transition of this knowledge from the Ottoman Empire to Republican Turkey. In attempt to grasp the contours of Ottoman legal imagination and how it contributed to the preservation of Ottoman imperial sovereignty, the next chapter provides a detailed analysis of the Ottoman literature on international law during the late nineteenth and early twentieth centuries.

## Chapter II

## Ottoman Legal Imagination and Claiming Imperial Sovereignty

Investigating how international law acquired a universal character during the nineteenth century, Becker Lorca challenged the long-established assumption that European international law progressively expanded and included non-Western states.[1] The clear cut distinction between two separate regimes as imposed by international law, i.e. the one that oversees relations between Western states under formal equality, the other, governing relations between Western and non-Western states; gradually blurred with the admission of a number of non-Western states into the international community during the nineteenth century.[2] This development not only led to the reinterpretation of the main precepts of international law, such as the doctrine of recognition and standard of civilization, but also posed significant problems to European jurists[3] to define the ambiguous legal status of these newly admitted states, which remained within and yet at the same time outside the European state system.[4] More importantly, Lorca argues that the universalization of international law doctrine cannot be explained with the gradual expansion of the European state

[1] Becker Lorca, "Universal International Law: Nineteenth-Century Histories of Imposition and Appropriation" *Harvard International Law Journal*, 51 no: 2, (2010): 475-552. Becker Lorca, *Mestizo* International *Law: A Global Intellectual History 1842-1933* (Cambridge, United Kingdom: Cambridge University Press, 2014).

[2] The inclusion of the Ottoman Empire to the Concert European after the Treaty of Paris can be considered as an example of the process. For a critique of seeing the formal inclusion of the Ottoman Empire to European states system is provided in Chapter 1.

[3] For a detailed discussion of how European jurists such as John Westlake, Kaspart Bluntschli, Henry Wheaton, and Lassa Oppenheim dealt with the expansion of European international law and the case of the Ottoman empire in particular see Alexander Orakhelashvili, "The Idea of International Law" *The European Journal of International Law* 17, no: 2 (2006): 315-347.

[4] Lauren Benton, Lauren Benton, Not Just a Concept: Institutions and the "Rule of Law," *Journal of Asian Studies*, Vol. 68, No. 1 (Feb., 2009), pp. 117-122, Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge, UK ; New York : Cambridge University Press, 2007)

system to include non-Western political entities, but requires a closer examination of how non-Western jurists first appropriated and then reinterpreted the main precepts of international law doctrine in a way to justify the legal recognition of non-Western states within the international system. Giving agency to "the semi-peripheral international lawyers", and studying their attempts for re-interpreting and transforming the scope of international law, Lorca highlights the emergence of a transnational legal discourse.

Lorca's intervention opens up new avenues for re-thinking the role of non-Western legal experts in the evolution of a new type of disciplinary discourse. Even though the disputed legal status of sovereign non-European states, semi-sovereign entities and protectorate regimes under European rule constituted a substantial focus in the publications of the most prominent European jurists, there has been little scholarly attention on how non-European legal experts understood and reacted against the doctrine of international law during the period in question. Although contemporary studies on the evolution of international law acknowledge the euro-centric focus and the exclusionary logic of the discipline; non-European jurists are only rarely given agency. The absence of non-European legal experts in these studies not only obscures how international law evolved as a transregional discourse but also further reinforces the euro-centric bias of the discipline.

This tendency partly derives from the assumption that non-European jurists knew little about the discipline and were scarcely aware of the major disputes among their European counterparts. In fact, international law discourse gave considerable leverage to non-European jurists and diplomats in their attempts to claim equal recognition in the international system.[5] Appropriation of international law hence became an important instrument for states, which were

[5] Selim Deringil, *The Well-Protected Domains*: *Ideology and the Legitimation of Power in the Ottoman Empire, 1876-1909* (London : I.B. Tauris, 1998).

partially or completely excluded from the realm of this newly emerging system. The strategic appropriation of these legal norms enabled non-European lawyers and diplomats to assert their political and economic interests against European imperialism.

Examining a group of non-European internationalists such as Carlos Calvo (Argentina), Etienne Caratheodori, (Ottoman Empire), Fedor Fedorovic Martens, (Russian Empire), Nicolas Saripolos, (Greece), and Tsurutaro Senga, (Japan)[6]; Lorca argues that all of these scholars were dedicated to the teaching of international law in their own languages, and at the same time developed a "distinctively non-European interpretation of the classical European law of nations" through publications intended for a European audience.[7] During this time, many non-European students and lawyers travelled to Europe to study international law and achieved a profound understanding of positivist legal principles such as sovereignty, formal equality and non-intervention. These principles not only enabled these lawyers to develop a new legal consciousness but also provided them a new vocabulary of legal norms to resist against extraterritorial jurisdiction and political intervention imposed by European powers. In doing so, these lawyers did not simply reject the standard of civilization assumed by their European counterparts, but internalized it in a way to include their respective states as part of the civilized nations, whereas considering some of the other non-Western political entities as belonging to the uncivilized portion of the world.

Despite his emphasis on the contributions of non-European lawyers to the discourse of international law, Lorca claims that there was little interest in the Ottoman Empire to produce lawyers who would gain proficiency in the new positivist understanding of international law.

[6] Arnulf Becker Lorca, "Alejandro Alvarez Situated: Subaltern Modernities and Modernisms that Subvert" *Leiden Journal of International Law* 19, no. 4 (2006): 879, 927, 929.

[7] Becker Lorca, "Universal International Law: Nineteenth-Century Histories of Imposition and Appropriation," p. 482.

Unlike the Russian or Japanese lawyers who were sent to Europe to study international law, Ottoman rulers often preferred to use diplomats to deal with such issues.[8] Referring to the works of Etienne Carathéodory and Gabriel Noradounghian, Lorca argues that these two Ottoman diplomats provided legal advice to the government as part of their service in the foreign affairs and published treatises on international law. Carathéodory wrote about freedom of navigation and the legal status of rivers, whereas Noradounghian complied a collection of treaties and legal documents about the Ottoman Empire.[9] Nevertheless, it was not until the early twentieth century, according to Lorca, that there emerged a new kind of legal awareness among Ottoman legal experts who appropriated the positivist doctrine of international law like their Russian or Japanese counterparts.[10]

Lorca's consideration of the Ottoman Empire *vis-a-vis* the other non-European sovereign empire-states in his analysis provides a comprehensive understanding of how the Eurocentric basis of international law was challenged from the "semi-periphery." Despite its comparative approach, however, Lorca's emphasis on Carathéodory and Noradounghian is at best insufficient and does not provide any insight on how these diplomats understood the newly emerging legal norms and deployed them in the interest of the Ottoman government. Even though both diplomats targeted an international audience by publishing books in foreign languages rather than their own, Lorca fails to clarify their interpretation of international law and does not give any idea on with what kind of an agenda they chose to write on these topics and what kind of contributions they intend to make

[8] Lorca, pp.538-539.

[9] Gabriel Noradounghian, *Recueil de'actes Interntionaux de l'Empire Ottoman* (Paris, F. Pichon, 1897-1903) and Etienne Carathéodory, *Du Droit International Concernant les Grands Cours d'Eau* (Leipzig: Erscheinungsjahr: 1861).

[10] Ibid.

to the field. Lorca's emphasis on the emergence of a universal legal awareness is hard to disagree with, and the Ottoman Empire was certainly part of this process presenting a case of anomaly both within and outside the international system. Nevertheless, his limited inquiry on Carathéodory and Noradounghian does not suffice to ratify his point.

By the mid-nineteenth century, there existed numerous legal scholars in the Ottoman Empire who made translations from the works of renowned European lawyers; and published manuals, textbooks and treatises on international law. International law first became part of the course curriculum at *Mekteb-i Mulkiye* as early as 1859 in order to acquaint the students with the basic legal norms and concepts of positivist international law.[11] These norms were further elaborated and circulated among the Ottoman intellectual circles through the works of various Ottoman scholars such as Munif Pasa, Hasan Fehmi Pasa, Ibrahim Hakki Pasa, Ahmet Resit, Ali Sahbaz Efendi, Humayak Husravyan and Mahmud Esad Efendi, to name just a few. The works of these scholars indicate the emergence of a new kind of international legal consciousness in the empire well before the turn of the century. Even though it is somewhat a stretch to claim the development of a distinctively Ottoman interpretation of international law during this period, a careful study of these publications provide invaluable insights to understand how international law was appropriated and challenged by Ottoman scholars, intellectuals and diplomats in the interest of the empire.

Despite the recent interest in the historical evolution of international law in the Ottoman Empire, there is no comprehensive study analyzing the works of Ottoman legal scholars. In fact,

[11] International Law was first taught by Hasan Fehmi Pasa (1839-1910) at the Law School. Hasan Fehmi Pasa's *Telhis-i Hukuk-i Duvel* is recognized as the first book in Ottoman Turkish on the subject. International Law was then taught by Ibrahim Hakki Pasa (1862-1918), Ali Sahbaz Efendi and Ahmet Selahattin Bey (1872-1921). Vakur Versan, "Osmanli Devletinde Tanzimattan sonra Bati Devletler Hukukunun Benimsenmesi" in *Cagdas Turk Diplomasisi, 200 Yillik Surec* ed. by Ismail Soysal, (Ankara: Turk Tarih Kurumu, 1999), 110.

the Ottoman Empire had long been an object of the discipline as many contemporary European lawyers of the late nineteenth and early twentieth centuries used the Ottoman Empire almost as a laboratory to elaborate on the critical issues and norms within the doctrine of international law.[12] The books published by prominent European lawyers of the time frequently refer to the Ottoman Empire and are preoccupied with defining the international legal status of the de facto independent territories, which remain under nominal Ottoman suzerainty. The disputed legal personality of Ottoman Egypt, British Protected Cyprus or the Principality of Bulgaria all attracted the attention of renowned scholars such as Westlake, Wheaton and Oppenheim who devoted a considerable portion of their studies to discuss the legal status of these political entities.[13] As a matter of fact, the discussion of these particular case studies by such prominent legal experts of the time demonstrate the degree to which these Ottoman provinces contributed to the broader discussion of sovereignty, which was considered to be the foundational principle of positivist doctrine of international law. A discussion about the legal status of the British Protected Cyprus under Ottoman rule, in other words, was very much so a general discussion about the doctrine of sovereignty and its legal implications. Such cases attracted the attention of European lawyers not simply because they were directly involved with these entities but also because these disputed cases led to the emergence of a rather sophisticated understanding of sovereignty and contributed to the accumulation of disciplinary knowledge on positivist international law. The Ottoman Empire was both a subject and an object of positivist international law providing an extensive repository

[12] Umut Ozsu, "Ottoman International Law?" *Journal of Ottoman and Turkish Studies Association* 3, no.2 (2016): 369.

[13] Henry Wheaton, *Elements of International Law* (Philadelphia: Lea and Blanchard, 1846), John Westlake, *Chapters on the Principles of International Law* (1894), Lassa Opppenheim, *International Law : a Treatise* (London ; New York : Longmans, Green, 1905-1906).

of cases to be studied by European legal scholars, which were eventually transcribed into general norms and principles.

These sources reveal that the Ottoman Empire presented a compelling field of study for European legal scholars. Additionally, the scholarly works of such prominent European legal experts provide invaluable insights to anyone who is interested in understanding the legal status of the Ottoman Empire and its semi-independent provinces within the overarching framework of positivist international law. Even though these sources can at first be rewarding for Ottoman historians interested in the issue, they nevertheless impose a strictly Eurocentric scope of analysis. More significantly, the abundance of information on the legal status of various semi-sovereign Ottoman provinces in European sources of law often made European and Ottoman historians automatically confine their research to these sources, and thus pay little attention to the works of Ottoman legal scholars. The accessibility of such European sources with relative ease further reinforced this phenomenon. [14] Taken together, these factors culminated in a general neglect for Ottoman literature on international law.

Thus, the absence of Ottoman legal scholars in the historical evolution of international law and their role in the emergence of a transregional legal consciousness is essentially a historiographical problem to be recognized and addressed by scholars in the field. It requires a good understanding of the major disciplinary issues and discussions presented in European sources of international law and their repercussions in Ottoman sources. Only then, it becomes possible to give voice to the Ottoman legal experts and grasp to what extent and in what capacity international law was utilized as an arena to express the political interests of the Ottoman Empire during the

[14] Also, a thorough understanding of Ottoman sources does require a certain level of proficiency in Ottoman Turkish. This is mainly a problem for international law and international relations scholars who are interested in the historical background of the issue in the Ottoman Empire as well as historians who rather prefer to use sources in modern European languages due to language limitations.

nineteenth and early twentieth centuries. On the other hand, it is somewhat problematic assume that one can achieve a profound understanding of Ottoman legal awareness and practice merely through a detailed study of such sources. In the big picture, it is necessary to acknowledge that there existed a broader network of experts such as diplomats, government officials and intellectuals who were engaged in a rather complicated web of everyday relations both at the domestic and international levels.

## A New Generation of Ottoman Legal Experts: Etienne Carathéodory, Ali Sahbaz Efendi and Ibrahim Hakki Pasa

### i. An Internationally Acclaimed Ottoman Legal Scholar: Etienne Carathéodory

Etienne Stephanos Carathéodory, an Ottoman diplomat of Greek origin, was born in Istanbul in 1836 and started his bureaucratic career in the Ottoman Bureau of Translation in 1852.[15] He then went to Berlin and obtained a doctorate[16] in law from Berlin University with a dissertation on *"Stromgebietsrect und die Internationale Flußschifffahrt"* in which he studied freedom of navigation in international rivers.[17] Carathéodory continued his career as a diplomat in Berlin,

[15] Etienne Carathéodory belonged to the new phanariots, who stayed in the Ottoman Empire after the Greek Revolution of 1821 and continued to serve in the Ottoman government. Christine Philliou, *Biography of an Empire: Governing Ottomans in an Age of Revolution* (Berkeley: University of California Press, 2011), 87.

[16] According to Sinan Kuneralp, Etienne Carathéodory was one of the three non-Muslim Ottomans who acquired a doctorate in law from universities abroad. Alexander Carathéodory, a relative of Etienne Carathéodory, completed his doctoral studies in 1860 at Faculte de Droit de Paris with a dissertation on "De l'Erreur en Matiere Civile d'apres le Droit Romain et le Code Napoléon." Eugéne de Kerkhove, on the other hand obtained his doctorate in law from the University of Ghent in 1841. Both Kerkhove and Caratheodory served in various diplomatic positions afterwards. Sinan Kuneralp, *Son Dönem Osmanlı Erkân ve Ricali (1839-1922). Prosopoprafik Rehber*. (Istanbul: Isis, 2003), 87.

[17] "River Area Law and International River Navigation", In Holtzendorff, *Handbuch des Volkerrechts* vol.II, (Berlin: C. Habel, 1885): 277-409 quoted in Georgiadou, p. 253 supranote: 4.

Stockholm, Vienna, St. Petersburg and eventually became the Ottoman consul in Brussels from 1875 to 1900.[18] Between his diplomatic posts, Carathéodory returned to Istanbul and worked at the Ottoman Ministry of Foreign Affairs from 1870 to 1872. Carathéodory's advanced knowledge of several European languages including French, German and Italian as well as Latin and Ancient Greek certainly made him an ideal candidate for positions within the Ministry of Foreign Affairs.

In 1861, Carathéodory published a book on *Du Droit International Concernant les Grands Cours d'Eau* in which he provided a scholarly discussion of the theoretical and practical implications of free navigation in open seas and rivers.[19] In his book, Carathéodory discussed the development of freedom of navigation in a historical trajectory. He first compared the related stipulations of Roman law, French laws and Islamic law, and then devoted a separate chapter to the Congress of Vienna (1815), which he considered as a turning point that eventually paved the way for the establishment of an international legal consensus on freedom of navigation on the rivers. "It was towards the end of the last century" Carathéodory maintained, "that the question of rivers was first raised in Europe" with a legal dispute that emerged between Austria and the United Provinces over navigation rights along the Scheldt, a river of considerable commercial and strategic importance.[20] According to Carathéodory, it was only after the Treaty of Paris (1814)[21]

[18] Carter Vaughn Findley, *Ottoman Civil Officialdom: A Social History* (Princeton, N.J. : Princeton University Press, 1989), 163.

[19] Etienne Carathéodory, *Du Droit International Concernant les Grands Cours d'Eau* (Leipzig: Brockhaus, 1861).

[20] Etienne Carathéodory, *Du Droit International Concernant les Grands Cours d'Eau*, 98.

[21] Article 5 of the treaty stipulated that "the fortress of Landau having, before the year 1792, formed an insulated point in Germany, France retains beyond her frontiers a portion of the departments of Mount Tonnerre and of the Lower Rhine, for the purpose of uniting the said fortress and its radius to the rest of the kingdom."

and the Congress of Vienna (1815)[22] that freedom of navigation on the Scheldt and Rhine rivers was formally instituted.[23] The Vienna Congress agreed on the establishment of a commission, which would meet on a regular basis to decide in what manner the provisions of the Paris Treaty were to be extended to all the rivers which separated or streamed through several sovereign states. Carathéodory stated that the Congress of Vienna laid down the main principles on the issue, an event that he believed to have formed "the basis of this part of international law in the future."[24]

After a careful examination of the legislations over various rivers in Europe (Rhine, Schlect, Elbe, Po, Danube) and in America (Mississippi, St. Laurent, La Plata, Amazon); Carathéodory emphasized the gap between theory and practice, as the question of navigation gradually became an international issue. While European riparian states "exploited congressional provisions to the fullest extent possible", "the American states followed a widely opposite path" by opening their waterways for general use.[25] Comparing the respective legislations over the Danube in Europe and La Plata in America, he asserted that even though theoretical discussions over navigation first originated in the former, it was the latter, which led to the proclamation of principles of liberty on such a vast scale. As an ardent supporter of navigational freedoms, Carathéodory believed that a new international regime would soon be fully recognized in Europe: "Would it be bold to presume that Europe, which has taken such a scrupulous part in the consecration of these principles, leaving aside rivalries and private interests, soon follows the

[22] The Congress of Vienna established a Central Commission for the Navigation of the Rhine River after Napoleon's defeat in 1815. The commission was aimed at overseeing navigation along the Nile River as it banks were split between several independent states after the war.

[23] Carathéodory, 106

[24] Carathéodory, 110

[25] Carathéodory, 155.

impulse given on the other side of the ocean?" Despite competing political interests of European riparian states, Carathéodory concluded that an international regime of free navigation would soon be established, under which all flags would be equal and neutral, even in time of war, and be subject to the same rules and duties.

During the second half of the nineteenth century, freedom of navigation on the rivers was indeed a developing issue, which attracted the scholarly attention of numerous international legal experts. Carathéodory's book, published in 1861 in Leipzig, should hence be considered as a scholarly contribution to the field, providing a thematic analysis of the issue in a comparative framework. In the introduction, Carathéodory emphasized "the need for a study which deal with the question as a whole, or even from a purely theoretical perspective," and claimed that his book aimed at filling this gap. In his book, Carathéodory displayed a solid understanding of political and legal theory with frequent references to Grotius' *Mare Liberum*, Vattel's *Droit des Gens*, Hobbes' *De Cive*, Locke's Two Treatises of Government as well as Ahren's *Droit International*, Wheaton's *Droit International* and *Histoire des Progres du Droit des Gens*, Marten's *Droit des Gens* and Heffter's *Das Europaische Volkerrecht der Gegenwart*. In the appendix, Carathéodory provided the international instruments, which he considered indispensable to the study of the question, and an outline of the treaties relating thereto. Carathéodory's timely interest in the issue, his critical use of sources and in-depth knowledge of legal theory convincingly qualifies him as a legal scholar of international significance writing for an international audience.

In addition to his scholarly contributions to the field, Carathéodory was also appointed to important diplomatic positions and represented the Ottoman Empire in several international conferences. Carathéodory's studies on freedom of navigation led him to became the secretary of the International Conference of Constantinople in 1873. The Conference was convened after an

invitation made by the Ottoman government to all the Great Powers in order to establish a commission to discuss the freedom of navigation in the Suez Canal. By the end of the Conference, the Ottoman government admitted that it would "not take any decision on the subject (conditions for the passage through the Canal) without previously coming to an understanding with the principal Powers interested therein".[26] After this declaration, all matters concerning the Suez Canal such as passage, navigation tolls or dues for towage, anchorage and pilotage, were to be decided in agreement with Great Powers. In practice, the declaration confirmed the disavowal of Ottoman sovereignty in the Suez Canal. The freedom of navigation in the Canal was later recognized with the Constantinople Convention of 1888, which granted all nations the right to free passage in time of peace and war. When Carathéodory published his book in 1861, the Suez Canal was still in construction. Nevertheless, Carathéodory's in-depth knowledge about the emergence of free passage rights along the rivers in Europe and America might have become relevant in international legal discussions concerning passage rights through the Suez Canal. Carathéodory's participation in the Conference as the representative of the Ottoman Empire reveals how his legal expertise on a particular subject became critical for the diplomatic relations between the Empire and Great Powers over the issue. It also shows how Carathéodory transferred his existing knowledge to resolve emerging questions over passage rights in the Canal, and allowed him to contribute, in his own right, to the formation of a general disciplinary discourse on freedom of navigation.

Nevertheless, Etienne Carathéodory's contributions to the field of international law have not attracted enough scholarly attention. What distinguished Carathéodory from other Ottoman legal scholars of his time was the extent to which his studies gained international recognition. Franz von Holtzendorff, renowned German jurist (1829-1889), dedicated a full section of his four

[26] Parl. Pap.' Commercial No.19 (1874). C. 1075, p. 319 in Joseph A. Obeita, *The International Status of the Suez Canal* (Dordrecht : Springer Netherlands, 1970): 55-56.

volume *Handbook of International Law* to Carathéodory's earlier work on "*Das Stromgebietsrect und die Internationale Flußschifffahrt."*[27] Carathéodory's section appeared in the second volume on European state practice, which was published in 1887.[28] Holtzendorff's *Handbook* can be considered as one of the most significant works of German legal literature, which is characterized by a tendency to present the major legal principles and norms of modern international law in a clear and systematic form. The leading German jurists of the time were preoccupied with reframing international law in an easily comprehensible theoretical structure and Holtzendorff's study was a typical example of this general trend.[29] Having completed his doctoral studies in Berlin, it seems that Carathéodory was well connected to prominent German scholars of the time, and was under the impact of German legal scholarship.

It appears that Carathéodory's section in the book is a revised version of his doctoral dissertation, which bore the same title. Even though the contents of the section also had significant overlaps with Carathéodory's earlier work *Du Droit International Concernant les Grands Cours d'Eau*, it is a rather comprehensive and systematic account on international river navigation with a greater emphasis on the contemporary developments. Similar to his earlier studies, the latter work provided a detailed discussion of the issue in the light of Roman law, and later developments, which took place between the French Revolution and the Vienna Congress as well as the existing legislations over the rivers in Europe and America. What distinguishes it from Carathéodory's

[27] Etienne Caratehodory, "River Area Law and International River Navigation" in Franz von Holtzendorff ed., *Handbuch des Volkerrechts* (Berlin, C. Habel; 1885-89).

[28] Scholars such as Bulmerincq, H. Geffcken, K. Gareis, F. Stoerck and A. Rivier also contributed Holtzendorff's *Handbuch des Volkerrechts*.

[29] Hans-Ulrich Scupin, "1815 to World War One" in *History of International Law: Foundations and Principles of International Law*, ed. by Yong Zhou (North Holland, 1984): 198.

earlier works, on the other hand, is a rather profound emphasis on freedom of navigation. It focused on the legislations over the Congo and Niger rivers in Africa, and included new sections on navigability, natural and artificial obstacles to shipping, freedom of navigation, rights and duties of territorial powers and neutrality in time of war. Furthermore, it provided a detailed discussion on landlocked seas and canals with a comprehensive account of the developments regarding navigation in the Suez Canal. In this respect, Carathéodory's section on *Das Stromgebietsrect und die Internationale Flußschifffahrt* in Holtzendorff's edited volume should be considered as an up-to-the-minute account on international river navigation, which compiled latest scholarly literature on the issue and provided a comprehensive thematic discussion.[30]

There is no doubt that Carathéodory's inclusion in Holtzendorff's *Handbook of International Law* had immensely contributed to the accessibility of Carathéodory's ideas and allowed his work to become a source of reference for legal scholars who followed him.[31] For instance, the renowned German jurist Francis Lawrence Oppenheim, who is considered as one of the founders of modern international law and positivist school of thought, used Carathéodory as an important source of reference when he discussed navigational freedoms. In his *International Law*, first published in 1905, Oppenheim especially put emphasis on Etienne Carathéodory and Carlos Calvo as two legal scholars who convincingly claimed that rivers and land-locked seas did not belong to the riparian states, and should be free like open seas as opposed to the majority of

[30] In this study, Carathéodory frequently made use of the works of important jurists such as Henry Wheaton, Sir Travers Twiss, Engelhardt, W.E. Hall, A.G. Heffter, Friedrich Martens, T.H.T. Woolsey and Holtzendorff.

[31] At this point, it is also important to mention that Holtzendorff's *Handbook of International Law* was often used as a reference in international law books published in the Ottoman Empire. One example is Ali Sahbaz Efendi's *Hukuk-i Duvel,* which will be discussed in detail below.

writers who considered them as part of their surrounding territories.[32] Even though the principle of free navigation had not yet been recognized by the Law of Nations at the time, Oppenheim believed, like his predecessor Carathéodory, that the principle would soon be admitted and rivers be opened to merchants of all nations.[33] Oppenheim also discussed passage rights over the Suez Canal and referred to Carathéodory in his analysis of the Constantinople Convention of 1888.[34] Oppenheim's use of Carathéodory confirms the importance of Carathéodory's work and the extent to which he was recognized as a legal scholar of international prominence.

In addition to his scholarly studies, Etienne Carathéodory also represented the Ottoman government in a series of international diplomatic conferences, which allowed him to be acquainted with distinguished jurists and diplomats from various countries. To name a few, he attended the Brussels Conferences for the Codification of the Laws of War (1874), for the Unification of Tariffs (1888), for the suppression of trafficking (1889-90), and for the revision of the spirits regime in Africa. These conferences enabled Carathéodory to develop a wide international network. He was known to be closely connected with prominent legal experts just as Alphonse Rivier, who also completed his doctoral studies in law at Berlin University, Tobias Asser, one of the founding members of the *Institut de Droit International*, also known for his role at the first Hague Conference; and Russian diplomat Friedrich Martens.[35]

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[32] Lassa Opppenheim, *International Law: a Treatise* (London; New York: Longmans, Green, 1905-1906) 246, 278, 301.

[33] Lassa Opppenheim, *International Law: a Treatise*, 247. Oppenheim quoted Rivier in p. 230, Carathéodory in p. 378 and Calvo in p. 301.

[34] Oppenheim, pp:249-250 and pp: 386-405.

[35] Maria Georgiadou, "Expert Knowledge between Tradition and Reform ,The Carathéodorys: a Neo-Phanariot Family in 19th Century Constantinople" in ***Médecins et ingénieurs ottomans à l'âge des nationalismes*** **ed. Méropi Anastassiadou-Dumont (**Paris: Maisonneuve et Larose, 2003), 243-293.

While Etienne Carathéodory was in Brussels, he was elected as an associate member of the *Institut de Droit International*, a private association of lawyers founded in 1873 at Ghent with the aim of contributing to the development of the discipline.[36] Carathéodory's membership is quite a remarkable achievement regarding the predominantly European composition of the Institut.[37] As the only representative of the Ottoman government, Carathéodory's membership enabled him to exchange ideas on the most compelling issues of the time with eminent jurists such as Carlos Calvo, James Lorimer and Johann Kaspar Bluntschli.

Peter Macalister-Smith rightly argues that the gradual and partial opening of the *Institut* to members outside Europe was in fact emblematic of the status of international law during this period as it also gradually expanded to recognize a number of non-European states as part of the international state system.[38] In this respect, Etienne Carathéodory's membership in the *Institut* should also be considered as a symbolic expression of the Ottoman Empire's international legal personality as recognized by the European powers. On the other hand, Carathéodory's participation in these meetings must have contributed to the transfer of knowledge and expertise to other Ottoman scholars of the time, who were well aware of the *Institut* and its publications. Indeed, Ottoman legal scholar Ibrahim Hakki explained the importance of the *Institut* in his

[36] *Annuaire de l'Institut de Droit International* vol. 16, (Paris, 1897), xiv.

[37] France, Germany, Prussia, UK, Italy each had more than 20 representatives, whereas Swizerland, Belgium, Spain, United states, Austria Hungarian Empire, Russian Empire and Netherlands had about 5 members, Japan, Ottoman Empire and Serbia had one representative. The Institute was founded by 11 jurists, from nine countries: Carlos Calvo (1824–1906, Argentina); Emile de Laveleye (1822–1892, Belgium); Gustave Rolin-Jaequemyns (1835–1902, Belgium); Johann Bluntschli (1808–1881, Germany); Pasquale Mancini (1817–1888, Italy); Augusto Pierantoni (1840–1911, Italy); Tobias Asser (1838–1913, Netherlands); Vladimir Besobrasov (1828–1889, Russia); Gustave Moynier (1826–1910, Switzerland); James Lorimer (1818–1890, United Kingdom); and David Field (1805–1894, United States of America). Even though membership was restricted to 50 jurists at the beginning, it was later extended to 120 in 1880.

[38] Peter Macalister-Smith, *Oxford Public International Law: Institut de Droit Internationale*, http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e947

voluminous book *Hukuk-i Duvel* by stating that even though the *Institut* did not have the authority to impose sanctions over its member states, its resolutions constituted one of the most significant sources for international jurists and hence immensely contributed to the development of the discipline.[39]

The *Annuaire de l'Institut de Droit* International, the main publication of the *Institut*, gives further insight regarding Etienne Carathéodory's participation in its annual convenings. Carathéodory's name first appears on the 12th volume of the Annuaire summarizing the Geneva Sessions between 1892 and 1894. The Annuaire listed Etienne Carathéodory as the "*envoyé extraordinaire et ministre plénipotentiaire de Turquie*" and an associate member of the *Institut*. In the Geneva Session, Carathéodory attended the third commission for the "*definition et regime de la mer territoriale*" with a group of lawyers including Sir Travers Twiss, John Westlake and Friedrich Martens.[40] The following year, Carathéodory attended the Paris Convening and was introduced as a correspondent member of the Royal Academy of Sciences at Lisbon, plenipotentiary at the African Conference in Brussels (1889-1890), and delegate at the Conference for the Unification of Tariffs in 1890.

Scholars of international law often focus on how and to what extent the positivist legal norms, which originated in Europe, were received and appropriated by non-European legal experts. As explained in the previous chapter, Lydia Liu's study on the Japanese translation of Henry Wheaton's book sheds light on how positivist legal norms were received and circulated in Japan.[41]

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[39] Ibrahim Hakki, *Tarih-i Hukuk-ı Beyneddüvel* (İstanbul : Karabet ve Kasbar, 1303 [1885 or 1886] 28.

[40] *Annuaire de l'Institut de Droit International*, Vol. 12, Session de Geneve, (Paris: 1892-1894), 133.

[41] Lydia Liu, *Tokens of Exchange: Problem of Translation in Global Circulations* (Durham [N.C.]: Duke University Press, 1999), pp:127-165.

Such legal norms were simultaneously penetrated into the writings and daily rhetoric of Ottoman diplomats and legal experts. Even though there is still much ground to be covered to understand how and to what extent these norms and ideas were received in the Ottoman Empire, a careful examination of Carathéodory's career opens up a new avenue to re-think the agency of Ottoman diplomats and legal experts in the empire and elsewhere.

A careful study of Carathéodory's works reveals that he was well informed about the contemporary legal debates among his European peers, made significant contributions to the discipline by gaining scholarly expertise on a particular theme, and became a source of reference for later studies. In that respect, Carathéodory does not fit into the typical image of a non-European/Ottoman scholar often considered to be lagging behind and constantly trying to catch up with the emerging legal ideas and norms in Europe through a limited number of translated volumes on international law. On quite the contrary, he represents an internationally acclaimed legal expert, who was well connected with renowned European and non-European lawyers of his time. He contributed to the development of the discipline with his writings on a particular subject and gained due recognition among international academic circles. He became a legal scholar in Berlin and yet was constantly occupied with the emerging legal issues as a prominent Ottoman diplomat. His ideas on the navigational freedoms and the Suez Canal should be considered as a good example of how his scholarly interests were shaped by political developments in the region.

Nevertheless, one cannot go further to claim, like Becker Lorca, that Carathéodory appropriated positivist international law and developed a distinctively Ottoman interpretation of European legal principles to be utilized in the interest of the Empire.[42] In fact, the Ottoman Empire

[42] Umut Ozsu, "Agency, Universality, and the Politics of International Legal History" *Harvard International Law Journal* 51 (2010): 58-72.

was completely absent in his first book, which provided a comparative analysis of European and American river navigation. This book only included a brief section on Muslim law but had no reference to the related laws in the Ottoman Empire. His second book and his section in Holtzendorff's edited volume, were both more comprehensive than the former and referred to the Ottoman Empire only when discussing the political developments regarding the Suez Canal. In these sections, Carathéodory did not refrain from advocating freedom of navigation in rivers, canals and landlocked seas as he did in his earlier studies. He did not promote any particular agenda in the interest of the Ottoman Empire, either. As a well-versed legal scholar and an experienced diplomat, Carathéodory was well aware of political dynamics and the limits of international law, and hence limited Ottoman sovereignty over the region. One may convincingly argue that the construction of the Suez Canal might have led Carathéodory to focus on river navigation when he was a doctoral student in Berlin, but assuming a direct relation between his scholarly interest and a certain political agenda in the interest of the Ottoman Empire is certainly a stretch.

Last but not least, a careful examination of Carathéodory's career reveals the emerging legal consciousness in the Ottoman Empire. Even though Carathéodory is a unique example of an Ottoman legal scholar with such international recognition, his career started at the Ottoman Bureau of Translation like many other Ottoman legal scholars of the time who then followed a similar career path.[43] He is emblematic of how the Ottoman ruling elite desired to achieve a solid

[43] Established in 1821 after the Greek War of Independence, the Bureau of Translation constituted a new mechanism for the recruitment of translators in order to replace the dragomans from the Ottoman Greek community. The Bureau of Translation was more like a school, which allow its officials to get exposed to Western sources. As an important node in the Ottoman Ministry of Foreign Affairs, it soon became an important site for political mobility within the Ottoman bureaucracy. At a time when the Empire was being integrated to the international system, a career start at the Bureau of Translation enabled many of its personnel to promote to important diplomatic positions. Donald Quartet, *The Ottoman Empire 1700- 1922*, 81, Carter Vaughn Findley, *Bureaucratic Reform in the Ottoman Empire: The Sublime Porte, 1789-1922*, 187.

understanding of positivist international law and hence prioritized the education of scholars and diplomats like Carathéodory in the late nineteenth and early twentieth centuries.

### ii. An Informed Critic of the International Law Doctrine: Ali Sahbaz Efendi

Ali Sahbaz Efendi was born in Kayseri in 1838 to an Armenian family. After completing his early education in Istanbul, Ali Sahbaz studied at the monastery at San Lazzaro degli Armeni in Venice.[44] The monastery, which was founded by Mekhitar Sebastatsi, an Armenian Catholic from Istanbul, served as an important hub for Armenian learning and printing until the twentieth century. Ali Sahbaz's detailed knowledge of several languages and the classical legal sources might derive from his early studies at San Lazarro, known for its rich collection of books and rare manuscripts.[45] After his studies at San Lazarro, Ali Sahbaz went to Paris and graduated from *l'École de Droit de Paris*.[46]

In 1866, Ali Sahbaz took a post as a dragoman at the French Consulate in Aleppo, where he met with Ahmet Cevdet Pasha, who was at the time the Ottoman governor of Aleppo. [47] Ahmet

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[44] San Lazarro degli Armeni was founded by Mekhitar Sebastatsi, an Armenian Catholic monk who fled from the Ottoman Empire to Venice and received the island from the Venetian Senate in 1717. The monastery housed the members of an independent Armenian order who observe the Eastern rites of the Roman Catholic Church and became the major center of Armenian printing from the 18th to 20th centuries. Ali Sahbaz's biography at Ali Cankaya's detailed study on the history of civil service in the Ottoman Empire states that Ali Sahbaz studied at the Armenian monastery in Venice. Ali Cankaya, *Yeni Mulkiye Tarihi ve Mulkiyeliler*, (Ankara: S.B.F., 1968/1969-1970/1971), p. 945.

[45] Charles MacFarlane, *The Armenians: A Tale of Constantinople* (London: Saunders and Otley, 1830), 254-255: Mac Farlane described San Lazarro as "about a middle size" monastery "adorned with a pretty garden, convent, church, library" where "most of its inhabitants spoke two or three languages besides their own."

[46] Ali Shabaz's date of graduation from *l'École de Droit de Paris* is not certain.

[47] Ali Cankaya, *Yeni Mulkiye Tarihi ve Mulkyeliler,* vol. II, 945

Cevdet convinced Ali Sahbaz to get into Ottoman civil service, and remained as a close acquaintance and a mentor throughout his life and career. In fact, this friendship was mutually beneficial for both parties. It allowed Ahmet Cevdet, an Ottoman scholar with a *medrese* background, to gain some exposure to contemporary works of European jurists. Primarily occupied with the drafting of the *Mecelle*, the first codified book of Islamic jurisprudence, among his many other administrative and judicial posts during the Tanzimat period, Ahmet Cevdet's knowledge of European law in fact might owe a great deal to his friendship with Ali Sahbaz. On the other hand, getting to know Ahmet Cevdet not only opened Ali Sahbaz a career in Ottoman civil service but also enabled him to achieve a solid understanding of Islamic and Ottoman legal sources.

In 1877, Ali Sahbaz became the judge of the commercial court. Shortly after, he started to teach commercial and international law at *Mekteb-i Mulkiye-yi Sahane* (Imperial School of Political Science) and *Mekteb-i Hukuk* (Faculty of Law). The course curriculum at *Mekteb-i Mulkiye* demonstrates that Ali Sahbaz received an annual salary of 19200 piasters in return for 144 hours of instruction. In 1887, he was appointed as the judge of the Ottoman Court of Appeal and continued his academic and judicial posts until his death in 1899.

The testimonies of his students at the Law School provide significant insights on Ali Sahbaz's life and career. According to these testimonies, Ali Sahbaz converted to Islam in order to get a divorce from his wife, which was otherwise forbidden by the Armenian Patriarchate of Istanbul. Ali Kemal, a student of Ali Sahbaz from the Law School, testified the extent of his friendship with Ahmet Cevdet as they often kept company with one another; and emphasized Ali Sahbaz's efforts for advancing the study of international law at a time when there were no international law textbooks available for students.[48] Ahmed Ihsan, another student of Ali Sahbaz,

[48] Ali Cankaya, *Yeni Mulkiye Tarihi ve Mulkiyeliler*, Vol.II, p. 945

asserted that Ali Sahbaz's lecture notes were an invaluable source for those who desire to develop a good understanding of European international law. Ahmed Ihsan's account also revealed Ali Sahbaz's pragmatism as he often advised his students to keep in mind that international law, despite its numerous acts and rules, most often works in favor of stronger states at the expense of their weaker counterparts: "*...bu fenn-i bipayanin kavaidi pek cok oldugu halde daima al-hukm li-man galaba kanun-i tabiisinden kurtulamadigini anlattilar."*[49] These testimonies reveal that Ali Sahbaz played an important role in introducing the sources and principles of modern international law to students at the law school. His book *Mufassal Hukuk-i Duvel*, with its simple and systematic composition, was a consequence of this ideal.[50]

Nevertheless, Ali Sahbaz only rarely attracted the attention of those studying the development of international law in the Ottoman Empire. Ali Sahbaz's thorough understanding of European sources, his familiarity with contemporary debates, and his ability to convey his knowledge and expertise in an easily comprehensible manner distinguish him from other Ottoman legal experts of his time.[51] In contrast to the majority of Ottoman legal scholars who simply give summary accounts or verbatim translations of renown works of international law, Ali Sahbaz provided a thematically organized study where he discussed different approaches and compared different case studies towards a rather critical understanding of the discipline. More significantly,

[49] Ibid.

[50] Ali Sahbaz Efendi, *Mufassal Hukuk-i Duvel* (Istanbul: Mehmet Adil, 1324-1325 – 1908-1909). His other publications are as follows: Ali Sahbaz Efendi, *Hukuk-i Ticaret* (S.I, 1310 -1893), Ali Sahbaz Efendi, *Usul-i Cezaiye* (Istanbul: Matbaa-I Amire, 1310, 1892).

[51] Bogac Erozan, "Turkiye'de Uluslarasi Iliskiler Disiplinin Uzak Tarihi: Hukuk-i Duvel (1859-1945)" *Uluslararası İlişkiler*, 11 no. 43 (2014): 53-80. Bogaz Erozan only briefly mentions Ali Sahbaz and his book *Mufassal Hukuk-i Duvel* but manily focuses on student testimonies provided in Ali Cankaya's *Yeni Mulkiye Tarihi ve Mulkiyeliler*.

however, Ali Sahbaz constantly made an effort to re-think the recent political developments in the Ottoman Empire within the scope of international law. Ali Sahbaz's systematically organized book not only provided the reader with a general idea about the sources and elements of international law but gave a critical insight about how these sources and elements were in fact relevant to the case of the Ottoman Empire. In that sense, Ali Sahbaz's *Mufassal Hukuk-i Duvel* is both a meticulously written scholarly work and a practical manual for students.

*Mufassal-i Hukuk-i Duvel* demonstrated a well-organized structure in terms of its content. The first section of the book introduced the reader to the discipline by giving clear definitions of the basic terminology with their French equivalents. In a numerical order, Ali Sahbaz explained the distinction between public and private law, and public and private international law. He used *hukuk-u duvel* and *hukuk-i umumiye-i hariciye* interchangeably in lieu of *droit international* and simply described it as the law organizing relations between different states. Ali Sahbaz asserted that international law became instrumental in ordering relations between two or more societies - *kavm*, states or nations.

Referring to the German jurist Franz von Holtzendorff[52], Ali Sahbaz distinguished between three essential prerequisites for the ratification of international law: (i) There needs to be two or more sovereign states - *mustakil devletler*, (ii) with long lasting commercial relations and (iii) common procedural laws - *usul-i müşterek-i kanuniye.*[53] International law originally came into being among Christian European states and then extended to other sovereign states and some European possessions in America. These civilized states – *ilm-i medeniyyete dahil olmus add*

[52] Holtzendorff, *Handbuch des Volkerrechts* vol.II, (Berlin: C. Habel, 1885).

[53] Ali Sahbaz Efendi, *Mufassal Hukuk-i Duvel*, 13.

*olunan* – bear common laws and thus were considered to be part of international society – *devletler heyeti*.[54] States that were yet to meet the civilizational standard assumed by their European counterparts and excluded from international society were also subject to international law when they entered into treaty agreements with European states. Reiterating from Holtzendorff, Ali Sahbaz noted that even though these were the three main categories of states that were included in the international system, international law was in fact binding on all states of his time. [55]

Curiously, Ali Sahbaz's use of Holtzendorff is a unique preference as most Ottoman legal experts were more exposed to the rather widely circulating legal treaties such as Vattel's *Law of Nations,* Martens' *Precis du droit des gens modernes de l'Europe*, Felix's *Droit International* or, to a certain extent, Bonfils' *Manuel de Droit International Public*.[56] Even though Holtzendorff agreed with contemporary jurists of his time on the above-mentioned prerequisites for international legal order, his emphasis on enduring commercial relations was somewhat unique as a benchmark that qualified sovereign states to the international system. In fact, Holtzendorff was known for envisioning the emergence of a new era created by economic and financial interdependence as early as 1873.[57] This new era, according to Holtzendorff, was characterized by a new kind of cosmopolitanism despite the lack of democratic states, and secured by an international legal order.

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[54] Ali Sahbaz Efendi, *Mufassal Hukuk-i Duvel,* 15.

[55] Ali Sahbaz Efendi, 14.

[56] Emmer de Vattel, *Law of Nations* (1834), Martens' *Precis du Droit des Gens Modernes de l'Europe* (Gottingue: Dietrich, 1821), Henry Bonfils, *Manuel de Droit International Public* (Paris: A. Rousseau, 1905). For more information about translated works of international law see Sezai Balci, "Osmanli Devletinde Tercumanlik ve Bab-i Ali Tercume Odasi", (Ph.D. Diss., Ankara University, 2009).

[57] "Between Technocracy and Democracy," *The Oxford Handbook of the History of International Law* p. 196.

Even though one cannot know how Ali Sahbaz came across Holtzendorff's ideas and to what extend he was engaged with his works; it is possible to argue that Holtzendorff had a central place in shaping Ali Sahbaz's understanding of the discipline.[58] Arguably, Ali Sahbaz's shared emphasis on the existence of long-lasting commercial relations among states that were part of the international system was not a random coincidence but rather a deliberate preference that would later enable him to include the Ottoman Empire within the European states system.

Ali Sahbaz put emphasis on the state system and civilizational standard that was imposed by European powers upon their non-European counterparts. Contrary to other legal scholars of his time such as Ibrahim Hakki or Mahmud Esad Efendi, Ali Sahbaz was openly critical about the discriminatory policies of European powers for not admitting non-European states to the international system on the pretext that they were yet to meet the European standard of civilization. He criticized European states for making a distinction between Christian and non-Christian states and for claiming that these states required different laws as they bear different civilizational standards. Ali Sahbaz argued that the bulk of European laws was characterized by an inherent religious bias against the Islamic world and provided a legitimate ground for European intervention in the domestic affairs of the Ottoman Empire.

According to Ali Sahbaz, the Ottoman imperial system was essentially based on the principle of freedom of faith whereas the Jewish communities living under rule of different European states were subject to numerous discriminatory policies. In order to strengthen his argument, Ali Sahbaz argued that Jews in England were not eligible for the parliament until 30 years ago, their assets were under strict government control in German and Austrian Empires and

[58] Etienne Caratheodory's section in Holtzendorff's edited volume might have attracted the scholarly attention of Ali Sahbaz.

they were not allowed to reside in certain provinces under the rule of the Russian government. Asserting that no such phenomenon ever existed in the history of Islamic rule, Ali Sahbaz refused the distinction between Christian and non-Christian states. He concluded that Muslims, Buddists and Brahmans of the Orient cannot be excluded from this standard of civilization and hence should be considered as equal members of the international state system. Ali Sahbaz was not only well aware of the Eurocentric bias of the discipline but was also vocal about the partiality of the state system, which, in his own words, always worked for the benefit of the European states at the expense of their non-European others: "Whenever a dispute emerges between a European and an Oriental state, let's say a Buddist one; and a presumably impartial third party state intervenes to resolve the dispute, this third state always acts in favour of the former."[59]

For Ali Sahbaz, the status of the Ottoman state was no different than other non-European states. Even though it became a member of the Concert of Europe – *Avrupa heyet-i mustereke-i duveliyesi* – with the Congress of Paris in 1856, Ali Sahbaz asserted that it did not automatically assume the legal personality of its European counterparts and was subjected to a somewhat inferior civilizational status in the European system: *Fakat Avrupa devletlerinin devlet-i Osmaniye'yi heyet-i mustereke-i duveliyeye dahil-i itibar etmeleriyle acaba devlet-i Osmaniye Avrupa medeniyetinde her devletin mazhar oldugu hukuka musavaten olabilir mi?*[60] Ali Sahbaz's critical point of view distinguished him from other Ottoman legal scholars as he accurately described the ambiguous legal personality of the Ottoman state. More significantly, Ali Sahbaz demonstrated a deeper knowledge of the discipline and was capable of drawing analogies and making comparisons

[59] Ali Sahbaz, p. 20.

[60] Ibid. p. 80.

between different cases. Referring to the Franco-Prussian War and the consequent Versailles Treaty (1871), he stated that international law was binding on weakened states whereas stronger states often had a considerable degree of autonomy to exempt themselves from unfavourable laws that might work against their own interests.[61]

Ali Sahbaz did not take the distinctions between civilized/uncivilized, Christian/non-Christian or European/non-European for granted. His line of thinking cut across such firmly established categories in such a way that allowed him to discuss the legal personality of a certain Brahman state as well as the Ottoman, Russian and Prussian empires within the same scope of analysis. In fact, his understanding of international law was primarily based on power politics; and his degree of awareness on the exclusionary logic of the discipline enabled him to assess different states with different levels of civilization, as assumed by others, within the same category of analysis.

Ali Sahbaz's book provided a detailed review of the historical and contemporary sources of international law. Despite his in-depth knowledge of contemporary books on European international law, Ali Sahbaz traced the origin of the discipline to Islamic clerics and claimed that they wrote on the laws ordering the relations among different states long before their European counterparts. Nevertheless, Ali Sahbaz only briefly mentioned the works of two clerics, Abu Hidaye and Mahmud al Mubahhab and focused on European scholars for the rest of his book. His emphasis on the works and ideas of renown international law scholars such as Francisco Suarez, Francisco de Vitoria, Gentili and Balthazar Ayala makes it clear that Ali Sahbaz was rather interested in introducing the sources of European international law to his intended audience at a time when only few European international law books were accessible in the Ottoman Empire. His

[61] Ibid.

timely and much needed intervention clearly aimed at providing a general understanding of the significant works and exposing his readers to the basic concepts and issues in the historical evolution of the field.

Ali Sahbaz's competence derived from his studies in Sorbonne, where he got familiarized with the works of such significant jurists and developed a rather critical understanding of the newly emerging principles of international law. Arguably, Ali Sahbaz was one of the very few names of his time that had such a sophisticated understanding of the discipline and was competent enough to develop a critical perspective on the challenges faced by the Ottoman Empire within the discourse of international law. As a legal scholar, he not only made such important works accessible to his students at the law school but also provided a critical perspective on how contemporary international law was used European powers against their non-European others. And yet, rather than rejecting the discipline altogether, Ali Sahbaz argued for the need to better understand the principles of international law and get well acquainted with contemporary politics in order to be able to utilize it in the interest of the Ottoman Empire.

Ali Sahbaz underlined that all the above-mentioned jurists belonged to the clergy and their works were studied at theological seminaries. Vitoria and Suarez's studies on natural law and just war laid the foundations of the discipline and put forth the basic elements of international relations. Despite their emphasis on just war, however, both scholars made a distinction between Christian and non-Christian states and regarded fight against the latter as just war. It was only Ayala, according to Ali Sahbaz, who disregarded this essential distinction between Christian and non-Christian powers and argued for a common law of war. For Ali Sahbaz, the real founder of the discipline was Hugo Grotius whose three-volume treatise on the *Law of War and Peace* was translated into many different languages. Grotius's *Mare Liberum*, on the other hand, was equally

important as it recognized all seas as international territory and asserted that all nations have free access to the seas.

Ali Sahbaz's training at Sorbonne also enabled him to learn about the works of contemporary jurists whose works were yet unknown among Ottoman legal experts and intellectual circles. In an attempt to introduce these sources to his readers, Ali Sahbaz briefly discussed the works of German jurists Johann Caspar Bluntschli, Friedrich Carl von Savigny, Johann Jakob Moser, Georg Friedrich von Martens, Joachim Wilhelm Franz Philipp von Holtzendorff and the distinguished Argentine jurist Carlos Calvo. Despite his concise analysis, Ali Sahbaz seemed to be well aware of the significance of the arguments promoted by these jurists and their relevance to the Ottoman case. In fact, Martens published the first systematic manual of positive international law, whereas Bluntschli argued for a universalist notion of international law, which was formally recognized with the admission of the Ottoman Empire to the European community of nations in 1856. After 1856, according to Bluntschli, the boundaries of international law no longer coincided with Christianity as it then acquired a universal character.[62] Even though Holtzendorff adopted the exclusionary and Eurocentric logic of the international law doctrine, he admitted that European international law included states which were historically part of it or those non-European states like the Ottoman Empire which later became part of the European state system.[63] Such states, according to Holtzendorff, were recognized as members of the system known as the international law of civilized states.

[62] Blutschli's ideas were also shared by Holtzendorff, whose *Handbuch des Volkerrechts* was considered as a particularly important source for international law by Ali Sahbaz.

[63] *Handbuch des Volkerrechts*, Holtzendorff, p. 14-17 in "The Idea of European International Law" by Alexander Orakhelashvili in T*he European Journal of International Law* 17 no.2 (2006): 324

Carlos Calvo, on the other hand, was primarily known for his opposition against political intervention and diplomatic protection of foreigners in sovereign states. Formulating the Calvo Doctrine in 1863, Calvo argued for the abrogation of diplomatic protections since they were used by stronger states to limit the sovereign powers of weaker ones.[64] Ali Sahbaz considered Calvo's refusal of extraterritorial jurisdiction in Argentina, which only recently gained independence from Spanish colonial rule and was recognized as a sovereign state, analogous to the case of the Ottoman Empire. Similar to Calvo, Ali Sahbaz was well aware of the inherent contradiction between the ideal of a universal and inclusive international society, and the hierarchical ordering of states according varying civilizational standards. His opposition was mainly against the continuation of consular jurisdiction and diplomatic protections in the Ottoman Empire, which, despite being a sovereign entity, was deemed to belong to an inferior civilizational category compared to its European counterparts. Despite its admission to the European international system as a sovereign entity, the continuation of extraterritorial jurisdiction in the Ottoman Empire was hence seen as an unjust burden curtailing its full sovereignty. Ali Sahbaz's emphasis on the ideas promoted by these jurists and his comparative approach to the study of international law qualify him as an informed critique of the discipline and its emerging norms.

### iii. International Law in Historical Perspective: Ibrahim Hakki Pasa

[64] Carlos Calvo, *Le Droit International Théorique et Pratique: Précédé d'un Exposé Historique des Progrès de la Science du Droit des Gens* (Paris: A. Rousseau, 1896), Donald R. Shea, *The Calvo Clause: A Problem of Inter-American and International Law and Diplomacy* (Minneapolis: University of Minnesota Press, 1955).

Ibrahim Hakki was born in Istanbul to a family of Georgian origin. He studied at the School of Civil Administration (*Mulkiye Mektebi)* and graduated in 1882.[65] Unlike Etienne Caratheodory and Ali Sahbaz Efendi, Ibrahim Hakki never studied abroad but learned foreign languages through private lessons. Ibrahim Hakki's career as a teacher, diplomat, legal scholar, and grand vizier was, according to Findley, "a test of what the empire's modern educational facilities could produce – and of his own auto didacticism."[66] Moreover, his legal training was only limited to a number of courses he took as a student at the School of Civil Administration. During his studies, Ibrahim Hakki became a student of Ali Sahbaz Efendi and took his courses on international and commercial law.

Ibrahim Hakki started his career at the Foreign Correspondence Office under Ministry of Foreign Affairs and then became a translator at the palace secretariat. In 1886, Ibrahim Hakki was appointed to the School of Law to teach history, constitutional law and international law with a salary of 800 *gurus*.[67] In 1886, he started to teach commercial law, international law and economics at the Hamidiye School of Commerce. In 1894, Ibrahim Hakki became one of the two legal counsellors and hence became the co-director of the Office of the Legal Counsel at the Ministry of Foreign Affairs.[68] The appointment of Ibrahim Hakki as the legal counsellor on

[65] Carter Findley, *Ottoman Civil Officialdom: A Social History* (Princeton, N.J.: Princeton University Press, 1989): 195-209.

[66] Findley, *Ottoman Civil Officialdom,* p. 196.

[67] "Salname-i Nezaret-i Maarif-i Umumiye" (Darulhilafetulaliyye: Matbaa-i Amire, 1312): 579 in Muharrem Dorduncu, "Sadrazam Ibrahim Hakki Pasa'nin Hayati ve Avrupa Seyehati" *Afyon Kocatepe Universitesi Sosyal Bilimler Dergisi* 17, no. 1 (2015): 86.

[68] Carter Findley, *Bureaucratic Reform in the Ottoman Empire: the Sublime Porte 1789-1922* (Princeton, N.J. : Princeton University Press, 1980): 258, 322-23.

international law in fact had a symbolic significance as the position was until then occupied by foreigners.

Ibrahim Hakki mainly published textbooks on history, international and administrative law.[69] His *Hukuk-i Duvel* should be considered as yet another important addition to the limited literature on international law in Ottoman Turkish. Similar to Ali Sahbaz, Ibrahim Hakki also targeted a general audience and hence produced a very easy to read manual on international law. Despite its title, Ibrahim Hakki's *Hukuk-i Duvel* should more accurately be considered as a historical account on the evolution of modern international law. The book did not provide a systematic account of the key ideas or norms of international law but offered a historical trajectory to better understand the development of the discipline and the states system.

Ibrahim Hakki opposed the exclusionary bias of modern international law and argued that even though it originated among European states, it included, over time, all sovereign states in the world.[70] Ibrahim Hakki considered the inclusion of the Ottoman Empire in the European states system with the Treaty of Paris as a turning point in the expansion of international law. He also saw the abrogation of extraterritorial rights in Japan as a significant development in the evolution of the discipline.

Despite his universalistic understanding of the discipline, however, Ibrahim Hakki did not entirely dismiss the standard of civilization imposed by European powers. He argued that barbarous people, like those in Australia, who live in a state of savagery, should be exempt from international law. And yet, for Ibrahim Hakki, civilization was less of a subjective category. In

[69] Ibrahim Hakki, *Hukuk-i Duvel* (Darülhilâfe: Matbaa ve Kütübhane-yi Cihan, 1327), Ibrahim Hakki, *Tarih-i Hukuk-i Beynedduvel* (Istanbul: Karabet ve Kasbar, 1303), Ibrahim Hakki, *Muhtasar Osmanli Tarihi (*İstanbul : Karabet Matbaası, 1321), Ibrahim Hakki, *Medhal-i Hukuk-i Duvel* (Istanbul, 1327).

[70] Ibrahim Hakki, *Hukuk-i Duvel*, 24.

practical terms, it meant whether a certain society, regardless of its level of civilization, had formed as a state or not. Ibrahim Hakki's emphasis on statehood as a benchmark of civilizationary status allowed him to conclude that all sovereign states, European and non-European alike, should be part of the international system.

After giving a brief introduction about the sources of international law, Ibrahim Hakki discussed the historical development of the discipline from the Middle Ages through the French Revolution and to the London Convention of 1840. The Treaty of Westphalia, Ibrahim Hakki argued, instituted the essence of the states system and marked the beginning of a new era in history.[71] On the other hand, he considered the period between the Treaty of Karlowitz (1699) and the Treaty of Paris (1856) as the most important time in the history of the Ottoman Empire. The continuous wars with neighbouring states and concluding treaties entered by the Ottoman Empire led to the loss of vast territories and should, according to Ibrahim Hakki, serve as a lesson for other states.[72]

Ibrahim Hakki treated major wars and international treaties as part of a linear historical account with scant attention to the contemporary issues in international law or legal norms such as sovereignty, territorial integrity, or non-intervention. In this respect, Ibrahim Hakki's *Hukuk-i Duvel* can at best be described as political history, providing a detailed account of military conflicts and treaties between different states. Clearly, Ibrahim Hakki was mainly concerned with providing a comprehensive study, a textbook on the history international law, rather than a treatise delving into the contemporary debates of legal experts. The abrupt ending of the book with the London Convention of 1840; and the absence of concluding remarks by the author strengthens the

[71] Ibid, 70, 147

[72] Ibid, 109.

assumption that Ibrahim Hakki was practically motivated towards filling a gap in the existing literature on international law during the period in question. Even though Ibrahim Hakki's book lacked the scholarly quality displayed in the works of Etienne Carathéodory and Ali Sahbaz Efendi, it certainly played an important role in historicizing international law and the emergence of the states system in the minds of a new generation of Ottoman lawyers and bureaucrats.

The scholarly works of Etienne Carathéodory, Ali Sahbaz Efendi and Ibrahim Hakki should be seen as a product of growing interest in the Ottoman Empire towards the development of positivist international law during the late nineteenth and early twentieth centuries. Their intended audience included students of law, diplomats and Ottoman bureaucrats as well as legal experts and jurists of international recognition. While the works of Etienne Carathéodory later became a source of reference for later studies in the field and contributed to the emergence of a transnational legal discourse, Ali Sahbaz put forth an informed critique of international law emphasizing the inherent contradiction between the ideal of a universal international society and hierarchical ordering of states according to varying civilizational standards. Their studies show how Ottoman legal experts appropriated the positivist notions of international law, which provided them a new legal vocabulary to resist against extra-territorial jurisdiction and political intervention in the empire during the period in question.

## Chapter III

### Negotiating Sovereignty through Individual Documentation: Identity Cards, Internal Travel Permits and Passports

The nineteenth century shift towards a territorial understanding of sovereignty generated a growing impetus for documenting individual identities and regulating movement across borders. Identity cards, internal travel permits and passports were all part of this process, through which individual identities were inscribed, verified and documented by a set of newly emerging bureaucratic institutions in the nineteenth and early twentieth centuries.[1] In their respective attempts to clarify "who their citizens were and how they would be protected," states developed elaborate systems for categorizing and tracking individual identities during this period.[2] These systems and bureaucratic mechanisms emerged only gradually and each at a different pace in different states, in their respective efforts to accurately document identities and monopolize legitimate means of movement across their borders.

The development of a documentary apparatus of identification can be studied within the overarching framework of governmentality and statehood, and in relation to the emergence of a modern notion of citizenship.[3] It is also connected, as Caplan and Torpey argue, to the development of a new quantifying spirit during the nineteenth century which entailed the adoption of various enumerative practices including population censuses and other statistical practices. Such enumerative practices were emblematic of the desire to create "legible people," as James Scott

[1] *Documenting Individual Identity: Development of State Practices in the Modern World*, ed. by Jane Caplan and John Torpey (Princeton University Press, 2001)

[2]Adam McKeown, *Melancholy Order: Asian Immigration and the Globalization of Borders*, (Columbia University Press, 2010), 102

[3] Ibid.

describes, and presented a condition of manipulation, which gave shape to certain power relations within subject societies.[4]

Categorization of individuals through identification documents distinguished among them for administrative and bureaucratic purposes. These categories not only differentiated subjects from one another but also classified each individual as the embodiment of a certain type.[5] In this respect, Caplan argues that the history of identification was not about individuals but more about standardized categories and their indicators, which simultaneously distinguished and assimilated individuals from/to others.[6] An identity document was a proof of bureaucratic recognition of the subject according to a standardized template including the bearer's personal description and other related information. Described as *révolution identificatoire* by Gabriel Noiriel,[7] the development of such uniform categories of identification heralded a new form of governmentality through which imperial governments know and distinguished between their subject populations and claimed monopoly of authority over legitimate means of movement.

Despite their critical importance, identity cards, population registration certificates, internal travel permits and passports have rarely been studied as an object of independent research. More significantly, studies dealing with systems of personal identification often limit their scope of analysis to national contexts. Nevertheless, the period in question was not a time of hardening

[4] James Scott, *Seeing Like a State: How Certain Schemes to Improve Human Condition Have Failed* (New Haven : Yale University Press, c1998), 83.

[5] Jane Caplan. "This or That Particular Person: Protocols of Identification in Nineteenth Century Europe," in *Documenting Individual Identity: Development of State Practices in the Modern World*, 51

[6] Beatrice Fraenkel, *La signature: Genese d'un signe* (Paris: Gallimard, 1992), 197 in Caplan, "This or That Particular Person: Protocols of Identification in Nineteenth Century Europe," 51.

[7] Gabriel Noiriel, *The French Melting Pot: Immigration, Citizenship, and National Identity*, (Minneapolis: University of Minnesota Press)

borders and tightening of controls but was rather defined by the channeling of different kinds of mobility which encouraged and legitimized certain types of movements, while limiting others.[8] At a time of increasing mobility, identities were negotiated by different groups of imperial subjects both at home and abroad as well as in the semi-autonomous sub-polities that lay in-between. The semi-sovereign principalities of Moldavia and Wallachia, for example, which were under the suzerainty of the Ottoman Empire and Russian protection allowed "its inhabitants", in the words of the renowned legal expert Henry Wheaton, "to enjoy freedom of trade", "navigate freely along the Danube in their own vessels" and "trade with other parts of the Turkish dominions with passports granted by their own governments."[9] The series of laws and regulations towards the establishment of elaborate systems for documenting individual identities can only be explained in relation to the policing of trade routes, surveillance of trading communities and (re)-definition of subjecthood and citizenship both within and across the borders of empires.[10] The study of the nineteenth century *révolution identificatoire* and the emergence of such fixed categories of identification should hence pay attention to the growing mobility of individuals constantly moving across borders as well as borders moving across imperial subjects; and cannot be fully understood within the territorial constrains of nation-states. [11]

[8] Valeska Huber, *Channelling Mobilities: Migration and Globalisation in the Suez Canal Region and Beyond, 1869-1914*, (Cambridge; New York: Cambridge University Press, 2013), 2

[9] Henry Wheaton, *Elements of International Law*, (London, Stevens and Sons; New York, Baker, Voorhis & Co., 1916), 330.

[10] Lauren Benton, *Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (New York: Cambridge University Press, 2010), 30.

[11] Etienne Balibar, *We, the People of Europe?: Reflections on Transnational Citizenship*, (Princeton, N.J.: Princeton University Press, 2004).

Torpey's canonical study on the use of passports from the French Revolution to the present explores how state systems monopolized the authority to control legitimate means for movement through the development of identification documents. Nevertheless, the geographical frame of Torpey's study is limited to Western Europe, while leaving the adjacent Ottoman and Russian Empires and the newly established Balkan states, which according to Torpey, "have not yet been sufficiently powerful to impose their ways upon the world," outside its scope of analysis.[12] Despite the geographical limits of his study, Torpey still stresses the need to explore the emergence of documentary controls on movement and identity in other parts of the world, and in different periods.

Torpey's emphasis on the development of documentary controls in different periods emanates from the general assumption that there existed a chronological asymmetry between the development of passport regimes in European and non-European empire-states. According to this view, there were no restrictions to the movement of persons between different European states until the First World War, which put an end to the era of freedom of movement in Europe and marked the beginning of the international passport regime.[13] Even though the outbreak of the war did put an end to the *laissez-faire* era of migration in Europe, Leo Lucassen convincingly argues that passport regulations were varied for subjects traveling within and across state boundaries during the nineteenth century. According to Lucassen, freedom of movement only started by the 1860s and even then, state controls over the movement of persons did not entirely disappear. In addition, the liberal policies toward migration did not hold for all subjects alike but excluded

[12] John Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State*, (Cambridge [England]: New York : Cambridge University Press, 2000), 3.

[13] Leo Lucassen, "A Many Headed Monster: The Evolution of the Passport System in the Netherlands and Germany in the Long Nineteenth Century," *Documenting Individual Identities*, 235.

certain groups of subjects from its purview. In this respect, nineteenth century freedom of movement was far from being a general phenomenon but varied in time, place and by class.[14] Even though the Ottoman and Russian empires are excluded from such liberal policies in Europe due to their imposition of strict passport regulations during the nineteenth century, one needs to further qualify the assumed chronological divide between these empires and their European counterparts. It is true that Ottoman reformers were mainly preoccupied with centralizing the power of the state by creating uniform categories of identification for its subject populations. Population censuses, the emergence and development of identity cards and the use of standardized passports allude to this growing tendency of the Ottoman government to exert its control over its subjects during this period. And yet, these practices were far from being uniform and also varied according to time, place and the group of persons who were subject to them. David Gutman's comparative study on the use of *murur tezkiresi* among the Maronite Christians in Mount Lebanon and Armenians in Mamuretulaziz between 1880 and 1908 shows how certain types of mobility were encouraged while others were impeded by the Ottoman state.[15] Moreover, Gutman's study also underlines a general shift in the policy of the Ottoman state in 1908 towards the relaxation of movement controls within and across the borders of the empire. This new policy, according to Gutman, considered the internal travel pass as a symbol of the old regime and hence ceased its use. Hence, the geographical and chronological divide that informs Torpey's study appears to be less of a useful category in order to explore the topic beyond the nation-state paradigm. Documenting individual identities was one among the various instruments for imposing state sovereignty for the

[14]Ibid.

[15] David Gutman, "Travel Documents, Mobility Control, and the Ottoman State in an Age of Migration 1880-1915" *Journal of Ottoman and Turkish Studies Association,* 3 no: 2, (2016): 348-49.

Ottoman ruling elite very much like its European counterparts during the late nineteenth and early twentieth centuries.

This chapter explores the documentary apparatus of identification in the Ottoman Empire in an attempt to contribute to the history of identification by the turn of the twentieth century. Even though documentation of identities in the Ottoman Empire has recently received some scholarly attention, the institutional mechanisms that enabled the documentary controls on identity and movement, i.e. how the Ottoman state differentiated between those who belonged to the empire and those who did not, still needs to be clarified. In an attempt to expand the Euro-centric focus of the field, it investigates the documentation of individual identities in relation to the broader question of Ottoman sovereignty and disputed claims to nationality by individuals both within and across the boundaries of the empire. Rather than focusing exclusively on the series of laws and regulations on individual documentation and control of movement, it seeks to answer, first, a set of simple questions to better understand the emergence of the Ottoman *révolution identificatoire*: Why and how did the Ottoman government claim the exclusive right to determine, document and verify individual identities during the late nineteenth and early twentieth centuries? What were the basic bureaucratic means and institutional systems that came into existence to track imperial subjects and authenticate individual identities? What were the functions of an Ottoman identity card (*nufus tezkeresi*), an internal travel pass (*murur tezkeresi*) or a passport, for the state and their bearers, and who had the authority to issue these documents to whom? Were there standard categories of identification uniformly applicable in different parts of the empire without any exceptions? And did such categories remain unchanged throughout the period in question? Taken together, these questions enable a better understanding of how the Ottoman state tried to claim its sovereignty over populations moving across its territories through a newly instituted system of

individual documentation. Only then, does it become possible to decipher how imperial subjects maintained, negotiated, or contested their status by the use (and misuse) of such documents of identification.

Studying a collection of identification documents produced between 1860 and 1914 in Alexandria, Will Hanley demonstrates the diversity of identification practices before the emergence of internationally recognized standards of documentation.[16] Focusing on the differences regarding the content, form, use and issuing institution of identity documents, he argues for the existence of a functional diversity between papers for mobility, i.e. passports, and papers for residence, i.e. residency permits, used by foreigners in Alexandria. Studying passports and residency permits issued by the French and British consular authorities in Alexandria, Hanley concludes that these two types of identification documents pertained to two types of subjecthood between the "municipally constituted citizen" and the "internationally constituted national."[17] Even though Hanley's distinction allows him to provide some useful insights for the study of the varying functions of identity documents, it overlooks the fact that different identity documents such as passports, residence permits and identity cards often completed one another for tracking and verifying individual identities. In other words, neither the different types of identity documents, nor the different subjectivities they entailed were in fact separable from one another before the emergence of universal standards for identification.

Nevertheless, Hanley's emphasis on the foreign resident as a distinct category may help us to decipher the significance of passports well before the emergence of an international passport

[16] Will Hanley, "Papers for Going, Papers for Staying: Identification and Subject Formation in the Eastern Mediterranean", *A Global Middle East: Mobility, Materiality and Culture in the Modern Age, 1880-1940* ed. by Liat Kozma, Cyrus Schayegh and Avner Wishnitzer (I.B. Tauris & Company Limited, 2015), 177-201.

[17] Ibid.

regime. The British consulate in Alexandria produced approximately 100 passports annually, which corresponds, according to Hanley, only to one per cent of the British population in Alexandria at the time. In Malta, by contrast, passports were already in common use during the 1880s well before they became mandatory in 1899.[18] The evidence suggests that passports carried a critical importance for British subjects who had the special need to demonstrate their nationality as foreign residents even before passports were legally required. Hanley's emphasis on the foreign resident as a distinct category is also important when thinking about the broader history of the emergence of the passport regime. Even though studies often focus on the *laissez-faire* era of movement in continental Europe during the nineteenth century, the experiences of British or French subjects abroad shed light on how the use of passports acquired an increasing significance for demonstrating status and claiming certain privileges for foreign residents. The practices of foreign consuls who issued passports to their own nationals allude to the broader question as to whether one needs to seek the development of the international passport regime outside continental Europe. At least, one may explore how the experiences of European consuls in the colonies and in regions under full or partial sovereignty of non-European empire-states contributed to the development of an international passport regime. Arguably, one may speculate that some aspects of the modern passport regime might have been developed in the periphery well before the turn of the twentieth century.

In the Ottoman context, the series of laws and regulations that defined Ottoman nationality and the development of a documentary apparatus for identification were related to state efforts to curtail the extraterritorial powers enjoyed by foreign consulates extending privileges and protections to increasing numbers of non-Muslim Ottomans during this period. Documenting

[18] Charles Archibald Price, *Malta and the Maltese: A Study in Nineteenth Century Migration* (Melbourne: 1954) in Hanley, 185.

individual identities stemmed from the desire to make a clear distinction between Ottoman subjects and foreigners, which resulted in the promulgation of a series of laws and reforms including the *Men-i Murur Nizamnamesi* of 1841, the Passport Law of 1867, the Nationality Law of 1869 and the *Sicill-i Nufus Nizamnamesi* (Regulation for Population Registers) of 1881. Nevertheless, studies dealing with individual identification in the Ottoman Empire often focus on the role of foreign consuls and imperial subjects claiming foreign status, and state efforts to cope with these claims through a set of bureaucratic systems for registering and tracking individual identities. This general tendency often limits the scope of analysis to non-Muslim Ottomans claiming foreign protection by passports or registration documents issued by foreign consulates in the empire. On the other hand, we know very little about how Ottoman identity documents and passports were used as proof of Ottoman nationality and an instrument for exerting state sovereignty. What was the role of Ottoman consuls who provided consular assistance to those claiming to be Ottoman nationals or trying to maintain their status as such while residing abroad? What were the institutional channels for an allegedly Ottoman national living abroad or constantly moving across the borders of the empire to prove his identity and nationality? And how were disputed claims to Ottoman nationality evaluated by different offices such as the Directorate of Nationality, General Directorate of Population Administration and the Legal Division of the Ministry of Foreign Affairs? More significantly, what does the intermediary role of Ottoman consular officials to communicate such claims to the Porte tell us about the broader question of Ottoman sovereignty during this period?

The following section provides a brief overview about the legal reforms that enabled the development of a system for individual documentation during the late nineteenth and early twentieth centuries. It then seeks to explore how individual identities were categorized and

recognized through particular case studies. Studying a collection of identity cards, population records and passports, it investigates the various functions of such documents and sheds light on the working of the bureaucratic apparatus that was used to track and verify individual identities on a daily basis. The chapter then focuses on a particular case study and examines the relations between the Bulgarian agents of the Gate – *Bulgaristan Kapikethudaligi* – in Istanbul and the Ottoman commissariat – *Bulgaristan Komiserligi* – in Sofia in their respective efforts to monopolize the control of movement across their territories through a newly instituted passport regime between 1878 and 1908.

## Inscribing Individual Identities:

### I. Population Registers and Identity Cards

The enumeration of subjects gained an unforeseen significance throughout the nineteenth century. The census, as a political project, imposed certain categories of counting and differentiated between subject populations according to ethno-religious and racial groups of identification. These categories of identification changed rapidly and revealed different political strategies for the definition of subjecthood, citizenship and otherness. The population censuses of 1850s differed from earlier enumeration practices, as they were no longer concerned solely with military manpower and economic surplus.[19] They included women and children, and aimed at reforming the institutional apparatus of the state in various areas including education, jurisdiction, health, police and immigration.

The modern census surveys of the nineteenth century, Benedict Anderson argues, had no tolerance for multiple or changing identifications. According to Anderson, the census was a fiction,

[19] Benedict Anderson, *Imagined Communities*, (London: South Bank Centre, 1995), 166-170.

which assumed that "everyone is in it, and that everyone has one – and only one – extremely clear place."[20] The case of the Ottoman Empire was no exception to this general trend. Even though there existed a certain tradition of census taking in the Ottoman Empire, a regular system of population registration was first developed in the second half of the nineteenth century. The desire to embrace the subject populations in a legible manner led the Ottoman reformers to experiment with various enumeration practices including the census.

The introduction of Ottoman population certificates and their mandatory use in all kinds of official transactions coincided with state efforts towards creating an effective system of population registration. As will be further discussed below, the Ottoman census surveys of 1881/1882 and 1903 attached the census registration to the identity card system.[21] The following section does not offer a study of the Ottoman census but focuses on how census-taking and population registration facilitated the mandatory use of identity cards and imposed certain categories of individual identification. The studies on Ottoman census registers often emphasized the importance of these sources for gathering useful insights on Ottoman social history, and exclusively focused on the state's efforts to count its subjects and institute an efficient system of population registration. Nevertheless, only little attention has been given to how the census registration provided an opportunity for ordinary people to define themselves and, as Ipek Yosmaoglu suggests, make that definition count.[22] The very act of census-taking and the procedures that were associated with it

[20] Ibid

[21] The Ottoman census of 1866-1873 was a remarkable achievement in the evolution of the Ottoman census system. Despite being limited to the Danube Province only, the census provided, for the first time, systematic information on how many people lived in a household, their age, marital status, occupation and properties. It also aimed to issue a population ceritificate– *tezkire-i Osmaniye* – in order to track the changes in individuals' status.

[22]Ipek Yosmaoglu, "Counting Bodies and Shaping Souls: The 1903 Census and National Identity in Ottoman Macedonia," *International Journal of Middle Eastern Studies*, 38 (2006): 57.

entailed a dynamic process of negotiation between the government and imperial subjects who often challenged the categories of identification inscribed in their identity cards by census officials. Population registers, on the other hand, constituted a database of information and a source for future reference for validating claims to individual identities. Ottoman subjects abroad and foreign *protégés* in the empire, who were interested in maintaining their respective status were required, first, to verify their claims on the basis of their registration records and by way of producing their identity cards to Ottoman authorities. Hence, the Ottoman population registers are not only a resource for studies on Ottoman social history but also provide invaluable insights for understanding individual documentation as a site for negotiation between imperial subjects and the government. They provide an interesting niche for understanding the construction of state sovereignty in relation to disputed claims to identity through a newly instituted bureaucratic apparatus during the period in question.

This quest for embracing the subject populations of the empire in a systematic and enforceable manner led the state to concentrate its efforts on generating an all-encompassing system of population registration. The census of 1881/81 was a result of this shift in mentality and aimed to compile permanent population registers (*sicill-i nufus*) in villages and quarters of larger towns and cities.[23] The Council of the State considered census taking as an instrument for compiling statistical information on the population and putting together a concrete system for population registration.[24] Hence, the state intended to achieve more than just compiling numerical information on the population but was interested in laying the foundations of a permanent

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[23] Stanford Shaw, "The Ottoman Census System and Population, 1831-1914" *International Journal of Middle East Studies*, 9, no. 3 (1978): 330.

[24] Kemal Karpat, "Ottoman Population Records and the Census of 1881/82-1893," *International Journal of Middle East Studies*, 9, no. 3 (1978): 250.

registration system for the future.[25] In this vein, the Council of the State also emphasized the need to issue a population certificate *tezkire-i Osmaniye* for each individual who would be registered during the census. Ottoman *tezkires* would enable the bureaucratic recognition of individuals and allow the population administration to keep track of changes in the status of its subjects with relative ease. Ottoman *tezkires* were to be produced in all interactions taking place between the government and subjects.

Creating "legible subjects" through census-taking and population registration entailed a number of legal and bureaucratic reforms. The foundation of the General Population Administration (*Nufus-i Umumi Idaresi*) under the Ministry of the Interior, and the promulgation of a Regulation of Population Registers (*Sicill-i Nufus Nizamnamesi*) were the two main achievements towards the establishment of a solid registration system. The Regulation of Population Registers consisted of 50 articles intended to clarify the procedures for census taking and lay out the general principles for the registration system. Article 4 of the regulation required each registered individual to acquire a Population Certificate – *nufus tezkeresi* –to be demonstrated to state officials when buying, selling or inheriting property, obtaining travel documents and making job applications. Subjects who were unable to produce their population certificates would no longer be able to have any dealings with the police, judicial or municipal authorities. Article 5

[25] Even though the census included the central provinces of the empire, it excluded mountainous and desert areas in Erzurum, Iskodra, Tiflis, Bagdad, Basra, Aleppo, Zor, Kosova, Mamuret ul-Aziz, Musul, Manastir, Syria and Van. The census did not include regions that remained outside the provincial administration of the Tanzimat, such as Yemen, Hicaz, Tripoli and Bengazi as well as semi-autonomous provinces such as Egypt, Tunisia, East Rumelia, Bulgaria, Crete, Bosnia-Herzogovina, Cyprus and Lebanon. Shaw, "The Ottoman Census System and Population," 332.

stipulated that individuals who were unable to present identity cards when necessary would be charged fines and might be put in jail for a month. The article particularly targeted those who deliberately escaped from registration in order to escape military service. Men who came to military age and could not display their identity cards were to be conscripted immediately.

The regulation also required the registration of births, deaths, marriages and migration at the provincial level by local officials in standardized certificates of information (*ilmuhaber*). These records were then transferred to the provincial administrative council for approval and then to the General Administration of Population functioning under the Ministry of the Interior. The registration included information about the name and nickname of the subject, father's name, physical appearance (height, eye color, complexion), address, age, religion, occupation, physical disabilities, and civil status. Non-Muslims were also registered with the same information but their records were kept in separate books in order to ease the process of tax-collection. Foreigners and *protégés* were registered in separate books as well. The regulation required all subjects to appear in person before the registration officials. Absentees were allowed to be registered by a third party with two witnesses who were over the age of twenty-one. This provision particularly pertained to women and children who could be registered by their relatives and parents, although it subsequently led to serious flaws in the counting of women and children.[26] Ottoman consuls were commissioned to register subjects who were born in foreign countries along with the testimony of two witnesses to confirm the accuracy of the information provided. In such cases, the notification certificates were sent to the census authorities of the hometown of the new-born's parent, where

[26] Cem Behar, "Sources pour la démographie historique de l'empire ottoman: Les tahrirs (dénombrements) de 1885 et 1907," *Population*, 53, no. 1/2, Population et Histoire (1998): 163.

the information was put into the population register and a certificate was issued in return for a fee varying from one to five *kurus*.

The Regulation for Population Registration was amended in 1903 in order to provide more efficiency in the keeping of population registers and clarify census procedures. Notably, the population certificate, already in use in 1881, was firmly anchored in the registration process.[27] The certificate included the same information taken by the census committee for registration purposes such as the name, age, gender, father's name, date and place of birth, occupation, place of residence and place of registration in the civil register. The revisions led the population certificate to take the form and function of an identity card, and clarified the provisions that required subjects to produce their population certificates in official procedures and transactions. Accordingly, the regulation maintained that all subjects had to produce their documents when they bought, transferred or abandoned property, took a new job, were admitted to public or private schools and retired. In addition, certain penalties were imposed on subjects whose certificates conveyed false information and those who produced false documents to government officials.[28]

Shaw argues that the attachment of the census to the identity card system and the provisions that regulated the mandatory use of identity documents resulted in the effective registration of the population in the highly populated provinces of the empire. However, recent studies revealed that census taking met with a considerable degree of resistance in various provinces of the empire. Imperial subjects often resisted the categories imposed upon by the census takers and refused to acquire *tezkeres* issued by the government.[29] Deringil's study on Ottoman reforms in Tripoli shows

[27] Ibid, 165.

[28] Ibid, 334-36.

[29] According to Cem Behar, the population censuses of 1881 and 1905 categorized subjects according to certain ethno-religious groups. The 1881 classified the population according to eleven different millets

that Ottoman officials met with serious difficulties in counting the nomadic populations of the desert.[30] The memorandum dealing with the reforms to be carried out in the province underlined the necessity of census taking by stating, "if at all possible, without terrifying the population, a census should be carried out and the Bedouin should be classified." Deringil argues that the emphasis on "terrifying the population" was in fact a clear indication that the state was well aware that counting people alienated them.[31] Ipek Yosmaoglu's study in Ottoman Macedonia, on the other hand, shows how local villagers slowed the process of census taking by simply refusing to obtain *tezkeres* or returning their *tezkeres* to the government officials as they resisted the categories imposed upon by the imperial center.[32] At a time when the nationalist struggles in Macedonia reached their peak, the 1905 census led many propaganda groups and armed bands to pressure the local villagers to acquire either Rum or Bulgarian identity cards. Yosmaoglu argues that census was far from being a top down instrument of governmentality but entailed an on-going process of negotiation between the locals of Macedonia and the central government. The refusal to acquire *tezkeres* or returning them was the primary means for the locals to resist the central government and the categories enforced by alien census officials.

Hence, the documentation of individual identities through the mandatory use of identity cards and the establishment of a registration system was a controversial process, which provoked

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including Muslims, a general category regardless of ethnic origin, Greek Orthodox, Armenians, Bulgarians, Catholics, Jews, Protestants, Latins, Monophysites, non-Muslim Gypsies and foreigners. The 1905 census, on the other hand, added eight other ethno-religious categories to these such as the Syriacs, Muslim Gypsies, Catholic and Protestant Armenians and Yezidis. Behar, 174.

[30] Selim Deringil, "They Live in a State of Nomadism and Savagery": The Late Ottoman Empire and the Post-Colonial Debate," *Comparative Studies in Society and History*, Vol. 45, No. 2 (2003): 321.

[31] Ibid.

[32] Ipek Yosmaoglu, "Counting Bodies and Shaping Souls: The 1903 Census and National Identity in Ottoman Macedonia,": 67-72.

a considerable degree of resistance among the local populations. The categories inscribed in the identity cards oftentimes conflicted with the self-identification of individuals, who refused "the fiction" of the census, in Anderson's words, and "the extremely clear place," which they were deemed to belong by census officials. On the other hand, identity cards and registration records also determined the validity of disputed claims to nationality. Subjects who claimed Ottoman or foreign status were asked to demonstrate their identity cards as a prerequisite for verifying their claims.

The cases below do not focus on how the practice of census-taking became a ground for negotiation between government officials and ordinary subjects, but explores how population registers and identity cards, as a repository of information, became a valuable resource for verifying claims to individual identities. They elaborate how disputed claims to nationality were articulated by subjects living within and across the boundaries of the empire, and were evaluated jointly by a number of government offices including the General Population Administration, the Directorate of Nationality and the Ministry of Foreign Affairs. The first group of cases focuses on Ottoman subjects living abroad who were interested in maintaining their status by acquiring identity cards through the agency of Ottoman consuls. The second group of cases considers foreigners who intended to naturalize as Ottoman nationals and applied to the Ottoman authorities to receive identity cards as a proof of their status. The third group of cases focuses on Ottoman subjects who aimed naturalize as foreigners and produced their existing identity cards to Ottoman authorities in order to acquire government authorization for expatriation.

The development of individual identification in the Ottoman Empire is often studied in the context of state efforts for controlling its subject populations, and resisting the trend whereby growing numbers of non-Muslim Ottomans claimed foreign status in the empire. Be that as it may,

this general tendency often leads to a general neglect of the numerous appeals of allegedly Ottoman subjects abroad who were interested in maintaining their identities as Ottoman subjects against the growing pressures imposed by their host governments. Even though the Ottoman government imposed strict regulations on the emigration of its subjects from the empire, a careful study of numerous appeals from Ottoman immigrants abroad reveal that it treated such appeals with utmost attention. Arguably, such openness can be explained by the willingness of the Ottoman government to encourage Ottoman emigrants to return back to the empire after a certain period of time, the expectation for the transfer of remittances by Ottoman emigrants to their relatives at home or by the simple motivation to perpetuate a favorable image of the empire abroad. Indeed, the archives of the Ministry of Foreign Affairs contain numerous appeals from Ottoman subjects abroad who were interested in maintaining their identities and procuring Ottoman identity cards through the agency Ottoman consuls in the late nineteenth and early twentieth centuries.

The appeals of Ottoman emigrants to Latin American countries provide a revealing case study for a better understanding of how and why Ottoman subjects abroad were interested in maintaining their status during this period. There occurred several waves of emigration from the Ottoman Empire to Latin America from 1860s through the end of the First World War. These emigrants mostly consisted of non-Muslim Ottomans from Syria and Lebanon, who immigrated to the newly independent states of Latin America such as Brazil, Argentina and Chile.[33] Immigrants arrived in these countries with Ottoman passports and identity cards and were

[33] Sarah Gualtieri, Between Arab and White: Race and Ethnicity in the Early Syrian American Diaspora, (Berkeley: University of California Press, 2009).

generally called *Turcos*, a designation, which continued over many generations.[34] Escaping from political unrest, socio-economic deterioration or military conscription after the 1860s, Ottoman emigrants took advantage of the economic opportunities in the rapidly growing cities and agricultural fields of Argentina and Brazil.[35] Other pull factors included open immigration policies of these countries, which offered cash subsidies, re-imbursement of travel expenses and access to accommodation to desired immigrants.[36] In Argentina, such policies later excluded immigrants from Ottoman Syria who were deemed ineligible for state subsidies.[37] Nevertheless, Ottoman immigrants still benefited, to a certain extent, from liberal constitutional policies, which stated that all "foreigners (irrespective of race or national origins) enjoy…all of the civil rights accorded to (Argentine) citizens."[38] Such open policies toward immigrants facilitated the influx of Ottoman

[34] Ignacio Klich, "Argentine-Ottoman Relations and Their Impact on Immigrants from the Middle East: A History of Unfulfilled Expectations, 1910-1915," *The Americas*, 50, no.2, (1993): 177-205

[35] Kemal Karpat, "Ottoman Emigration to America," *International Journal of Middle East Studies*, Vol. 17, No. 2 (1985): 179-185. Karpat asserts that contrary to the general assumption that emigrants from the Ottoman Empire to the Americas were Syrians, mainly Lebanese and Christians, either Maronites or Orthodox, the number of Muslim immigrants was also substantial, approximately about 15% to 20%. Nevertheless, it is difficult to give a close estimate of the number of total emigration from Syria to the Americas between 1860 and 1914. According to Karpat, the total number of persons to approach to 1,200,000 persons, 600,000 of whom were Arabic speakers from Syria and Mount Lebanon. According to the Ottoman consul in Buenos Aires, approximately 46,000 Ottomans had come to Argentina between 1911-1913. The return rate was also high: approximately one-third of the Ottoman emigrants returned back to their homelands and took advantage of the Ottoman governments' liberal policies toward return immigration. Even though it is difficult to have a close estimate of the total immigration to the region, the total number of immigrants from the Ottoman Empire to the Americas reached to 1,200,000 between 1860-1914.

[36] Klich, "*Criollos and Arabic Speakers in* Argentina" *Lebanese in the World*: *A Century of Immigration*, ed, by Albert Hourani and Nadim Shehadi, (London: Centre for Lebanese Studies in association with I.B. Tauris, 1992): 248-273.

[37] Stacy D Fahrenthold, *Making Nations in the Mahjar, Syrian and Lebanese Long-Distance Nationalisms in New York City, Sao Paolo and Buenos Aires*, 1913-1929, (Ph.D. Thesis, Northwestern University, 2014), 92.

[38] Ibid.

immigrants into Argentina without any pressures for acquiring documentation or seeking citizenship. Notably, by 1914, only 385 Syrian immigrants were known to have been naturalized as Argentine citizens.[39]

The Ottoman government's attitude towards emigration from Greater Syria to Latin America changed over time and varied according to the status of subjects intending to move. While the central government initially tried to restrict emigration from the 1860s to the 1890s, it then pursued a rather liberal policy towards migration and relaxed controls over the movement of its subjects to Latin America, which roughly continued until the outbreak of the First World War. Engin Akarli's study on Ottoman attitudes towards Lebanese immigration to Latin America demonstrates that the government encouraged the emigration of economically prosperous segments of the population while limiting the movement of the poor.[40] Despite the general policy towards banning emigration from the Ottoman Empire, the central government encouraged the exodus of local merchants to Latin America, who established profitable businesses abroad and provided remittances to their families and relatives in their homeland. In this respect, the central government considered these emigrants as a source of revenue for Ottoman Syria.[41] The expectation of return immigration also played a significant role in shaping such favorable attitudes

[39] Klich, "*Criollos and Arabic Speakers in* Argentina," 256.

[40] Engin Akarli, "Ottoman Attitudes towards *Lebanese* Emigration, 1885– 1910," *Lebanese in the World,* 110.

[41] By 1900, Mount Lebanon received about 200,000 British pounds in remittances from Latin American countries. In 1910, this number raised to 800,000 pounds as a consequence of the growing numbers of emigrants as well as their economic success. By 1917, emigrant remittances became Mount Lebanon's largest economic resource which was about 220 million Ottoman *gurus* annually. Charles Issawi, "The Historical Background of Lebanese Emigration, 1800-1914," in Lebanese in the World, 26-7 cited in Fahrentold, *Making Nations*, 62. A report from the Ottoman consul in South America stated that Syrian immigrants in Argentina sent a sum of 24 million pesos or 240 million Ottoman *gurus* to their relatives in Syria and Lebanon in 1913. Kemal Karpat, "The Ottoman Emigration to America, 1860-1914," *International Journal of Middle Eastern Studies*, v. 17, n. 2, (May, 1985).

towards emigration to Latin America. Ottoman subjects who acquired a considerable amount of wealth abroad were allowed to return to their homelands with relative ease.[42]

The establishment of Ottoman consular offices in Argentina and Brazil emanated from the desire of the central government to preserve the rights of its subjects, who were engaged with profitable businesses in their host countries.[43] These subjects were believed to reside in their host countries only temporarily and were seen as an important source of revenue by the central government. Indeed, the majority of Ottoman immigrants in Latin America were settled in urban areas and worked as petty traders or peddlers, unlike their European counterparts who became laborers in agricultural fields.[44] On the other hand, the transfer of remittances by Ottoman immigrants turned out to be a significant concern for the Argentine government, which accused them of transferring their earnings directly to their families in their home countries without making any contributions to the local economy.

For the Ottoman government, providing consular service to Syro-Lebanese immigrants was also facilitated by the desire to prevent them from appealing to other European consular officials for acquiring diplomatic protection and passports. Ottoman authorities mainly competed

[42]This was also in line with the general policy of open immigration in order to facilitate population growth in the Ottoman Empire during the period in question. The decree issued by the High Council of *Tanzimat* on emigration stated "the migration to the Ottoman state was open to everyone who was willing to give allegiance to the Sultan, to become his subject and to respect the country's law." Stanford Shaw, *History of the Ottoman Empire and Modern Turkey* (New York: Cambridge University Press) vol. 2, 1977 cited in Kemal Karpat, *Ottoman Population, 1830-1914: Demographic and Social Characteristics*, (Madison, Wisconsin: University of Wisconsin Press, 1985), p. 62 and Kazim Baycar, *Ottoman Emigration to Latin America*, Master's Thesis, Bogazici University, 2008, 89.

[43] Before the establishment of Ottoman consular offices in the region, the central government paid special attention to the occupations of its subjects in Latin American countries with a particular emphasis on understanding "whether they were engaged with trade or not. BOA, M.V. (Meclis-i Vükela Mazbataları) 118/8 in Baycar, p. 93

[44] Klich maintains that this also led to an *anti-turco* reaction in 1910s. 179.

with French consular officials who readily provided French passports to Maronites in various Latin American countries and recognized them as *de facto* French citizens. This became a major concern for the Ottoman government as it enabled Maronite immigrants to claim French citizenship and French consular protection upon their return to their homelands.[45]

In 1910 an Ottoman consular office was opened in Buenos Aires and Emir Emin Aslan, a Lebanese Druze notable, became the first consul general.[46] When Aslan was assigned as the Ottoman consul of Buenos Aires, he was expected "to protect in all circumstances Ottoman subjects crossing his territory, shelter all the privileges they were entitled to and facilitate their business transactions by all possible means."[47]

Emin Aslan received numerous appeals from Ottoman immigrants who complained about their maltreatment by the judiciary, local police or their employers, and demanded consular protection from Ottoman authorities. These immigrants also asked consular assistance regarding their legal status as immigrants, personal rights and tax liabilities. Consular representation was also critical for the immigrants who desired to maintain their ties to their families and relatives in Ottoman Syria. These immigrants often had recourse to the Ottoman consul for managing their properties

[45] The Ottoman Empire competed with the French consular officials in various Latin American states who readily extended protections over the Syro-Lebanese immigrants, particularly to the Maronite community. This was also facilitated by France's interest in expanding its control in the Middle East. AMREC, CD, Turkey 23/913 A Luciano to J. Peuser, Aug. 16, 1913 cited in Klich, 181. Also see the correspondence between Yusuf Efendi, consul in Barcelona, and Turkhan Bey, Ottoman representative in Madrid, in AFM, fol. 346 (Idare), June 1889 to 14 November 1899 to 14 November 1892 cited in Kemal Karpat, "Ottoman Emigration to America," 184.

[46] Emin Aslan came from a prominent Lebanese family and had close ties with the Young Turks. Emin Aslan graduated from the Maronite School and the Jesuit University in Beirut. Aslan remained as the consul-general in Buenos Aires for five years. He was dismissed from the foreign service after the outbreak of the First World War. Klich, "Argentine-Ottoman Relations and their Impact on Immigrants from the Middle East: A History of Unfulfilled Expectations, 1910-1915," *The Americas*, v. 50, n.2, 1993 182-183.

[47] Ibid. 193.

in Syria or sending remittances to their families. Immigrants who were intending to return to their homelands oftentimes appealed to the Ottoman consul to renew their Ottoman identity cards and registration records at their hometowns.

For Ottoman emigrants abroad, Ottoman nationality was not a status that was taken for granted. Rather, it was an identity to be maintained against their ambivalent legal status as Ottoman immigrants in their host countries. The nationality of Ottoman immigrants was continually constituted and challenged through political struggle in their host countries. Numerous appeals by Ottoman immigrants to the Ottoman consuls abroad were in fact emblematic of this general tendency as they intended to preserve their links to their homeland by acquiring the necessary documentation as proof of their national status. Their claims to Ottoman nationality differed from those at home, as they were exempt from the obligations required by their national status such as military service or the payment of taxes.

In 1911, Emin Aslan, the Ottoman consul in Buenos Aires, contacted the Ministry of Foreign Affairs in order to procure identity cards for eleven allegedly Ottoman subjects who had appealed to the consulate. [48] In his correspondence, Emin Aslan provided a list of the subjects and requested information from the central government regarding their registration records at their hometowns. The report prepared by the General Directorate of Population Registration provided that Cercis Ilyas, Ibrahim, David Salman and Husn Ali Yosfa were born in Beirut, whereas Nikola, Harun bin Ishak, Fazil Hilafi, Selmiyan, Habib Ibad and Seman were born in different districts of Syria, and a certain Panayot Yorgi was born in Rodos. Among these individuals, Harun bin Ishak was born in Damascus in 1882 and he was 29 years old at the time of his application. According to the information sent from Rodos to the General Directorate of Population Registration, on the

[48] BOA. DH. SN. THR 32/58

other hand, Panayot Yorgi was born in 1880 and was 31 years old. The correspondence did not include further information regarding the ages of the remaining applicants but authorized the provision of identity cards to the applicants.

In 1909, the Ottoman Consulate in Brazil contacted the Ministry of Foreign Affairs regarding the appeal of five Ottoman subjects who petitioned to the consulate to certify their ages and acquire Ottoman identity cards.[49] The petitioners, who were residents of Sao Paolo, included two testimonies each as a proof of their status, attached their photographs to their appeal and paid 87 *gurus* to the consulate in order to acquire Ottoman identity cards, including a statement regarding their ages. The Ministry of Foreign Affairs approved their request and informed the Ottoman consul in Sao Paolo that he could issue their identity cards. The note stated that the petitioners were Ottoman subjects and should hence be exempted from military conscription in their current residence.

The appeal of these subjects to the Ottoman consul-general Munir Sureyya in order to acquire Ottoman identity cards is a revealing example of how Ottoman immigrants tried to be exempt from military conscription in Sao Paolo. The case is particularly interesting as it provides significant insights into how the Ottoman consuls tried to claim rights for Ottoman migrants against growing pressures from their host governments. In fact, starting from the mid nineteenth century, many Ottoman immigrants in Brazil, particularly from Syria and Lebanon, petitioned the Ottoman government for the appointment of a representative, preferably a Christian Arab with a good command of several foreign languages to the Ottoman consulate in Sao Paolo.[50]

[49] BOA. DH. SN. THR 34/76

[50] BOA. DH. ID. 85/37

The 1858 Treaty provided the legal framework that determined the rights of Ottoman immigrants in the region and remained in effect until its unilateral denunciation by the Ottoman government in 1912. The 1858 Treaty stipulated that both governments could open consular offices reciprocally on the condition that their consular representatives would refrain from naturalizing each other's subjects or offering them consular protections (Article 1). According to the treaty, Ottoman subjects residing in Brazil and Brazilian subjects residing in the Ottoman Empire would be exempt from military conscription (Article 6), and when an Ottoman subject died in Brazil or a Brazilian subject died in the Ottoman Empire their properties would be transferred to their consular representatives to be distributed among their family members in accordance with the laws of their country of origin. Despite the 1858 Treaty, the Ottoman government did not appoint a consular representative to Sao Paolo until 1891. The appeal of these five immigrants for procuring Ottoman identity cards indicates that the Brazilian authorities forced Ottoman immigrants into military conscription despite the 1858 Treaty. The granting of identity cards to these immigrants shows that the Ottoman government did not refrain from taking such requests into consideration and granted identity cards to Ottoman immigrants who were able to fulfil the necessary bureaucratic procedures. In a note addressed to the Sublime Porte, Munir Sureyya underlined such abuses and stated that the provisions of the 1858 Treaty failed to protect the rights of Ottoman subjects, and hence should be replaced with a new treaty in accordance with the modern principles of international law. In his note, Munir Sureyya complained that the Brazilian government did not even require immigrants to produce passports to ease their entry to the country and treated them in an ambivalent legal status as immigrants.[51]

[51] BOA, DH.MBJ1PS.M. 6/29 cited in Mehmet Temel, "19. ve 20. Yuzyillarin Baslarinda Osmanli-Brezilya Iliskileri," *Hacettepe Universitesi Edebiyat Fakultesi Dergisi* 19, no.2 (2002): 175.

A note issued by the Ottoman Consulate in Sao Paolo to the Ottoman Ministry of Foreign Affairs in 1909 provides further insight into the growing diplomatic conflict between Ottoman and Brazilian governments regarding the legal status and rights of Ottoman immigrants.[52] In his note, the Ottoman consul mainly complained about the Brazilian Law of Nationality of 1908, which recognized children of Ottoman immigrants who were in Brazil as Brazilian citizens. The consul argued that this was contrary to the Ottoman Nationality Law, which considered the children of foreigners in the Ottoman Empire as foreigners and allowed them to freely choose their nationality after they reached the age of majority. Moreover, the Brazilian government did not inform Ottoman consular officials about the properties of deceased Ottoman subjects and distributed their properties arbitrarily on its own initiative. Ottoman subjects were also forced into military conscription by the Brazilian government. These unjust practices, the note concluded, led to a significant degree of disquiet among Ottoman immigrants who looked upon to the Ottoman central government to claim their rights against the Brazilian authorities. In response, the Ministry of Foreign Affairs sent a copy of the Ottoman Nationality Law to the consulate and reminded the Brazilian government that Ottoman subjects were not allowed to become nationals of a foreign state without acquiring an imperial deed of authorization from the Ottoman government. The Ministry of Foreign Affairs also warned Ottoman immigrants that those who were naturalized as Brazilian nationals without the consent of the Ottoman authorities would be recognized as Ottoman subjects upon their return to their homelands and the government had the right to confiscate their property.[53] Even though the Ottoman government had a limited capacity to protect the rights of Ottoman immigrants in Brazil, it severely resisted the plans for opening a Brazilian consular office

[52] Mehmet Temel, 180.

[53] Ibid. 178.

in Beirut, and did not grant exequatur to the Monsieur Kuniva, the Brazilian consular representative who was appointed to Beirut by the Brazilian government. Clearly, in extending consular protection to Ottoman immigrants in Brazil, the Ottoman government was mainly concerned about the status of returning immigrants and tried to prevent them from claiming Brazilian or another nationality upon their return to the empire. The refusal to grant an exequatur to a Brazilian consular representative in Beirut also shows the extent to which the Ottoman government was concerned about the status of returning immigrants. Arguably, the efforts of the Ottoman government to protect the rights of Syro-Lebanese immigrants in Brazil and Argentina were connected to its struggle for exerting its sovereignty in Ottoman Syria at a time of mounting imperial rivalry in the region.

The diplomatic conflict between the Ottoman and Brazilian governments over the status of Ottoman immigrants was not unique. Similarly, James Meyer examines how the question of citizenship became an arena for diplomatic and political struggle between the Ottoman and Russian empires during the nineteenth century. Meyer's study shows that the influx of Russian Muslims who were granted Ottoman identity cards by the Ottoman state led to increasing tensions between the two empires over the status of these subjects.[54] Russian Muslims in the Ottoman Empire, like Syro-Lebanese immigrants in Argentina and Brazil, preserved their ties with their homelands and oftentimes returned to their lands of origin. These Muslim Russian immigrants, Meyer maintains, entered into the Ottoman Empire without proper documentation and were granted Ottoman identity cards by the Ottoman government. Even though these immigrants procured Ottoman identity cards

[54] James Meyer, "Immigration, Return and the Politics of Citizenship: Russian Muslims in the Ottoman Empire, 1860-1914," *International Journal of Middle Eastern Studies* 39 (2007): 15-32.

and claimed Ottoman nationality, they also took advantage of their ambiguous legal status and appealed to Russian consuls for consular assistance.

Nevertheless, the granting of Ottoman identity cards was not always a guaranteed bureaucratic procedure for Ottoman immigrants abroad, whose appeals were often subject to close examination by the Ottoman government. The case of six Ottoman subjects from Taygan (Taganrog), a port city in the Sea of Azov, shows the extent to which such appeals for procuring Ottoman identity cards were evaluated by the government. In 1912, the Ministry of Foreign Affairs informed the Ministry of the Interior about the appeal of six Ottoman subjects to obtain Ottoman certificates of Nationality from Taygan.[55] Their appeal was communicated to the Foreign Ministry by the Ottoman consul in Taygan, who delivered six petitions and a total fee of 100 *gurus* for procuring their identity cards. The note from the consul also provided a list providing information about the petitioners' date and place of birth, name, father's name and mother's name. Upon their initial appeal, the General Directorate of Population Registration contacted the provincial authorities to confirm the information provided by the petitioners. In a series of correspondences addressed to Erzurum, Selanik and Sivas provinces, the General Directorate of Population requested the local authorities to check the registration information pertaining to these individuals. The response from the Selanik Province provided the address and the date of birth of one petitioner, yet reported that the said petitioner had no record of registration in the province. The Vali of the province hence concluded that it would be impossible to issue an identity card for someone who did not renew registration and therefore requested the return of 5 *kurus* stamp fee for the procuring of the identity card. Similarly, the correspondence from the Sivas Province informed the Ministry of the Interior that Vicin, son of Korabali had no record of registration in the province and hence

[55] BOA DH. SN. THR 33/9

his appeal should be denied. The note from Erzurum Province to the General Directorate of Population Registration also stated that there was no record of registration for a certain Uskan, who appealed for acquiring an identity card through the Ottoman consul in Taygan. Oskan's appeal was also rejected and his stamp was returned. On the other hand, a certain Haralmapov, who was born in Giresun in 1870, was granted his identity card by the Ministry of the Interior without any problem. The local records indicated that he was born in Cinarlar Street at Giresun, where his parents continued to reside by the time of his application to the Ottoman consul in Taygan.

The appeal of these individuals for acquiring Ottoman identity cards demonstrate the web of bureaucratic relations between different government offices, which closely examined the validity of such claims. The appeal of six individuals through the Ottoman consul in Taygan led to a detailed inquiry into their claims for Ottoman nationality through correspondence among the Foreign Ministry and the Ministry of the Interior and the provincial authorities. As shown above, this correspondence primarily dealt with finding clear information regarding the date and place of birth of the petitioners and their families as included in registration records at the local level. The detailed evaluation of these appeals shows that granting an identity card to an allegedly Ottoman subject living abroad was not guaranteed. The appeals of three of the petitioners were rejected due to the lack of clear information regarding their links to their alleged places of birth in the empire. In the end, only one of the petitioners succeeded in obtaining his identity card as the information he provided in his appeal was confirmed by registration records at the local level. Despite the general assumption that the Ottoman government pursued an open policy in order to facilitate return immigration to its own territories, it nevertheless evaluated the appeals of allegedly Ottoman subjects abroad carefully and refrained from getting into diplomatic conflict with other states unless it verified claims to Ottoman nationality through registration records at the local level. By

the turn of the century, the evaluation of claims to disputed nationality developed into a rather systematic and uniform bureaucratic procedure. And yet, government officials continued to face significant difficulties in tracking registration records in various provinces. A report written by the Directorate of Population in Istanbul reveals that registration records at the local level were in fact far from being complete by 1910.[56] According to the report, forty per cent of the records of subjects who appeal for Ottoman identity cards from the provinces still lacked critical information such as their mother's name and place of birth.

Record keeping was also a problem in Ottoman consular offices and made it more difficult for Ottoman immigrants to verify their claims to Ottoman nationality. In 1909, a certain Petro and his family in Vidin requested the renewal of their Ottoman certificates.[57] The deputy consul in Vidin reported to the Ottoman Foreign Ministry that Petro submitted to the consulate a petition and a note describing his features and appearance in order to renew his certificate of nationality. In his appeal, Petro asserted that he constantly renewed his passport as a proof of his allegiance to Ottoman nationality. The report of the consul stated that even though there was no prior record of Petro's appeal to the consulate to verify his claim to Ottoman nationality, this was in fact due to the lack of an organized habit of record keeping at the consulate. Petro and his family resided in Karcaova district in Vidin and his certificate of nationality was in stale condition. As Petro was planning to travel to Istanbul with his family, he was asked to present a note describing his features and appearance, which need to be confirmed by the Ottoman consul in Vidin. In the end, Petro's appeal was approved by the Directorate of Nationality, and he and his family were registered in

[56] DH. SN. THR 32/55

[57] BOA DH. SN. THR 33/48 1330. C. 3

the General Administration of Population Registration (*Sicill-i Nufus Idare-i Umumiyesi*). Petro was charged a fee for 100 *gurus* per each identity card.[58]

The appeal of a certain of Mugaridic to acquire an Ottoman tezkere was communicated to the Foreign Ministry by the Ottoman consul in Varna.[59] In his appeal, Mugaridic stated that he was originally from the district of Hoyt in Bitlis, his mother's name was Manisehak and his father's name was Vartan. Even though the registration records in Bitlis confirmed Mugaridic's claims to have born in Bitlis, there was no clear information regarding his parents' names. Nevertheless, Mugaridic's appeal for Ottoman nationality was approved by the central government and his identity card was issued.

When in doubt, the Ottoman government contacted foreign consular offices to clarify the status of subjects claiming Ottoman nationality. In 1911, a certain Yakub bin Ordi, a Jewish Russian subject from Kudus applied for Ottoman nationality.[60] The government inquiry revealed that Yakub was born in 1889 and was 22 years old by the time of his appeal to naturalize as an Ottoman subject. Yakub's appeal was then communicated to the Russian Consulate by the Ottoman Foreign Ministry to see if there were any obstacles for Yakub to naturalize as an Ottoman subject. Upon the approval of the Russian consulate, Yakup was granted an Ottoman identity card and asked to register himself at the General Directorate of Population Registration.

Similarly, the appeal of a certain Kozme, son of Istranaki Felci, for naturalization as an Ottoman subject was initially rejected by the imperial government, which requested Kozme, a foreign subject of Greek origin, to first appeal to the nearest Greek consulate in order to get

[58] These fees were an important source of revenue for Ottoman consulates abroad.
[59] DH. SN. THR 31/80

[60] DH. SN. THR 31/89

consular approval for expatriation.[61] The correspondence from the Directorate of Nationality informed the Interior Ministry that Kozme could only be granted an Ottoman identity card upon the receipt of an authorization by the Greek consulate. Kozme was also asked to prove that he was not part of an on-going litigation, or charged with a criminal assault at the consular court. Kozme, a resident of Bandirma, received authorization from the Greek consul in Hudavendigar and then acquired an Ottoman identity card.

Ottoman subjects who wanted to expatriate were subject to detailed government inquiry. The request of Nesim Daniel, son of Nesim Henri provides some insight into how such appeals were evaluated by the government. When Nesim Daniel informed the Ottoman government about his intention to be naturalized as a French citizen, the Foreign Ministry requested information from the General Directorate of Population Registration regarding his status an Ottoman subject.[62] In response, it was reported that Nesim Daniel was an Ottoman subject, who was born in Izmir and had been residing in France for a while until the time of his application in 1909. According to the information provided by the Aydin Province, Nesim Daniel was born in 1881 in the Hamambasi district of Izmir. It stated that Nesim Daniel's father was registered with the name "Yontav" in the local population records. Even though Nesim Daniel was initially asked to prove his identity by coming to Izmir in the presence of two witnesses, the Ministry of Foreign Affairs later declared that he could instead go to the Ottoman consulate in Paris to prove his identity with two witnesses, as it would be unrealistic to expect an Ottoman subject already living abroad to come to Izmir for that purpose. The Directorate of Nationality also confirmed the decision of the Foreign Ministry by stating that Ottoman subjects who were living abroad and intend to be naturalized as foreign

[61] DH. SN. THR 31/79

[62] DH. SN. THR 31/18

citizens were allowed to have recourse to Ottoman consuls in order to verify their identity with the testimony of two witnesses. Ottoman subjects who were born abroad and did not have any record in the Ottoman Empire regarding their status were advised to appeal to the nearest Ottoman consulate with two witnesses in order to prove their Ottoman nationality. The Ottoman consuls were authorized to issue certificates of registration to Ottoman nationals who could afford to pay the registration fee.[63]

The appeal of Angeli Konstantin, an Ottoman subject for naturalization as a citizen of Austria and Hungarian Empire was authorized by the government with an imperial decree issued by the Council of State in 1910.[64] The decree stated that Angeli Konstantin was an Ottoman subject and a merchant doing business with Austria. Stating that there was no impediment for Angeli Konstantin's expatriation, the imperial government approved Angeli Konstantin's appeal on the condition that he would never return to the Ottoman Empire. If he ever intended to do so, the decree stated, Angeli Konstantin would be treated as an Ottoman national. The decree was transferred to the Ministry of Foreign Affairs and the Ministry of the Interior to be put into execution. The certificate prepared by the Directorate of Nationality included a detailed chart including information about his name, father's name, place of birth, age, religious affiliation, occupation and current residence. According to the information provided in the certificate, Angeli Konstantin was born in Dresden, Germany in 1882, 29 years old, Orthodox Christian and engaged in the tobacco trade in Germany and Austria. The certificate reiterated the decision provided in the imperial decree by stating that Angeli Konstantin acquired the nationality of the Austrian and Hungarian Empire on the condition that he would never return to the Ottoman Empire. If he ever

[63] BOA DH. SN. THR 36/16 1330 S. 29

[64] BOA DH. SN. THR 37/70 1330.2.27

returned, the certificate stated, Angeli Constantine would be considered as an Ottoman and subject to Ottoman laws.

In 1910, a circular from the Directorate of Nationality to the Ministry of the Interior emphasized the need to revise the imperial deeds for the authorization required for Ottoman subjects who aimed to be naturalized as foreigners.[65] According to the circular, the imperial deeds for authorization lacked a clear statement declaring that an Ottoman subject who naturalized as a foreigner would no longer be allowed to come to the empire and if he did so he would be treated as an Ottoman subject. The absence of such a clear statement on the issue, the circular continued, led to grave abuses as ex-Ottoman subjects continued to claim foreign protection and used their governments to escape from Ottoman jurisdiction when they came to the Ottoman Empire. The deeds should hence be renewed to clarify the matter in the form of smaller documents in Turkish and French. The circular included the suggested templates in Turkish and French.[66]

The cases of Nesim Daniel and Angeli Constantine shows that expatriation of Ottoman subjects who appealed to the government and received an imperial deed of authorization was possible as long as they agreed to be subject to Ottoman jurisdiction upon their return to the Ottoman Empire. Taken together the above cases reveal that the central government was concerned with subjects who claimed foreign status in the empire or those living abroad with a likelihood of return to their places of origin. The careful evaluation of appeals from Ottoman immigrants in Latin America can be considered as an illuminating case demonstrating how the central government was trying to strengthen its territorial sovereignty in Syria by offering consular

[65] BOA DH. SN. THR 34/14 1330 C 22

[66] The template stated that Ottoman nationals who expatriate are not allowed to return back to the Ottoman Empire and if they do so they would be treated as Ottoman subjects and be registered by the General Directorate of Population Registers.

assistance and procuring Ottoman identity cards to Ottoman emigrants abroad. It appears that in doing so, the main goal of the Ottoman government was to prevent return immigrants from claiming foreign status to be able to take advantage of consular protections offered by foreign powers, and hence was connected to the competing imperial interests in the region. Furthermore, the appeals of Ottoman subjects from Argentina and Brazil show how the Ottoman policy toward emigration changed over time and varied according to the status of its subjects. For Ottoman emigrants abroad, Ottoman nationality was not taken for granted but was something to be maintained through the agency of Ottoman consuls in the region.

The cases above consist of appeals for naturalization and expatriation and tell us about the bureaucratic procedures that came into play in order to evaluate such appeals. They demonstrate that population registers and identity cards gained a critical importance for verifying claims to disputed nationality. These appeals are brief in content and do not provide detailed insight to understand why a Russian Jewish subject in Jerusalem was interested in naturalizing as an Ottoman national, or an Ottoman subject of Greek Orthodox origin intended to acquire Austro-Hungarian nationality. And yet, taken together, they shed light into the role of Ottoman consuls in communicating such claims to the central government and how they were tracked through registration records at the provincial level by the General Directorate of Population Registration.

Even though the registration records were far from being complete, a thorough reading of the correspondence between different government offices and foreign consulates demonstrates that the bureaucratic evaluation of such claims gained a systematic and uniform quality during this period. The above examples show how Ottoman identity cards enabled the bureaucratic recognition of individuals and became the primary means for verifying identities within and across the borders of the empire by the turn of the twentieth century. These cases also reveal that

identity cards were far from being a top down instrument of governmentality but often signified a rather complicated process of negotiation between the government authorities and imperial subjects who tried to maintain their identities or rejected certain categories of identification imposed by the state.

The development of a documentary apparatus of individual identification started with the mandatory use of identity cards, which certified one's belonging to the Ottoman state within or outside the realm of its territorial sovereignty. And yet, subjects often made use of other documents of identification such as internal passes and passports in order to support their claims to subjecthood. The following section explores how internal travel permits – *murur tezkeresi* – and passports were used with or at times *in lieu* of identity cards by imperial subjects and gained a critical importance for negotiating state sovereignty within and across the borders of the empire as well as its semi-autonomous provinces.

### II. Internal Travel Permits and Passports

No longer considered simply as a means to regulate domestic movement or documents requesting safe passage, the modern passport gradually evolved into an internationally recognized document for individuals abroad by the turn of the twentieth century.[67] International law texts, McKeown argues, only rarely mentioned passports until the late nineteenth century as they were merely considered to be domestic documents. Furthermore, the passport system remained incoherent throughout the nineteenth century and there was hardly any consensus on who had the authority to issue passports to whom and to what extent these documents could be treated as proof of individual identification. The visa regulations regulating entry, on the other hand, were designed

[67] Adam McKeown, *Melancoly Order*, 102.

to provide border officials information about the bearer's former travels and only gradually transformed into an efficient tool for controlling movement and letting certain groups of people in while leaving others out of one's territories. The Ottoman regulatory controls of movement were codified in two regulations, *Men-i Murur Nizamnamesi* of 1841 and the Passport Law of 1867, and were put into execution within the provinces under the Tanzimat reforms. Both the Bureau of Internal Travel Permits – *murur kalemi* – and Passports – *pasaport kalemi* – were subject to the General Administration of Population Registration – *Sicill-i Nufus Idare-i Umumiyesi* under the Ministry of the Interior.

Internal travel permits (*murur tezkeresi*) were already in use well before the nineteenth century and gained a critical importance concomitant with increased mobility within the empire during the period in question. Travel permits were originally used to control entry to Istanbul, particularly by ex-Janissary soldiers who were sent back to their districts after the abolition of the Janissary corps in 1826. Until 1831, internal travel permits were issued by *kadis* and *naibs* at the district level. A subject who intended to travel beyond his/her district was required to get an *ilmuhaber* (certificate) from the local imam stating his/her place of destination, duration of stay and reason for travel. Non-Muslims, on the other hand, were required to appeal to their religious leaders at the local level. This *ilmuhaber* was then presented to the *kadi* who was in charge of procuring a travel permit in return for a certain fee.[68] After the population census of 1830, internal travel permits were issued by *defter naziri* (registrar) at the provincial level. Subjects were also required to designate a *kefil* (guarantor) in order to procure a travel permit. Travel permits included

[68] Musa Cadirci, "Tanzimat Doneminde Cikarilan Men-i Murur ve Pasaport Nizamnameleri," *Belgeler*, (Turk Tarih Kurumu), 15:19, (1993): 171.

information about the name and title of its bearer, his/her father's name and physical appearance.[69]

*Men-i Murur Nizamnamesi* (Regulation for the Prevention of Passage) of 1841 formalized these practices in a comprehensive body of laws and was put into execution in the provinces, which remained within the realm of Tanzimat reforms.[70] The 1841 Law required all subjects travelling beyond their district (*kaza*) to acquire a travel permit (Article 2), and those who were residents of other districts to make their appeal in the presence of two witnesses (Article 3). Subjects who intended to travel beyond their district were made to appeal first to the local imam or district headman (*muhtar*) in order to get a certificate (*ilmuhaber*) stating their place of destination and reason of travel (Article 4). These certificates were then taken to the district council (*kaza meclisi*), which had the authority to issue the travel permit.

Even though *murur tezkeresi* is often understood as travel certificates regulating internal movement of subjects from one district to the other, *Men-i Murur Nizamnamesi* of 1841 also introduced laws to regulate international mobility. According to this, residents of Istanbul intending to travel abroad were required to acquire a certificate from the regional municipality (*ihtisab nezareti*) and then had recourse to the Ministry of Foreign Affairs for the approval of their travel requests. These certificates were then signed and sealed by the foreign consul of their country of destination in Istanbul (Article 5). Residents in other districts were required to apply to their district headman as mentioned in Article 4 and then had to get their travel permits signed and sealed by the consul of their country of destination either at their own district or at the border. Foreigners travelling to the Ottoman Empire, on the other hand, need to get their passports signed

[69] Musa Cadirci, "Tanzimat Doneminde Cikarilan Men-i Murur ve Pasaport Nizamnameleri," 172.

[70] *Men-i Murur Nizamnamesi* was published in Takvim-i Vekayi on 27 February 1841.

and sealed by Ottoman authorities either at the border or at their final destination in the empire. Foreigners coming to Istanbul were required to get their passports signed and sealed at the municipality (Article 5).

The 1841 Law also standardized the form and content of the travel permit. The travel permits were to include detailed information about the name, title, age of its bearer, his/her occupation, and nationality as well as his/her place of origin and destination. The travel permits would also include information about when and where the certificates were issued (Article 6). Merchants who had to travel occasionally were allowed to use their travel permits multiple times for the duration of one year (Article 14). Subjects who procured travel permits for domestic travel were charged a fee of 5 *gurus*, whereas those travelling abroad had to pay a fee of 20 *gurus* (Article 15). Subjects who could not afford to pay the 5 *gurus* fee were allowed to pay 3 *gurus* only (Article 16). The law was put into execution two months after its promulgation in April 1841. The 1841 Law was amended twice, in 1844 and in 1887, and remained in execution until it was repealed in 1910. 1844 amendments reiterated and further clarified the original regulation of 1841, and stated that travellers with wives and children under the age of 20 could procure one *tezkere* containing information about their names, gender and ages.[71] The Law of 1887 re-emphasized the need to carry travel permits when travelling within the empire and stipulated that subjects traveling with their families were allowed to acquire one *tezkere* stating the names of the traveler's wife, children and servants under the age of 20.[72] The tezkeres would be valid for one year and would be issued

[71] Christoph Herzog, "Migration and the State: On Ottoman Regulations Concerning Migration since the Age of Mahmud II," *The City in the Ottoman Empire: Migration and the Making of Urban Modernity,* ed. Ulrike Freitag, (London; New York, NY: Routledge, 2011),
121.

[72] *Dustur*, "Mer'iyeti ahkamina bi'l-istizan irade-i seniye-i cenab-i padisahi serefmuteallik buyurulan murur nizamnamesi," (18 Z 1304/08.08.1887) T:1 C:5, 861-65.

in return for a fee for 5 *gurus*. Travellers who could not afford to pay the fee could be exempted from payment.

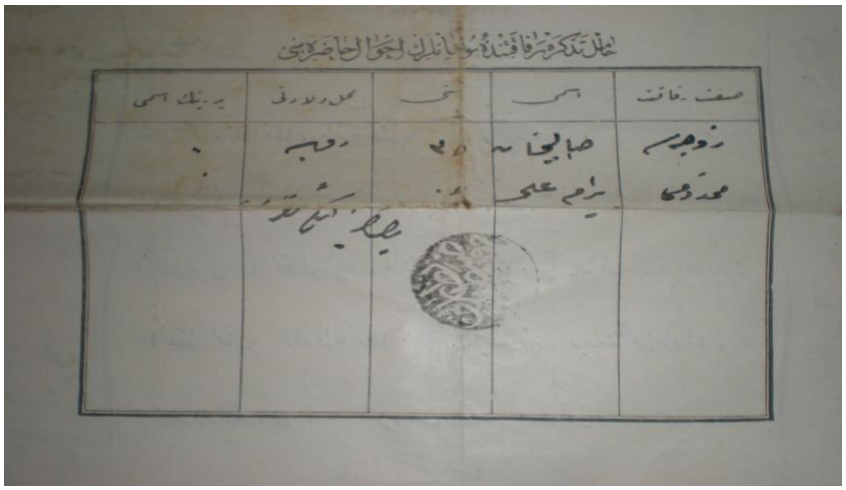
The sample *murur tezkeresi* given below exemplifies the standardization of travel permits during this period.[73] The format of the printed document was aimed at giving quick information about its bearer at a glance. Under the title *murur tezkeresi* it was written that the document was for internal use only (*dahile mahsustur*). The column on the right provides general information about the traveler's place of destination and circumstances (*mahall-i azimeti ve ahvali*), and lists information about the traveler's name, place of birth, place of residence, occupation, father's name and place of birth, destination of travel, nationality and religion. The column on the left gives a physical description of the traveler by listing his/her features and appearance (*eskali*), age, height, eye colour, facial features, moustache, beard, chin, complexion and identification mark (*alamet-i farikasi*). Nevertheless, such concise and general descriptions were not sufficient to differentiate one subject from the other according to physical appearance.

We understand that the *tezkere* was issued for a certain Davla Toka, who was born in Russia and residing in Istanbul by the time of his application. Toka was a national of the Russian Empire, and a Muslim. His destination was Konya. On the left column, it is mentioned that he was 52 years old and a tall man with light brown eyes and a moustache. The printed text in the middle states that the bearer of the *tezkere* has brought an *ilmuhaber* to his embassy's chancellery and that he would be travelling with his wife, and that Ottoman government officials on the route to his destination would allow his passage. The *tezkere* was issued by the Sublime Porte and would be valid for one year. The back page of the *tezkere* contains brief information about family members

[73] BOA. A. MKT. MHM 525/25.

who would be travelling with the bearer of the *tezkere.* The list includes the epithet of the companion (*sifat-i refakat*), his/her name, age, place of birth, and father's name.

According to this, Toka was travelling with his wife Salihan, who was 35 years old and was born in Russia, and his son Ali, who was 5 years old. The *ilmuhaber* issued for Toka reveals that he was an émigré from Crimea who came to the Ottoman Empire along with 7 other families consisting of a total population of 30. Toka's *ilmuhaber* states that he and his family were intending to travel from Istanbul to Konya to live with their relatives.



Such appeals were often accompanied by petitions written by Russian Muslim émigrés declaring their expatriation from Russian nationality and their intention to be naturalized as Ottoman subjects. These petitions also had a standard template stating immigrants' intent to be recognized as Ottoman subjects once they arrived at their final destination. The petition written by a certain Mehmet, a Russian Muslim immigrant from Caucasus in 1901 stated "as we, a family of three Russian nationals, have emigrated from the Caucasus to Damascus in order to live with our relatives, we have abandoned Russian nationality and request to be naturalized as Ottoman subjects and to be granted Ottoman *tezkeres* accordingly."[74] The petitioners also provided the names and total number of family members at the top of the petition. Even though families were allowed to have a single *tezkere* for travelling within the Ottoman Empire, *tezkeres* issued for Russian Muslim immigrants and related documents such as *ilmuhabers* and petitions for naturalization are often found as a collection of documents archived together. These collections also included lists summarizing the names of the family members who were intending to travel together from one district to the other or collectively applying to the government to be naturalized as Ottoman subjects. The Ottoman policy toward Russian Muslim *émigrés* can be traced through government

[74] BOA. MKT. MHM 527/23

efforts to control the movement of immigrant groups by documenting their identities in conformity with the prevailing tendency of individual documentation during this period. These different types of documents all follow a standard template in terms of their form and content. A careful examination of a collection of *ilmuhabers* issued for a group of Russian Muslim families travelling together or petitions submitted for naturalization demonstrate a verbatim reiteration of a single text with the mere addition of names and total number of family members for each document. Hence, the text of the above-mentioned petition by this Mehmet was replicated in other petitions submitted by other immigrant families who applied to the government to be naturalized as Ottoman subjects. The level of standardization as seen in these documents is emblematic of state efforts to monitor the movement of its subjects through the efficient use individual documentation during this period. More importantly, these different types of documents were often used together by subjects with dubious identities such as Russian Muslim immigrants. For the Ottoman state, these documents played a critical role in preventing these immigrants from seeking consular assistance against the central government.

The Passport Law of 1867, on the other hand, required Ottoman subjects to obtain passports when traveling abroad and foreigners to carry both a passport and a *murur tezkeresi* when travelling within the empire.[75] According to the Passport Law, foreigners were to get visas on their passports issued by their own consular agents accredited to the Ottoman Empire or by Ottoman consuls in their countries of origin. In places where there is no Ottoman consular representation, foreign travellers would be allowed to get visas from their home governments on the condition that they would later renew their visa from Ottoman consular officials in the nearest district

[75] *Dustur,* "Pasaport Odasi Nizamnamesi," (9 L 1283/ 14.02.1867) R:16 T:1 C:1 p. 776-9, 14 February 1867.

(Article 2). Travellers arriving in the Ottoman Empire by land routes were required to present their passports to border officials whereas those arriving by the sea were required to show their passports to officials at their destination port (Article 3). Upon their entry to the Ottoman territories, foreign travellers were expected to register and acquire a residency permit within 24 hours of their arrival approved by their own consular officials (Article 4). Foreigners who were intending to travel within Ottoman territories would get a visa from their own consuls and acquire a *murur tezkeresi* which they were obliged to carry along with their passports and present to Ottoman authorities when necessary (Article 7). The *murur tezkeresi* would be valid for one year and include information about the name, reputation, age, occupation, physical appearance and nationality of its bearer. Those traveling with their families were allowed to get a single *tezkere* for their wives and children under the age of 15 (Article 9). Subjects travelling from the Ottoman Empire to other countries were expected get visas from their district council as well as officials at the border (Article 10). Travellers without a passport need to present a valid excuse to Ottoman authorities at their arrival and were required to acquire a deed of guaranty from their own consuls confirming their respective identities (Article 13). Foreigners who presented false names or used forged documents on entry would immediately be expelled from Ottoman territories with prior notice given to their own consuls. Ottoman subjects who presented false information or used forged documents would be punished accordingly (Article 16). Travellers who failed to present passports were made to pay a fine of 100 *gurus*, whereas those who had passports but no visas were charged a fine of 30 *gurus.*

Interestingly, the 1867 Passport Law did not make any distinction between Ottoman and non-Ottoman subjects on the issue of departure as they were both required to get their passports

visa stamped by the Ottoman authorities.[76] The distinct procedures on entry and exit regulations as stipulated by the Passport Law allude to several preliminary conclusions. First, recognizing both the authority of foreign consuls in the empire and Ottoman consuls abroad for visa regulations on entry, the Ottoman Passport Law was no exception at a time when a modern visa system was yet to emerge, whereby visas were only to be issued by the consular authorities of the country of destination. For departure purposes, on the other hand, the 1867 Law only recognized the authority of Ottoman officials, which can only be understood as part of a broader concern for obtaining accurate population data and preventing the expatriation of Ottoman subjects. The information acquired by Ottoman officials at departure was transferred directly to the General Directorate of Population. The Passport Law of 1894, on the other hand, stated that Ottoman subjects who were planning to travel to other countries were required to present their identity cards and acquire an *ilmuhaber* from their districts and passports would be granted in return for a fee of 50 *gurus.*[77]

In 1911, Passport Law was once more amended and announced on *Takvim-i Vekayi.*[78] The Law of 1911 required all subjects travelling abroad to acquire a passport by presenting their identity cards (Article 2). The fee for acquiring a passport was 50 *gurus*, whereas travellers who were intending to travel to surrounding countries were charged 10 *gurus* only. Travellers who could not afford to pay the fees were to receive passports for free (Article 3). Passports were to be issued in Ottoman and French and would be granted by officials on the border and passageways designated by the government (Article 4). Ottoman subjects should get visas when travelling

[76] Ibid. Article X

[77] Christoph Herzog, "Migration and the State: On Ottoman Regulations Concerning Migration since the Age of Mahmud II," 128-129.

[78] *Dustur*, "Pasaport Law," (22.05.1326 / 04.06.1911), T:2 C:3 p.462

abroad. The visa fees would be 10 *gurus* for passports that were issued for 50 *gurus*, and 2 *gurus* for passports that were issued for 10 *gurus*. There would be no visa fees for passports granted for free (Article 7). The 1911 Law considered the treatment of subjects who were travelling to the Ottoman Empire from other countries in a separate section. According to this, all subjects intending to travel to the Ottoman territories need to procure a passport and get a visa from Ottoman consuls abroad (Article 9). Visas would be valid for one trip only, but subjects who were constantly travelling to neighboring countries were allowed to acquire visas valid for 6 months (Article 10).

Lastly, the 1911 Regulation provided detailed information regarding travellers who acted contrary to the law. Travellers who came to the empire without a passport or those who presented a forged or fake passport on entry were made to prove their identities to the government officials by presenting their identity cards and other related information. Ottoman subjects who were able to prove their identity but did not have a passport were allowed to obtain one by paying a fine for twice their passport fee, whereas those who had a passport but did not have a visa would pay a fine for twice the visa fee. Subjects who could not present identity cards and hence were unable to prove their identities were to be taken by the police for investigation. Foreigners who did not have a passport were required to procure a passport from their consuls by paying a fine of twice the visa fee within 48 hours after their arrest. Foreign travellers who were unable to get passports from their own consuls would be expelled from the Ottoman Empire immediately (Article 13). Travellers who presented forged documents would be punished according to the Penal Code. Last but not least, the 1911 Regulation provided that passports could not be used as proof of nationality (Article 18).

Hence, the 1911 Regulation further clarified the application of passport laws by providing detailed information about passport and visa requirements for Ottoman and foreign subjects respectively. Nevertheless, the laws regarding the entry of foreigners to the Ottoman Empire were further clarified with a separate regulation, which was promulgated in 1915.[79] Consisting of 12 articles, the 1915 *Regulation Regarding the Travel and Residence of Foreigners in the Ottoman Empire* stipulated that foreign subjects should appeal to the nearest police department within 15 days upon their arrival in the empire. In their appeal, foreigners should provide a written statement including detailed information regarding their names, place and date of their departure, reputation, occupation and their purpose of visit as well as the names of their wives and children (Article 2). Upon the receipt of this statement, police officers were authorized to issue an internal travel permit or a residency certificate. Those who made a false declaration would be punished with imprisonment from 15 days to two years or be charged with a fine ranging from 5 to 100 gold coins (Article 4). Foreigners who were expelled from Ottoman territories and then returned to the empire would be punished with imprisonment from one month to 6 months or would be charged with a fine ranging from 10 to 50 Ottoman gold coins (Article 7). Hence, the 1915 Regulation provided detailed information regarding the entry of foreigners into the Ottoman territories and clarified the punishments for subjects who breached the law by giving false information or acting contrary to the laws.

In the light of the articles provided in the 1915 Regulation, it is evident that the central government imposed rather strict measures for controlling the mobility of foreigners within the empire. The earlier regulations on passports were rather concerned with the departure and return

[79] *Dustur,* "Ecnebilerin Memalik-i Osmaniye'ye Seyehat ve Ikametleri Hakkinda Kanun-i Muvakkat" (Regulation Regarding the Travel and Residence of Foreigners in the Ottoman Empire (28 R 1333 / 15.03.1915), T:2 C:7, 487. The Regulation was announced in *Takvim-i Vekayi* on 3 Mart 1333.

of Ottoman subjects from/to Ottoman territories with the underlying motivation of embracing the subjects of the empire, enforcing military service and taxation. The provisions of the 1915 Regulation, on the other hand, should be understood within the general tendency towards tighter controls of mobility and the development of a universal passport regime with the First World War.

Despite Ottoman attempts towards defining the use of travel documents and clarifying the relevant bureaucratic procedures through a series of laws and regulations, passport system remained incoherent during the period in question and led to mounting diplomatic conflict between different states who claimed rights over their own subjects travelling across their borders. Even though there was no universal consensus on the issue, passport regulations gained an unforeseen significance by the turn of the twentieth century as various states tried to distinguish between their subjects and monopolize legitimate means of movement across their borders. The development of a universal passport regime was rooted in territorial understandings of sovereignty and modern citizenship, and constituted an arena of ongoing tension between different states and imperial subjects. In an attempt to understand how Ottoman travel regulations evolved as an instrument for exerting state sovereignty, the following section focuses on a case study exploring passport controls between the Ottoman Empire and the Bulgarian Principality between 1878 and 1908.

## Negotiating Sovereignty through Passport Controls: A Case Study

This section focuses on the Bulgarian Principality from its inception as an autonomous and tributary state in 1878 to its declaration of independence in 1908. Even though the Bulgarian Principality was recognized to be under the suzerainty of the Ottoman sultan, "with a Christian government and a national militia"[80] according to the Treaty of Berlin of 1878, it acted almost as

[80] For a detailed discussion of the Berlin Treaty of 1878 see below.

an independent state over which the imperial center did not have much of an influence.[81] And yet, the international legal capacity of the newly established Bulgarian principality during the period in question presents an illuminating case study to achieve a better understanding of the status of autonomous niches that were both within and outside the sovereignty of the Ottoman Empire. Against the background of the late nineteenth century shift towards a strengthened emphasis on territorial sovereignty and the ambiguous legal personality of quasi-sovereign entities within the international legal system, I will explore the ways in which both the Ottoman Empire and the Bulgarian Principality tried to exert political sovereignty by monitoring the movement of immigrants across their territories through passport controls between Ottoman and Bulgarian authorities. I will specifically examine the relations between the Bulgarian agents of the gate – *Bulgaristan Kapukethudaligi* – in Istanbul, and the Ottoman Commissariat - *Bulgaristan Komiserligi* – in Sofia in their respective efforts to exert control over the movement of populations across their territories through a newly instituted passport regime. While the Bulgarian agents of the gate in Istanbul and their commercial agents – *tuccar vekilleri* – in the provinces claimed an exclusive right to determine and verify individual identities, and dismissed the validity of Ottoman travel permits and passports, the Ottoman government continuously put emphasis on the semi-autonomous status of the Bulgarian Principality and tried to enforce its own passport regulations through the Ottoman commissariat in Sofia.

The Treaty of Berlin of 1878 divided Bulgaria into three parts and initiated a *de facto* independent Bulgarian principality stretching from the Danube River to the Balkan Mountains in the north, a semi-autonomous province of Eastern Rumelia to the south, and Macedonia, which

[81] Charles and Barbara Jelavic, *The Balkans*, (Englewood Cliffs, NJ, 1965), 30.

was restored to the Ottoman Empire.[82] The first article of the treaty recognized Bulgaria as "an autonomous and tributary Principality under the suzerainty of His Imperial Majesty the Sultan with a Christian government and a national army."[83] The treaty neither satisfied Russia despite its tacit recognition as the protector of Bulgaria by the signatory powers, nor the newly established Bulgarian state as it was left with much reduced territory than was originally stipulated in the Treaty of San Stefano.[84] Trying to restore the balance of power in the Balkans, the Berlin Treaty also forestalled the appointment of a Russian Commissioner who, according to the Treaty of San Stefano, would be charged with the task of settling disputes and hence would further confirm Russian political influence over the region. Instead, the Berlin Treaty stipulated that the provisional administration of Bulgaria would be under the direction of an Imperial Russian Commissioner until the completion of the Organic Law and thereafter an Imperial Ottoman Commissioner and as well as consuls delegated ad hoc by the other signatory powers.[85] In case of any disagreement between majority and the Imperial Russian Commissioner or the Imperial Turkish Commissioner,

[82] Until its annexation to Bulgaria in 1886, Eastern Rumelia had a semi-autonomous position with a Christian governor appointed by the imperial center. According to the Berlin Treaty, Russia acquired the provinces of Kars, Ardahan, Batum, Austria-Hungary occupied Bosnia and Herzegovina and established military control over Yenipazar, and Montenegro, Serbia and Rumania gained formal independence from the Ottoman Empire.

[83] "Berlin Anlaşması" Article 1, *Mu'âhedât Mecmu'ası*, C. V, Ceride-i Askerîye Matbaası, Dersaadet 1298, p. 113: "Bulgaristan zat-ı hazret-i padişahinin tabiiyeti tahtında ve vergi verir bir emaret idilmiştir bir Hıristiyan hükümeti ve bir milli askeri olacaktır."

[84] The main goal of the Treaty of San Stefano was to establish a large autonomous Bulgarian state, called Greater Bulgaria, stretching from Danube to the Aegean and from the Black Sea to the Lake of Ohri, covering almost the entire Macedonia. Encompassing a territory of 160.000 square kilometers, it would have completely cut off the imperial center from its outlying provinces.

[85] Treaty of Berlin Article VI, "The Treaty between Great Britain, Germany, Austria, France, Italy, Russia and Turkey for the Settlement of Affairs in the East: Signed at Berlin, July 13, 1878," *American Journal of International Law*, Vol. 2, No.4, (1908), 401-424.

the representatives of the signatory powers in Istanbul were authorized to make a final decision.[86] The treaty also recognized all "the treaties of commerce and navigation, as well as the conventions and arrangements concluded between foreign powers and the Sublime Porte to be maintained in the Principality of Bulgaria" and stated that no change could be made in these agreements without the consent of the Principality.[87] Hence, even though the Principality was recognized to be under the suzerainty of the Ottoman Empire, it was granted equal treaty rights in diplomatic affairs.

The treaty also provided the evacuation of Eastern Rumelia by Russian troops within nine months from the date of ramifications, and agreed on the appointment of commissions to deal with the remaining matters of detail in the region.[88] Even though Eastern Rumelia remained under the sovereignty of the Ottoman sultan and was granted administrative autonomy with a Christian governor-general to be nominated by the imperial center, the province was eventually annexed to the autonomous Bulgarian Principality after the coup of 1885-86.[89]

A careful analysis of the relations between the Ottoman Empire and Bulgarian Principality

[86] In his well-known circular of April 1st, 1878 Lord Salisbury puts emphasis on the provisions of the treaty of San Stefano, which would further strengthen Russian control over the region: "The provisions by which the new state is to be subjected to a ruler whom Russia will practically choose, its administration by a Russian Commissary, and the first working of its institutions under the Russian army, sufficiently indicate the political system of which in the future it is to form apart." In Thomas Wodehouse Leigh Newton, *Lord Lyons: A Record of British Diplomacy*, (London, E. Arnold, 1913), 95.

[87] "Berlin Anlaşması" Article 8 in *Mu'âhedât Mecmu'ası*: "Düvel-i Ecnebiye ile Bâbıâli beyninde akd olunub elyevm meriyülicra olan ticaret ve seyr-i sefayin muahedeleri ile bil cümle mukavele ve nizamnameler Bulgaristan Emareti'nde ibka olunmuştur."

[88] W. D. Medlicott, "Diplomatic Relations after the Congress of Berlin," *Slavonic and Eastern European Review*, 8, no.22 (1929): 66. This article effectively reduced the presence of the Russian commission from two years, as mentioned in San Stefano to nine months. Russia withdraw from Bulgaria in July 1879. P.J. Cramoton, *A Short History of Modern Bulgaria*, (Cambridge [Cambridgeshire]; New York: Cambridge University Press, 1987: 24.

[89] Istanbul Conference of April 1886 recognized the annexation and confirmed the Prince of Bulgaria to be the governor of Eastern Rumelia.

reveals how both powers used this political void for their own political interests. While the Ottoman government continuously emphasized the subject status of the Bulgarian principality under the suzerainty of the empire, the Bulgarian authorities charged their agents of the gate in Istanbul and commercial agents in the provinces with diplomatic functions equal to those of the Great Powers.

### Consuls of *Variety,* Reciprocity of Sorts: Passport Controls between the Bulgarian Commissariat in Sofia and the Bulgarian Agent of the Gate at the Porte

The status of the Bulgarian Principality as a subject state under the suzerainty of the Ottoman Empire until its declaration of independence in 1908, prevented the Bulgarian government from establishing a diplomatic legation at the imperial center. Instead, the Bulgarian Principality carried out its diplomatic relations through the Bulgarian agents of the gate – *Bulgaristan Kapukethudaligi* – in Istanbul, an institution which was originally established by the Ottoman state to facilitate relations between the imperial center and its distant provinces.[90] Likewise, the Ottoman government established a commissariat in Sofia in order to oversee and protect the rights of its own subjects. The commissariat, immediately founded after the Congress of Berlin of 1878, was a novel institutional solution to manage diplomatic relations with the newly established Bulgarian Principality. Explaining the increasing number of Ottoman embassies and legations during the

[90] In its origins, the *Kapukethudalik* (Agency of the Gate) was established to facilitate the relations between the imperial center and the provinces in administrative, military, financial and foreign matters. Even though the agents of the gate operated within the imperial bureaucracy, they had a unique position in the system. The agents of the gate who administered relations with the privileged provinces such as Serbia, Bosnia and Herzegovina, Cyprus, Tunisia, Egypt and Sisam [???} had considerable autonomy in the empire. The same was also true for the agents of the gate of Bulgaria and the province of Eastern Rumelia as they both enjoyed a considerable degree of autonomy in administering relations between the imperial center and their own governments. Carter Findley, *Bureaucratic Reform in the Ottoman Empire: The Sublime Porte, 1879-1922*, (Princeton, N.J.: Princeton University Press, 1980): 263 and Michael Nizri, "Re-Thinking Center-Periphery Communication in the Ottoman Empire: The Kapi Kethudasi," *Journal of Economic and Social History of the Orient,* 59, no.3, (2016): 473-498.

nineteenth century, Carter Findley states "there was also a variety of something like commissioners" acting as representatives of the Porte in places which it did not recognize their independence. [91]The Ottoman Commissioner was directly subject to the Foreign Ministry and functioned as the representative of the Sublime Porte in Bulgaria. Great powers, on the other hand, accredited consuls to Bulgaria who would be subject to their ambassadors in Istanbul.[92]

Carefully managing their relations with the Bulgarian Principality, the Ottoman authorities also tried to avoid having Ottoman Commercial Agents – *tuccar vekilleri* – in Vidin, Ruscuk and Varna get in direct contact with the Commissariat, which might, according to the Ottoman legal advisors at the Porte, lead the Commissariat to appear as the head of the state and the commercial agents as consuls of the empire. Instead, all communication between the commissariat and the commercial agents in the provinces was required to be made through the imperial center.[93] The organizational structure of the Commissariat, and its relations to the imperial center and individual commercial agents in the provinces reveal the extent to which the Ottoman government was trying

[91] Carter Findley underlines the growth of the number of embassies and legations during the late nineteenth century. The establishment of independent states in the Balkans certainly contributed to this process and at various times during this period, "there was also a variety of something like *commissioners*" as representatives of the Porte in places which it did not acknowledge independence. The only one of these serving under the Foreign Ministry in 1908 was in Bulgaria. Another Commissariat was later founded in Egypt under British occupation, where Gazi Ahmed Muhtar Pasa served as the Ottoman Commissioner between 1885-1908. Nevertheless, there was confusion whether the Commissariat should be under the authority of the Foreign Ministry or under the Section for Provinces in Privileged Status (*Vilayat-i Mumtaze Kalemi*). Carter Findley, *Bureaucratic Reform in the Ottoman Empire,* 263.

[92] Britain, France, Russia, Germany, Austria, Italy, Greece, Romania and Serbia all had sent consuls to Bulgaria under the direction of to their ambassadors in Istanbul. Between 1878 and 1908 nine commissioners were appointed to Bulgaria by the imperial center: Pertev Efendi 1878-1879, Nihad Pasa 1879-1885, Nikola Gadban Efendi 1885-1886, Kazim Beyefendi 1887-1896, Niyazi Beyefendi 1896-1897, Nasuhi Beyefendi 1897-1898, Necip Melhame Efendi 1889-1902, Ali Ferruh Beyefendi 1902-1904 and Sadik Pasa 1904-08. The Commissariat was originally constituted of six officials, one commissioner, four clerks and one dragoman. Mahir Aydin, "Bulgaristan Komiserligi," *Belgeler: Turk Tarih Belgeleri Dergisi*, (Turk Tarih Kurumu Basimevi),17:21, 71-127.

[93] BOA, A. MTZ. 04 31/54.

to preserve a delicate balance of power with the Bulgarian Principality and enunciate its subject status under nominal Ottoman sovereignty.

On the other hand, the status of Ottoman and Bulgarian commercial agents was a matter of dispute between the two governments.[94] Acting as ordinary consular officials, the commercial agents not only played a prominent role in facilitating commercial relations of Ottoman merchants in Bulgaria but were also authorized to issue internal travel permits – *murur tezkeresi* – and passports for Ottoman subjects, approve travel documents issued by the Bulgarian authorities, regulate tax issues for merchants and escort Ottoman vessels when necessary.[95] Even though the obligations of commercial agents acting in Bulgaria were specified in a manual of instruction by the Ottoman government in 1883, the Bulgarian government only tacitly recognized them and their affairs caused continuous conflict between the two states. Similarly, the Porte was reluctant to grant formal recognition to Bulgarian commercial agents in the Ottoman Empire on the grounds that such recognition would be at odds with the subject status of the Bulgarian Principality.[96] Nevertheless, both the Ottoman and the Bulgarian commercial agents played a significant role as intermediaries between their own subjects and the two states.

In his detailed study on the development of contemporary passport regime and documentary controls, Torpey argues that the passport system had emerged out of a relatively inchoate

[94] Commercial agents correspond to ordinary consular officials and was only found in Bulgaria in 1908, Findley, p. 265.

[95] Reform Proposal pertaining to the duties of commercial agents, 12 July 1883, Foreign Ministry. Also see Emine Bayraktarova, "Osmanli Devleti ile Bulgaristan Emareti arasinda Tuccar Vekilleri Meselesi," *Osmanlı ve Cumhuriyet Dönemi Türk- Bulgar İlişkileri Bildiriler*, (Odunpazarı Belediyesi Yayinlari, 2005): 201-207.

[96] For the same reasons, the commercial agencies were not allowed to hoist a flag and use their coat of arms. In July 1889, the Bulgarian commercial agent in Siros was made to take down its coat of arms by the imperial government.

international system during the long nineteenth century. State monopolization of legitimate means of movement was "an aspect of state-ness of states," *vis-à-vis* other potential claimants.[97] The nineteenth century shift towards a territorial understanding of sovereignty generated a growing impetus for creating efficient systems for regulating movement across borders. This newly emerging system, despite being far from effective, led to disputes between states over "clarifying who their citizens were and how they would be protected" in a way that was acceptable to other nations.[98] No longer considered simply as a means to regulate domestic movement or documents requesting safe passage, the modern passport evolved into an internationally recognized documentation of state responsibility for individuals abroad.[99] Nevertheless, the passport system remained incoherent throughout the nineteenth century and there was hardly any consensus on who had the authority to issue passports to whom and to what extent these documents could be treated as proof of individual identification. The visa regulations regulating entry, on the other hand, were designed to provide border officials information about the bearer's former travels and only gradually were transformed into an efficient tool for controlling movement and letting certain groups of people in while leaving some others out of one's territories.

The following analysis on border and passport regulations between the Ottoman Empire and the Bulgarian Principality aims to broaden Torpey's geographical frame of analysis and illustrate how controlling the legitimate means of movement became a central concern for both powers in their respective attempts to assert sovereignty over their own subjects. Despite having a limited capacity of political power, both the Ottoman and the Bulgarian authorities tried to gain monopoly

[97] John Torpey, *The Invention of the Passport*, 7.

[98] Adam McKeown, *Melancholy Order,* 102.

[99] Ibid.

over the regulation of movement at a time when their subjects were moving across their borders and their borders were shifting across their subjects.

The regulation of movement between the Ottoman Empire and the Bulgarian Principality was a matter of contention as both powers tried to exert sovereignty through the monopolization of this process. Asserting the subject status of the Bulgarian Principality, the Ottoman government demanded foreigners traveling to Bulgaria to obtain internal travel permits from Ottoman authorities. In 1883, the Ottoman government sent the *Bulgaristan Kapukethudaligi* in Istanbul a brief note concerning the rules of passage across its borders with the Principality.[100] Consisting of 7 articles, the note asserted that the residents of the Bulgarian Principality were required to get visas for their passports and obtain internal travel permits from Ottoman border officials to be able to travel in the Ottoman Empire. Ottoman subjects who were travelling to the Bulgarian Principality from Ottoman territories, on the other hand, would be exempt from visa requirements and could use their internal travel permits issued by Ottoman officials. Passports and internal travel permits were to be issued and approved by Ottoman officials in Istanbul and the commissariat in Sofia.

This created mounting tension with the Bulgarian government, which rejected such documentation at the border. Instead, the Bulgarian government authorized its own Agent of the Gate at the imperial center and commercial agencies in the provinces to visa travel permits and passports for those intending to go to Bulgaria. In 1898, the Bulgarian Agency informed the foreign consulates in Istanbul that all foreign passengers traveling through Edirne to Bulgaria should get visas for their passports from the Bulgarian commercial agents.

The controversy over who had the authority to issue and approve travel permits and passports

[100] BOA A.MTZ. (04), 43:53.

reached at a climax especially after the annexation of Eastern Rumelia to the Bulgarian Principality in 1886. In the correspondence sent to the Bulgarian Commissariat by the Bulgarian Foreign Ministry, it was argued that there was no such requirement in the past that required foreign subjects to possess internal travel permits granted by the imperial center. Such a regulation, argued the Bulgarian Foreign Ministry, had no basis in international law and would further complicate the regulation of movement across the border.[101]

As a response, the Ottoman government asserted that the law had been in place for over years but it was only recently that the Bulgarian Principality started to bestow on Bulgarian commercial agents such illicit capacities for granting and approving travel documents. In so doing, the Ottoman officials argued, the Bulgarian government was trying to make its commercial agents be recognized as having equal status to that of the foreign consuls, and hence present itself as a sovereign entity independent from the Ottoman Empire.[102] Even though there was some consensus regarding the passport regulations concerning Ottoman and Bulgarian nationals, the status of foreigners who were intending to go to Bulgaria from Ottoman territories remained uncertain and led to growing conflict between the two governments. The Bulgarian government no longer accepted the *murur tezkeres* presented by foreigners who were travelling to Bulgaria from the Ottoman territories. Instead, foreigners were asked to get visas directly from the Bulgarian commercial agents on their passports issued by their own governments. In the eyes of the Bulgarian

[101] BOA A.MTZ. (04) 45:63

[102] BOA A.MTZ (04) 6:4 No. 139, "Simdi ise Bulgaristan Emareti Memalik-i Mahruse'nin cesitli yerlerinde faaliyet gosteren Bulgar tuccar vekillerinin hukmunu tanitmak ve Bulgar tuccar vekillerini duvel-i mustakile sehbenderleri hukukuna sahipmis gibi gostererek Bulgaristan'i Memalik-i Sahane'den ayri bir ulkeymis gibi gostererek, Bulgaristan'a seyehat edecek olan ecnebilere Osmanli tarafindan verilen pasavanlari kabul etmiyor ve ecnebilerim kendi hukumet-i metbua'alari tarafindan verilen ve Bulgar tuccar vekilleri tarafindan vize edilmis pasaport gostermelerini istiyor".

government, the Bulgarian Principality could no longer be considered as part of the Ottoman Empire and therefore internal travel permits issued by the Ottoman government could not be used by foreign subjects who were travelling to Bulgaria from Ottoman territories. In 1898, a note sent by the Bulgarian commercial agent in Edirne to the Foreign Embassies in Istanbul stated that foreigners were required to get visas from Bulgarian commercial agents at the border and those who failed to do so would pay a fine of 5 franks.[103]

On the other hand, forcing foreigners to acquire travel passes and visas directly from the Bulgarian Agent at the Gate would practically meant the exclusion of the Ottoman government from movement controls across the border. Since foreigners would enter into the Ottoman territory with their own passports, and yet leave with visas acquired from the Bulgarian agents, and it would not be possible for the Ottoman officials to keep records of their departures. This proved to be a significant concern for the Imperial Ministry of Population, as the imperial center was mainly concerned with acquiring up to date information on population.[104]

At a time when a universal passport system was yet to come, the visa requirement enforced by the Bulgarian Agent of the Gate was not simply a symbolic gesture towards declaring sovereignty but stemmed from a desire to effectively control and verify individual identities. The case of two Greek nationals intending to go to Sofia through Ottoman territories reveals the extent to which the Bulgarian government was trying to exert control over the verification of travel documentation. In 1898, two supposed Greek subjects in Istanbul acquired *ilmuhabers* from the Greek consul stating their intention to travel to Sofia and were accordingly granted internal travel

[103] Ibid.

[104] BOA, A.MTZ (04) 6:4

permits by the Ottoman authorities.[105] However, their documents were denied by the Bulgarian Agent at the Gate who instead marked their Greek passports with a visa. The Ottoman government fiercely protested the action of the Bulgarian Agent, claiming that both Ottoman and non-Ottoman subjects were required to procure internal travel permits in order to go to Bulgaria from the Ottoman Empire in accordance with the provisions of the *Men-i Murur Nizamnamesi.* The argument of the Ottoman government was further elaborated by a legal treatise prepared by the Office of Legal Counsel stating that the Bulgarian Principality was still under Ottoman suzerainty and hence should be recognized in a way similar to other provinces in privileged status (*eyalet-i mumtaze*) under the rule of the central government. The Bulgarian Ministry of Foreign Affairs opposed this view in a note addressed to the Ottoman Commissariat and argued that it was not possible to consider Bulgarian Principality equal to other Ottoman provinces of privileged status, and the insistence of Ottoman authorities on the use of internal travel permits by foreigners travelling to the Bulgarian Principality from Ottoman territories was not in no compliance with international law.[106]

For the Bulgarian government, the denial of internal travel permits presented by the two allegedly Greek subjects in fact alluded to a broader problem regarding the privileged status of foreigners in Bulgaria as recognized by the Berlin Treaty. The Bulgarian Agent complained that growing numbers of Ottoman subjects of Greek origin were currently appealing to the Bulgarian government with forged travel documents in order to present themselves as Greek nationals. These subjects, the agent continued, used Greek passports provided by the Greek government and internal travel permits issued by the Ottoman authorities, and tried to make it seem like their foreign status

[105] BOA, A. MTZ (04) 7:6.
[106] BOA, A. MTZ 46/34 Bulgaristan Komiserligine 22 Agustos 1899 tarihiyle Bulgaristan Hariciye Nezaretinden irsal olunan takririn tercumesidir.

was also approved by the Ottoman government (*bazi gusan mugayir-i kanun olarak her nasil pasaport istihsaliyle Yunan tabiiyeti iddasinda bulunup, tabiiyetleri kabul olunmadikda hamil olduklari murur tezkerelerini ibraz ile bunlarin Yunanilikleri guya hukumet-i seniyyece taht-i tasdikde bulundugu iddia etmekte oldugundan...).*[107] According to this, foreign subjects were able to benefit from consular protections provided by their consuls accredited to the Bulgarian Principality and acting under their embassies in Istanbul.

The Bulgarian government, very much like its Ottoman counterpart, was hence mainly concerned about the extraterritorial privileges enjoyed by foreign subjects in its own territories. The case of the two allegedly Greek subjects travelling from Salonica to Sofia was emblematic of this general concern on the part of the Bulgarian authorities. These two Ottoman subjects of Greek origin were presumably using their Greek passports to take advantage of Greek consular protections in the Ottoman Empire, while at the same time they were using their internal travel permits granted by the Ottoman authorities to be exempt from Bulgarian jurisdiction in the Bulgarian Principality. The Greek passport and the Ottoman *murur tezkeresi* hence became useful instruments for these subjects to be exempt from Ottoman and Bulgarian jurisdictions when necessary. In this overlapping scheme of jurisdictions, i.e. those of the Bulgarian Principality, the Ottoman Empire and the Great Powers, movement controls and passport regulations gained critical importance in the Ottoman and Bulgarian governments' respective attempts to distinguish between their subject populations and monopolize their authority over legitimate means of movement across their borders.

This particular case concerning the claims of two allegedly Greek nationals was then used by the Bulgarian authorities to justify their refusal of internal travel permits given to foreigners,

[107] BOA, A. MTZ 47:40

and required them, instead, to get visas for their passports from Bulgarian officials. As the rules and procedures regulating movement between the territories of the two states was far from being uniform, the case clearly illustrates how certain groups were able to use such voids for their own interests. While requiring internal travel permits from Ottoman subjects and foreigners alike, the Ottoman government was mainly aiming at acquiring accurate population record but fairly capable of preventing individual persons claiming nationality through false identification. The careful treatment of the issue by the Bulgarian authorities, on the other hand, was certainly associated with the greater concern for avoiding further Greek immigration to Bulgaria. Competing interests of Bulgaria and Greece over Macedonia, and the policies of assimilation directed towards the Bulgarian Greeks led the Bulgarian authorities at the Porte to receive such inquiries with extreme caution.[108]

Even though the Bulgarian officials at the imperial center were originally concerned with inquiries made by the Greeks only, and hence dismissed the validity of internal travel passes granted to them by the Ottoman authorities, it eventually turned into a general policy to include all foreigners intending to go to Bulgaria from Ottoman territories and remained as a source of dispute between the two governments. Similarly, such travel permits given to Ottoman subjects by the Ottoman commercial agents in Bulgaria were also considered to be void by the Bulgarian government. In their attempts to delimit the authority of Ottoman commercial agents and establish absolute control over the circulation of populations across the border, the Bulgarian authorities made Ottoman subjects obtain Bulgarian passports instead of Ottoman travel permits.

[108] Theodara Dragostinova, "Speaking National: Nationalizing the Greeks of Bulgaria, 1900-1939", *Slavic Review*, 67, no.1 (2008): 155. While Internal Macedonian Revolutionary Organization (IMRO) promoted the idea of Macedonian autonomy, The Supreme Committee advocated direct annexation to Bulgaria. Ethniki Etaria, on the other hand, shifted its attention to Macedonia to counterbalance Bulgarian claims.

The insistence of Bulgarian authorities on not recognizing the validity of internal passes granted by the Ottoman authorities and their insistence that travellers get visas from the Bulgarian Agent of the Gate in Istanbul or Bulgarian commercial agents in the provinces stemmed from the desire of the Bulgarian government to be recognized as a sovereign political entity by the imperial center and an outcome of its efforts to exert its sovereignty over its subject populations. The Ottoman authorities, on the other hand, continuously enunciated the semi-sovereign status of the newly established Bulgarian Principality under the suzerainty of the Ottoman Empire and insisted on issuing internal travel permits for both Ottoman nationals and foreigners intending to go to Bulgaria from Ottoman territories.

We can only understand the emergence of modern notions of citizenship and the documentary apparatus that came with it by looking deeper into such areas of conflict where subjects effectively challenged or tried to maintain their identities by navigating through overlapping structures of sovereignty concurrently exercised by different empire states. The on-going conflict between Ottoman and Bulgarian governments to know and distinguish among their subject populations and their respective attempts to claim monopoly of movement across their borders through their consuls (of some *variety*) and an ill-defined understanding of reciprocity is an illuminating example showing how identities were negotiated by different groups of imperial subjects both at home and abroad as well as in the semi-autonomous sub-polities that lay in-between at a time of increasing mobility. If we need to understand how the nineteenth century *révolution identificatoire* took place in the Ottoman Empire we need to broaden our scope of analysis and pay attention to such autonomous zones of on-going political conflict. Only then does it become possible to understand the documentation of individual identities in the Ottoman Empire as an instrument for exerting state sovereignty, very much like its European counterparts, during

the late nineteenth and early twentieth centuries.

## Chapter IV

## Disputed Nationality and Jurisdictional Politics Between Ottoman and British Courts

The Ottoman Nationality Law (*Tabiiyet-i Osmaniye Kanunnamesi*) was declared on 19 January 1869 and drafted under the influence of European laws on nationality, particularly the French citizenship law of 1851.[1] The Nationality Law of 1869 was the first attempt to institute a secular notion of Ottoman nationality, which no longer defined the relationship between the ruler and the ruled on the basis of religious affiliation. Conversion to Islam was no longer the sole criterion for acquiring Ottoman nationality, as the law eradicated the long-established distinction between Muslim and non-Muslim populations in the empire.[2] Rather, the 1869 Law ushered in a new legal definition of foreign (*ecnebi*) and Ottoman subjects by specifying the conditions for the acquisition and loss of Ottoman nationality. Consisting of 9 articles only, the 1869 Law, as Deringil argues, was very "inclusive on the matter of who might be of benefit to the state, but equally exclusive when it came to the question of whom the state would be obliged to protect and provide for."[3] In other words, the 1869 Law was mainly concerned with drawing up a legal frame of reference to determine who was and was not an Ottoman subject, rather than defining the rights and duties of citizens.[4]

Studies on the 1869 Law often emphasize its inclusive quality. The primary intention behind the declaration of the 1869 Law was to tighten the grip of the Ottoman government over

[1] Rona Aybay, *Vatandaslik Hukuku*, (Istanbul: Istanbul Bilgi Üniversitesi, 2004), 64-65.

[2] Selim Deringil, *Conversion and Apostasy in the Late Ottoman Empire*, (New York, NY: Cambridge University Press, 2012), 182.

[3] Ibid.

[4] Will Hanley, "What Ottoman Nationality Was and Was Not," *Journal of Ottoman and Turkish Studies Association*, 3, no: 2 (2016)

the increasing numbers of Ottoman subjects who claimed foreign status and consular protection during the mid-nineteenth and early twentieth centuries. Indeed, the 1869 Law should be seen as part of a series of legal enactments starting in 1860, which required all protégés to leave the empire within three months. The Law of 1860 declared that those protégés who continued to reside in the empire would lose their privileges and be subject to Ottoman law. In 1863, a law concerning the foreign consulates imposed limitations on the number of Ottoman subjects who could be employed in the service of foreign consulates, and strictly prohibited these employees from enjoying consular protection with the status of foreign protégés.[5] The Passport Law (*Pasaport Odasi Nizamnamesi*) of 1867, furthermore, tightened border controls and required all foreigners to be in possession of passports while travelling to the Ottoman Empire.

Clearly, these consecutively enacted laws and regulations were mainly concerned with restraining the breadth of extraterritorial jurisdiction in the empire by introducing clear definitions of Ottoman nationality and its requirements. The promulgation of the 1869 Law was hence a legal strategy on part of the Ottoman government to curtail the influence of European states extending consular protections to growing numbers foreign protégés and foreign subjects during the period in question. Such jurisdictional politics was an arena through which Ottoman sovereignty was continuously confronted and negotiated by inter-imperial rivalries and ordinary individuals who used novel strategies to benefit from the existing legal order.[6] In this respect, the promulgation of the 1869 Law should also be seen as an attempt to

[5] "Memalik-i Mahrusa-i Sahanede Bulunan Devlet-i Ecnebiyye Konsolosluklari Hakkinda Tanzim Kilinin Nizamname", *Dustur*, R: 115 T:1 C:1 p. 772. "Regulations in Regard to the Foreign Consulates" According to the regulation, foreign embassies would be allowed to have four dragomans and servants whereas the consulates would have three dragomans and servants in their service. Ottoman subjects under consular service would continue to be considered as Ottomans and would not be allowed to transfer their privileges to other family members or relatives.

[6] Lauren Benton, Law and Colonial Cultures: Legal Regimes in World History, 1400-1900 (Cambridge Cambridge ; New York: Cambridge University Press, 2002), 10 and Mary Lewis, "Geopgraphies of Power, The Tunisian Civic Order, Jurisdictional Politics, and Imperial Rivalry in the Mediterranean, 1881-1935" *Journal of Modern History* 80, no: 4, (2008), 795-796.

define Ottoman nationality, conditions of naturalization and expatriation in accordance with international law. Nonetheless, the 1869 Law and the institutional and bureaucratic apparatus that emerged with it led to serious diplomatic conflicts with foreign governments trying to preserve their jurisdictional autonomy within the empire.

The 1869 Law consisted of nine articles, which briefly laid down the principles regulating Ottoman nationality, naturalization and expatriation. Article 1 recognized all persons who were born in the empire to an Ottoman father as Ottoman nationals. The first article was mainly based on the principle of *jus sanguinis*, the right of blood, and therefore considered citizenship to pass directly from parents to their children. Article 2, on the other hand, was based on the principle of *jus soli*, right of birth, and declared that the children of foreigners in the Ottoman Empire did not automatically assume the nationality of their parents and had the right to apply for Ottoman nationality within three years after they reached the age of majority. The Ottoman Nationality Law thus combined the principles of *jus sanguinis* and *jus soli* and used them interchangeably when necessary. The selective use of the two principles for Ottoman nationals on the one hand, and foreigners on the other, reveals the extent to which the drafters of the law were mainly concerned with preventing growing numbers of Ottoman subjects from naturalizing as foreigners. The use of the principle of *jus soli* concerning the children of foreign subjects who were born in the Ottoman Empire is an indication of the inclusiveness of the law, as its drafters were primarily aiming at easing the acquisition of Ottoman nationality for foreigners.

In the preamble of the Nationality Law, it was stated that "non-Muslim Ottoman subjects, for quite some time, had been arbitrarily acquiring passports and assuming foreign nationality" which required the establishment of laws that were binding for Ottoman nationals

and for those who intend to naturalize as foreign subjects.[7] Hence, the law aimed at clarifying the conditions for naturalization and expatriation. Article 3 required foreign subjects who intended to acquire Ottoman nationality to reside in the empire for five consecutive years. Article 4, on the other hand, declared the right of the imperial government to grant Ottoman nationality in exceptional cases to foreigners who did not fulfill the requirements for the acquisition of Ottoman nationality.[8] Article 5 considered the case of Ottoman nationals who changed nationality without the authorization of the Ottoman government and stipulated that such subjects' foreign nationality would be null and void, and hence they would continue to be treated as Ottoman nationals. Only those who acquired a governmental decree would be authorized to naturalize as foreign subjects. Article 6 declared that Ottoman subjects who have changed their nationality while residing at a foreign state or those who performed military service without the permission of the Ottoman government could lose their Ottoman nationality and be prohibited from returning to the empire. Article 7 considered marriages between Ottoman and foreign subjects and declared that an Ottoman woman who married a foreign national automatically acquired the nationality of her husband, and yet could re-claim her Ottoman nationality within three years following the death of her husband. Article 8 required that infant children of an Ottoman subject who acquired foreign nationality were recognized as Ottoman nationals, and infant children of foreigners who acquired Ottoman nationality were recognized as foreigners until they reached the age of majority. The 9th and the last article asserted that whoever resided in the empire was considered an Ottoman national unless they could prove otherwise in accordance with the established laws and regulations.

[7] BOA, Dosya Usulu Iradeler Tasnifi (I. DUIT), 90/66, Tabiiyet-i Osmaniye Kanunu Hakkinda Mutalaa, 9 July 1284 / 21 June 1868 in Ibrahim Serbestoglu, "Zorunlu bir Modernlesme Ornegi Olarak Osmanli Tabiiyet Kanunu," *Osmanli Tarihi Arastirma ve Uygulama Merkezi Dergisi*, no: 29, (2011), 205.

[8] Article 4 was taken from the Article 9 of the Code Civil. This article was particularly important for naturalization of converts to Islam and Muslim immigrants from Russia.

Even though the 1869 Law aimed at establishing a coherent legal framework on the acquisition and loss of Ottoman nationality, the concise body of the law did leave enough room for a considerable degree of interpretation and uncertainty in execution. Writing a commentary on the 1869 Law in 1903, Pierre Arminjon, a legal scholar, stated that the law addressed the distinction between Ottoman and foreign subjects and the conditions for the acquisition and loss of nationality in an "imperfect and incomplete manner," while "leaving various points of capital importance under shade."[9] The article on naturalization, for example, led to confusion with other governments concerning the age of majority of a foreigner intending to acquire Ottoman nationality. Article 7 explained the status of an Ottoman woman marrying a foreigner but did not openly state the status of a foreign woman marrying an Ottoman subject, and did not specify matters related to the transfer of property and inheritance either. Article 9 became a major point of diplomatic contention with foreign consulates, due to conflicting legal approaches to expatriation. Indeed, the legal commentaries written by Ottoman and foreign legal experts as well as pending cases of disputed nationality between Ottoman and consular courts well demonstrate the major areas of contention in the execution of the 1869 Law.[10]

Recent studies on the 1869 Law provide a thorough understanding of the provisions of the law and its legal interpretation. Yet another step towards the centralization of the state and enhancing of Ottoman territorial sovereignty over imperial subjects, the 1869 Law, despite its shortcomings, was certainly a significant measure for the definition of Ottoman nationality. As such, this chapter is not concerned with the law itself but focuses instead on how ordinary individuals pursued their own interests by claiming the nationality of one state against the other. It provides an alternative framework to understand the scope and the execution of the

[9] Pierre Arminjon, *Etrangers et Proteges dans l'Empire Ottoman*, (Paris, A. Chevalier – Marseq &cie: 1903), 6-7.

[10] Mehmed Fuat, *Tabiiyyet*, trans. Cihan Osmanagaoglu, (Istanbul, 2006) R. Salem "De la nationalite en Turquie" in *Journal de Droit International Prive et de la Jurisprudence Comparee* 32 (1905), 585-91, 872-83; 33 (1906), 1032-41, Babanzade Ismail Hakki, *Hukuk-i Esasiye*, 1913

1869 Law by focusing on cases of disputed nationality and jurisdictional politics as an arena of continuous conflict between Ottoman and British courts during the last quarter of the nineteenth and early twentieth centuries. It deals with the nationality claims of Ottoman and foreign subjects jockeying between different legal forums to settle property disputes, claim inheritance, demand tax exemptions or escape from criminal charges imposed by the Ottoman or consular authorities. The cases below include nationality disputes presented by British and Ottoman subjects who displayed a profound understanding of the law and used quite a sophisticated legal vocabulary to pursue their own interests by appealing, even at times simultaneously, to Ottoman and British consular courts. It explores what it meant to be an Ottoman and a foreigner in the Ottoman Empire during the period in question and argues that subjecthood, nationality and citizenship often appear as instrumental categories incidentally utilized by ordinary individuals when deemed necessary. The cases below show how ordinary subjects could claim to be an Ottoman national one day and a foreigner the next, or vice versa, as they brought local governors, consuls, ambassadors and the newly emerging bureaucratic cadres of the empire up against one another in their respective attempts to resolve conflicts within the scope of established laws. The cases below show that imperial sovereignty was established in the gaps, ambivalences and inconsistencies ingrained in the 1869 Law and constantly negotiated through the miscellaneous and often premature ways through which the imperial government tried to settle disputes among its subjects whose claims were coated in this newly emerging legal vocabulary of subjecthood, nationality and citizenship. This chapter is not concerned with understanding to what extend the 1869 Law managed to establish a uniform legal order concerning subjecthood and nationality, but rather to see how "the imperfect and incomplete" provisions of the law, in the words of Arminjon, were used by ordinary individuals who brought imperial officials and consular authorities up against one

another in their respective attempts to benefit from extraterritorial privileges endangered by state efforts towards legal centralization.

**Property, Inheritance and Subjecthood: The Cases of Margaret Simmons, Zeynep Hanim and Madame Besiktashian**

The Ottoman government first recognized foreigners' right to private property with the Law of 1867, which required all foreigners, (with the exception of those in the Hicaz Province) to be subject to Ottoman jurisdiction in matters concerning private property. [11] The 1867 Law strictly prohibited consular courts from adjudicating property disputes, and made them forward matters related property, even between foreigners, to the Ottoman courts. In this respect, land and property disputes between Ottoman and foreign subjects constitute an interesting niche where both parties were subject to Ottoman laws and required to seek justice within the Ottoman bureaucratic and legal system.[12] Nevertheless, the 1867 Law did not prevent foreign subjects from seeking assistance from their consulates in order to bring their cases to the attention of the Ottoman courts and mediate their claims. A dispute between Margaret Simmons, a British subject living in Istanbul, and a group of local villagers in Kucuk Cekmece over a certain portion of land which was claimed to be part of the forest area open to common usage provides significant insights into how land disputes were settled between Ottoman and consular courts despite the limited purview of the latter.[13]

[11] "Traite de la Propriete Immobiliere en Droit Ottoman" by N. Mitri (1906), quoted in Nedjib Chiha, trans. by Halil Cin "Osmanli Devletinde Gayrimenkul Mulkiyeti Bakimindan Yabancilarin Hukuki Durumu," *Ankara Üniversitesi Hukuk Fakultesi Dergisi*, 24 (1967): 247. The author states that consular courts challenged the law of 1867 and continued to claim their right to adjudicate cases involving their own subjects whenever possible.

[12] Tebaa-yi Ecnebiyenin Emlaka Mutasarrif Olmalari Hakkinda Kanun (Law concerning foreigner's acquisition of Propoerty) 7 Sefer 1284 / 10 June 1867.

[13] BOA, HR. H. (Hariciye Nezareti) 499/1, 5 November 1897.

Margaret Simmons, owner of a farm at Kucuk Cekmece, who lived in Istanbul applied to the British Embassy in 1898 to complain about an act of aggression against her farm by the local police and local villagers whom she claimed to have unlawfully seized her property. The Ottoman authorities asserted that the claims brought by Margaret Simmons had no grounds, as she never appealed to the Ottoman court to file an official complaint about the alleged outrages committed against her property by the villagers. Contrary to Simmon's allegations, the local farmers claimed that the she was trying to take possession of the forest area bordering her land gradually, where the locals were in the habit of collecting firewood. In reply, the British embassy asserted that the wood, which the Ottoman authorities claimed to be part of state property, was delivered to Simmons by virtue of title deeds granted by the imperial land administration (*Defter-i Hakani*). And yet, Simmons was never able to regain possession of her land seized by the villagers. Upon Simmons' appeal, a member of the prefectural town counsel, Mustafa Bey, was commissioned by the Ottoman authorities to hold an inquiry about the dispute but his report did not have any effect on the settlement of the matter. In order to put an end to the situation, the British authorities proposed to the Ottoman government to form a commission consisting of a high official of the Sublime Porte, a representative of the imperial land administration, an official, an engineer of the prefecture of the town, a judicial functionary, and an inspector of forests, who should be charged to hold an inquiry on the spot and defining the limits of Mrs. Simmons' property as shown by her title-deeds. The inquiry should also be attended by a dragoman of the Consulate for the purpose of reporting the result of the investigations to the British authorities.

The correspondence between the Sublime Porte and the British Embassy reveals that the dispute between Simmons and the villagers was far from being resolved, but was even further aggravated after a group of *zabtiye* officials entered into Simmons' farmhouse in 1898. The incident took place under the pretext of searching for certain brigands who were alleged

to be hiding in Simmons' property. The report of the British Embassy stated that Sadik, a police sergeant, forcefully entered into Simmons' house with several other policemen and about 25 villagers. Ali Tafil, Simmons' wood ranger, was seized and the police took his revolver. The Embassy claimed that the incident was an unlawful attack against the property of a British domicile by a mere police sergeant without proper orders from a superior officer. The British authorities therefore requested the punishment of the police officials and the restoration of the stolen property. The Embassy also renewed the necessity of appointing a joint commission for the final settlement of the boundaries of Simmons' property.

In fact, the dispute between the Simmons and the villagers went on for more than 20 years, and Simmons seemed to have appealed to both Ottoman and British authorities for the settlement of the boundaries of her property. The exacerbation of the conflict was also due to the fact that Simmons actually lived in Istanbul and tried to retain control over her lands through two of her servants Ali Tafil and Andon Alexi who interacted with the villagers on a day-to-day basis.

In the late nineteenth century *Nizamiye* Courts constituted one of the primary venues for litigants to bring disputes over land. Litigants also appealed to district and provincial administrative councils, which often played a more significant role in settling large-scale disputes over agricultural land than the *Sharia* and *Nizamiye* courts.[14] The role of administrative councils in mediating such disputes was in fact emblematic of ongoing struggles within an expanding bureaucratic apparatus through which different agencies claimed to allocate rights over valuable lands. This led litigants to use such struggles for their own advantage by appealing to different venues in order to obtain favorable judgments in rural

[14] Nora Barakat, "Regulating Land Rights in Late Nineteenth-Century Salt: The Limits of Legal Pluralism in Ottoman Property Law" *Journal of the Ottoman and Turkish Studies Association* 2, no. 1, (2015): 104. Barakat elaborates the role of forum shopping in settling land disputes and the function of district and provincial courts in the rural Syrian district of Salt.

provinces. Such administrative councils also enabled rural notables to take part in deciding disputes over valuable agricultural lands. In this respect, these councils constituted arenas through which the new order of the Tanzimat state was transformed in accordance with the competing interests of different power groups in the rural provinces.[15] Even though the administrative councils played an important role in the resolution of disputes over land at the provincial level, it is also significant to note that administrative councils often directed conflicting parties to the relevant judicial bodies whenever they adopt a decision for the settlement of a certain dispute over land.[16]

The dispute between Simmons and the local villagers over the portion of land which she claimed ownership against the allegations of the locals who insisted that it was in fact part of the forest area open to the common usage was emblematic of the general transition from a plurality of rights on land to individual title and use as defined in the Ottoman Land Code of 1858.[17] The transition from communal to individual rights on land often led to similar border disputes on communal lands, particularly on pastures and forests, during the period in question. Terzibasoglu argues that such border disputes often lay at the core of these disputes at a time when demarcating the exact boundaries of a piece of land proved to be nearly impossible. The borders on an old title only rarely matched with border plans (*hududname*) as land owners continued to cultivate lands and open up new areas for cultivation by extending their boundaries with the expectation of obtaining rights of use (*tasarruf*). This was made possible

[15] Huri Islamoglu, "Politics of Administering Property: Law and Statistics in the Nineteenth Century Ottoman Empire" in *Ottoman History as World History*, (Istanbul: ISIS, 2007), 239-241.

[16] Yucel Terzibasoglu, "Eleni Hatun'nun Zeytin Bahceleri: 19. Yuzyilda Anadolu'da Mulkiyet Haklari Nasil Insa Edildi?" *Tarih ve Toplum Yeni Yaklasimlar* (No. 4) 2006.

[17] Yucel Terzibasoglu, "Land Disputes and Etnno-Plitics: Northwestern Anatolia" in *Land Rights, Ethno-nationality and Sovereignty in History*, ed. John Munro, Stanley Engeman and Jacob Metzer. P. 153-159 For a detailed analysis of the Land Code see Atilla Aytekin, Agrarian Relations, Property and Law: An Analysis of the Land Code of 1858 in the Ottoman Empire" in *Middle Eastern Studies*, Vol. 45, No. 6 (November 2006), pp. 935-951.

by prescriptive rights (*hakk-i karar*), which allowed landowners to claim property rights and obtain titles by way of opening forests and draining swamps for cultivation during the period in question. Often, these disputes were resolved at the local level by the agency of local witnesses and administrative councils rather than judicial bodies.

Simmons' appeal to the provincial council for the settlement of the dispute and the subsequent report of the administrative commission headed by Mustafa Bey, a local notable from Kucuk Cekmece, demonstrates that Simmons was well aware of the available means for claim-making at the local level. Despite being physically away from Kucuk Cekmece, as she resided in the district of Valide Cesmesi in Istanbul, Simmons managed to acquire a favorable decision from the provincial council approving her use of the forest area and hence the rightful expansion of her borders at the expense of the villagers. Nevertheless, the correspondence from the British Consulate revealed that the report had no immediate impact for the settlement of the dispute in favor of Simmons, which made one presume that the villagers might have carried the case to the *Nizamiye* court against the decision of the administrative council.

Furthermore, even though Simmons insisted on the ownership of the lands under dispute by claiming the titles she acquired from the imperial land registration (*Defter-i Hakani*), she was unable to present the titles to the Ottoman State Council (*Sura-yi Devlet*). This can be explained by the fact that the records of the imperial title registration often lacked up-to-date information regarding such changes on the boundaries of lands under dispute. Simmons' inability to present evidence regarding the exact boundaries of her property from the imperial title registration office should thus be seen as part of this general discrepancy in the registration of privately owned lands in rural areas.

The case illustrates that the British Embassy proved to be yet another venue for Simmons, in addition to the already existing means, both at the bureaucratic and judicial levels, to claim proprietorship over the piece of land in question. The dispute between Simmons and

the villagers remained unresolved for more than twenty years despite Simmons' appeal to the administrative council and imperial title registration. The intervention of the Embassy enabled Simmons to bring the case to the notice of the Ottoman State Council but did not help to resolve the ongoing conflict between Simmons and the villagers.

It is also important to note that Simmons' appeal to the British Embassy was strengthened by the treatment of her two servants, Ali Tafil and Andon Alexi by a group of villagers who unlawfully broke into her property along with the police sergeant Sadik Cavus. The correspondence between the Embassy and the Ottoman Ministry of Foreign Affairs revealed that British authorities mainly put emphasis on this incident and condemned Sadik Cavus who entered into the property of a British subject without any prior notice given to the consular authorities. In response, a note from the Grand Vizierate (*sadaret*) asserted that Simmons' claims were unfounded. Sadik Cavus was actually chasing a group of fugitives during the incident and he got suspicious of Ali Tafil's behavior when he came to the farm to inquire about the group. Sadik confiscated Ali Tafil's weapon as a precaution and did not intrude into Simmons' farm. Another note from the municipality (*sehremaneti*) recapitulated the report of the Grand Vizierate and stated that the dispute over the borders of Simmons' property would soon be resolved. Indeed, another note from the Grand Vizierate declared that Husameddin Bey, a member of the municipality council, and Muhlas Bey, a civil servant from the office of the imperial land administration (*Defter-i Hakani*) in Rumeli were commissioned by the Ottoman government to determine the boundaries of Simmons' property despite the absence of any further appeal from Simmons and the Embassy. Even though the Ottoman authorities disproved the allegations against Sadik Cavus, Simmons' right of use (*tasarruf*) over her property was never questioned and the question of the exact boundaries of her lands were investigated by the municipality council.

In fact, the British Embassy had no authority to intervene in property disputes involving British subjects after the promulgation of the 1867 Law. The legal status of foreigners in regard to private property was within the purview of Ottoman courts and strictly defined as being outside the rule of their consular counterparts according to the law of 1867.[18] The right of foreigners and protected subjects to acquire private property was first recognized by the Ottoman Reform Edict of 1856, which guaranteed the security of all persons and property in the empire. The law of 1867, on the other hand, confirmed foreigners' right to private property with the exception of the Hicaz Province, and required all foreigners to be subject to Ottoman laws and courts in matters concerning private property. The law strictly prohibited consular courts from adjudicating property disputes and made them forward matters related property, even between foreigners, to the Ottoman courts.[19] Hence, the law of 1867 was a strategic move by the Ottoman government to bring foreign subjects and protégés and their property under the control of the central state, and more importantly, a measure against enabling Ottoman subjects from acquiring foreign nationality and consular privileges.[20] Even though the law created a lot of opposition from consular courts, it was eventually recognized by a series of protocols signed between the imperial government and various foreign consulates.

[18] Tebaa-yi Ecnebiyye'nin Emlake Mutasarrif olmalari hakkinda kanun, 7 Sefer 1284 (10 Haziran 1867) *Law Concerning the Disposition of Foreign Subjects' Property*

[19] "Traite de la Propriete Immobiliere en Droit Ottoman" by N. Mitri (1906), in "Osmanli Devletinde Gayrimenkul Mulkiyeti Bakimindan Yabancilarin Hukuki Durumu Nedjib Chiha, trans. By Halil Cin. The author states that consular courts challenged the law of 1867 continued to claim their right to adjudicate cases involving their own subjects whenever possible.

[20] Sibel Zandi-Sayek, "Ambiguities of Sovereingty: Property Rights and Spectacles of Statehood in Tanzimat Izmir," in *Imperial Geographies in Byzantine and Ottoman Space*, eds. Sahar Bazzaz, Yota Batsaki and Dimiter Angelow, (Washington, D.C.: Center for Hellenic Studies, 2013), 133-159. Zandi-Sayek explains that by the 1867 protocol, foreigners and protégés were to be considered as Ottoman subjects when it came to property and land. For matters related to their movables and person, however, they maintained their status as foreigners and hence the privileges and immunities associated with their status. In this respect, the 1867 law signified the emergence of a new relationship between property and imperial sovereignty whereby the imperial center sought to extend its rule over foreign subjects, who had hitherto remained outside its jurisdiction.

Hence, the intervention of the British consular authorities in the dispute between Simmons and the villagers did not go beyond condemning the treatment of Simmons' servants by the police forces and requesting reparation from the Ottoman government for the damage given to Simmons' property. When it came to the dispute over the piece of land between Simmons and the villagers, however, the British consul could do no more than asking the Ministry of Foreign Affairs to bring the case to the attention of the municipality council and Ottoman courts. The case of Simmons sheds light on how foreign subjects and protégés sought justice in matters concerning property and disputes over land in the late nineteenth century. It reveals how Simmons, a British subject living in Istanbul, used her status to brought her case to the attention of Ottoman courts by the agency of the British Embassy despite its limited purview on matters concerning property. On the other hand, Simmons' ability to acquire a favorable decision from the administrative council in Kucuk Cekmece against the allegations of the villagers demonstrates the degree to which she was able to maneuver among available bureaucratic means and utilized the administrative council according to her interests.

Indeed, disputes over land and property concerning foreign and Ottoman subjects constituted an interesting arena where both parties were subject to Ottoman laws and were required to seek justice within the Ottoman bureaucratic and legal system. The property disputes, thus, create a unique opportunity to better understand what nationality or being a protégé of a European government meant when alternative channels to legal jockeying between Ottoman and consular courts did not exist. Even though recent studies on the Ottoman Land Law of 1858 opened up new avenues to understand the transition from communal rights to individual titles to land in various regions of the Ottoman Empire, the role of foreign subjects in this transition is still unknown. A careful examination of the link between property and nationality hence provides new possibilities to better understand this transition.

The land dispute between Margeret Simmons and local villagers in Kucuk Cekmece was resolved in favor of Margaret Simmons and demonstrated the possible means through which a foreign subject could acquire rights of use on land and sought justice within the Ottoman bureaucratic and legal apparatus with some degree of mediation from the British consular authorities. The following case, on the other hand, will explore an inheritance dispute between Zeynep Hanim and her sons, who constantly changed their nationality to be able to claim rights through Ottoman and consular authorities depending on their respective interests.

The case considers an inheritance dispute between Zeynep Hanim, the widow of a British subject, Hindli Hasan Efendi, and her sons Hasan Nazmi Bey and Ismail Bey as well as Hindli Hasan's first wife Emine Shendil Hanim.[21] The detailed correspondence between the Ottoman Bureau of Nationality and the Supreme Consular Court in Istanbul reveals how litigants in an inheritance dispute incidentally appealed to both Ottoman and consular authorities and denounced their existing nationalities depending on their respective interests. The dispute among the heirs of Hasan Nazmi Bey demonstrates how readily litigants tried to change nationality as a means for legal jockeying between Ottoman and consular courts. The bureaucratic evaluation of such claims both by the Ottoman Bureau of Nationality and the British consular court, on the other hand, shows how meticulously these claims were examined as both governments aimed at maintaining their jurisdictional powers over their own subjects.

For litigants, change of nationality was an instrument for claim making. The multiple appeals of the litigants in the case below exhibits that the change of nationality was incidental and viable for many who were able to maneuver through the often prolonged bureaucratic processes for their own advantage. For the Ottoman and British governments, on the other hand, change of nationality was a contest for sovereignty whereby both powers tried to retain their jurisdictional powers over their own subjects. Hence the case in point provides an

[21] BOA, HR. H (Hariciye Nezareti) 500/6, 1 January 1908.

opportunity to explore the link between nationality and transfer of property, and makes it possible to achieve a nuanced understanding of how multiple claims over Ottoman sovereignty were negotiated through quotidian conflicts among ordinary subjects. The details of the inheritance dispute below also articulates the profound awareness among the heirs of Hindli Hasan Efendi of the existing laws and bureaucratic processes concerned with nationality, marriage and inheritance. Their ability to make use of the gray areas within the multiple jurisdictions of the Ottoman Empire was only possible through such extensive legal know-how. Indeed, inheritance cases between Ottoman and foreign subjects constituted the most troubling area for Ottoman jurists and lawmakers.

The Ottoman Nationality Law of 1869 was in line with the international legal standard of "dependent citizenship."[22] Article 7 of the 1869 Law declared that an Ottoman woman who married a foreign subject would lose her original nationality (marital expatriation) and acquire the nationality of her husband (marital naturalization).[23] Ottoman women who married foreign men would directly assume their husband's nationality without an additional authorization from the Ottoman government.[24] This article also stated that an Ottoman woman who married a foreign subject could reclaim her original nationality as an Ottoman subject within three years after her husband's death.[25]

[22] Karen M. Kern, "Re-Thinking Ottoman Frontier Policies: Marriage and Citizenship in the Province of Iraq" *The Arab Studies Journal*, 15, no. 1 (2007): 10

[23] In his *Hukuk-i Esasiye* Ismail Hakki argues that the 1869 Law was based on the French Civil Code, and resembles similar laws on marriage in other countries such as Italy, Germany, Switzerland, Denmark and Belgium. Ismil Hakki, *Hukuk-i Esasiye,*

[24] BOA, YEE, 33/27, Tamim, 15 Ramazan 1304/7 Haziran 1887, Ilhan Unat, *Turk Vatandaslik Hukuku*, s. 19-23

[25] The 1869 did not include any clause regarding the status of a foreign woman marrying an Ottoman man. This was later clarified in 1883 by Article 59 of the Law of Consulates, which stated that foreign women who marry with Ottoman men would be considered as Ottoman subjects, and would be subject to Ottoman Law of 1869. In *Tabiiyyet*, Mehmed Fuad, p. 58-59.

However, the 1869 Law did not include any clause on inheritance. The legal ambiguity concerning inheritance disputes between Ottoman and foreign subjects was explained in Mahmud Fuad's *Tabiiyyet* as follows: "The absence of an article concerning the right of inheritance by women, who formerly lost their Ottoman nationality by marriage, to their husband's property in the Law of 1869 makes it necessary to consider the issue in reference to Islamic law; and their disputes with their Ottoman relatives should hence be resolved according to the precepts of Islamic law on inheritance."[26] The uncertainty on inheritance cases also stemmed from Article 110 of the Land Code, which prohibited foreigners from inheriting property from Ottoman subjects: "The land of an Ottoman subject does not pass by inheritance to his children, father or mother who are foreign subjects."[27] Article 111 of the Land Code further stipulated "the land of a person who has abandoned Ottoman nationality does not pass by inheritance to his children, father or mother who are Ottoman subjects." These articles led further confusion in cases where the widow of a foreign subject chose to convert, according to Article 7 of the 1869 Law, to her original, i.e. Ottoman nationality, within three years after the death of her husband. This uncertainty was further reinforced by another decree in 1873, which stated that the property of an Ottoman woman could not be transferred to her foreign husband or children by inheritance.[28] For the children of a deceased foreign subject, this practically meant that they would no longer be eligible to inherit their father's property if their mother choses to revert to her Ottoman nationality while they decided to retain their status as foreigners. In 1875, another decree was promulgated which prohibited foreign subjects from

[26] Ibid, p. 60 in Ibrahim Serbestoglu.

[27] Article 110 of Land Code: "tebaa-yi Devlet-i Aliyyeden olan bir kimsenin arazisi, tebaa-yi ecnebiyeden olan evladina ve babasina ve anasina intikal etmez.

[28] "Instructions concerning inheritance of foreigner's wives who are nationals of the state," Dustur, Vol. 3, p. 141 in Qafisheh

inheriting property from their Ottoman relatives.[29] The case of Ottoman women who married foreign men after the promulgation of the 1869 Law and their right to dispose of property to their foreign relatives was also considered in another decree in 1908 to further clarify the matter.[30]

It seems that Zeynep Hanim, the widow of Hindli Hasan Efendi, and her sons were well aware of this legal vacuum as they asserted their respective claims to inherit the estate in question. In a petition submitted to the Ministry of Foreign Affairs in 1905, Zeynep Hanim stated that she had acquired an Ottoman certificate of nationality following the death of her husband Hindli Hasan Efendi in 1885 and lawfully inherited his property with her sons. Since Hindli Hasan Efendi died without a will, the Supreme Consular Court in Istanbul appointed Zeynep Hanim as the administrator of the estate.

In her appeal to the Ministry of Foreign Affairs, Zeynep Hanim asserted that her sons Hasan Nazmi and Ismail appealed to the Supreme Consular Court in 1906. In their appeal, she claimed, Hasan Nazmi and Ismail forged Zeynep Hanim's seal on a false deed, and claimed that she had bought the shares of her stepdaughters from her husband's first wife Emine Shendil Hanim, and transferred the entire estate to her sons. Despite being Ottoman nationals, Zeynep Hanim continued, Hasan Nazmi and Ismail presented themselves as British subjects and instituted an action against her regarding the administration of the estate at the Supreme Consular Court. In her petition, Zeynep Hanim also complained about the armed guards of the British consulate who broke into her house at Nuri Osmaniye and threatened her that they would take her to the court by force unless she agreed to attend the trial on her own will. In her

[29] "Devlet-i Aliyye tebaasindan bir sahsin vefatinda emlak ve arazisinin tebaa-i ecnebiyyeden olan evlad ve akrabasina intikal edememesine dair tezkire-i samiye" Dustur ¼ 417 5.8.1875

[30] "Tebaa-i Osmaniye'den olup tabiiyet kanunun nesrinden sonra ecnebiye ile izdivac eden kadinlarin vefatinda ecnebi olan veresesinin hukuk-i intikaliyesi ve ol babda konsolosluklardan verilecek ilmihaberlerin itibari hakkinda irade-i seniyyeyi mubellig tahrirat-i mesihatpenahi" Dustur 1/8 823 21.02.1908

appeal, Zeynep Hanim requested the Ministry of Foreign Affairs to intervene in the dispute, as the Supreme Consular Court had no right to administer or adjudicate disputes between Ottoman subjects let alone to threaten their safety of life or property. Zeynep Hanim demanded protection from the Ottoman authorities against the unlawful attacks of the consular officials. In fact, the case can be considered as a rare instance whereby an allegedly Ottoman subject appealed to the Ottoman authorities for protection against the abuses of the British Consulate.

In another appeal to the Ministry of Foreign Affairs in 1908, Zeynep Hanim recapitulated her claims and asked the Ottoman government to intervene in the dispute against the Supreme Consular Court. This time, Zeynep Hanim based her claims on the *Law Concerning the Disposition of Foreign Subjects' Property* (*Ecanibin Hakk-i Istimlaki Nizamnamesi*) of 1867, which required foreigners to be subject to Ottoman laws and courts in matters concerning private property.[31] Zeynep Hanim particularly put emphasis on Article 3 of the 1867 Law, which strictly prohibited consular courts from adjudicating property disputes and made them forward matters related property, even between foreigners, to the Ottoman courts. Zeynep Hanim continued that the 1867 Law was recognized by a protocol signed between the Ottoman and British governments on July 7, 1868 and argued that the case should therefore be seen at the Ottoman Court of First Instance (*Bidayet Mahkemesi*) regardless of her sons' claims to British nationality. In her correspondence with both the Ottoman and consular authorities, Zeynep Hanim demonstrated a keen legal understanding of the existing laws and used them to strengthen her case against the allegations of her sons.

The Ministry of Foreign Affairs carefully evaluated Zeynep Hanim's claims in collaboration with the Directorate of Nationality and the Office of the Legal Counsel (*Istisare Odasi*). According to the information provided by the Directorate of Nationality, it became

[31] Halil Cin, Osmanli Devletinde Gayrimenkul Mulkiyeti Bakimindan Yabancilarin Hukuk Durumu, p. 256, Belkis Konan, Osmanli Devletinde Yabancilarin Kapitulasyonlar Kapsaminda Hukuki Durumu, (PhD Diss., Ankara University, 2006).

clear that Zeynep Hanim in fact continued to enjoy her status as a British subject until 1907 when her sons instituted an action against her at the Supreme Consular Court. Claiming that she returned to her original nationality soon after the death of her husband in 1885, Zeynep Hanim most likely had in mind Article 7 of the 1869 Law, which allowed an Ottoman woman to revert to her original nationality within three years after the death of her foreign husband.[32] Since Zeynep Hanim already passed the legal timeframe recognized by the law, her appeal to Ottoman nationality was considered in reference to general rules and procedures concerning the nationality claims of foreigners in the Empire. In this respect, Zeynep Hanim was expected, very much like any other foreigner, to apply to the Ministry of Foreign Affairs to present her intent to assume Ottoman nationality and satisfy the necessary conditions required by the Ottoman government.[33]

Contrary to Zeynep Hanim's allegations, the report prepared by the Directorate of Nationality stated that Hasan Nazmi and Ismail Beys had formerly applied to the Supreme Consular Court to denounce their status as British subjects and acquire Ottoman nationality in order to get into Ottoman bureaucratic service.[34] According to the report, Hasan Nazmi acquired Ottoman nationality in 1900 and was employed as a secretary at the Directorate of Commercial Affairs (*Umur-i Ticariye Kalemi*), whereas his younger brother Ismail became an Ottoman subject in 1901 and was employed as a clerk at the Directorate of Mixed Legal Affairs (*Umur-i Hukuk-i Muhtelit Kalemi*).

[32] Hukuk-i Esasiye, p. 85

[33] The 1869 Law dictated two conditions for foreigners who were willing to assume Ottoman Nationality. The applicant was expected to reach full age and required to live in the Ottoman Empire for five consecutive years.

[34] At this point, it is possible to assume that Hasan Nazmi and Ismail based their claims on Article 2 of 1869 Law, which stipulated that children of foreign subjects could claim their status as Ottoman subjects after they reached to the age of discretion.

Nevertheless, the correspondence between the Ottoman Ministry of Foreign Affairs and the Supreme Consular Court revealed that the case was in fact more complicated than it seemed. Even though the Supreme Consular Court verified Hasan Nazmi and Ismail's intent to assume Ottoman nationality, it asserted that when they were asked to sign a written statement confirming their appeals to denounce their status as British subjects they both refused to do so stating that they had no intention to assume Ottoman nationality. According to the report, Hasan Nazmi then changed his mind and signed the statement whereas his brother Ismail decided to keep his British nationality and returned his Ottoman certificate of identification. In the end, the Supreme Court rejected their appeals, as they were both involved in an ongoing trial at the Supreme Court regarding the inheritance of their deceased father's estate.

When the Directorate of Nationality informed the British Embassy that Zeynep Hanim was desirous of denouncing her British nationality and becoming an Ottoman subject in 1907, the Supreme Court issued a similar reply. Zeynep Hanim was a defendant in a trial pending at the court and her contemplated change of nationality could hardly withdraw her from British jurisdiction. In a detailed note addressed to the Ministry of Foreign Affairs, the consular authorities underlined the undesirable consequences of such acts: " to allow a British subject to escape national jurisdiction by change of nationality would open the way to grave abuses and be contrary to the principles governing such matters."[35]

It is quite difficult to estimate the validity of these allegations; and yet a careful reading of the contradictory statements communicated by the Ottoman and British authorities offers a good understanding of how claims to nationality, both Ottoman and foreign, enabled subjects to take advantage of the loopholes in the legal and bureaucratic system. It reveals that Zeynep Hanim and her sons Hasan Nazmi and Ismail Beys used nationality as a means for legal jockeying between British and Ottoman courts. Contrary to her initial statement, Zeynep

[35] February 1907 British Embassy to the Ottoman Foreign Ministry.

Hanim re-claimed her status as an Ottoman subject only after her sons appealed to the Supreme Court in 1906. On the other hand, Hasan Nazmi and Ismail used their status as British subjects when they carried the case to the Supreme Court. And yet at the same time, they tried to keep their Ottoman nationality as a tactical response against Zeynep Hanim when she tried to bring her case to the attention of the Ottoman government.

After all, who could know better to navigate through the multiple jurisdictions of the Empire than Ismail Bey, who worked as a clerk at the Ministry of Mixed Legal Affairs? Zeynep Hanim's occasional references to 1867 Law and 1869 Law in her petitions to the Ministry of Foreign Affairs indicate that she also had a good understanding of the existing laws and procedures related to property and inheritance. The dispute over Hindli Hasan's estate clearly shows that change of nationality was a tactical move utilized both by Ottoman and foreign subjects. The detailed assessment of such claims by Ottoman and British governments, on the other hand, reveals the degree to which change of nationality was, more than anything, a contest over sovereignty whereby both powers aimed at maintaining their jurisdictional powers over their own subjects. Even though both the Ottoman Bureau of Nationality and the Supreme Consular Court closely monitored the status of their own subjects through well-defined laws and regulations over nationality, they were nevertheless incapable of preventing claimants such as Hasan Nazmi and Ismail Beys as they gained time between the two courts by oscillating between the two identities.

In its assessment of the case, the Office of the Legal Counsel was mainly confused by Supreme Court's depiction of Zeynep Hanim as the administrator of Hindli Hasan Efendi's estate. The term "administrator," according to the Office of the Legal Counsel, had no equivalent in Ottoman law and hence needed to be clarified by the Supreme Court. In reply, it was stated, "the estate of a British subject who died intestate in the Ottoman Empire was vested in the judge of the Supreme Consular Court, who would appoint a person to distribute the

estate." This person, according to the Supreme Court, was called the administrator and responsible for the management of the estate. In 1898, Zeynep Hanim applied to the consular court for the distribution of her deceased husband's estate and was then appointed by the court as the administrator of the estate. In 1907, the Supreme Court decided in favor of Hasan Nazmi and Ismail Beys and required Zeynep Hanim to pay them £684 each in return for their shares in their father's estate.

In the end, Zeynep Hanim's request to carry the case to the Ottoman Court of First Instance (*Bidayet Mahkemesi*) was futile. The Ministry of Foreign Affairs and the Office of the Legal Counsel rejected her appeal on the grounds that she had already applied to the Supreme Court in 1898 for the distribution of the estate and tried to involve the Ottoman court only after her sons filed another action against her in 1906. After a careful examination of the case, the Court of First Instance decided on April 19, 1909 that neither Zeynep Hanim's nor her sons' change of nationality would have any effect on the resolution of the case as they were all British subjects when the case was carried to the consular court. The Court of First Instance concluded that the Supreme Consular Court had the exclusive right of jurisdiction over the matter and the claimants were obliged to comply with its judgment regardless of their personal status.

Perhaps, a comparative analysis of the cases of Margaret Simmons, a British subject and Zeynep Hanim, an allegedly Ottoman subject, makes it possible to achieve a rather nuanced understanding of how both women tried to maintain their rights over their property through navigating their claims in Ottoman and consular courts. Both women complained about the abuses against their properties, Margaret Simmons by the local police and Zeynep Hanim by guards of the British Consulate in Istanbul; and demanded protection from Ottoman and British authorities. They both demonstrated a good legal understanding and referred to the *Istimlak Nizamnamesi* on multiple occasions. Even though Margaret Simmons never presented herself as an Ottoman subject, her case is a good example showing how British subjects tried to settle

disputes over property by having recourse to the Ottoman court. The case of Zeynep Hanim, on the other hand, shows how the appeal of an allegedly Ottoman subject might be rejected by the Ottoman court after careful evaluation of her claims by the Directorate of Nationality and the Office of the Legal Counsel.

As a matter of fact, women often had difficulties inheriting property from their foreign husbands. The case of Madam Besiktashian elaborates how difficult it was to transfer her husband's property as a widow of a British subject. As opposed to Zeynep Hanim, who tried to position herself as an Ottoman subject after the death of her husband, Madam Besiktashian struggled to convince the Ottoman government that she assumed her husbands' nationality and hence should be treated as a British subject. In Madam Besiktashian's defense, the British consulate put emphasis on "the uncontestable principle of international law," which required a wife to take on her husband's nationality; a principle also admitted by the Article 7 of the 1869 Law. The consulate requested the Ottoman government to give necessary instructions to ensure that Madam Besiktashian could dispose of her property without further delay in the manner that she may deem proper as a British subject. According to the "invariable rule and doctrine of civilized nations," another note stated in 1899, Madam Besiktashian's nationality was merged with that of her husband; and that principle was also adopted by the Article 7 of the Ottoman Law of Nationality.

The report of the Office of the Legal Counsel (*istisare odasi*), on the other hand, provided a detailed examination of Madam Besiktashian's case and asserted that the matter was in fact more complicated than it was presented by the consular authorities. The status of women who were married to foreign men, according to the Office of the Legal Counsel, should be treated in two different categories depending on whether the husband already held foreign nationality by the time of marriage, or acquired foreign nationality after matrimony. Women whose husbands already had foreign status when they got married directly assumed their

husbands' nationality in accordance with the doctrine of civilized nations. Whereas, women whose husbands denounced Ottoman nationality and assumed foreign status after marriage were considered in a separate category and were not included within the scope of the Article 7 of the Nationality Law. Such women should instead be considered in terms of their birth nationality until the Ottoman government approved their expatriation. Even though the 1869 Law lacked a clear explanation on this matter, legal commentaries on the law often elaborated on the distinction between the two and advised to carry out strict investigations into the nationality claims of women who belonged to the second category.

The refusal of Madam Besiktashian's claim to foreign nationality was hence due to the absence of a prior authorization by the Ottoman government recognizing her intention to denounce Ottoman nationality. Even though the Ottoman government authorized her deceased husband's claim to foreign status by an official permit in June 1884, there was no record concerning Madam Besiktashian's claim to foreign status. The universally accepted principle of dependent citizenship had no validity in the case of Madam Besiktashian, who continued to be treated as an Ottoman subject by the imperial government after the death of her husband. Her claim to her deceased husband's estate was therefore within the purview of Ottoman courts rather than the British Consulate.

Even though each case has its own peculiarities, a comparative analysis makes it possible to see how two ordinary subjects could quite successfully maneuver their respective interests through the legal and bureaucratic apparatus of the empire during the late nineteenth and early twentieth centuries when the legal definition of subjecthood and its implications on various areas such as marriage, property and inheritance were still in the process of being finalized. As seen in the case of Margaret Simmons, subjects often used consular courts as sites for arbitration in resolving disputes, which remained outside their jurisprudence.

There were also instances where Ottoman subjects appealed to consular courts to resolve property disputes with foreigners.[36] In 1886, an Ottoman landholder requested the assistance of the Supreme Consular Court against his tenant Vicenzo, a British subject registered at the British Consulate. The owner of the house appeared several times before the Supreme Consular Court to convince Vicenzo to quit residing at his property through an amicable agreement. Even though Vicenzo appeared at the Supreme Court and agreed to vacate the house, he did not fulfill his promise. The chief of the consular court then informed the landlord that the Supreme Court had in fact no authority to force Vicenzo to vacate his house and advised him to have recourse to the Ottoman courts, since such property disputes were within their competence. How the dispute between Vicenzo and his Ottoman landlord was resolved is unknown, but the case makes clear how Ottoman subjects, very much like foreign subjects, appealed to consular courts to acquire favorable resolutions for their property disputes; and similarly, the gaps in the legal framework further complicated the cases and postponed their settlement. As opposed to the case of Zeynep Hanim, where the consular court insisted on preserving its jurisdiction over its own subjects, the consular authorities abstained from claiming any responsibility over Vicenzo's property dispute and advised the plaintiff, an Ottoman subject, to appeal to the Ottoman court.

As already stated, the primary intention behind the declaration of the 1869 Law was to tighten the grip of the Ottoman government over the increasing numbers of Ottoman subjects who claimed foreign status and consular protection during the period in question. The consecutively enacted laws and regulations were mainly concerned with restraining the breadth of extraterritorial jurisdiction in the empire by introducing clear definitions of Ottoman subjecthood and its requirements. Nevertheless, the inclusiveness of the 1869 Law should be taken rather cautiously. A careful examination of case studies reveals that naturalization was

[36] BOA, HR. H. (Hariciye Nezareti) 492/6, 21 October 1886.

not a right that was readily granted to any foreigner who expressed the intention to assume Ottoman nationality. Indeed such appeals were often subject to strict legal inspections and bureaucratic procedures. The case of Zeynep Hanim provided some insight into how the appeal of an ex-Ottoman subject to re-claim her birth nationality was carefully evaluated by the Ottoman government. The following case, on the other hand, demonstrates how the Ottoman government handled the appeals by foreign subjects who applied to be naturalized as Ottoman nationals.

**Acquisition of Ottoman Nationality: The Case of a Prominent Merchant Family in Iskodra**

In 1899, Gaspar and Phillip Summa, two British subjects living in Iskodra, applied to the British Consulate to renounce their status and assume Ottoman nationality.[37] Gaspar and Phillip were in fact members of a prominent merchant family in Iskodra, known to be importing Manchester cottons.[38] Curiously, the British consulate, following Gaspar and Phillip's appeal, proposed to withdraw its protection from the remaining members of the Summa family with the exception of Nicholas Summa, who was soon to be appointed as a dragoman at the British Vice-Consulate at Iskodra.[39] Before doing so, however, the British Vice-Consulate in Iskodra contacted the Ministry of Foreign Affairs to receive a formal assurance from the Ottoman government that no arrears of taxation would be charged from the members of the Summa family for the period during which they enjoyed British protection. In response, it was stated

[37] BOA, HR. H. (Hariciye Nezareti) 499/11, 19 October 1899.

[38] *Albania's Greatest Friend: Aubrey Hebert and the Making of Modern Albania, Diaries and Papers 1904- 1923*, ed. by Bejtullah Destani and Jason Thomes (London; New York: I. B. Tauris, 2011), 45.

[39] Joseph Heller, *British Policy Towards the Ottoman Empire*, (London, England; Totowa, N.J.: F. Cass, 1983), 59. Heller mentions M. Summa as the British Vice-Consul of Iskodra but the there is no reference to M. Summa in the correspondence available in the dossier at the Prime Ministry Archives. Still, Heller's reference makes it possible to presume that another member of the Summa family was appointed as Vice-Consul at Iskodra in the following years.

that the Summa family, for the period during which they enjoyed British protection, would not be liable for the payment of an income tax (*temettu vergisi*), but be responsible for the payment of the property tax (*emlak vergisi*) like all other subjects, Ottomans and foreigners alike, in the empire. It appears that Gaspar and Philip's appeal for Ottoman nationality suddenly put them on the radar of the imperial government, which then impelled them to pay their due amounts immediately.

As seen in the example of Gaspar and Phillip, an attempt to change nationality often meant an in-depth bureaucratic examination for subjects. Before the granting of Ottoman nationality, the imperial government checked whether foreign subjects had any tax liabilities or were involved in an ongoing trial. For Gaspar and Philip, both apprehensions were valid. The report prepared by the Iskodra Province in 1901 asserted that Gaspar and Philip, apart from their tax delinquencies, were also involved in a case of bankruptcy. The creditors were Austrian subjects, who brought the case to the attention of the Austrian vice-consulate in Iskodra. Hence, Gaspar and Philip's intention to acquire Ottoman nationality was a tactical move to make their case be heard by the Ottoman Court of Commerce rather than the Austrian Consulate.[40]

Furthermore, their appeal jeopardized the status of their fellow family members under British consular protection. The note from the Ministry of Foreign Affairs to the British Consulate asserted that, according to the 1863 Regulation Concerning the Foreign Consulates, protégé status was only a temporary right granted to the employees under the service of

[40] In 1871, the British consul R. Reade at Iskodra explained the working of the British vice-consulate as follows: "The major part of foreign trade with Scutari (Iskodra) was with Austria. Austria, France, Italy and Russia had vice-consulates at Scutari. The transmission to the local authorities of petitions from the very few subjects and the protégés here, who amount to four, and which occurs very rarely, and I must also add the delivery of certificates of registration to the above subjects and protégés at the beginning of each year. The jurisdiction of the British consul is solely over the British subjects within the limits of the province. When a British subject has a question with an Ottoman, the case is tried before the Ottoman tribunal, when a delegate from the consulate is present to report the case to the consul in case the British subject appeals. Should a case appear between a British subject and another foreigner, the case is adjudicated at the Consulate of the defendant. In Scutari these cases occur very rarely." *Reports Relative to the British Consular Establishments: 1858-1871*, Vo. 3 p. 16-19.

consulates and could not be transferred to children or other relatives.[41] Indeed, various members of the Summa family were known to have taken over important positions at the service of the British Consulate in Iskodra over succeeding generations. Auguste Summa, who died in 1894 and Francesco Summa, who died in 1895, were local employees of the consulate for decades. Nicholas Summa, over whom the British authorities were intending to preserve their protection as stated in their note of 1899, would then be appointed as the acting vice-consul in 1904 and finally, vice-consul from 1908 to 1914.[42] Despite the lack of a clear record, Gaspar and Philip were presumably the sons of the above-mentioned Francesco and Auguste, whose protégé status, along with other members of their family, was called into question following the death of Francesco and Auguste. Gaspar and Phillip's debts to two Austrian merchants in Iskodra and their subsequent appeal for naturalization as Ottoman subjects suddenly brought the status of the entire Summa family to the attention of Ottoman and British governments.

Even though the Ottoman and British authorities seemed to collaborate on the exchange of information regarding the matter, the search of Gaspar and Phillip's residence by an Ottoman police officer, Hulusi Efendi, without prior notice to the consulate caused significant tension with the vice-consulate. Despite their intention to renounce their status as British protégés, consular authorities continued to claim protection over Gaspar and Phillip and pressured the local police to release them immediately.

It can be argued that the consular authorities were mainly aiming at preserving the interests of British merchants and their rights to property. In 1881, W. Ducci, a British merchant

[41] "Memalik-i Mahrusa-i Sahanede Bulunan Devlet-i Ecnebiyye Konsolosluklari Hakkinda Tanzim Kilinin Nizamname", *Dustur*, R: 115 T:1 C:1 p. 772. "Regulations in Regard to the Foreign Consulates", Article 11.

[42] *Albania's Greatest Friend: Aubrey Hebert and the Making of Modern Albania, Diaries and Papers 1904- 1923*, p. 44

residing at Rhodes, foreclosed a mortgage held by him on a house at Halki, belonging to a certain Theodors Pappadapoulos.[43] The house was, in consequence, sold by auction, and W. Ducci purchased it for the sum of 300 pounds. Though his purchase took place three years ago, and he obtained judgment in his favor at the time, Ducci was never able to obtain possession of his property owing to the violent oppositions of the Pappadopoulos family. The Pappadopoulos family, Ducci claimed, were supported by the judicial authorities in Rhodes, while the *mudir* of the neighboring island, Halki, declared that he did not have sufficient force at his command to put the judgment into execution, and to overcome the material resistance of the Pappadapoulos and his friends among the Halkiots. The family in question had fortified the house and declared that it was their intention to defend it even if force were used to compel them to give it up. Such a miscarriage of justice, the consular authorities proclaimed, did not affect W. Ducci's interests alone but also endangered the interests of numerous British merchants who had commercial dealings with the inhabitants of the island. In 1883, a report prepared by the Ministry of Justice proclaimed that the issue was to be resolved by a direct appeal to the *mutasarriflik* of Rhodes and the Court of First Instant by Ducci.

Ducci also claimed to own immovable property and certain lands in Ferikoy Istanbul, which concomitantly came under dispute in 1882. Curiously, Ducci refrained from appealing to the British authorities for claiming rights over the disputed property in Istanbul. This time, emphasizing his role as the consul of Netherlands in Rhodes, Ducci appealed to Rudolf August Alexander Eduard von *Pestel*, the Minister Resident of the Dutch Embassy in Istanbul, to intervene in the dispute on his behalf. Writing to Arifi Pasa, Head of the Council of State (*Sura-yi Devlet*) in 1882, Pestel mentioned certain disputed lands in Ferikoy, which allegedly belonged to Ducci. In his appeal, Pestel asserted that Ducci's immovable property on the Aziziye Street in Ferikoy was unlawfully occupied by a certain Cordalia, an Italian subject,

[43] BOA, HR. H. 489/5

and should be evacuated immediately in accordance with the judgment issued by the Ottoman Court of First Instance in Pera. Pestel also requested Arifi Pasa to compel the Ministry of Pious Foundations (*Evkaf-i Humayun Nezareti*) to consider the status of Ducci's remaining lands in Ferikoy, which were also claimed to be *vakif* property. Even though there is no clear information regarding how the dispute was resolved, the curious case of Ducci reveals how a foreign subject strategically used his status as a British merchant and his post as the Dutch consul in Rhodes in an attempt to involve British and Dutch consulates to achieve favorable judgments from Ottoman Courts.

**Disputed Nationality of Two Families in Syria**

In 1886, a certain family of Russian Jews under British protection by the name Azari was called by the local authorities in Nablus to pay the military tax and arrears.[44] The family was threatened with imprisonment if they failed to pay the due amount by the local authorities. In fact, the Azari family was registered at the British consulate in Syria as British protected subjects since 1865. The report of the acting consul general in Beirut asserted that a consular certificate should be sufficient proof for the local authorities that the holder was entitled to British protection. The Ottoman government and the local authorities, British authorities claimed, should have no right to question the status of British subjects or British protected subjects, as the consular certificate should be a sufficient proof for the local authorities that the holder was entitled to protection until it was proved otherwise. The imperial government should admit that such cases of disputed nationality should be settled in Istanbul between the British Embassy and the Ministry of Foreign Affairs. If the validity of their claims was in doubt, the case should be examined in Istanbul and until a conclusion was made, the Azari family would be entitled to British protection.

[44] BOA, HR. H. (Hariciye Nezareti Hukuk Kismi), 493/1, 23 November 1886.

In response to the appeal of the consulate, the Bureau of Nationality asserted that a consular certificate alone could not be sufficient proof for entitlement to foreign protection. The Azari family had been residing in Nablus for a long time and their Russian origin was dubious. As residents of Nablus the Azari family had always been considered as Ottoman nationals and a few consular certificates would not suffice to prove the protégé status of an entire family. In fact, the increasing number of non-Muslim Ottomans who claimed foreign protection during the period in question became an issue of critical importance for the imperial government.

The Regulations in Regard to Foreign Consulates of 1863 and the Nationality Law of 1869 were mainly aimed at curbing the influence of foreign consuls extending consular protections to growing numbers of non-Muslim Ottoman subjects. The 1863 Regulation required foreign consulates to grant protection only to consular employees and strictly prohibited protégés to transfer their rights to consular protection to remaining family members and relatives after death. The temporary nature of consular protection is elaborated above in case of the Summa family in Iskodra, whose protégé status came into question after Phillip and Gaspar Summa's appeal to denounce their status. The case of the Azari family in Nablus, on the other hand, reveals the degree to which such claims were closely investigated by the central government and local authorities in Syria. Even though the imperial government rejected the Azari family's request for tax exemption, such instances whereby the members of an entire family claimed protégé/foreign status were not rare.

The case of a certain Misk family in Syria, on the other hand, shows the extent to which such collective claims to consular protection led to significant controversy between the Ottoman and British governments.[45] Residing in Beirut and Damascus, the Misk family consisted of 40 males, and had without exception, according to W. White, the British

[45] BOA, HR. H. (Hariciye Nezareti Hukuk Kismi), 495/12, 3 October 1891.

ambassador to Istanbul, consistently been admitted by the local authorities as under British protection, and was exempt from paying taxes. Even though White acknowledged the recent regulations prohibiting the protection of persons of Ottoman origin, "except during and in connection with their actual employment under British service," he claimed that the case of the Misk family was an exceptional one and their appeal for tax exemption should be taken into consideration by the imperial government.

The Misks were a prominent Christian family in Syria, and originally came from the village of Enfeh, situated on the coast, north of Beyrut, between Batroun and Tripoli. Nasrallah Misk, the father of Hasmah Misk, and the first member of the family who came into notice, left Enfeh at the beginning of the nineteenth century, and took up residence in Beirut, after which he attained employment under the British government in Egypt. His two sons, Francis and Hasmah served in the British Consulate at Beirut and Damascus, respectively.

The Misk family, according to W. White, had been employed by the British Government for nearly a century. Hasmah Misk, who was nearly 80 years of age in 1891, acted, besides his long service in the British Consulate, as an interpreter to Commodore Napier at the taking of St. Jean d'Arc in 1840, and was charged with interpreting for the marines during the event. He received the Turkish gold and the English silver medals, and was accorded by the British government the same privileges of British protection as would be granted to any British subject. Francis Misk, on the other hand, served as the secretary of Bashir III when he was appointed, upon British suggestion, as the ruler of Lebanon by the Ottoman government.[46] Francis Misk was known to have played a critical role in enhancing the influence of the British government on the newly appointed emir.[47]

[46] Joseph Bayeh, *A History of Stability and Change in Lebanon: Foreign Interventions and International Relations*, (London and New York: I. B. Tauris, 2015)

[47] Francis Misk was an influential protégé in the service of Bashir Qasim in the powerful position of *Divan Efendisi*. Richard Wood, British consul in Damascus, appointed Francis Misk as the secretary to Bashir Qasim and used him to pass orders to the emir. In doing so, Wood argued that the Emir was

W. White concluded that the services of Hasmah and Francis Misk had been hitherto regarded as sufficient to warrant the placing of the entire Misk family under British protection and the consulate was unwilling to withdraw its protection from the Misk family. As a result, White proposed to the Ottoman government that Britain would maintain the existing protections while ceasing to grant protections to the remaining members of the Misk family who were not already enjoying consular protection. According to White's proposal, the members of the Misk family would continue to enjoy consular protection until death on the condition that no other members of the family would be admitted to the same privileges in the future.

In his note to the Foreign Minister Said Halim Pasha, White provided a detailed list of all the members of the Misk family who claimed British protection. The list included a chart with information about the names, statement of parentage, date and place of birth and current residence of the members of the Misk family. The list, which was dated July 8, 1890, included 49 men and women, who resided in Beirut, Baalbek, Damascus and Egypt.[48]

The Ottoman authorities opposed British claims for granting protection to all members of the Misk family on the grounds that only those who were under British consular service could enjoy such privileges. The Misks were Ottoman subjects, and according to tax records, they owed 20407 piasters and 13 paras to the Ottoman government from 1881 to1890. With their lands in Balbek, Misks' total sum of arrears was 88,666 piasters, which should

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inexperienced and therefore needed a capable advisor to deal with the Europeans. Ceasar Farah asserts that Francis Misk served as an excellent spy for the British government by communicating "any measures likely to prejudice national interests" immediately. In 1841, Moore reported to Palmerstone by saying: "Misk deserves praise, our influence will continue as long as he is near to Bashir." Quoted in Ceasar Farah, *Politics of Interventionism in Ottoman Lebanon*, (Oxford: Centre for Lebanese Studies; London; New York: I.B. Tauris; New York, NY: 2000), 71, Also see Jens Hensenn, *Fin de Siecle Beirut: The Making of an Ottoman Provincial Capital*, (Oxford: New York: Oxford University Press, 2005), 35-36, and August Jochmus, *The Syrian War and the Decline of the Ottoman Empire 1840-48*: *In Reports, Documents, and Correspondences, Etc,* (War College Series, 2005), 30-31

[48] A copy of the list is provided in appendix.

immediately be paid to the government. It was also asserted that their tax liabilities emanated from the due amounts of property tax, which was also charged from residents who were under consular protection. Hence, the arrears owed by the Misks had nothing to do with their privileges as foreign subjects. Nevertheless, the appeal of the British consul to the Ottoman government to request tax exemption for the Misk family brought their status into the attention of the imperial government, which in turn instructed the British consulate to withdraw its protection over the Misks, who should instead be recognized as Ottoman subjects.

In the end, the British consul in Beirut was instructed by W. White to withdraw protection from the Misks with the exception of Hanna Misk, who served as a dragoman at the British Consulate in Beirut. In return for such a compromise, White asked the imperial government not to levy the arrears of taxation to which the Misk family would have been liable in the past as Ottoman subjects. In his note to Said Pasha, White stated that the withdrawal of consular protection from such a prominent family should be seen as a proof of British government's "desire to meet the views of the Sublime Porte in all matters respecting disputed nationality on foreign protection."[49] The case demonstrates that the Ottoman government in fact reached some degree of consensus with the British consulate in the settlement of disputes where families like the Misks' or the Summas' tried to benefit from consular protections. Even though non-Muslim Ottomans continued to take advantage of consular protections, the declaration of the 1863 Regulations in Regard to Foreign Consulates enabled the imperial government to gain some degree of control in overseeing the claims of subjects to foreign protection. Article 11 of the 1863 Regulation stated that consular protections would only be granted to individuals who were under consular service and could not be transferred to other family members or relatives.[50] As seen in the cases above, the imperial government managed

[49] W.White to Said Pasha, 27 October 1891

[50] "Her ne kadar müstahdemin-i mümtaze konsoloshane maiyetinde bulundukları esnada zuhur etmiş olan her türlü mesailden dolayı kendilerini taarruzdan masun add etmeleri lazım gelir ise de yukarıki

to curtail the extension of such privileges to those who were not directly affiliated with consular service in the last quarter of the nineteenth century.

Studies on the 1863 regulation often emphasized its limited purview considering that the regulation had no impact on the status of protégés who were already entitled to consular privileges before 1863.[51] In his initial outreach to the Ottoman government, White was probably aiming to take advantage of this fact by stressing that the Misks were under British protection for a long time. Nevertheless, the final settlement of the issue confirms that the regulation had a retroactive effect on the members of the Misk family who were already entitled to British protection before 1863. This was also the case with the Summa family in Iskodra, where the British consulate ended up withdrawing its protection from the entire family except for one employee in the service of the consulate. Both cases reveal that the imperial government achieved a certain degree of success, contrary to the general interpretations of the 1863 Regulation, in confronting such families of local prominence who claimed consular privileges.

The 1869 Law of Ottoman Nationality was primarily aimed at elucidating the obscurities of the 1863 Regulation and forming an all-encompassing legal framework for Ottoman nationality. Similar to the 1863 Regulation, the 1869 Law was deemed to be non-retroactive as declared by a circular on 26 March 1869.[52] The Nationality Commission reiterated the point by stating that those already holding another nationality before the declaration of the 1869 Law would be able to keep their original nationality and be exempt

bentlerde beyan olunduğu vecihle o makule müstahdeminin haiz oldukları himayet mutlaka şahıslarına ve fiilen hizmetlerine mahsus olup bina'en aleyh hiçbir halde unvan suretiyle bir kimesneye verilmeyeceği misüllü memuriyetlerinden infisallerinden sonraya hükmü kalmayacağı ve kezalik akraba ve mütealikatlarına dahi şumulu olmayacağı mukarrerdir." Düstur I. Terip, C. 1, s. 775.

[51] Belkis Konan, "Osmanli Devletinde Protégé Sistemi", *Ankara Universitesi Hukuk Fakultesi Dergisi*, p.185

[52] Young 1905-06:II, 225

from the stipulations of the Nationality Law.[53] The 1869 Law was based on the principle that nationality could not be imposed but should be acquired by naturalization only in favor of foreign subjects who solicit it.[54] Article 2 of the 1869 Law provided that "an individual born on the Ottoman territory of foreign parents may, within three years of his majority, claim to be an Ottoman subject." Hence, a foreigner who was born in the Ottoman Empire to foreign parents would be considered as a foreigner but able to claim Ottoman nationality at majority.

Nevertheless, the 1869 Law did not provide clear information regarding the formalities to be fulfilled for this purpose. In practice, foreigners who want to naturalize as Ottoman nationals were expected to send a formal request to the local authorities, which was then transferred to the Ministry of Foreign Affairs. The Ministry was charged with authorizing appeals for naturalization and registering applicants as Ottoman subjects by issuing a *Nufus Tezkiresi* as a proof of the subjects' civil status.[55] Another circular, which was sent to provincial governments by grand vizier Ali Pasha advised the provincial governments to comply with the personal law of each foreign individual, that is to say the law of the country of origin, when evaluating their claims for naturalization as an Ottoman subjects.[56]

### Foreign Muslims and Ottoman Nationality: The Case of Two Indian Fellahs from Peshawar

Even though the 1869 Law was the first secular legal document to define Ottoman nationality regardless of religious affiliation, religion continued to play a prominent role in the

[53] Citizenship in the Arab World, p. 74

[54] R. Salem, "De la nationalite en Turquie," 1302

[55] Salem, 878.

[56] This was particularly important to determine the full age of foreign subjects according to the laws of their country of origin. Circular by Ali Pasha, 25 March 1869.

acquisition of Ottoman nationality. In his recent study, Deringil shows through numerous case studies how conversion to Islam became a significant instrument for foreign subjects who applied for Ottoman nationality.[57] He also emphasizes the institution of a new category for foreign Muslims (*ecnebi Muslimin*) to describe the status of Muslims from the British Raj or those under Dutch, French or Russian rule, who were seen as "a potential fifth column" against the imperial government. The below cases of Haci Ahmed Gul and Haci Habib explores how the Ottoman government resisted the claims of Indian Muslims for British consular protection within the purview of the Nationality Law.

The following case of a certain Haci Ahmed Gul, an allegedly British Indian subject living in Kutahya demonstrates how his claim to British protection was conferred by the Ottoman and British governments.[58] According to the Ottoman government Haci Ahmed Gul, a native of Peshawar, left his homeland about 35 years ago and established himself in Kutahya with no intention to return. Since that date, Haci Ahmed Gul always acted as an Ottoman subject and never claimed British protection in the payment of his taxes or in his business transactions. According to the records of the Hudavendigar Province, Haci Ahmed Gul had originally came to Kutahya as a *muhacir* (immigrant), and was officially registered as an Ottoman subject in 1880.

The correspondence from the British Embassy in Istanbul, on the other hand, stated that Haci Ahmed Gul in fact registered himself at the consulate in 1882 and he continued to renew his registration annually since that date. According to the records of the consulate, Haci Ahmed Gul was a native of Peshawar and a British subject; and the only way that he could lose his nationality would be by making a declaration as provided by the British law or by voluntarily naturalizing himself as the subject of a foreign state upon receiving authorization from the

[57] Deringil, *Conversion and Apostasy in the Late Ottoman Empire*, 182.

[58] BOA, HR. H. (Hariciye Nezareti Hukuk Kismi) 489/16, 27 December 1881.

British government. It was also added that his payment of taxes to the Ottoman government could not be considered, according to the British law, as a sufficient proof for naturalization. Since Haci Ahmed Gul resided in Kutahya, a province that was far from the British consulate, he might have preferred, the correspondence concluded, to pay a small amount of tax for not raising any difficulties with the local authorities.

In his note to the Foreign Minister Said Pasha in 1891, White renewed Haci Ahmed Gul's claim to British protection and complained about the general tendency of the Ottoman government to contest the right of British protection to all natural born British Indian subjects in the empire. The case of Haci Ahmed was part of this general tendency and emanated from a false assumption that he was not actually a British subject. In his note, White asserted that Haci Ahmed was born in Peshawar and did not leave his country of origin until some years after it came under British sovereignty.

In his own appeal, Haci Ahmed Gul maintained that he never intended to become naturalized as an Ottoman subject and no record of such an application with his official seal existed. The reply from the Bureau of Nationality contested Ahmed Gul's claim by stating that when he came to Kutahya some 30 years ago, there was no law that required official appeal by foreigners who intend to become naturalized as Ottoman subjects. Despite the lack of any formal inquiry on his behalf, it was stated that Haci Ahmed Gul became an Ottoman subject and had no right to British protection. According to the records of the Bureau of Nationality, Haci Ahmed Gul emigrated to the Ottoman Empire 30 years ago, settled in Kutuhya, married an Ottoman woman and had two children.

The conflict over the status of Haci Ahmed Gul is informative in two respects. On the one hand, it shows that even though the 1869 Law was deemed to have no retroactive effect, and exempted foreign subjects who came to acquire consular protection before 1869, the imperial government insisted on recognizing individuals like Haci Ahmed Gul as Ottoman

nationals. Despite the lack of any formal document proving Haci Ahmed Gul's change of nationality, his record at the provincial tax registry was seen as an evidence of his status as an Ottoman subject; an assumption which was groundless in regard to the provisions of the Nationality Law. On the other hand, such disputes constantly led to ongoing conflicts between Ottoman and British governments considering their respective laws and regulations for expatriation and naturalization. Even though the 1869 Law put forward certain requirements that need to be fulfilled to acquire Ottoman nationality, there was a significant degree of ambiguity in validating such claims. The example of Haci Ahmed Gul demonstrates how difficult it was to comply with the personal law of each individual in cases of disputed nationality. White's emphasis on British law, and the lack of any formal appeal made by Haci Ahmed Gul to consular authorities to renounce his status as a British subject indicate how both governments pushed for their own laws and regulations on naturalization and expatriation against one another. The ongoing controversy between Ottoman and British governments over Haci Ahmed's nationality grew out this fluid area which remained both within and outside the jurisdictions of the two powers.

More significantly, Haci Ahmed's claim to British nationality was directly associated with the extension of British rule to Peshawar and whether he left his country of origin before or after this date. Clearly, the imperial government was primarily aimed at preventing growing numbers of Muslims from claiming British status in accordance with the extension of British political rule in India.

Even though the Ministry of Foreign Affairs did not manage to decipher when exactly Haci Ahmed Gul left Peshawar and his case remained unresolved, it carried out a detailed investigation in the case of a certain Haci Habib, another native of Peshawar, who claimed British status in 1886.[59] In 1886, the British consul in Baghdad informed the British Embassy

[59] BOA, HR.H. (Hariciye Nezareti Hukuk Kismi), 492/13, 6 July 1886.

in Istanbul that a certain Haci Habib, a native of Peshawar, came and settled in Bagdad with his two sons, and was recognized as British subjects since then. On April 22, the note continued, one of the younger sons of Habib named Jalal, 18 years of age, was arrested by the Baghdad police without prior notice given to the consulate. Jalal was beaten and ill-treated on his way to the prison and his right to consular jurisdiction was ignored after his arrest. Upon the request of the consulate, the Vali of Bagdad contacted the dragoman of the consulate and stated that Jalal was convicted of murder and the police did not have time to inform the consulate about his arrest due the urgency of the matter. Even though Jalal requested a consular dragoman to assist him during his trial, the Vali rejected his request by asserting that Jalal's father Habib chose to reside in the Ottoman Empire 35 years ago and Jalal was a resident of Bagdad since his birth. Therefore neither Habib nor his sons were entitled to consular protection as British subjects.

The consul general replied that there was in fact a misunderstanding on the part of Vali who assumed that the long residence of a British subject in a foreign country would lead to the loss of his British nationality, a principle that was at odds with international law. Even though the consul general pressured the imperial government to provide clear instructions to the Vali to consider Jalal as a British subject, the Bureau of Nationality asserted that the joint commission established by local and consular officials in Bagdad did not come upon any document proving Jalal's status as a foreign subject. The point was elaborated by referring to Article 9 of the Nationality Law, which considered all subjects residing in the Ottoman Empire as Ottoman subjects except for those who could prove their status as foreigners. Since Habib came to the empire and settled in Bagdad 35 years ago and was unable to present an official document proving his status as a British subject, neither he nor his sons could benefit from consular privileges. Another note from the Directorate of Nationality asserted that Habib left Peshawar before it came under British rule. It was argued that the military occupation of

Peshawar occurred in 1846, and it finally became part of British dominions three years later in 1849. According to this, Habib must have come to the empire before Peshawar became part of the British Empire and hence could not be entitled to British protection.

Indeed, the main controversy between Ottoman and consular officials focused on deciphering exactly when Habib left Peshawar, which led to prolonged discussions between the Ottoman and British governments. While rejecting Habib's claims to consular privileges, the imperial government requested that the consular officials get in touch with the British authorities in Peshawar. Upon the request of the imperial government, consular officials were asked to obtain Habib's birth certificate and clarify his exact date of departure through testimonies taken from his acquaintances in Peshawar. In a note addressed to the Ottoman Foreign Minister Said Pasha, White enclosed six official testimonies collected by the British Commissioner of Peshawar regarding the information requested by the imperial government. The testimony of a certain Madhub Khan, who resided in Matta, a village in Peshawar, stated that Habib was born in Matta and left for Mecca some 40 years ago. Madhub Khan, who was described as man of status and respectability, also asserted that Habib should be about 60-65 years old. Another testimony taken by the Court of W. Merk Esquire, the Deputy Commissioner of Peshawar in 1891, belonged to Moghal Khel, a landholder from Matta, at the age of 70. In his testimony, Moghal Khel stated that he was acquainted with Habib, who left Peshawar for Mecca and never returned. By the time he left, Moghal stated, Peshawar was already under British rule and Habib was known to have served the British government for about a year. The deposition made by Jamal Khan, a landholder from Matta, also stated Habib left Matta two years after British rule was established and had never returned. Finally, the deposition made by Sarafhraz, again a prominent landholder from Matta, declared that he had seen Habib with his own eyes and Habib was in the service of the British government before he left Matta on pilgrimage two years after the annexation of Peshawar to the British Empire.

The testimonies collected by the deputy commissioner of Peshawar included detailed information regarding the name, age and occupation of the deponents and were carefully examined by the Ottoman government. Even though all the deponents agreed on the fact that Habib left Matta after its annexation to the British Empire and briefly worked under British government service before his departure, the depositions were not considered as a satisfactory proof for approving Habib and his son's status as British subjects by the Ottoman government. In particular, the Ottoman government found Madhub Khan's deposition dubious. In his deposition, which was taken in 1887, Mahdub stated that Habib left Matta about 40 years ago. According Mahdub's testimony, the Ottoman authorities asserted that Habib must have left Matta in 1847, two years before Peshawar came under British rule. In response, the British consular officials argued that Mahdub was one among five other witnesses, three of whom stated that Habib left Matta about 30-35 years ago. The consular officials asserted that the witnesses were not asked to make an arithmetic calculation as to the number of years past, but merely to answer the simple question as to whether Matta was administered by the British government when Habib left. This should be seen, according to the consular officials in Bagdad, as evidence of greater weight for the simple fact that British occupation was far more likely to have been impressed in the minds of the witnesses rather than the exact number of years since the occupation took place.

The Ottoman government further stated that Habib acted as an Ottoman subject from 1847 to 1885, when his nationality became a matter of dispute for the first time. In 1885, Habib petitioned the British consulate in Bagdad on the occasion of an attempt to enroll his four sons in military service. This was the first occasion when his nationality came under dispute. The Ottoman government also emphasized the absence of any *animus revertendi* in case of Habib and his four sons, a fact that was also approved by the depositions of his acquaintances in

Peshawar. In the light of these facts, the imperial government continued to consider Habib and his sons as Ottoman subjects.

When the embassy was asked about Habib's certificate of registration at the consulate, it was stated that even though Habib came to Bagdad from Mecca around the year 1854 he first registered himself at the consulate in 1883. And yet, the consular officials claimed, the absence of such a certificate could not be seen as a conclusive proof of Habib's status as an Ottoman subject. When Habib came to the empire, the officials argued, it was not customary for British subjects to have consular registration. The fact that Habib, "a poor Indian fellah," did not register himself and his sons as British subjects was most likely due to his unwillingness to pay for the fees associated with consular registration. In fact, this was the case with many other Indian Muslims in the empire, who chose not to register themselves as British subjects since they were unable to afford the costs of consular registration. These subjects tend to register themselves only when they needed consular assistance. Nevertheless, the lack of such records, the consulate declared, would not deprive them of their privileges as British subjects.

The consular authorities also disputed the request of the Ottoman government asking for Habib's date of birth by stating that it was not fair to expect that the date of birth of a poor Indian Muslim now at the age of 60-70 could be found. Even though Habib was known to have worked under British service, the records of such services were not likely to exist either. Even though a list of British subjects were submitted to the Vilayet of Bagdat before 1889, no opposition was raised by the local authorities against the appearance of Habib and his sons' names in the list. The correspondences show that Habib's status remained unresolved as a source of dispute according to the between Ottoman and British authorities.

Taken together, the cases of Haci Ahmed Gul, Haci Habib and his sons demonstrate how the status of Indian Muslims became a serious matter of contention between the Ottoman and British governments. As discussed above, the 1863 Regulation and the 1869 Law of

Ottoman Nationality stemmed from the desire of the Ottoman government to curb the influence of foreign consulates over growing numbers of non-Muslim Ottomans in the empire. Nevertheless, Muslim colonial subjects who came to the empire and started to claim protégé status were also seen as a significant threat to Ottoman sovereignty during late nineteenth and early twentieth centuries. The detailed examination of Haci Ahmed Gul and Haci Habib's claims to British status was an outcome of this general concern and shows how the imperial government strictly imposed the provisions of the 1869 Law against the continuous pressures of British consular authorities for extending privileges over foreign Muslims.

**Disputed Nationality of Circassian Slaves under Consular Protection: The Case of Two Fugitives from Mersin**

Studies on slavery in the Ottoman Empire have well demonstrated that the British government frequently used diplomatic channels for putting pressure on the Ottoman government for the abolition of the slave trade.[60] As Ehud Toledano argued, the British government effectively used its consular network throughout the empire as a way to oversee the execution of arrangements towards the prohibition of slave trade. From 1850s onward, slaves constantly appealed to the British consular authorities for emancipation. And yet, the consulates only had limited authority over the matter, as it was not possible for consular officials to directly intervene in disputes concerning slaves who escaped from their masters. More importantly, the British involvement in the prohibition of Ottoman slavery was mainly focused on the African slave trade. The reforms concerning Circassian slaves, on the other

[60] Ehud Toledano, *The Ottoman Slave Trade and its Supression: 1840-1890,* (Princeton, N.J.: Princeton University Press, 1982) and Hakan Erdem, *Slavery in the Ottoman Empire and its Demise, 1800-1909* (London: Macmillan, in association with St. Antony's College, Oxford; New York: St. Martin's Press, 1996). Erdem underlines that slavery was never abolished in the Ottoman Empire as a legal and institutional category. All reforms were concerned with the abolition of the slave trade. The Anglo-Ottoman Convention of 1880 and the Brussels Act of 1890 were also concerned with the slave trade rather than slavery.

hand, were mostly undertaken by the initiative of the Ottoman government and there was a great degree of ambiguity in the policy of the Ottoman government towards the Circassians.[61] From 1850s onwards, the Ottoman government initiated certain reforms according to its own concerns, the most significant of which was the temporary abolition of the Circassian slave trade in 1854-55 as a wartime measure.[62] Nevertheless, when the issue was brought to a discussion in the Council of Ministers in 1867, it was emphasized that Circassians were all Muslims and considered as Ottoman subjects. Circassians shared, as Hakan Erdem stated, the same legal and civic rights like other Ottoman subjects, "the most valuable asset of which was freedom".[63]

The following case of a certain Cerkes Kasim and Ibrahim explores how the imperial government reacted to their claims for consular protection by claiming that Kasim and Ibrahim were Ottoman subjects. At the request of the British Consulate in Mersin, the Embassy intervened in the dispute and sent a note to the Ministry of Foreign Affairs about the imprisonment of Kasim, who was a servant of the British Consul in Adana. The note complained about the irregularities committed by the local authorities and the misconduct of the *mutasarrif* of Mersin towards the consular dragoman Mr. Loisos who insisted on Kasim's release. The Embassy claimed that a charge of theft was lodged against Kasim, who was in the service of Colonel Massy, the British consul in Adana. A day or two before starting a short journey, Colonel Massy was informed about the charge and he contacted the Vali of Adana

[61] Ehud Toledano, *The Ottoman Slave Trade and its Supression: 1840-1890,* 174-176.

[62] Approximately 500,000 to 1 million Circassians immigrated to the Ottoman Empire between 1850 and 1860. The Ottoman government mainly argued that it was not possible to know who was who in the wave of immigration as many Circassian slaves came to the Ottoman territory with their Circassian masters.

[63] Hakan Erdem, *Slavery in the Ottoman Empire and its Demise, 1800-1909*, 117-118. On 27 October 1909, the Council of Ministers prepared a report on the "prohibition of selling and buying of male and female Circassian and other (white) slaves (*cerkes ve sair kole ve cariyelerin de useray-i zenciye gibi men-i bey u sirasi*). Erdem states Circassian slavery became almost voluntary with the Young Turks. 150.

and requested him not to deal with the situation during his absence. Even though Massy received a promise from the Vali, the police arrested Kasim while he was in company of a cavass from the consulate at the spice market. Upon Kasim's arrest, Mosyo Loisos, the dragoman of the consulate, went to the police office and demanded Kasim's return. Hayri Bey, the *mutasarrif* of Mersin, rejected the request of Mosyo Loisos and informed him that Kasim would be kept in prison until Colonel Massy's return. In his report to the Embassy, Colonel Massy also stated that Kasim was a slave before entering into the service of the consulate and sought assistance from consular officials for his emancipation.

As a response to the Embassy, the prosecutor's office in Mersin stated that Kasim and Ibrahim were in fact Ottoman subjects of Circassian origin who were convicted of robbery. Kasim was arrested in Mersin when he was at the spice market and was transferred to the Court of First Instance, which ordered his arrest. Upon the arrest of Kasim, the Vali stated, a dragoman and two servants from the British Consulate in Mersin had come to the Police Office and attempted to get Kasim out by force. Mosyo Loisos, the dragoman, insisted on Kasim's release by stating that he would not leave without taking him. In the meantime, Ibrahim took refuge at the British Consulate in Mersin to escape from the police and he should be surrendered to the Ottoman authorities as soon as possible.

The prosecutor's office in Mersin claimed that the consulate tried to intervene in the case on behalf of Kasim and Ibrahim on the pretext that they were Circassian slaves who were seeking assistance from the consular authorities. The note from the Vali of Adana also stated that Kasim and Ibrahim fled to Mersin and appealed to the British Consulate by presenting themselves as Circassian slaves. The Ottoman government rigorously opposed the allegations of the consular authorities by asserting that that abolition of slavery in the empire pertained to African slaves only (*memnu'iyeti usera zenciye mahsus olup*), and consulates had no right to protect Circassians who were in fact considered as Ottoman subjects. The correspondence from

the Ministry of Justice on August 20, 1902 to the Embassy stated that the consular officials unlawfully intervened in the case by falsely assuming that Kasim and Ibrahim were Circassian slaves. As the Ottoman government refuted their claims, the consular officials then claimed that they were in the service of the consulate and hence were entitled to consular protection.

Indeed, the intervention of the consular officials in the case of Kasim and Ibrahim demonstrate the degree to which the British government made use of its consular network to claim rights on behalf of slaves who appealed to the consulates. And yet, the refusal of Kasim and Ibrahim's claims by the Ottoman government and its insistence on differentiating between slaves of African and Circassian origin should be seen as part of the general government policy explained above. Kasim and Ibrahim's appeal to consular authorities by presenting themselves as Circassian slaves shows how they used British involvement in the broader debate of slavery to their own advantage in order to escape the jurisdiction of the Ottoman courts. Moreover, the continuous emphasis of the Ottoman government on Kasim and Ibrahim's status as Ottoman subjects should be understood in relation to the above-mentioned decision of the Council of Ministers, which underlined the equal legal and civic rights of Circassians. Seeing Kasim and Ibrahim as Ottoman subjects of Circassian origin, the imperial government also managed to refute the consulate's later claim for extending its protection over Kasim and Ibrahim as employees in the service of the consulate. The extensive correspondence between the prosecutor's office, the ministry of justice, the ministry of foreign affairs and the British Embassy reveals how the case gradually evolved into a significant conflict between the two governments, each claiming jurisdiction over the matter. And yet, the insistence of the imperial government on Kasim and Ibrahim's status as Ottoman subjects shows how effectively the imperial government managed to cope with British intervention within the overarching framework of Ottoman nationality.

In cases of disputed nationality, foreign subjects often took advantage of the imprecise provisions of the law, which led to ongoing conflicts between consuls who took local disputes to their ambassadors in Istanbul and provincial governors trying to establish their control against extraterritorial pressures.[64] The cases of disputed nationality in the provinces of the Ottoman Empire reveal the complicated means through which state sovereignty was negotiated through individual claims of subjects, which brought local governors, consuls, ambassadors and the newly emerging bureaucratic cadres of the empire up against one another in their respective attempts to resolve these cases within the scope of established laws. The involvement of foreign consuls in these conflicts not only put extra pressure on governors at the local level but also forced Ottoman legal experts and imperial officials to ensure that the laws and bureaucratic procedures on nationality were attuned with the universally acclaimed principles of international law. The debates between the imperial center and consular authorities over disputed claims to nationality brings to light how the Ottoman government tried to constrain the extraterritorial powers of foreign states by the gradual enhancement of the 1869 Law in line with the precepts of international principles.

A close reading of the 1869 Law of Ottoman Nationality, its amendments and legal commentaries is important to achieve a better understanding of the concerns of its drafters. However, in order to decipher the complicated means through which Ottoman sovereignty was built and constantly negotiated between the state and non-state actors, one needs to go beyond the law itself and focus instead on the troubled cases of subjects whose claims were coated in this newly emerging legal vocabulary of subjecthood, nationality and citizenship. The cases above showed that imperial sovereignty was established and constantly negotiated in the gaps, ambivalences and inconsistencies ingrained in the 1869 Law. The cases of Ottoman and foreign

[64] Engin Akarli, The Problems of Extraterritorial Pressures, Power Struggles and Budgetary Deficits in Ottoman Politics under Abdulhamid II (1876-1909): Origins and Solutions, Unpublished Ph.D. Thesis, Princeton University, 1976, 90 in Feroz Ahmad, "Ottoman Perceptions of Capitulations 1800-1914" *Journal of Islamic Studies*, 11, no.1 (2000) p. 8.

women such as Margaret Simmons, Zeynep Hanim, Madam Besiktashian, prominent merchant families from Syria, Circassian slaves and Indian Muslims under consular protection allude to the miscellaneous ways through which the imperial government tried to settle disputes over nationality and strengthen its rule over the subjects of the empire. The history of Ottoman imperial sovereignty in the late nineteenth and early twentieth centuries lies in the disputes of such ordinary individuals and jurisdictional politics as an arena of continuous conflict and negotiation.

## Chapter V

## Subjecthood and Citizenship across Borders: Hadrami Arabs and Asiatic Ottomans of Dutch Indonesia

> Je dis: Il est oblige de tracer une ligne de séparation entre un domaine dans lequel il peut tolérer, par respect pour la liberté de conscience, et *imperium imperio,* et autre domaine, dans lequel l'influence illimitée cette puissance ne peut s'accorder avec des intérêts plus généraux.
>
> C. Snouck Hurgronje,
> *Politique Musulmane de Hollande*

Is there a way that one can think of nineteenth-century Ottoman and European colonial empires as being in the same "analytical and historical space" despite the historiographical consensus on their differences?[65] The sharp separation between different types of empires, that is to say the distinction between colonial and continental ones, avoids seeing interconnected processes in a shared time and space.[66] The history of nineteenth-century European colonial empires cannot be understood properly, Cooper argues, unless the histories of the Habsburg, Russian and Ottoman Empires are taken into consideration.

[65] Dina Rizk Khoury and Dane Kennedy, "Comparing Empires: The Ottoman Domains and the British Raj in the Long Nineteenth Century," *Comparative Studies of South Asia, Africa and the Middle East*, 27:2, (2007): 233-244.

[66] Frederick Cooper, Colonialism in Question: Theory, Knowledge, History, (Berkeley: University of California Press, 2005). p.22., *Imperial Rule* ed. Alexei Miller and Alfred J. Rieber (Budapest, New York: Central European University Press, 2004), C.A. Bayly, "Distorted Development: the Ottoman Empire and British India, circa 1780-1916," in *Comparative Studies of South Asia, Africa and the Middle East*, 27:2, (2007): 332-344.

Comparing Ottoman rule over its provincial periphery with the discourses and practices deployed by European colonial empires, recent scholarship attempts to integrate late Ottoman studies into the world-historical framework of nineteenth century colonialism and imperialism.[67] Focusing on center-periphery relations, these studies reveal that similar tensions between notions of incorporation and differentiation were also at work in the context of the nineteenth century Ottoman Empire. By undertaking a close examination of the administrative practices in Mount Lebanon, Yemen, Baghdad and Damascus, these studies challenge the idea that the Ottoman Empire was simply a "passive object" of European imperialism.[68] On quite the contrary, they reveal that the Ottoman ruling elite started to see its periphery as a "colonial setting" and adopted ruling strategies akin to European colonial forms of governance in their efforts to keep the provinces under control.[69]

Even though these studies manage to narrow down the historiographical divide between the Ottoman and European colonial empires, they nevertheless fail to perceive them as parts of a shared existence. The divide still remains, and cross-imperial dynamics that shaped their respective ways of "thinking about empire" have not yet received enough attention. We now know that at some point in the nineteenth century, colonial and non-colonial empires were employing similar strategies of rule, yet we still tend to perceive them as belonging to distinct contemporaneities. The question, then, is not whether it is possible to *compare* different types of empires but the possibilities of mapping them onto the same analytical framework, which pays equal attention to their *interconnectedness* alongside their newly discovered similarities and already apparent differences.

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[67] Empire in the City: Arab Provincial Capitals in the Late Ottoman Empire, ed. by Jens Hanssen, Thomas Phillip, Stefan Weber, (Beirut, 2002), pp. 6-10.

[68] Thomas Kuhn, Shaping Ottoman Rule in Yemen: 1872-1919, Unpublished Dissertation, New York University, Department of Middle Eastern and Islamic Studies, Department of History, 2005.

[69] Selim Deringil, "They Live in a State of Nomadism and Savagery": Late Ottoman Empire and the Post-Colonial Debate," Society for Comparative Study of Society and History, (2003): 311.

Drawing on Cooper's and Stoler's call for understanding the dynamic relationship between the metropole and the colony, Mary Lewis underlines the necessity of integrating local strategies of rule into imperial rivalries. "If the relations between the metropole and the colony did not operate in a vacuum," Lewis asserts, "then historians must expand their vision to include neighboring colonial territories, the range of imperial powers active in the area, and individuals who traversed these boundaries by themselves or called them into question by their behavior."[70] Only then, Lewis maintains, it will be possible to achieve a better understanding of the different ways in which imperial power was exercised, contested and transformed.[71]

This chapter is an exercise in elaborating the impact of cross-imperial dynamics and the ways in which they shaped Dutch and Ottoman ways of "thinking about empire" in the late nineteenth and early twentieth centuries. It uses a reform proposal (*lahiya*) submitted to the Ottoman Sultan in 1908. The document bears the title of "Legal Reforms in the Sublime Porte" ("*Devlet-i Aliyye'deki Islahat-i Kanuniye")* and is catalogued in the Ottoman archives as an anonymous *lahiya* on legal reforms.[72] What makes it the focus of this study is the fact that it was written by a Dutch colonial administrator, also a well-known Orientalist, Christian Snouck Hurgronje, who played a leading role in the formation of Dutch colonial policy in Indonesia.

[70] Mary Lewis, "Geographies of Power: Tunisian Civic Order, Jurisdictional Politics, and Imperial Rivalry in the Mediterranean," The Journal of Modern History, 80 (December 2008): 791-830.

[71] At this point it is equally important to consider the growing influence of international law and language of humanitarianism in shaping the strategies of colonial governments in the late nineteenth century. Anghie asserts that it also empowered non-European entities, which remained outside the scope of the law yet at the same time within it, that is to say the entities which were by then "lacking an international personality and yet possessing it." Anghie's argument is significant to understand the intervention of Ottoman Empire in the conflicts between Dutch colonial authorities and Indonesian Muslims in the name of protecting their co-religionists. Even though this is generally seen within the pan-Islamic propaganda of the Empire, which became in the nineteenth century the official state ideology, it should be better be considered as an instrument for the Ottomans to adjoin themselves to international power politics. Anthony Anghi, Imperialism, Sovereignty and the Making of International Law, (Cambridge University Press, 1996), p. 82 For the use of pan-Islamism by the Ottoman Empire see Avni Ozcan, Pan-Islamism: Indian Muslims, the Ottomans and the Britain (1877-1924), (Brill, 1997).

[72] BOA, Yildiz Esas Evraki, 58/10, 06.R. 1827.

Introducing himself as a "Flemish infidel, esteemed in the duty of explaining some fundamental principles" that had to be taken into consideration by Ottoman reformers, Snouck provided a detailed account of the newly introduced law codes and judicial reforms since the declaration of the Tanzimat Edict in 1839. After providing a general discussion about the shortcomings of these reforms, Snouck asserted that these newly introduced laws further crippled the functioning of the legal system and created a highly ambiguous and inefficient legal environment in the Ottoman Empire.

In his lahiya Snouck mainly argued for the necessity of keeping the "Islamic essence" of the Empire. He severely criticized the drafting of *Kanun-i Esasi,* the Ottoman constitution, and glorified, instead, the preservation of the "old order," in which the ruler is vested with absolute authority for the distribution of justice and the maintenance of the social order. After addressing the main problems in the legal system, Snouck advised the Ottoman Sultan to take Dutch and British colonial governments as a model in order to strengthen his rule over his subjects. Identifying the status of non-Muslims living in the Empire with the status of Muslims under British and Dutch colonial governments, Snouck argued for the necessity of keeping different communities subject to their own courts and calls for the preservation of the communal distinctions between the Muslim and non-Muslim populations. More significantly, however, he maintained that Arabs and Kurds, despite being Muslims, should be considered as distinct groups and hence be exempt from the newly introduced laws. Referring to the French colonies where the colonial authorities failed in their attempts to subject African tribes to colonial courts, he concluded that the reformers should take a lesson from the experience of the French, and rule the subjects of the Empire according to their own needs. "True equality of law," Snouck concluded, "does not entail the equality of all," as asserted in the reform edicts

and the constitution, "but distribution of rights to each person according to his/her respective status."[73]

Even though the *lahiya* gave a comprehensive account of the legal and institutional reforms that were carried out in the *Tanzimat* era, this chapter does not undertake a reading of this document for its "evidentiary value." Rather, it is an attempt to see it as a subjective trajectory, which is shaped according to Snouck's own experience as a colonial administrator in Dutch Indonesia. Thus, this chapter follows Scholten's argument for hearing the subjective views of local agents whose priorities played a decisive role in the process of colonial state formation. These participants, Scholten argued, spoke a language with its own emphasis, accents and silences when translating their duties and professional convictions into official discourse."[74] Taking a cue from Scholten, I offer a critical reading of Snouck's lahiya in relation to his role as a policy maker in Dutch Indonesia for whom the growing influence of the Ottoman Caliphate under pan-Islamism, and the activities of Ottoman consuls in the area had a primary importance.

A careful analysis of Snouck's correspondence with the Governor-General of Dutch Indonesia reveals the degree to which the Dutch authorities were concerned about the issue. Under pan-Islamic ideas, the Indonesian rulers were generously offering their kingdoms to the Ottoman sultans and asking for protection against "the injustices of Dutch colonial authorities." Even though the imperial center refrained from giving military assistance to Indonesian Muslims under the pressure of Britain, the Ottoman consuls in the region were continuously interfering in day-to-day conflicts between the natives and colonial authorities and hence were playing a decisive role in the formation of Dutch colonial policy.

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[73] Ibid.

[74] Elisbeth Locher-Scholten, "Dutch Expansion in the Indonesian Archipelago Around 1900 and the Imperialism Debate," Journal of South Asian Studies, 25 (March 1994):91-111.

In the following I will first provide a general discussion on how Dutch colonial policy towards its Muslim subjects was shaped and continuously contested in accordance with local dynamics, and try to elaborate the role of Ottoman agents in this process. Even though pan-Islamism provided the general framework for the Ottomans to legitimize their claims over Indonesian Muslims, I intend to illustrate that notions of subjecthood and citizenship played an equally significant role for Ottoman consuls at Batavia in their struggles with the Dutch colonial government.

Against this background, I will argue that the lahiya was in fact a by-product of an ongoing political conflict between Dutch and Ottoman governments concerning the growing Ottoman influence over Indonesian Muslims and particularly the status of Hadhramis Arabs, a highly mobile trade diaspora dispersed around various regions around the Indian Ocean. Snouck's emphasis on the necessity of taking the colonial government as a model and his argument for keeping the Arabs and Kurds exempt from the new legal arrangements resonates with his own experience in Indonesia as a colonial administrator and stems from his desire to legitimize the strategies employed by the Dutch colonial state over its Muslim populations.

Using Snouck's *lahiya* as a trajectory, I aim to complicate the ways we perceive strategies of rule and formation of sovereignty in colonial and continental empires. A thorough reading of the *lahiya* reveals that the strategies and discourses employed by Dutch and Ottoman empires were neither so different as we generally assume nor as similar as recent scholarship tends to suggest, but were formed and continuously contested in relation to local and cross-imperial dynamics.[75] All told, this chapter is an exercise of thinking through "the emphasis,

[75] At this point I draw on Sugata Bose's definition of the Indian Ocean rim as "an interregional arena of political, economic and cultural interaction" and his problematization of regional designations of the Middle East, South Asia and Southeast Asia as "relatively recent constructions that arbitrarily project certain legacies of colonial power onto the domain of knowledge in the postcolonial era." Sugata Bose, A Hundred Horizons: The Indian Ocean in the Age of Global Empire, (Cambridge, Mass. Harvard University Press, 2006), p.6-10. As will be discussed in the following, the controversy between Dutch colonial officials and Ottoman consuls at Batavia over the status of Hadhrami Arabs who started to claim Ottoman citizenship by virtue of birth and descent in the late nineteenth century can only be

accents and silences" of a text written in Ottoman Turkish by a Dutch colonial administrator that yet speaks a language of its own priorities.

### Indonesian Muslims at the Porte: Pan-Islamism and the Formation of Dutch Colonial Policy

The Acheh War, which started in 1873 with the Dutch military expedition against the loosely structured sultanate of northern Sumatra is considered to be a turning point leading to significant shifts in Dutch colonial policy. Also called the "high-tide of Dutch expansion," this new era is characterized by the strengthening and extension of administrative control throughout the regions under Dutch colonial government.[76] The experience of Aceh or more so "the fear of a second Aceh," as Stolten puts it, prompted the Dutch to carry out military expeditions in order to extend the rule of colonial state over far away regions which had hitherto enjoyed a semi-autonomous status under Dutch sovereignty. The desire for establishing direct control throughout the East Indies also led to the creation of new government posts and offices that were designed to achieve administrative uniformity and efficacy in the region.

Looking at the Dutch imperialism debate, Stolten maintains that local colonial servants played a determinant role in the formation of Dutch colonial policy in this period. The empire was "forged in the periphery," as the local authorities actively participated in the formation of the Dutch colonial state. Even though this could hardly be considered as a new phenomenon, it was carried out, from the mid-nineteenth century onwards, with an unforeseen degree of intensity and rapidity as "the local civil servants now needed to do less urging, Batavia took quicker decisions for action, and The Hague no longer ever let the Indies government down."[77]

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understood in relation to the "flexible" boundaries of the Indian Ocean rim as a site of circulation against the background of competing imperialisms of the late nineteenth and early twentieth centuries.

[76] Kuitenbrouwer, Maarten. The Netherlands and the Rise of Modern Imperialism: Colonies and Foreign Policy, 1870-1902. trans. Hugh Beyer, (New York, Oxford), p.31.
[77] Stolten, "Dutch Expansion in the Indonesian Archipelago Around 1900 and the Imperialism Debate," p. 97.

Snouck Hurgronje's appointment to the newly created office of Advisor on Arab and Native Affairs in 1889 took place within this general context. His role in the formation of Dutch policy towards the Muslims of Dutch Indonesia instantiates the degree to which local colonial agents and international politics determined the main strategies of rule in the colonial periphery. As an Islomologist and an Arabist, Snouck's appointment to Batavia stemmed from the desire of the colonial government to *know* more about Indonesian Muslims at a time when, embracing pan-Islamist ideas, they became increasingly hostile to colonial authorities. Snouck was first sent to Jidda consulate to study the influence of pan-Islamism on Indonesian Muslims and then became the advisor to the Governor-General in the East Indies.

A detailed study of Snouck's career reveals the degree to which the idea of pan-Islamism gained currency among the Muslims of Indonesia and thus became a primary concern for the colonial government. Writing to the Governor-General in 1908, Snouck maintained that even though the idea of the Caliphate in reality had "for a good deal become fictitious in the nineteenth century," pan-Islamism was still "able to work to bad effects, and raise trouble by fostering expectations which cannot be fulfilled, but nevertheless are cherished dearly by the mass of Muslims" who were constantly "stimulating discontent with a non-Muslim government."[78]

Snouck's concern about the growing influence of the Caliphate can clearly be seen in one of his articles published right after the abolition of the institution by the Turkish government in 1924. After giving a detailed account of the historical development of the Caliphate, Snouck maintained that it provided "brilliant service" to the Ottoman sultans who

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[78] Jan Schmidt, *Through the Legation Window: 1876-1926: Four Essays on Dutch, Dutch Indian and Ottoman History*, (Leiden: Netherlands, 1992), p. 49 Also see Cemil Aydin, *The Politics of Anti-Westernism in Asia: Visions of World Order in Pan-Islamic and Pan-Asian Thought*, (New York: Columbia University Press, 2007) and *The Idea of the Muslim World: A Global Intellectual History*, (Cambridge Massachussetts: Harvard University Press, 2017)

started, from the eighteenth-century onwards, to use their entitlement to the Caliphate as a way to compensate for the declining political power of the Empire. The development of a pan-Islamic policy under the auspices of Abdulhamid II, Snouck asserts, was a significant error, which led "Muhammedans living under non-Muhammedan rule to feel authorized to appeal to the Sultan-Khalifs." Muslims under colonial states considered the Ottoman sultan as their "real ruler," Snouck continued, to whom they complained about "the actions of their temporary oppressors." Referring to his stay in Constantinople in 1908, Snouck maintained that the idea was still strong in leading Turkish circles as they "were unwilling to give up this evident error." [79]

Snouck's assessment of pan-Islamism and the growing influence of the Ottoman Empire over Indonesian Muslims resonates with the shift in Ottoman state ideology under Abdulhamid II, who started to use Islamic legitimation and the idea of pan-Islamism as an instrument for providing unity among the Muslim populations of the Empire.[80] Following the Ottoman-Russian War of 1878, Pan-Islamism gained importance for creating a potent discourse against the West and emphasized, instead, the Islamic roots of the Empire so as to enhance its legitimacy in its Arab provinces. Concomitant with this shift in the imperial center, the anti-Western sentiment which found expression in a growing appeal to Islam found support in the provincial periphery of the Empire, especially after the French occupation of Tunisia in 1881, British occupation of Egypt in 1882 and Russian conquest of Merv in 1884.[81] Even though the basic premises of Pan-Islam – the unity of the *umma*, loyalty to a single caliph and

[79] Snouck Hurgronje, "The Caliphate," Foreign Affairs, American Quarterly Review, vol III, No.1, Sep. 1924, in Snouck Hurgronje, Verspreide Geschriften, Vol. 4, 1927, pp 445-446. Describing the Turkish Caliphate as an "ornament of power gained by military force," Snouck maintains that "the last occupant has now exchanged his palace for a hotel room in Switzerland."

[80] Deringil, *The Well-Protected Domains,* 47-48.
[81] Nikkie Keddie, *Sayyid Jamal ad-Din al-Afghani: A Political Biography,* (University of California Press, 1972), p. 131.

purification of religion – are reminiscent of traditional convictions, in its essence, the idea of uniting the Muslim community bears remarkable similarities to nationalist movements that arose against Western imperialism. [82] In this respect, nineteenth-century Pan-Islamism harbored, Keddie argues, proto-nationalist sentiments rather than drawing upon traditional Islamic loyalties. The idea of Pan-Islamism generated a new understanding of solidarity, which was defined in terms of the old but shaped according to the exigencies of the present.

It was in this political context that the Ottomans emphasized their right to protect Muslims more ardently than ever. Even though the Empire utilized the universalistic nature of the Caliphate as early as the sixteenth century, it was during the reign of Abdulhamid II that it was turned into a legitimizing institution in accordance with the policy of Pan-Islamism.[83] Pan-Islamism as an official state ideology primarily targeted the Muslims populations living in the Empire, yet it also made a considerable impact on non-Ottoman Muslims who considered their allegiance to the Sultan-Chaliph as a powerful instrument for resisting European colonialism. For Muslims in British India, French Africa and Dutch Indonesia, pan-Islamism served as a powerful instrument in their respective attempts to oppose Western imperialism[84]. Even though the Ottoman ruling elite never considered pan-Islamism as a tool for making extra-territorial claims of sovereignty and refrained from giving active support to non-Ottoman Muslims, it

[82] Nikkie Keddie, "Pan-Islam as Proto-Nationalism," *The Journal of Modern History*, 41: 1, March 1969pp. 18-19.

[83] Hamilton A. R. Gibb, "Lutfi Pasha and the Ottoman Caliphate," *Oriens*, Vol. XV, 1962, pp.288-299. In 1562 the grand vizier Lutfi Pasha was asked by Selim II whether the titles of Imam and Khalifa were applicable to a ruler who was not coming from the Qurayshi family. Lutfi Pasha asserted that he who "maintains faith with justice, command to the good and prohibit the evil" was the Caliph. The Caliph, according to Lutfi Pasha, is the highest sultan who rules the "most important lands of the Muslims, such as lands of Rum and the Arabs, The Hijaz and Yemen, to the extremities of Oman, and Iraq and Bagdad. As is evident from the account of Lutfi Pasha, the Caliphate from its very beginnings contained a universal claim for the protection of Muslims. However, it was only during the reign of Abdulhamid II, especially after the Ottoman-Russian War of 1877-78 that the title of Caliphate was instrumentalized by the center in order to enhance its control in the provinces.

[84] Cemil Aydin, *Politics of anti-Westernism in Asia: visions of world order in pan-Islamic and pan-Asian thought*, (New York: Columbia University Press, 2007), Azmi Ozcan, Pan-Islamism: Indian Muslims, the Ottomans and Britain, 1877-1924, (New York: Brill, 1997).

was used as a bargaining chip against European powers. Indeed, Snouck's experience in Indonesia clearly shows how the Ottoman Empire utilized the idea of pan-Islamism in its efforts to attach itself to international power politics.

Even though Indonesian Muslims were already considering the Ottoman Empire as a possible ally as early as sixteenth century, the extension of Dutch military expeditions in the nineteenth century moved them to put a stronger emphasis on their allegiance to the Sultan/Caliph. It was within this general context that the Porte started to be visited by envoys sent by semi-autonomous sultanates of Indonesia; and Snouck Hurgronje, the newly appointed advisor to the office of Arab and Native Affairs started to consider the Caliphate as a serious threat against the Dutch colonial government.

A sequence of anti-Dutch movements in South Sumatra displays the extent to which the influence of pan-Islamism gained currency from 1850s onwards. Taha Safi'ud-din, the sultan of Djambi, which was then an autonomous sultanate under Dutch sovereignty, sent a group of envoys to Constantinople in 1855 and demanded the recognition of his sultanate to be a territory of the Ottoman Empire.[85] In the face of increasing pressure from the Dutch government for renewing its contract with the sultanate of Djambi under binding requirements, Taha considered putting his domain under the sovereignty of the Ottoman Empire as a viable alternative, which would thence avoid the "foreigners to claim rights over" his sultanate.

Concomittant with Taha's appeal, Sultan Ibrahim of Aceh sent an envoy to Constantinople to request that Aceh be considered as a vassal state of the Ottoman Empire.[86]

[85] Anthony Reid, "Nineteenth Century Pan-Islam in Indonesia and Malaysia," *Journal of Asian Studies*, 26:2, (Feb 1967), pp.267-283.

[86] Ibid. Reid argues that first formal links with the Ottoman Empire was established in the sixteenth century against the advance of Portuguese and remained as an important component of Acehenese patriotism. Two imperial firmans taken from Abdulmecid renewed Ottoman protection over Aceh and thus confirmed Ibrahim's status as the legitimate ruler in 1850s. In 1872 Reid maintains, the Ottoman governor of Jidda repeatedly assured the Netherlands consul that Aceh was a possession of the Ottoman Empire.

In his appeal to the Porte, Ibrahim referred to a sixteenth century document, which had formerly recognized Aceh as a protectorate of the Ottoman Empire against the Portuguese. In his appeal to the Porte, Ibrahim convinced the Ottoman authorities to search for the sixteenth document in the imperial archive and asked them to reaffirm the already existing status of Aceh as a vassal state of the Ottoman Empire. Even though Taha eventually failed to get any support from the Empire, Ibrahim managed to acquire two imperial firmans from the Porte, which recognized Aceh as a protectorate of the Ottoman Empire and reassured the royal status of Ibrahim.

When the Dutch finally declared war against the Kingdom of Aceh and declared it to be a possession of the Netherlands Indies, another mission was sent to Constantinople under Habib Abd al-Rahman al-Zahir, a key advisor to the Sultan Muhammad Dawot.[87] Presenting certificates signed by five emirs of Aceh who offered their possessions to Sultan Abdulaziz, al-Zahir requested the appointment of an Ottoman governor to the region. Even though al-Zahir was not offered an audience with the Sultan, his appeal was favorably received by the Porte and gained public acclamation as the "grande question du jour" in the newspapers published in Constantinople. Even though the Porte did not offer military assistance to al-Zahir under the pressure of Britain, the status of Aceh as a protectorate of the Ottoman Empire continued to cause trouble for Dutch colonial authorities in their attempts to claim sovereignty over the region. Even though Indonesian sultans eventually failed in their attempts to obtain the support of the Empire against the Dutch, Indonesian Muslims continued to appeal to the Porte complaining about the injustices of the colonial authorities.[88] Ottoman consular reports

[87] Reid, Anthony. *The Contest for North Sumatra: Aceh, Netherlands and Britain 1858-1989*. (Kulala Limpur: Oxford University Press, 1969).
[88] BOA, A:MKT. NZD 47/38, 22/S/1268, BOA A.MKT.NZD, 51/51, 29/Ca/1268. These documents maintain that Mehmed Gavus Efendi and his friends were hosted in the residence of Tahir Efendi, the head of the police department and received a monthly salary from the state treasury.

indicate that the Porte maintained its influence in the region and the situation of Indonesian Muslims remained as a serious consideration from the 1850s up until the 1910s.

These documents reveal that various groups of Muslim Indonesians made their way to Constantinople from the 1850s onwards. Even though they were unable to forward their demands directly to the Sultan, they were accommodated at the Porte and some of them received a stipend from the state treasury during their stay in the city. This became a serious concern for the Dutch authorities who tried to monitor the relations of these Indonesians with Ottoman officials through the Dutch Embassy in Constantinople. Writing to the Governor-General in 1906, Snouck reported the visit of Hassanuddin Pangeran Sosronegoro, the brother of the Sultan of Koetei, and maintained that he was "lodged in the estate of Abdulaziz" at Besiktas, which he described as a totally "unsuitable undertaking."[89] Upon his return to Borneo, Sosronegoro was interrogated by the Dutch authorities and maintained that he had initially stayed in the Pera Palas Hotel in Istanbul but later was invited to the estate of Seyyid Sahil Pasha, who was, according to Snouck, the son of an influential man in the retinue of the Sultan. In his correspondence with the Governor-General, Snouck accused the legation of "being totally unaware of East-Indian matters and ignorant of the men who mattered in Yildiz Palace."[90]

Nevertheless, a general overview of the appeals to the Ottoman government indicates a shift in the relationship between the imperial center and the Indonesian Muslims coming to the Porte. Even though earlier documents that fall between 1850s and 1900s primarily reveal the attempts of individual rulers from Indonesia to be recognized by the Empire as vassal states, later documents comprise collective petitions directly addressed to the Porte by Indonesian

[89] Snouck Advice No.14 November 28, 1906, doss. 451, no. 26287, in Schmidt, Through the Legation Window, p. 65.

[90] Snouck Advise No. 5, March 27, 1908, doss. 451, in Schmidt, p.66.

Muslims. The influence of the Ottoman Empire increased in accordance with the gradual strengthening of Dutch rule over the semi-autonomous sultanates, and pan-Islamism gained popular support among Indonesian Muslims who were by then starting to appeal to the Porte without any intermediaries. Equally important is the interest shown by Ottoman authorities to the status of Muslims in Indonesia. Between 1908 and 1910 the Ottoman government sponsored the preparation of general reports by Ottoman officials. In total eight reports were submitted to the Porte, each providing a detailed account regarding the abuses of Dutch authorities in the East Indies.[91] Curiously, all of these reports referred to Indonesian Muslims as "Asiatic Ottomans," which points to a significant shift in the official discourse as well as an increasing interest on the issue in the Ottoman Empire.

How can one explain this shift in the official discourse? Why were the Ottomans, despite formerly declining the appeals of Indonesian Muslims in 1850s, starting to show an active involvement in the conflicts between Dutch authorities and their subject populations? To what extent was pan-Islamism determinant in this process? What does this episode tell us about the different ways in which notions of subjecthood and citizenship were employed by Dutch and Ottoman authorities, and about the role of Ottoman involvement in the shaping of Dutch colonial policy in Indonesia? Was this episode simply a symbolic demonstration of Ottoman sovereignty in the Dutch East Indies or does it tell us more about Ottoman imperial interests in a broader geography of power relations? Can one draw connections between the arguments conveyed in Snouck's lahiya, which he submitted to the Empire in 1908, and the strategies of local Ottoman agents in the East Indies who by then started to conceive the Muslims of Indonesia as "Asiatic Ottomans"?

[91] BOA, HR.HMS.ISO, 122/17: 24/Ts/1325; BOA, HR.HMS.ISO 122/16: 31/Ks/1325; BOA, HR.HMS.ISO 122/15: 19/Ni/1326; BOA, HR.HMS.ISO 122:18: 22/Ha/1326, BOA, HR.HMS.ISO 122/14:16/Ts/1326; BOA, HR.HMS.ISO 122/13: 23/Ke/1326; BOA, HR.HMS.ISO 122/12: 05/Ma/1327; BOA, HR.HMS.ISO 122/11: 12/Ni/1327. All of these reports bear the title of "A report on the treatment of Asian Ottomans in Dutch Indonesia."

## Categorizing the Hadrami Arabs: Politics of Incorporation and Differentiation in Dutch Indonesia

In a report considering the situation of Muslims in British India, Saffet Pasha, the Ottoman Chief Minister, referred to Dutch Indonesia and put a particular emphasis on their uniquely unjust treatment by the Dutch colonial government . Composed of fourteen million Muslims, Saffet maintained in his report, the Java islands were turned into a vast plantation by the Dutch who mercilessly exploited their subjects for maximizing their own profits. Saffet maintained that the Muslims were forced to work on the land and then to sell their agricultural produce at a fixed price to the government. After referring to the economic exploitation of the Muslims by colonial authorities, Saffet asserted that they were made subject to "a unique form of administration," which had no equivalent in any other colonial state. Comparing the Muslims under the rule of the Dutch to those subject to the rule of the French, Saffet claimed that the Indonesian Muslims were deprived of the rights and liberties that had been granted to their co-religionists under the rule of other colonial governments (*"…ve Fransa ahalisinin nail olduklari hukuk ve serbestiyyeden mahrum olarak mustesna surette idare kilindigi malum iken…"*).[92]

Saffet's reference to the exploitation of Indonesian Muslims resonated with a shift in Dutch colonial policy, which re-introduced, in 1830s, the system of forced cultivation in an

[92] BOA, YEE, No. 43/11, 06.R.1327. Even though the archival catalogues indicate that the report was submitted to the Porte on March 28, 1909, this is hardly possible to be the case. The date on the catalogue corresponds to the last day of Abdulhamid II's rule before he was sent to exile. In fact, the case represents a typical method frequently used by the Ottoman archivists. Unless a specific date of submission is provided, the last day of the Ottoman sultan whom the report was presented is assigned as the date of submission. The fact that Saffet Pasha was already dead by 1883 confirms this assumption. Most probably Saffet Pasha prepared the report when he was a Chief Minister in 1878, which also corresponds to the shift in Dutch policy, which aimed at bringing forced cultivation to an end.

attempt to increase the production of certain crops and hence to increase state revenue.[93] Even though the policy of forced cultivation was brought to a halt in the 1870s by the agrarian reforms introduced in the Liberal Period, the exploitation of the peasantry continued to generate discontent among the indigenous populations of the region.

What is significant about this report, however, is Saffet's emphasis on the *unique* features of Dutch administration and its effects on Indonesian Muslims. Even though this can be associated with the above-mentioned policy of forced cultivation, it is more likely that Saffet was implicitly referring to the tripartite division of the indigenous population by the Dutch authorities and the passport-district system (*wijken-passenstelsen*)[94], which limited the mobility of a distinguished group of Indonesians living in the archipelago. Indeed, Saffet's criticism against the Dutch authorities seems to address the situation of the Indonesian Muslims of Arab origin, the *Hadramis,* who were recognized by the Dutch government as having a distinct legal status, as "Foreign Easterners," (*vreemde oosterlingen*) and thus were exempt from the rights granted to the rest of the population. Saffet's report coincided with a general tendency in the Ottoman Empire, which started to show a growing interest in the situation of Hadrami Arabs in Indonesia and their struggles with the Dutch colonial government. Even though pan-Islamism provided the Ottomans with a general repertoire for legitimizing their

[93] Jur van Goor, "Continuity and Change in the Dutch Position in Asia between 1750 and 1850" in Colonial Empires Compared: Britain, and the Netherlands, 1750-1850, eds. Bob Moore and Henk van Nierop, (Aldershot,Englad: Ashgate, 2003), p.197. The introduction of the Cultivation System – Cultuurstelsel – was primarily designed to boost the exports of the colony. The main assumption behind this system, Jur van Goor argues, was the idea that the state owned all the land and those work on the land had to pay tax for its use. Taxes were levied by village and the peasants were obliged to pay for them in kind mainly in export crops designated by the government. Also see Edward Keene, Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics, (Cambridge University Press, 2002), pp.85.

[94] Under the passport-district system those who hold Foreign Easterner status were prohibited to go from one town to the other without acquiring a pass from Dutch colonial officials. In certain towns, the Foreign Easterners were also exempt from the right of going from one district of a town to the other. The passport district system was primarily aimed at avoiding the Hadramis to migrate to other urban centers.

claims against Dutch colonial authorities, it was specifically the status of the Hadrami Arabs, rather than Indonesian Muslims in general, that became a primary concern for the Ottoman government.

According to the state regulation passed in 1854, the Arabs, Chinese and Indians were considered in the status of "foreign easterners" and were exempt from the rights granted to Europeans and natives."[95] Separated from the Muslim natives of Indonesia, the Arabs were forced to reside in special quarters, called *wijken*, and required to obtain passes in order to go from one district to the other. While the Chinese were considered as a threat to the "healthy economic development of Java," the Arabs supposedly "violate[ed] the peace and order" in the colony as they keep agitating against the government."[96] The consideration of Hadramis as foreign easterners by the colonial administration, therefore, was primarily designed to keep them under control and to avoid further migration to the region. This policy not only separated the Hadramis from the rest of the population, especially from the native Muslims on whom they had a considerable degree of influence, but also led to the emergence of a heightened sense of community among them.

What made the legitimacy of the Dutch administration susceptible to serious criticisms was not only the insistence of the colonial government on preserving this three-level ethno-racial separation of the subject populations, but also the artificiality of the divisions that separated these categories from one another. Contrary to Arabs, Chinese and Indians as Foreign

[95] Michael Laffan, *Islamic Nationhood and Colonial Indonesia: The Umma Below the Winds*, (New York, 2003), p. 43. Even though there had been a Hadhramis population in the East Indies from time immemorial, there occurred, especially after the opening of the Suez Canal, a steady influx of Hadhramis Arabs into the region. The Hadhramis already living in the area before the nineteenth century were mainly composed of wealthy merchant families and enjoyed a special place of honor among the Muslims of Indonesia by virtue of their kinship with the family of the Prophet. Those who came to Java in the nineteenth century, however, were from a lower economic background, "in search for fame and fortune in bilad al-jawa.

[96] Kolonial Verslag of 1902, quoted in Hamid Algadri, *Dutch Policy against Islam and Indonesians of Arab Descent*, (Jakarta, 1994), p. 77.

Easterners, the Japanese were considered to hold European status, which exacerbated the Hadramis' opposition to the Dutch government. In a secret letter to the Governor General, Snouck addressed the growing discontent of the Hadramis who started to ask the government to account for "what good quality" was "suddenly found in this one Eastern nation (Japanese) that apparently could not be found in other Easterners." In response, Snouck maintained that the position of Japanese in Indonesia was guaranteed by the politics of Japan, which avoided its subjects to be considered as Eastern Orientals. Considering the Arabs, Snouck asserted that they "put all their hopes in the strong Islam country of Turkey" and showed a strong support for "pan-Islamist agitation, which has been going on for several years all over the country."[97] The Ottoman consuls tried to give the impression, Snouck continued, that the Hadhramis "have more protectors than their rulers" and prevented them from identifying themselves with the colonial government. On the other hand, Snouck did not consider the Chinese likely to cause any trouble for the government as they were still "waiting for the day" when China would finally appear as a strong state and make similar claims for their people.[98]

Snouck's assessment of the situation not only provides useful insights for understanding how colonial strategies of rule were continuously contested by cross-imperial dynamics but also reveals the increasing influence of Ottoman consuls over the Hadhrami Arabs, whose communal solidarity was further strengthened by Dutch administrative policies.

[97] Secret Letter to the Governor-General, Batavia, 28 July, 1904, in Algadri, pp. 95-96.

[98] The consideration of Japanese under European status can be explained in relation to the Meiji Restoration and the consequent abolition of extraterritoriality in Japan in 1899 with the Aoki-Kimberly treaty signed with Britain. The complaints of Hadrami Arabs, as conveyed in Snouck's letter to the governor general of Indonesia, resonates with the concomitant debates and negotiations about extraterritoriality in other non-Western states followed by the abolition of extraterritoriality in Japan. While the Western states cited Japanese reforms as examples that the Ottoman Empire and China should emulate, Kayaoglu maintains, the Ottoman and Chinese governments accused Western states of double standards for keeping their extraterritorial rights in their countries while abolishing them in Japan. Turan Kayaoglu, *Legal Imperialism: Sovereignty, Extraterritoriality in Japan, the Ottoman Empire and China*, (Cambridge University Press, 2010), pp. 66-68.

It is within this context that the Hadrami Arabs of Indonesia, who were not considered as the natives of the region, started to claim Ottoman citizenship by virtue of birth or descent, and came to identify themselves with the Ottoman Empire.

Even though pan-Islamism set the general framework within which the Ottomans made claims on behalf of Indonesian Muslims, the controversy between the Hadrami Arabs and the Dutch authorities was specifically shaped around the idea of citizenship. Although Hadramaut, the homeland of the Hadrami émigré community, had never formally been under Ottoman sovereignty, the re-establishment of Ottoman power in Yemen in 1872 and the concomitant alliance formed between Ottoman Empire and the Kathiri sultanate in Hadhramaut provided the Hadramis of Indonesia a legitimate framework for claiming Ottoman citizenship by virtue of birth and descent in their attempts to acquire European status in the Netherlands Indies.

In an attempt to refute these claims, the Dutch government introduced yet another distinction between "Asiatic" and "European" Ottomans and asserted that the Hadramis who held Ottoman citizenship were not qualified for European status as they fell into the former category. The emergence of "Asiatic Ottomans" as a distinct category not only manifests how a grammar of difference was continuously crafted with rapidly changing discourses on both sides of this controversy, but also presents a bizarre case in which ethno-racial categories deployed by the Dutch colonial state were transposed upon modern notions of Ottoman citizenship in an attempt to preserve the already existing categories of colonial administration.

Schmidt's study on the correspondence between Ottoman and Dutch authorities further elaborates the degree to which these categories were shaped and constantly contested on both sides. Missak Efendi, the Ottoman Minister at the Hague, for instance, severely criticized the Dutch for making a distinction between Asiatic and European Ottomans and considering the former as having the status of Foreign Easterners. Arguing that no such distinction existed in the Empire, Missak demanded that the colonial authorities recognize the Hadramis as Ottoman

citizens and hence enable them to acquire European status. In order to strengthen his argument, Missak referred to the situation of Dutch citizens in the Empire who were treated as a "most favored nation" and asserted that Ottoman citizens in the Dutch colonial state should be considered the same way.[99] Similar reasoning is also visible in the correspondence of Aristarchi Bey, the Ottoman envoy to the Hague in 1910, in his attempt to protest against the humiliating pressures and other unfavorable legislation for "Asiatic Ottomans," a situation which was not only discriminatory for the Hadramis but also against the Article 19 of the 1862 Treaty, which granted full rights to all Ottomans in the territories and possessions of Netherlands.[100]

In fact, the appeals of the Hadhrami Arabs to Ottoman consuls in the region display a significant degree of pragmatism, rather than an ideological allegiance based on pan-Islamic ideas. The Ottoman involvement shows how the discourses and strategies on both sides of the controversy were shaped in relation to one another with quite an extraordinary degree of simultaneity. The Ottomans were furthering their claims over the Hadrami community by presenting them as Ottoman citizens; while the Dutch colonial government asserted a distinction between Asian and European Ottomans to legitimize the already existing categories of the colonial state. Even though the imperial center refrained from giving military assistance

[99] The Ottoman foreign Minister at Istanbul, January 9, 1909, doss.453-4, no.1061, in Schmidt, p. 105 Interestingly, Missak's argument sees the Hadramis of Indonesia as Ottoman citizens and hence demands a just treatment by the Dutch authorities through the principle reciprocity. Missak's elaboration of the case illuminates how the Ottomans in fact mimicked the affairs of European consuls in the Empire, who were concurrently extending citizenship to non-Muslim Ottoman subjects. For an analysis of extraterritorial rights over the Ottoman Empire see Nasim Sousa, *The Capitulatory Regime of Turkey: Its History, Origin and Nature,* (Baltimore: Johns Hopkins Press, 1933), Ali Ihsan Bagis, *Osmanli Ticaretinde Gayrimuslimler: Kapitulasyonlar, Beratli Tuccarlar, Avrupa ve Hayriye Tuccarlari*, (ankara, 1983), Belkis Konan, "Osmanli Devletinde Protégé Sistemi*," Ankara Universitesi Hukuk Fakultesi Dergisi*, 58:1 (2009): 169-187, Bruce Masters, "The Sultan's Enterpreneurs: The Avrupa Tuccaris and the Hayriye Tuccaris of Syria," *International Journal of the Middle East Studies,* 24:4 (1992).

[100] BOA, HR.HMS. ISO, No:12/2. Aristarchi Bey was the Ottoman envoy to the Hague in 1910. In his attempt to refute the distinction made between Asiatic and European Ottomans Aristarchi Bey refers to the 19th article of 1862 commercial treaty signed with Netherlands, which declares an equal treatment of Ottoman people in the possessions of Netherlands. Clearly Aristarchi was making an argument based on the principle of reciprocity.

to the Muslims of Indonesia who appealed to Istanbul to acquire protection, the case of the Hadhrami Arabs reveals that the Ottoman consuls in Batavia played a prominent role in the settlement of their quotidian conflicts with Dutch colonial authorities. In marked contrast to earlier appeals to the Ottoman government, which found expression in the vocabulary of pan-Islamism, the claims of the Hadhrami Arabs as Foreign Orientals were coated in the newly emerging notions of citizenship and displayed some understanding of positivist international law.[101]

### Going Back to the Text: An Alternative Trajectory on Ottoman Legal Transformation

Snouck's report bore the title of *Legal Reforms in the Sublime Porte* and provided a comprehensive account regarding the reforms that were carried out in the Tanzimat Era. In his letter to the famous Orientalist Theodor Noldoke, Snouck maintained that he came to Constantinople the day after the constitution was re-installed by the Young Turks in 1908, and stayed in the city for about five weeks.[102] One of his articles "Jong-Turkije Herinneringen uit Stambol," which was published in Amsterdam in 1909, confirms this data, suggesting that Snouck arrived at Constantinople on July 25th, and stayed until September 23rd.[103] Even though

[101] At this point I do acknowledge the still evolving discourse of citizenship in the nineteenth century and see the claims of Hadramis Arabs for Ottoman citizenship as somewhat analogous to Sukanya Banerjee's study of imperial citizenship in the Late Victorian Empire. Taking a cue from Lauren Berlant, Banerjee argues that there existed not one but many languages of citizenship before the inception of the nation state and these different formulations were continually produced out of a political, rhetorical, and economic struggle over who will count as "the people" and how social membership would be measured and valued. Sukanya Banerjee, *Becoming Imperial Citizens: Indians in the Late-Victorian Empire*, (Duke University Press, 2010). Gorman's study of imperial citizenship in the context of British Empire is a relevant example revealing the general neglect of imperial historians for the question of citizenship and the ambivalent rhetoric between citizenship and subjecthood. Daniel Gorman, *Imperial Citizenship: Empire and the Question of Belonging*, (Manchester University Press, 2006).

[102] Orientalism and Islam : the letters of C. Snouck Hurgronje to Th. Nöldeke : from the Tübingen University Library / published by P. Sj. van Koningsveld.

[103] Snouck Hurgronje, "Jong-Turkije Herinneringen Uit Stambol," Gids, 73:1, Amsterdam 1909, pp.1-33.

the *lahiya* is catalogued in the Ottoman archives as an anonymous document, the above-mentioned article and the letters Snouck wrote to Noldoke and Goldziher from Constantinople confirm the assertion that the *lahiya* was indeed written by Snouck.[104] The consistency between the arguments on these sources verifies this assumption. Snouck not only made similar claims in both sources but also used, at certain points, highly similar, and sometimes almost identical sentences.[105]

Snouck's correspondence with the Hague and the Dutch Embassy in Constantinople reveals the importance Snouck attributed to information gathering from the Porte. Schmidt's detailed study on the Hague archives indicates that Snouck demanded in 1903 that the Dutch government train a candidate for the post of a second dragoman for the legation at Constantinople. In the correspondence Snouck maintained that the candidate should learn Arabic and Turkish and be able to start working by the beginning of 1907.[106] Following Snouck's request, the government decided to appoint A.H. Van Ophuijsen to the post, who had formerly studied law and Semitic languages with De Groeje and Snouck at Leiden University. Snouck had previously taught Ophuijsen elementary Turkish when he was at Leiden and made

[104] In Orientalism Said maintains that Ignaz Goldziher, Theodor Noldoke, Carl Becker, Duncan Black MacDonald and Snouck Hurgronje were five important experts "as makers of the image of Islam," who all agreed on the "latent inferiority" of Islam. Edward Said, Orientalism, (New York: Vintage Books, 1978), pp.209-210. Snouck's letters reveals that he was constantly in touch with Noldoke and Goldziher while he was in Constantinople. Furthermore, they also indicate that MacDonald was also in the city and in touch with Snouck. In one of the letters Snouck wrote to Noldoke he states that he had met with MacDonald in front of the Robert College. In one of his German correspondances, Snouck also maintains that he had just received a report from De Goeje and an article on "Ancient Tribes" from Noldoke. These sources instantiates that all these well-known Orientalists were exchanging information continuously and considered the re-opening of the Ottoman parliament in 1908 as a significant event.

[105] In the beginning of the lahiya where Snouck accounts for the reasons that led him to write such a treatise, he maintains that he, as "a Flemish infidel," "felt obliged" for such an undertaking at a time when learned and wise Muslims were yet to appear. In his letter to Noldoke, which he wrote from Constantinople Snouck maintains that "true leaders are still missing, but will have to emerge over time."

[106] Schimidt, pp. 111-115.

him, after his appointment, take Turkish lessons from his own teacher, an Ottoman staff-officer living in Stuttgart. [107]

This correspondence indicates that Snouck knew Turkish at least well enough to give lessons on the elementary level, yet was not fluent enough to carry on everyday conservations. In one of his German letters written from Constantinople, Snouck stated that "if he could find a pair of competent and friendly Turkish mentors who would be linguistically helpful," then "there would be more to tell than a letter can accommodate."[108] In the light of this information it's also possible to speculate that the *lahiya* might have been put down into writing with the assistance of the dragomans in the legation.[109]

The document consists of three sections. The first section gave a detailed account of the legal reforms that were carried out in the Empire since the declaration of the Tanzimat in 1839. In the following section Snouck examined the reasons that led to the eventual failure of these reforms, and in the last section he explained some fundamental principles that had to be taken into consideration by the Ottoman reformers. The *lahiya* not only is an important source giving a comprehensive account regarding the newly introduced laws and the reforms aimed at reordering the legal system, but also provides an interesting trajectory from the viewpoint of a colonial administrator and a well-known Orientalist.

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[107] This raises the question of whether the lahiya might actually have been written by Ophuijsen rather than Snouck. Especially when Ophuijsen's expertise on law is taken into consideration, it appears to be a strong possibility. However, Schmidt's careful analysis of Snouck's correspondences reveals that Ophuijsen was still in Stuttgart in November 1908. He arrived to Constantinople in January 1909 upon completing his studies in Stuttgart and finally took the oath from Van Oordt, the dragoman in the legation, whose language skills, according to Snouck, were clearly defective. When Snouck came to Constantinople then, Ophuijsen was not yet in the legation.

[108] Minor German Correspondences of Snouck Hurgronje, pub. By Psj van Koningsveld, p. 112.

[109] As mentioned already Snouck was appointed to the Office of Arab and Native Affairs in 1889. In 1906 he left Batavia and became a Professor of Arabic at Leiden University. However, he continued to advise to the Dutch colonial government and remained connected to the office of Indische en Arabische aangelegenheden. When he came to Constantinople in 1908, therefore, he was still sending reports to the Governor-General as a leading policy maker for the colonial government.

This *lahiya* can be analyzed as a political treatise produced in accordance with Snouck's own priorities, which can only be understood in relation to the ongoing controversy between the Ottoman and Dutch authorities.[110] In an attempt to put these empires back into harmony, Snouck's arguments can be placed in dialogue with those conveyed by the Ottoman officials in their efforts to raise claims on behalf of the Muslims and more specifically the Hadhrami Arabs of the Dutch Indies.

The Ottoman government considered the status of the Hadhrami Arabs under the rule of the Dutch colonial government in relation to the principle of reciprocity. Writing in 1909, Missak Pasha denounced the Dutch government for not considering the Ottoman citizens under their rule in the same way the Ottomans were treating the Dutch citizens in the Empire. Wheras Snouck, directly addressing a reform proposal to Abdulhamid II, asserted the necessity for the Ottoman government to identify the status of non-Muslims and Arabs living in the Ottoman Empire with that of the Muslims under the Dutch rule.

**The idea of Constitution and the "Islamization of Modern Law"**

In the *lahiya* Snouck argued against any attempt that contradicted the Islamic essence of the Empire. In this respect it presented the adoption of laws from European codes and reforms initiated towards the creation of a centralized legal system as the main reasons leading to the eventual decline of the Empire. Most remarkably, it denounced the drafting of the Ottoman constitution, *Kanun-i Esasi*, as the most pernicious innovation yet made in the Empire in the name of legal transformation. Even though it is clearly stated in Article 14 of the constitution that Islam is the official religion of the state, Snouck argued that the constitution as a whole was in conflict with Islamic law.[111] Asserting that the *Kanun-i Esasi* introduced a

[110] Snouck leaves Indonesia in 1906 and goes back to Netherlands where he became a professor at Leiden University. Even though Snouck was not officially working as a colonial official after 1906, he continued prepare reports for the Governor-General and maintained his influence as a policy-maker.

[111] The Kanun-i Esasi was based on the Belgian Constitution of 1831 and was also believed to be influenced by the Frecch Constitution Charter of 1824 and the Constitution of the German Reich of 1871. Berkes underlines that the influence of French and German constitutions were particularly

novel relationship between the sultan and his subjects, Snouck maintained that the idea of a constitution could not be compatible with an Islamic state as "Islam does not permit the creation of a law that would put a wedge between the sultan and his subjects." Snouck specifically attacked the articles of the constitution that stressed the autonomy of laws, the ascription of legislative functions to state officials and limit the absolute authority of the ruler. He severely criticized Article 7 for restricting the rights of the sovereign by placing the sultan below the law: "Instead of stating that the sultan is the maker of the laws and responsible for them, it maintains that he merely executes them."[112]

Snouck's opposition to the idea of a constitution is also visible in one of his articles, "Le Droit Musulman," in which he severely criticized Savvas Pasha, the former foreign minister of the Empire, who was at the same time a member of the committee delegated to draft the constitution.[113] Snouck condemned Savvas for his book *Etude sur la Theorie du Droit Musulman*,[114] which Snouck saw as a study that lacked any scientific grounding but one that

important as they were both provided for a semi-autocratic states ruled by the king and the government. Especially Article 13 of the French Constitution recognized the kigh to be the supreme head of the state, whose authority is sacred and inviolable. On the other hand, the French constitution of 1875 was also translated but was found unacceptable as a model as it did not fit into a monarchial regime. Niyazi Berkes, Development of Secularism in Turkey, (Montreal: McGill, 1964), pp.242-243.

[112] BOA, YEE, "Legal Reforms in the Ottoman Empire."
[113] Snouck Hurgronje, "Le Droit Musulman," in Verspreide Geschriften, p. 244.

[114] Savvas Pacha, Etude sur la Theorie du Droit Musulman, (Paris, 1892). Apart from this Savvas Pacha also published Le Tribunal Musulmane in 1902 in Paris, which provides a detailed account on the newly introduced laws and the changes in the court system. This book also includes a section, which is written as a response Goldziher. In Le Droit Musulman, Snouck refers to this text and severely criticizes Savvas Pacha. These sources indicates an ongoing debate between Goldziher, Hurgronje and Savvas Pacha in relation to their respective views on the compatibility of constitution with an Islamic state. Furthermore there is some evidence that suggest that this debate reached a somewhat wider audience. Servier refers to this opposition between Snouck and Savvas in his own book: "Savvas Pacha, an Ottoman Christian and a liberal thinker, but who thinks like a Christian and not as a Musulmane, says, in his Studies on the Theory of Musulmane Law: One can render not only acceptable to but also compulsory on the Musulmane conscience all progress, all truth, every legal dispotion, not hitherto accepted by the Muslim community or inscribed in its law…one of the most eminent Orientalists of the present day Snouck Hurgronje, whose works have thrown a startling light upon the psychology of Muslim nations, have proved irrefutably the falsity of the theories Sawwas Pacha." Andre Servier, Islam and Psychology of the Musulmane, (London: Chapman Hall, 1924), pp.250-51

was filled with imagination. Snouck mainly argued against Savvas' defense of the "Islamization of modern law," a term Savvas used for legitimizing the idea of constitution and its compatibility with the fundamental principles of Islam. In the book Savvas argued that the adoption of foreign laws and their adjustment to Islamic law was "not only acceptable according to Muslim consciousness, but also mandatory for every Muslim who respects the will of God and his messenger."[115] Furthermore, Savvas asserted that this obligation held for "200 millions of Muslims who now live in the three continents of the old hemisphere," eventually bringing them "a prosperous future in modern society." Referring to these arguments of Savvas Pasha in his article, Snouck asserted that Savvas' understanding of Islamic law was "neither Muslim, nor historical" but completely "utopian, which lacks any raison d'etre."[116] Even though Snouck was primarily against the idea of a constitution, his severe criticism against Savvas Pasha and his denunciation of his ideas for lacking any rationality was derived from Savvas' emphasis on the Muslims living outside the borders of the Empire who, he believed, should follow a similar path in order to achieve a prosperous future.

When Snouck's critique of Savvas Pacha is juxtaposed with the arguments he presented in the *lahiya*, the reasons behind his opposition to the *Kanun-i Esasi* became clearer. After explaining the reasons why the articles of the constitution would not be compatible with Islam, Snouck asserted that the problem did not derive from these specific articles but from the idea of constitution as a whole. Instead of bringing the representatives of people coming from diverse ethnic and religious backgrounds together in one parliament, Snouck argued, the Ottomans should have maintained the distinctions between different communities and made them subject to their own laws and customs. In order to elaborate his argument Snouck referred

[115] Ibid.
[116] Snouck, "Le Droit Musulman," p. 244.

to the situation of Muslims in non-Muslim countries: "All Christian states, but especially Netherlands, successfully apply this system in their Eastern provinces."[117] It is precisely at this point that Snouck's argument against the idea of a parliamentary regime turns into a "defense" of the administrative strategies employed by colonial governments. Snouck's identification of non-Muslims and Arabs living in the Empire with the status of Muslims living in British and Dutch colonies and his proposal to the Empire to take colonial states as a model to rule these populations were thus legitimized against this background. The Muslims living under the rule of Christian states, Snouck maintained, "enjoy religious freedom and are subjected to their own laws" and "none of these states has any designs for restricting the rights of their Muslim subjects." This is the reason why "the Muslims of Bengal are today loyal to the British Queen and those living in Indonesia are allegiant to the Queen of Netherlands." These statements quite clearly indicate that while resisting the idea of a constitution and emphasizing its incompatibility with Islam, Snouck presents the administrative policies of the Dutch colonial government over the Muslims of Indonesia in a legitimizing framework.

What is more interesting, however, is Snouck's categorization of Arabs together with the non-Muslims apart from the Muslims of the Empire. If it would have been the otherwise, that is to say, if Snouck would have argued for the preservation of Muslim/non-Muslim divide, then it would be possible to assert that the *lahiya* was contending the continuation of the pre-Tanzimat order of the Ottoman society. Even though Snouck entirely refuted the idea of legal equality by maintaining "true equality of law does not entail the equality of all but distribution of rights to each person according his/her respective status," he nevertheless made an interesting move which can hardly be considered as an argument for the preservation of the existing order. By considering the Arabs, despite being Muslims, together with the non-Muslims of the Empire and claiming the necessity of keeping them exempt from the

[117] BOA, YEE, "Devlet-i Aliyyedeki Islahat-i Kanuniye."

constitution and the newly introduced laws, Snouck drew on his own experience in Indonesia, more specifically the controversy between Ottoman and Dutch authorities over the status of Hadhrami Arabs, who were kept, by the colonial government, under a distinct legal category as Foreign Easterners.

The same argument is also visible in his article on the Young Turks, which was published a year after his visit to Constantinople. In the article Snouck asserted that the aim of the leaders was "to turn Turkey, in every sense of the word and with no reserve, to a modern state by the constitution."[118] Even though this new system removed all obstacles to modern Turkey, Snouck continued, there were certain problems in the realization of this task. Although Snouck used a milder tone in the article compared to the *lahiya*, his main criticism of the incompatibility of a constitutional system with the basic principles of Islamic law is still visible. As in the *lahiya*, Snouck asserts that the religious scholars were "still trying to make sense of the constitution" and looking for ways to make it conform with the essentials of an Islamic state within which the ruler is the embodiment of sovereignty and whose absolute authority cannot be restricted by the law.

After referring to the inherent contradiction between Islam and the idea of a constitution, Snouck asserted that the main question that the reformers should deal with was the status of Arabs and Kurds. The most difficult task, Snouck maintained, was "to make this new system to work with the Arabs and Kurds of the Empire." At this point Snouck questioned whether there is any possibility that these new leaders (the Young Turks) would consider European colonial forms of government as an alternative to rule these populations, who "still believe that the Arabs would eventually accept" their rule. Even though the arguments conveyed in the *lahiya* and in the article reverberate with one another, those presented in the latter, despite its slightly milder tone, more explicitly point out to the Arabs and Kurds as the

[118] Snouck Hurgronje, "Jong-Turkije Herinneringen uit Istambol," p. 25.

main obstacles for the applicability of the constitution and the proper functioning of a parliamentary regime.

Even though the *lahiya* continually made references to British and Dutch colonial states, it scarcely mentions the French colonies. The only part in which Snouck referred to the French, is in connection with his argument for the necessity of exempting Arabs from rights of citizenship. Similar to the tribes of Africa subjected to the rule of French, Snouck maintained, the Arabs had traditionally exercised a certain degree of autonomy and therefore had be to exempt from these new arrangements:

> It is accepted by everybody that the French law and testimonials cannot effectively deal with Arabs and Kurds because as much as the Karumir tribes are obedient and submissive to French rule, the Arabs are obedient to the Sultanate. It was at least necessary to resort to European states or Suleimanic laws and not subject them to the new regulations.[119]

European laws, according to Snouck, were not only incompatible with Islam, and unable to answer the needs of the Muslims but also unsuitable for the Arabs and Kurds, who should be ruled according to their own customary practices. By presenting the case of African tribes as an example, Snouck advised the Ottomans to take a lesson from the experience of the French in their own colonies and thus not attempt to establish a unified order.

### Dealing with Custom: Aceh under the Dutch, Hijaz under the Ottomans

While arguing for the exemption of Arabs and Kurds from the newly introduced laws, Snouck asserted that these populations should be ruled according to their own customs. As a matter of fact, Snouck's emphasis on the importance of customary law reflects a shift in Dutch

[119] By Suleimanic Laws Snouck refers to the legal compilations of Suleiman the Magnificent which were compiled in the sixteenth century.

colonial policy during the Aceh War, which started in 1873 and lasted for nearly forty years. In order to curb the influence of the Achenese *ulema* which turned it into a religious holy war, Snouck initiated a new policy which was put into force by the colonial government. Under this new policy, the colonial government started to use tribal chieftains against the *ulema* whose administrative duties were gradually brought to a halt. According to this new system Aceh was divided into two types of administration. The regions surrounding the capital, which consisted of 50 *uleebalangs* (provincial chiefs) were made subject to the direct rule of the Dutch government, whereas the outer regions, which were governed by 100 *uleebalangs* remained semi-autonomous. But the distinction was not influential, Alfian suggests, as the Dutch acquired total control over most of the *uleebalangs* towards the end of the war and reduced the influence of the *ulema* to religious matters.[120]

This shift in colonial policy found its strongest articulation in the field of law, in which custom became the focus of attention.[121] Rather than pursing a policy of forced adoption of European codes or codifying Islamic law, the Dutch colonial government in the East Indies worked intensively on customary law in its attempt to break down the power of the Acehnese *ulema*. This shift constituted the backbone of Dutch Islamic policy, which was initiated by Snouck upon his appointment to Batavia. In *Politique Musulman de la Hollande* Snouck maintained that codification of Islamic law is "one of the heaviest mistakes that the government can make," and that it should instead direct all its efforts to better understand and hence utilize the *adat* law.[122] In this respect, *adat* came to be considered as the most powerful barrier against

[120] Alfian, "The Ulema in the Acehnese Society," Readings on Islam in Southeast Asia, ed. By Ahmad Ibrahim, Sharon Siddique, Yasmin Hussain, (Singapore, 1985), pp.82-83.

[121] Justus M. van Der Kroef, "Indonesia and the Origins of Dutch Colonial Sovereignty" Far Eastern Quarterly,Vol.10, No.2, 1951, p. 155

[122] Snouck Hurgronje, Politique Musulmane de la Hollande: Quatre Conferences par Snouck Hurgronje, (Paris:1911), p. 86.

Islam "because of its intrinsic conservatism and local particularisms," and which might be the only ally of the colonial government.[123]

Snouck's emphasis on the importance of custom in the *lahiya,* can thus be seen as a reflection of this newly initiated policy in the East Indies. Elaborating his argument against the idea of legal equality, Snouck asserted that everyone needed to be governed according to the laws they need. In this context, he not only criticized the adoption of European laws but also argued against the nineteenth century attempts at making the *Hanefi* school the basis of official ideology. Instead of imposing *Hanefi* law on all the Muslims of the Empire, Snouck argued, the reformers should take customary practices of diverse regions into consideration. "Even though the *Hanefi* Islam is officially recognized," Snouck wrote, "it does not appeal to all subjects of the empire" as those in Tripoli believe in the Maliki school, for instance, whereas those in Arabia are from the Shafi'i school. Nevertheless the *qadis* completely disregarded this fact nowadays, Snouck continued, and they insisted on the use of *Hanefi* Islam even when the litigant and defendant were from different schools. Although Snouck considered *Mecelle-i Ahkam-ı Adliyye,* the Ottoman civil code primarily based on the teachings of the *Hanefi* school of Islamic jurisprudence, to be an excellent piece of legal scholarship (*eser-i nefis*)[124], he nevertheless asserted that the authorities should instead make custom the basis of administration and jurisdiction, which is according to the principles of *fiqh* already considered to be equal to law as "what is directed by custom is as though directed by law."

A similar argument is also visible in Snouck's discussion of Mekka and the late nineteenth century attempts to make *Hanefi* Islam the official ideology of the state. Even though in the earlier times the Ottomans "recognized, in the conquered provinces that, along with the *Hanefi*, a judge belonging to the native rite," should be appointed, "nowadays this

[123] Henry Benda, "Christiaan Snouck Hurgronge and the Foundations of Dutch Islamic Policy in Indonesia," Journal of Modern History, 30, 1958, pp.88-89.
[124] Snouck Hurgronje, "Legal Reforms in the Sublime Porte."

came to be considered to be unnecessary as the government surpassed them all…except the *Hanefi* who became the sole judge in the Law of Religion."[125] This observation is particularly important because it was based on Snouck's own experience in Hijaz where he studied the influence of Pan-Islamism before his appointment to Batavia. When Snouck was in Hijaz, the province was administered by Osman Nuri Pasha, who was known for his strong advocacy for *Hanefi* Islam and its civilizing influence over the Arabs. Snouck's remarks reveal his understanding of Osman Nuri Pasha's centralizing policies in the province, who called the tribal sheikhs to abandon their tribal habits and laws and "come into the civilizing fold of the Seriat.[126] The policy of the imperial center towards initiating a more centralized system in the provinces also found its expression in an imperial memorandum prepared in 1882, which declared that "all cases" in the province of Hijaz, "should be tried according to Islamic law and very few be left over the tribal customs."[127]

In this respect, it is possible to suggest that Snouck's stress on customary law in the *lahiya* reflected his own experience in Indonesia as a colonial advisor and his observations in Hijaz, where he was in personal contact with the various Ottoman officials, including the Ottoman governor Osman Nuri Pasha.[128] In the *lahiya* Snouck not only refuted the idea of adopting European laws but also criticized the attempts for the establishment of a unified legal order based on the *Hanefi* school of Islamic jurisprudence. Instead he stressed the importance

[125] Snouck Hurgronje, Mekka in the Latter Part of the Nineteenth Century, (London, 1931), pp.182-183. Quoted in Selim Deringil, Well-Protected Domains, pp.48.

[126] Deringil, p. 52: Osman Pasha's efforts finds its expression in his controversy with the tribal cheifs: "O Sheikh! What manner of law is this Arab law of yours to take precedence over the sacred law of the Seriat!"

[127] Ibid.

[128] When Snouck was in Hijaz he was visited by two Turkish officials and also secured a personal invitation to Mecca by Osman Nuri Pasha, whom he photographed in the consulte. Laffan mentions about a conflict between Snouck and Osman Nuri when Snouck was falsely implicated in a murder case, which led to his departure from Hijaz before participating in the Hajj. Laffan, Islamic Nationhood and Colonial Indonesia, p. 72.

of customary law, especially in the Arab provinces, which would enable the sultan to achieve a stronger rule in these regions. At this point, however, Snouck asserted that the *ulema* were in no way appropriate for such a task as they were not entitled to deliver *fetwas* according to custom. A proper assessment of customary law and its execution could only be achieved, according to Snouck, through tribal chieftains under the direct rule of the Sultan, an argument which is highly reminiscent of his newly initiated policy in Indonesia. While Snouck was advising the Empire to take Dutch colonial government as a model, he had in mind, quite clearly, the *uleabalangs* of Aceh who became the most important ally of the colonial government in its attempt to curb the power of the *ulema.*

**The Ottoman Empire and the Caliphate**

Snouck's desire to refute the validity of the claims Ottomans made over the Muslims of Indonesia became apparent in the last section of the *lahiya*, where he explained his own ideas on the necessary measures that had to be taken into consideration by the Ottomans in the process of reform. As a matter of fact, the arguments presented in this section are in no way different from those conveyed in the earlier ones and thus can be considered as a brief summary for the whole document. What is interesting, however, is Snouck's emphasis on the Caliphate and his discussion on the limits of Sultan's power as the ruler of all Muslims. Snouck maintained that there could be no opposition to the legitimacy of the possession of this title by the Ottoman sultan, who was, without a question, the absolute ruler and the guardian of all Muslims in the world. "Even though the Christian states do not recognize the power of any authority over their subjects other than their own," Snouck recognized the legacy of the Caliphate and admitted that it was going to remain as an influential institution.

Given the deficiency of the current laws in the Empire, however, the Ottoman Sultan, according to Snouck, was in no position to claim any rights over the Muslims living across the borders of the Empire. Only when the Ottomans finally realized the necessity of preserving the

Islamic essence of the Empire and hence stopped adopting new legal concepts from Europe, which were fundamentally in contradiction with their own system, would they be able to achieve "a just rule" over their own subjects. At that very point, Snouck concluded, the Ottoman sultan would no longer need "to pronounce that he is the Caliph of all Muslims" but "will be recognized by the Muslims of all the world as such."

This is the last sentence of the 84 page long *lahiya* that discusses the legal reforms in the Sublime Porte. Snouck's detailed analysis of the drafting of the Ottoman constitution and the new law codes adopted from Europe, and his desire to elaborate the reasons why these reforms were in fact incompatible with the Ottoman Empire are connected, in the conclusion, to the question of the Caliphate and the influence of the Ottoman sultan over the Muslim community. Contrary to his other essays in which Snouck denounced the Ottoman claims over the Muslims as a "significant error" and described the Turkish Caliphate as "an ornament of power," in the *lahiya* he recognized it as a legitimate institution. Nevertheless, he justified his critical position against the role of the Sultan/Caliph over "the Muslims living under non-Muslim governments" by emphasizing the failure of the newly introduced laws since 1839 which were truly incompatible with the essential principles of an Islamic state.

Taken together with his argument for the recognition of non-Muslims and Arabs in the Empire to be in a status identical to that of the Muslims in Dutch Indonesia, the lahiya reflects the degree to which Snouck was transposing his own experience onto this treatise and using these arguments as a means to prove the falsity of the claims that were made by the Empire under pan-Islamism. Furthermore, his treatment of the Arabs, despite being Muslims, together with the non-Muslims of the Empire reveals that he was not simply making an argument for the preservation of the traditional order but offering something new, which can only be understood in relation to the ongoing controversy between Ottoman consuls and the Dutch colonial authorities over the status of Hadhrami Arabs, who claimed Ottoman citizenship by

virtue of birth or descent in order to obtain European status in the colony. These claims were based on the extension of Ottoman territorial sovereignty in Yemen in 1872, and the affairs of the Ottoman consuls in the region was in fact geared towards extending Ottoman sovereignty to Hadramaut, the homeland of the Hadhrami émigré community. It is precisely in this framework that Snouck brings the idea of constitution into play and severely criticized its execution. It is also along these lines that he advised the Ottoman sultan to take colonial governments as a model and keep different communities subject to their own laws instead of creating a uniform legal order. While the Ottoman government was primarily concerned with restricting extraterritorial jurisdiction in the Ottoman Empire through a series of reforms that instituted a modern and secular concept of citizenship during the late nineteenth and early twentieth centuries, Scnouck's arguments for the preservation of the traditional order in the Ottoman Empire presents an interesting trajectory for re-thinking the formation of sovereignty and extraterritoriality in relation to inter-imperial dynamics during the late nineteenth and early twentieth centuries.

Written at a time when the Ottoman consuls start to extend protections over the Hadhrami émigré community, who claimed Ottoman citizenship in Dutch Indonesia, Snouck's *lahiya* can hardly be considered as a text in which "a Flemish infidel" assume the duty of giving some fundamental advice to the Ottoman Sultan. It was a by-product of the ongoing controversy between the Ottoman and Dutch governments over the status of Hadrami Arabs, each and every accent of which finds its meaning in the own priorities of Snouck Hurgronje, a leading policy maker and a colonial administrator in Dutch Indonesia. It presents Snouck's way of thinking about empire, which can neither be classified within the existing typologies of empires nor be understood unless the interconnectedness of these far away entities are put back into a shared existence.

## Conclusion

The Ottoman Empire presented a compelling field of study for European international lawyers during the late nineteenth and early twentieth centuries. Autonomous provinces of the Ottoman Empire such as the Balkan Principalities of Serbia, Montenegro, Bulgaria and Wallachia as well as Create, Egypt and Tunisia preoccupied the legal thinking of European international lawyers, who proposed varying taxonomies of statehood with varying degrees of sovereignty. On the other hand, we now know how the long history of the capitulations and the practice of European extraterritoriality in the Ottoman Empire provided European international lawyers with a model for legitimizing European imperial interests elsewhere within the newly emerging discourse of positivist international law.

The building of Ottoman sovereignty during the late nineteenth and early twentieth centuries was certainly informed by the emerging notions of positivist international law, but its historical formation cannot be grasped within its disciplinary constraints. Jurisdictional politics, inter-imperial rivalries and disputed claims to Ottoman nationality tell us more about the shifting definitions of sovereignty in the Ottoman Empire during the period in question. Ordinary subjects, who were jockeying, often simultaneously, between British and Ottoman courts, and oscillating between different identities as they deemed fit, tell us about the formation of modern notions of subjecthood and citizenship in relation to the broader questions of sovereignty and extraterritoriality. It also allows us to move away from the state-centered accounts of nineteenth century legal transformation. The Ottoman Nationality Law of 1869, despite its shortcomings, was certainly a significant step towards determining who did or did not belong to the Ottoman Empire. And yet, the collection of legal disputes between Ottoman and British courts in this study demonstrates that subjects often displayed quite a sophisticated legal understanding in their efforts at settling disputes to their own advantage, and Ottoman

sovereignty was formed and constantly negotiated in the gaps, ambivalences and inconsistencies ingrained in the 1869 Law. Therefore, a nuanced understanding of Ottoman sovereignty as an arena of continuous conflict and negotiation cannot be achieved solely through the letter of the law, but through a close examination of quotidian conflicts as well as the imperfections that lay within the law itself.

Exploring the formation of Ottoman sovereignty in a transregional scope of analysis offers a range of new possibilities to better understand its fractured and uneven qualities. More significantly, it allows us to re-think Ottoman sovereignty in a world-historical framework and in comparison to other empire-states. The conflict between Bulgarian agents of the gate – *Bulgaristan Kapukethudaligi* – in Istanbul, and the Ottoman Commissariat - *Bulgaristan Komiserligi* – in Sofia in their respective efforts to exert exclusive control over the populations moving across their territories illustrates how both governments, both lacking and yet possessing some degree of legal personality, tried to exert sovereignty through passport controls, and in relation to a vague notion of reciprocity. Even though the emergence of an international passport regime is considered to be a post First World War phenomenon, a careful examination of passport controls between the Ottoman Empire and the Bulgarian Principality between 1878 and 1908 reveals that the period in question was already a time of experimentation with documentary controls. Contrary to the Eurocentric focus of the existing literature on the issue, it shows that some aspects of the modern passport regime started to take shape in such autonomous zones well before the turn of the twentieth century.

Once we move beyond the nation-state paradigm, it becomes clear that individual documentation mattered more for some subjects than others, who needed to maintain and negotiate their identities under overlapping structures of multiple sovereignties. The development of a documentary apparatus was one among the various instruments for imposing state sovereignty for the Ottoman ruling elite, very much like its European counterparts during

the late nineteenth and early twentieth centuries, and can be grasped within their interconnected histories.

It also allows us to break away from the strictly territorial understandings of Ottoman sovereignty. A careful analysis of various case studies demonstrate that disputed claims to nationality and foreign protection in one locality were often connected to the enhancement or loss of sovereignty elsewhere. After the promulgation of the 1869 Law, the Ottoman Foreign Ministry carried out detailed investigations regarding the status of subjects, non-Muslims and Muslims alike, who claimed entitlement to foreign protection in the empire. For instance, the Ottoman government strictly opposed the claim of a certain Haci Habib, who was originally a native of Peshawar and a resident of Baghdad, for British consular protection on the grounds that Peshawar was not formally under British rule by the time he left his hometown in 1846. On the other hand, the appeals of Hadhrami Arabs under Dutch colonial rule to Ottoman consuls stationed in Batavia and their acquisition of Ottoman passports were directly connected to the extension of Ottoman sovereignty in Yemen, which turned Hadhramaut, the homeland of the Hadhrami overseas community, into an Ottoman enclave, if not a formal possession of the empire in the late nineteenth century. Likewise, the competing interests between Ottoman and French consular authorities over granting Ottoman and French passports, respectively, to Syro-Lebanese immigrants in Argentina and Brazil cannot be understood without the growing French influence in Greater Syria, particularly over the Maronite community in Mount Lebanon, during the nineteenth century.

Nineteenth century Ottoman reforms are often seen as a defensive reaction against European imperial interests in the Ottoman Empire. The institution of modern citizenship and its documentary apparatus were primarily directed against controlling growing numbers of non-Muslim Ottoman subjects who claimed foreign protection in the empire. Nevertheless, disputed claims to Ottoman nationality raised by subjects under the rule of other political

entities only rarely received scholarly attention. In fact, a careful analysis of the individual appeals demonstrate how the Ottoman consuls, almost mimicking their European counterparts in the Ottoman Empire, tried to extend consular protections to Ottoman subjects abroad. Despite their limited capacity, the Ottoman consuls were at times concerned with making symbolic demonstrations of Ottoman sovereignty abroad. At other times, their activities were directly connected to state efforts for enhancing territorial sovereignty in the empire.

Ottoman sovereignty was constantly re-defined by inter-imperial rivalries, control of legitimate means of movement and formation of Ottoman subjecthood and citizenship within and across the boundaries of the empire. Working across the disciplinary divide between international law and history, a close examination of individual case studies shed light on the historical formation of Ottoman sovereignty and reveals the interconnected histories of Ottoman and European Empires during the late nineteenth and early twentieth centuries.

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