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NON-MUSLIMS AND OTTOMAN JUSTICE(S?)

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Introduction: Non-Muslim Legal Status

The aim of this chapter is to discuss the interaction between the Ottoman state, an early modern empire which was characterised by a clear Islamic ideology but ruled over a religiously mixed population, and its non-Muslim subjects in the field of justice, understood as legal practice and dispute-resolution mechanism. This is a topic which has attracted a fair amount of scholarly attention,[1] and one issue which has been stressed by the relevant literature is the opportunity that the non-Muslims of the Ottoman Empire had to practice 'forum shopping' among various judicial authorities. Even though I do not discard the concept of 'legal pluralism', which theorizes this opportunity to choose different forms of adjudicators and courts,[2] I will not place any particular emphasis on it in my treatment of the subject, as I share the doubts that have been voiced about its actual contribution in substantially changing the way in which we study judicial practice, either in individual case studies or comparatively.

The chapter is divided into three parts. In the first, I discuss how official Muslim judicial institutions treated non-Muslims. Then, I turn my attention to the latter and explore their options and practices concerning the handling of their judicial affairs, as well as non-Muslim judicial institutions. In this part of the chapter I focus almost exclusively on the Greek-speaking communities of the Ottoman Empire on the basis of the relevant literature, so my points and conclusions should not be taken

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[1] For a recent treatment of this subject, see Eugenia Kermeli, 'The Right to Choice: Ottoman Justice vis-à-vis Ecclesiastical and Communal Justice in the Balkans, Seventeenth-Nineteenth Centuries', in Andreas Christmann and Robert Gleave, eds., *Studies in Islamic Law: A Festschrift for Colin Imber* (Oxford, 2007), 165–210. Several issues discussed here are treated in more detail by Kermeli, but our emphases and conclusions do not always coincide. See also Fatma Müge Göçek, 'The Legal Recourse of Minorities in History: Eighteenth-Century Appeals to the Islamic Court of Galata', in Molly Greene, ed., *Minorities in the Ottoman Empire* (Princeton, 2005), 47–69; Fariba Zarinebaf, *Crime and Punishment in Istanbul, 1700–1800* (Berkeley, Los Angeles, and London, 2010), *passim*, esp. 146–148.

[2] See, for instance, Ido Shahar, 'Legal Pluralism and the Study of Shari'a Courts', *Islamic Law and Society* 15 (2008), 112–141.

to apply necessarily to other non-Muslim communities. In the last part, I conclude by treating the subject of non-Muslims and justice in the Ottoman Empire as a topic which can contribute towards understanding the involvement of the imperial state in society and the interaction between the two.

A brief overview of the status of non-Muslims in the Ottoman Empire is, I think, necessary before embarking on the main subject of the chapter. This status was in principle prescribed by the relevant precepts of the holy law of Islam, the *shari'a*. The non-Muslim subjects of the sultan, defined as '*dhimmi*',[3] enjoyed the right to live, hold property and practice their religions in the lands under Islamic rule as long as they accepted the authority of their Muslim sovereign and paid a special poll-tax. In the context of this arrangement, the non-Muslims had the right to have recourse to the same judicial authorities as the Muslims did, first and foremost the *qadi* courts. Furthermore, non-Muslims shared with Muslims the right to settle their lawsuits out of court through mediators.[4]

However, non-Muslims were legally inferior to the Muslims and were, in principle, expected to be constantly reminded of their inferiority to the dominant community through restrictions and markers which affected their daily lives, such as the obligation to wear different clothing from Muslims and the prohibitions against bearing arms, building new houses of worship or extending them, or living in houses higher than those of the Muslims. Even though in actual practice these (and many other) rules were not stringently applied at all times, they never ceased to be in effect, as many decrees demanding respect for sartorial regulations[5] and the

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[3] 'Dhimmi' comes from 'dhimma', meaning 'engagement, responsibility', as formally the Muslim ruler is supposed to conclude a treaty of surrender with the non-Muslims by which he guarantees their rights; Joseph Schacht, *An Introduction to Islamic Law* (Oxford, 1964), 130. 'Dhimmi' is a derivative of 'ahl al-dhimma', meaning 'people of the pact'; Benjamin Braude and Bernard Lewis, 'Introduction', in Benjamin Braude and Bernard Lewis, eds., *Christians and Jews in the Ottoman Empire: The Functioning of a Plural Society*, Vol. 1 (New York and London, 1982), 5.

[4] On settlements, see Abdülmecid Mutaf, 'Amicable Settlement in Ottoman Law: *Sulh* System', *Turcica* 36 (2004), 125–140; Işık Tamdoğan, '*Sulh* and the 18th Century Ottoman Courts of Üsküdar and Adana', *Islamic Law and Society* 15 (2008), 55–83; cf. Eyal Ginio, 'The Administration of Criminal Justice in Ottoman Selânik (Salonica) during the Eighteenth Century', *Turcica* 30 (1998), 204–208. For a rare reference to the background of an out-of-court settlement, see Paolo Odorico et al., *Conseils et mémoires de Synadinos, prêtre de Serrès en Macédoine* (*XVII^e siècle*) ([n.p.], 1996), 119–120 (§ 28).

[5] See, for instance, Madeline C. Zilfi, 'Goods in the *Mahalle*: Distributional Encounters in Eighteenth-Century Istanbul', in Donald Quataert, ed., *Consumption Studies and the History of the Ottoman Empire, 1550–1922: An Introduction* (Albany, 2000), 297–308; Donald

demolition of unauthorized additions to churches suggest.[6] It is admittedly very difficult to draw a balanced and nuanced picture of the life of the non-Muslims in the Ottoman Empire, all the more so because conditions were not uniform, neither in space nor in time. It is advisable not to overemphasize either the suffering or the ease of *dhimmi* life, and also to keep in mind that this is a topic with clear, even if implicit, ideological and political overtones, even for modern scholars.[7] But if we stick to the letter of the law, what is I think safe to note is that, generally speaking, the legal framework of Islamic law on *dhimmi*s meant that, in principle, non-Muslims were or should be prevented from any action which might scandalize Muslim ethics, imply that the Muslims encouraged false religious beliefs, or suggest that non-Muslims were on an equal footing with or superior to Muslims.[8] Non-Muslim inferiority in the legal field meant that in several issues a non-Muslim had half the legal capacity of a Muslim and that the testimony of non-Muslims against Muslims was not admissible in the courts of law.[9]

The administration of state justice in the Ottoman Empire rested on three legal sources: the *shariʿa*, sultanic law (*kanun*), and customary law; its principal vehicle was the *qadi* court.[10] Based on the idea of the contrast between the *kanun* as secular/human and the *shariʿa* as religious/'divine' law, there has been a long scholarly debate over which of the two prevailed

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Quataert, 'Clothing Laws, State, and Society in the Ottoman Empire, 1720–1829', *International Journal of Middle East Studies* 29 (1997), 403–425, esp. 410, 413–414.

[6] For churches, see Rossitsa Gradeva, 'Ottoman Policy Towards Christian Church Buildings', *Etudes Balkaniques* 4 (1994), 25–26; cf. Ioannis K. Vasdravellis, ed., *Historika archeia Makedonias. B'. Archeion Veroias-Naouses, 1598–1886* [Historical archives of Macedonia. II. Archive of Veroia—Naoussa, 1598–1886] (Salonica, 1954), 217 (No. 227—H. 1195 / CE 1781).

[7] Cf. Antonis Anastasopoulos, 'Hoi christianoi sten Tourkokratia kai hoi othomanikes peges: he periptose tes Veroias, p. 1760–1770' [The Christians in the period of Turkish rule and the Ottoman sources: the case of Veroia, c. 1760–1770], *Ariadne* 9 (2003), 76–78.

[8] Cf. Odorico et al., *Conseils*, 106 (§ 22).

[9] For the legal status of and legal restrictions suffered by *dhimmi*s according to Islamic law, see Schacht, *An Introduction*, 130–133, and Braude and Lewis, 'Introduction', 5–6; for objections as to the applicability of the *dhimma* as an explicatory model for the status of non-Muslims in the Ottoman Empire, see Eleni Gara, 'Christianoi kai mousoulmanoi sten Othomanike Autokratoria ton proimon neoteron chronon: historiographikes proseggiseis' [Christians and Muslims in the Ottoman Empire in the early modern period: historiographical approaches], in Molly Greene, *Krete: henas koinos kosmos. Christianoi kai mousoulmanoi ste Mesogeio ton proimon neoteron chronon* [A shared world: Christians and Muslims in the early modern Mediterranean], trans. Eleni Gara-Themis Gekou (Athens, 2005), 25–28.

[10] See, for instance, Halil İnalcık, *The Ottoman Empire: The Classical Age, 1300–1600* (London, 1994), 70–75; Haim Gerber, *Economy and Society in an Ottoman City: Bursa, 1600–1700* (Jerusalem, 1988), 187–211.

in the practice of law in the Ottoman Empire and during which periods. What is a fact is that, at least as far as the official rhetoric and ideology were concerned,[11] the *shari'a*-based *qadi* courts which followed the Hanafite school of law were the official, state-sanctioned and controlled network of courts of law in the Ottoman Empire. Even though these courts also applied the laws of the sultan and took into consideration customary legal arrangements of the societies within which they functioned (see N. Królikowska's paper in this volume), their identity and legitimacy were primarily Islamic, and, thus, it seems that in the long run they tried to stick to the application of the Islamic holy law as much as possible, at least as far as appearances were concerned; this is a possible explanation, at least in some cases, for the absence of reasoning or even of the court decisions themselves in some entries of the *qadi* registers—so as not to make it too obvious that the holy law was not applied.[12]

On the other hand, it would be inaccurate to portray Ottoman justice as being conditioned only by Islam. Apart from the fact that, as noted above, the *qadi* courts also applied sultanic law and local custom, which at times were at odds with the principles of the *shari'a*, justice as an ideal of paramount importance in official state ideology and a primal expression of sultanic paternalism was, as Halil İnalcık and others have argued, determined by other—Turkish, Persian, and ancient-Near-Eastern—traditions as well.[13] This ideal did not discriminate between Muslims and non-Muslims, and imperial justice was available to all. In practical terms, the sultans' concern for justice was expressed primarily through the right of their subjects to appeal to the sovereign and, in fact, the imperial council, consisting of high-ranking civil, religious and military officials, for the redress of wrongs that they had suffered.[14]

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[11] Uriel Heyd, *Studies in Old Ottoman Criminal Law*, Victor L. Ménage, ed. (Oxford, 1973), 180; see also his discussion of conflict between *kanun* and *shari'a*, and of the attitude of Ottoman *şeyhülislam*s towards *kanun* (ibid., 180–192).

[12] Antonis Anastasopoulos and Eleni Gara, 'Othomanikes antilepseis peri egklematos kai timorias' [Ottoman views about crime and punishment], *Mnemon* 21 (1999), 44. But see Gerber, *Economy and Society*, 197–198.

[13] Halil İnalcık is an ardent proponent of this view; İnalcık, *The Ottoman Empire*, 65–69. Cf. Olga Todorova, 'The Ottoman State and Its Orthodox Christian Subjects: The Legitimistic Discourse in the Seventeenth-Century "Chronicle of Serres" in a New Perspective', *Turkish Historical Review* 1 (2010), 101–106.

[14] Suraiya Faroqhi, 'Political Activity among Ottoman Taxpayers and the Problem of Sultanic Legitimation (1570–1650)', *Journal of the Economic and Social History of the Orient* 35 (1992), 1–39; Halil İnalcık, 'Şikâyet Hakkı: *'Arz-i Hâl* ve *'Arz-i Mahzar'* lar' [The right to complain: *'arz-i hâl*s and *'arz-i mahzar*s], *Osmanlı Araştırmaları* 7–8 (1988), 33–54;

If indeed, as has been argued, justice in the context of the 'circle of justice'[15]—a theory of state which makes justice one of the inter-dependent factors on which the stability of the state rests—meant protection of the subjects from the fiscal and other abuses of state officials and the powerful,[16] then from the state's perspective the notion of justice had a particular meaning, and served specific practical purposes, namely order, stability, and the proper and uninterrupted functioning of the fiscal mechanism. Thus, justice was a medium rather than a goal and represented a relative rather than an absolute value, which may explain why sometimes the Ottoman state was willing to condone arrangements not fully in accordance with the law as long as they secured its tax income (unless, of course, we theorize too much, and, in fact, this attitude stemmed from the pragmatic realization of the limits of the ability of the state to intervene in every case of complaint that it received from throughout its vast territory about its officials or the tax-collectors). On the other hand, this restrictive, so to speak, perception of justice did not prevent the Ottoman population from appealing to the imperial council for all sorts of complaints and disputes (or the council from admitting them and responding to them).

The official Ottoman sultano-centric notion of justice finds its echo, internalisation (unless there is some hidden ulterior motive here), and reproduction in the—extensively studied,[17] but still rather unique in its richness of information—memoir of a wealthy Christian priest who lived in the southern Balkans in the first half of the seventeenth century and viewed the Sultan as an ideal, virtuous, and just monarch whose task was to discipline his unjust subordinates, that is, the officials who entered into daily contact with the people and oppressed them. The priest from Serres (Ott. Siroz), named Synadinos, laments the death of Murad IV (1623–1640), a sultan known for restoring order in the Empire through a policy of

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Linda T. Darling, *Revenue-Raising and Legitimacy: Tax Collection and Finance Administration in the Ottoman Empire, 1560–1660* (Leiden, New York, and Cologne, 1996), 246–306.

[15] Cornell Fleischer, 'Royal Authority, Dynastic Cyclism, and "Ibn Khaldûnism" in Sixteenth-Century Ottoman Letters', *Journal of Asian and African Studies* 18 (1983), 198–220; Darling, *Revenue-Raising*, 283–299.

[16] İnalcık, *The Ottoman Empire*, 66.

[17] See, for instance, Odorico et al., *Conseils*; Johann Strauss, 'Ottoman Rule Experienced and Remembered: Remarks on Some Local Greek Chronicles of the Tourkokratia', in Fikret Adanır and Suraiya Faroqhi, eds., *The Ottomans and the Balkans: A Discussion of Historiography* (Leiden, New York, and Cologne, 2002), 195–208; Todorova, 'The Ottoman State', 86–110.

violence and intimidation.[18] Synadinos remarks that such a praiseworthy sultan would never appear again, having first explained that

> He also decapitated all those who were tyrannical, be they viziers, *pasha*s, *mufti*s, *qadi'askers*, *qadis bey*s, *agha*s, janissary officers (*gianitzaragai kai otapasedes*) or rebel leaders (*zorpapasedes*); not a single day went by without him killing someone . . . he walked around in disguise every day and collected information about everything, and he dealt personally with all the affairs of the kingdom, and this is how injustices were eclipsed; and in his days you could see the sheep walk next to the wolf.[19]

Likewise, Synadinos praises Kenan Pasha, former governor-general (*beylerbeyi*) of Rumelia,[20] who, as an agent of Sultan Murad, arrived in Serres in 1625/1626, held sessions to hear the complaints of the population of the town and the villages ('they found great justice', as Synadinos notes), and had various Muslim notables executed. As a result, 'the Turks ceased to commit injustices'.[21]

At the same time, the priest records on other pages of his memoir various cases of gross injustices that his fellow Christians suffered at the hands of local Muslim officials and notables, the *qadi* court, and the mob.[22] One of these incidents is the story of a rich Christian who initiated the process of submitting a group protest against a local Muslim notable to the imperial council in Istanbul; the notable had the Christian hanged without trial on the false accusation (if we are to believe Synadinos) that he had insulted Islam and that he had broken the law by selling wheat to European Christians (*Phraggoi*). That same evening the Muslim notable brought his false witnesses before the *qadi*, whom he bribed, and thus obtained a written sentence against his victim.[23]

Non-Muslim Adjudicators and Courts

Thus, as far as the official, state-controlled judicial institutions were concerned, non-Muslims in the Ottoman Empire were given equal access with

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[18] On his reign, see Caroline Finkel, *Osman's Dream: The Story of the Ottoman Empire, 1300–1923* (New York, 2005), 204–222.

[19] Odorico et al., *Conseils*, 92–94 (§ 16); cf. ibid., 130 (§ 29).

[20] Odorico et al., *Conseils*, 366, where Kenan is cited as the *beylerbeyi* of Rumelia in 1622.

[21] Odorico et al., *Conseils*, 94–96 (§ 17).

[22] Odorico et al., *Conseils*, 68 (§ 1), 70–72 (§ 4), 76–78 (§ 9), 106 (§ 22), 112 (§ 24), 176 (§ 36); cf. ibid., 296–298 (§ 7–8). For a decision of the *qadi* court in favour of his father against the creditors of his village, see ibid., 120 (§ 29); see also ibid., 124–126 (§ 29).

[23] Odorico et al., *Conseils*, 92 (§ 15).

Muslims to the imperial council and the *qadi* court, but in the latter they suffered certain restrictions prescribed by the *shari'a*. But this was not all: in addition to the above-mentioned institutions, non-Muslims were given the right to resort to their own religious authorities in certain legal areas, primarily those pertaining to family law; in addition, patriarchs and metropolitans were granted authority to discipline the priests who were subordinate to them.[24] Furthermore, it should be kept in mind that, as noted above, non-Muslims had the option of settling their disputes out of court without interference from the *qadi* in such settlements, which were only sometimes ratified in his court. It seems that with time the Orthodox Christian ecclesiastical and lay authorities took advantage of these principles, namely, their right to dispense justice within the context of the episcopal court of law[25] (which in many cases also included members of the lay elite) and the non-Muslims' right to settle their disputes 'informally' outside the *qadi* court, and thus expanded their jurisdiction well beyond family law and crimes of, or accusations against, members of the clergy, into the whole of civil law, and, possibly, even into cases of penal law, when circumstances allowed them to do so.[26]

It is not always clear if this extension of their jurisdiction was formal or informal. It is reasonable to think that in an Islamic state this process would have been informal, but there are indications which suggest that

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[24] For a brief description of the jurisdiction of the Christian Orthodox prelates according to their patents (*berat*), see Rossitsa Gradeva, 'Orthodox Christians in the Kadı Courts: The Practice of the Sofia Sheriat Court, Seventeenth Century', *Islamic Law and Society* 4 (1997), 41; for a detailed analysis of the patriarchal *berat*s, see Paraskevas Konortas, *Othomanikes theoreseis gia to Oikoumeniko Patriarcheio: veratia gia tous prokathemenous tes Megales Ekklesias* (*17os-arches 20ou aiona*) [Ottoman views about the Ecumenical Patriarchate: *berat*s for the heads of the Great Church (seventeenth-beginning of the twentieth centuries)] (Athens, 1998). Nikolaos J. Pantazopoulos, *Church and Law in the Balkan Peninsula during the Ottoman Rule* (Salonica, 1967), 24, maintains that the jurisdiction of the Greek Orthodox patriarch in Istanbul extended 'over all the personal differences of the Christians related to religion; that is, marriages, adoptions, divorces, wills, etc.', and that over time it expanded in the whole area of private/civil law (ibid., 43–47, 91–112). On the issue of the jurisdiction of the Church in inheritance-related matters, see Kermeli, 'The Right to Choice', 174–175. In Synadinos' account, those with authority in matters of law, justice, and order were not only the *qadi*, the *voyvoda*, the *sipahi*, the *zâbit*, and an unspecified *nazır* (for a comment on this office, see Odorico et al., *Conseils*, 454–455), but also the metropolitan; Odorico et al., *Conseils*, 102 (§ 21), 140–142 (§ 31), 182 (§ 36).

[25] For Synadinos' experience in the episcopal court, see Odorico et al., *Conseils*, 110 (§ 23), 130 (§ 30), 140–150 (§ 31). This first trial was about accusations against Synadinos that he had instigated his brothers-in-law not to pay their tax(?) contribution to the community; it is possible then that it can be treated as a case beyond the official jurisdiction of the high clergy.

[26] Gradeva, 'Orthodox Christians', 45 (she observes this tendency from as early as the seventeenth century); Pantazopoulos, *Church and Law*, 44–45.

over time the Ottoman state took a somewhat more liberal view, at least in the course of the eighteenth century. It is reported, for instance, that in 1764 the Sultan allowed the Greek Orthodox and the Armenian patriarchs to inflict punishment on troublemakers from their own communities, instead of referring these cases to the Ottoman authorities.[27]

The formulation of a late-eighteenth-century collection of canon law (the *Nomikon* by Theophilos, Bishop of Campania, 1788) suggests that the sultans sanctioned the expansion of the jurisdiction of ecclesiastical courts beyond religious and family matters, and forbade the interference of Ottoman officials in cases which had been decided by Christian prelates.[28] Ottomanist research has indeed brought to light sultanic decrees which forbade *qadi*s from handling or interfering in affairs which fell under the jurisdiction of the Christian metropolitans, but these refer to matters of family law.[29] Therefore, Theophilos might be inaccurate in extending the scope of a principle which in fact applied only to family law, to include all the fields of law; an obvious goal would have been to establish that the extension of the judicial authority of the bishops was legal by claiming that it had been approved by the sovereign.[30] Additional evidence against Theophilos's suggestion comes from the most detailed patriarchal patent (*berat*) in Ottoman history, that of 1835: apart from citing the obligation of all the Orthodox Christians to be obedient to their religious authorities, it still explicitly recognized the patriarch's 'judicial' authority in only two fields: marriages and the disciplining of the clergy. On the other hand, we should note that from roughly the early eighteenth century a clause was added in the *berat*s of the patriarch and the metropolitans which guaranteed their right to act as mediators in disputes between Christians and to impose an oath or inflict excommunication on Christians when they deemed it necessary.[31]

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[27] Halil İnalcık, 'Ottoman Archival Materials on *Millets*', in Braude and Lewis, eds., *Christians and Jews*, Vol. 1, 440.

[28] Demetrios S. Ghinis, ed., *Nomikon poiethen kai syntachthen eis haplen phrasen hypo tou panierotatou ellogimotatou episkopou Kampanias kyriou kyriou Theophilou tou ex Ioanninon (1788)* [A legal code prepared and composed in the simple language by the most reverend and learned Bishop of Campania, Theophilos of Ioannina (1788)] (Salonica, 1960), 237 (§ 1–2).

[29] Gradeva, 'Orthodox Christians', 58 n. 69 (*ferman* of 1802).

[30] Compare Kermeli, 'The Right to Choice', 181–182.

[31] Konortas, *Othomanikes theoreseis*, 73–104; for the last-named clause, see ibid., 79–80 (No. 20), and 387, and Kermeli, 'The Right to Choice', 175–176. For the *berat*s granted to the metropolitans, see Konortas, *Othomanikes theoreseis*, 104–112.

Thus, it seems that, up until the end of the pre-Tanzimat era (1839), the Ottoman authorities granted the patriarchs and the bishops authority to deal with matters of family law, as prescribed by the *shari'a*, and furthermore with matters concerning their subordinate clergy as heads of the 'guild' of priests, monks, and nuns. However, the right to out-of-court settlements and the obligation of the Christians to obey their religious leadership allowed the prelates some space to formally or informally expand their jurisdiction without interference from the Ottoman authorities. In other words, it may be argued that, in areas other than family law (where the jurisdiction of the Church was unquestionable), court sessions and judicial decisions which were formal procedures and formal verdicts or penalties, respectively, for the Christian community, were, in the view of the Ottoman state and the *qadi* courts, instances of out-of-court settlements among Christians performed by the clergy, and thus acceptable.

The existence of structured judicial sessions is proven by the admittedly few church registers which survive from the Greek-speaking world.[32] Presumably the low level of literacy—and possibly a culture of orality—was a major factor that accounts for this lack of consistent record keeping,[33] which in any case suggests that episcopal justice was not as systematic or universal as, for instance, Greek scholarly literature sometimes represents it as being—although we must allow for the possibility, albeit a remote one, that a large number of pre-nineteenth-century ecclesiastical registers may survive in church archives, which have not yet surfaced.[34] Other explanations are also possible. Eugenia Kermeli has drawn our attention

[32] See, for instance, Nikolaos I. Pantazopoulos with Despoina Tsourka-Papastathi, *Kodix Metropoleos Sisaniou kai Siatistes, iz'-ith' ai.* [Codex of the diocese of Sisanion and Siatista, seventeenth-nineteenth centuries] (Salonica, 1974); Nikos K. Giannoulis, *Kodikas Trikkes* [Codex of Trikki] (Athens, 1980). For a longer list, see Kermeli, 'The Right to Choice', 167–168 n. 15.

[33] Even though it cannot be dismissed, the Church's support of educational institutions was not systematic: see, for instance, *Historia tou hellenikou ethnous* [History of the Greek nation] (Athens, 1974–1975), Vol. 10, 366–377; Vol. 11, 129–130, 306–310. On the interaction between orality and the written word in the Ottoman administrative and judicial contexts, see the articles in *Revue du monde musulman et de la Méditerranée*, 75–76 (1995) [thematic issue: Nicolas Vatin, ed., *Oral et écrit dans le monde turco-ottoman*], especially those by Gilles Veinstein, Nicolas Vatin, and Işık Tamdoğan-Abel (133–165); Boğaç A. Ergene, 'Evidence in Ottoman Courts: Oral and Written Documentation in Early-Modern Courts of Islamic Law', *Journal of the American Oriental Society* 124 (2004), 471–491; Marc Aymes, 'The Voice-Over of Administration: Reading Ottoman Archives at the Risk of Ill-literacy', *European Journal of Turkish Studies* 6 (2007) [Thematic Issue N°6: *Ill-literate Knowledge*, URL: http://ejts.revues.org/1333].

[34] Cf. Najwa Al-Qattan, '*Dhimmī*s in the Muslim Court: Legal Autonomy and Religious Discrimination', *International Journal of Middle East Studies* 31 (1999), 430, 439.

to the possibility that high registration fees may have discouraged many Christians from having their cases entered in the church registers.[35] And there is one further possible reason for the reluctance to produce or systematically preserve written evidence of the procedures that took place within the Christian community: this is the psycho-social, so to speak, insecurity and fear of exposure to the authorities which accrued from the non-Muslims' inferior status. But this argument of fear, well-known in traditional Greek scholarly circles, and not necessarily as far-fetched as it may sound, is a hypothesis which needs further research and substantiation.

In light of the above, what is noticeable in the church registers that have been published to date is that the metropolitans were generally careful to record in them cases almost exclusively within their formal jurisdictional area, family law, which was nevertheless broadly defined. These cases include pre-marital gifts, dowries, divorces, adoptions, the guardianship and property of orphans, wills, and the division of estates (contested or non-contested). Cases outside this sphere are mostly (but not exclusively) non-contested, such as donations, regulations of guilds, registration of out-of-court settlements, loans, and transactions. When they are contested, often—but not always—a church, a monastery, or a member of the clergy is involved; in Siatista, in southwestern Macedonia, the episcopal court examined various contested cases of debts and division of profits from business partnerships, but usually one of the two parties was involved in these cases through the right of inheritance (either of the money due to them or of the debt of the deceased). On the other hand, ample evidence about the extensive use by the Church of excommunication as a penalty in a wide range of disputes between Christians, and occasionally even between non-Christians and Christians, suggests again that the Orthodox Church had found ways to extend its jurisdiction well beyond its formally prescribed bounds. Once again, this extension was made cautiously, through the use of a moral penalty supposedly imposed for the disciplining of sinners and not for the punishment of civil or penal wrongdoers.[36]

According to the dominant paradigm accepted by traditional Greek historiography, non-Muslim judicial institutions in the Ottoman period

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[35] Kermeli, 'The Right to Choice', 177–178.

[36] For excommunication in the Ottoman period, see Panagiotis D. Michailaris, *Aphorismos: he prosarmoge mias poines stis anagkaiotetes tes Tourkokratias* [Excommunication: the adjustment of a penalty to the necessities of Turkish rule] (Athens, 1997); see, in particular, 97–110, 167–189 (esp. 176), 192–204.

included not only episcopal, but also communal lay courts composed of elders appointed by the local people or their leadership. This approach rests on two (often implicit) premises: first, that the Greek-speaking local communities also constituted more or less fully functional political communities; second, that the elite of these communities included the lay leadership and the clergy as two distinct groups in contest in the context of the evolutionary paradigm of church domination v. secularization.[37]

However, almost all the known cases of well-structured communal courts with systematic record-keeping procedures in Greek-speaking communities come from small Aegean islands with little Muslim presence. This suggests that on the whole these courts seem to have been quite rare and, thus, a rather marginal phenomenon (bar the unlikely option that there are archives that have suffered massive destruction or sunk into universal oblivion).[38] Furthermore, the sultanic decrees (*ahdname*) presented until recently as guaranteeing the right of the island communities concerned to dispense justice, in fact record the right of the islanders to seek out-of-court settlements without the *qadi*s being allowed to intervene or annul them.[39] Nevertheless, it is interesting to note that here again the Christian islanders' formal judicial institutions must have been seen as informal mechanisms of out-of-court settlements from the official viewpoint of the Ottoman state.

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[37] What seems certain is that, in quite a few places, by the beginning of the nineteenth century the lay notables had managed to take control of communal affairs and restrict the authority of the metropolitans in public life; Kostas Kostis, 'Koinotetes, Ekklesia kai millet stis "hellenikes" perioches tes Othomanikes Autokratorias kata ten periodo ton Metarrythmiseon' [Communities, Church and *millet* in the "Greek" districts of the Ottoman Empire during the period of the Reforms], *Mnemon* 13 (1991), 65–69; cf. Michailaris, *Aphorismos*, 444–446.

[38] See, for instance, Dimitris Th. Siatras, *Hellenika koinotika dikasteria kata ten Tourkokratia* [Greek communal courts of law during the period of Turkish rule] (Volos, 1997), 36–38. See also Andreas Th. Drakakis, *He Syros epi Tourkokratias* [Syros under Turkish rule]. Vol. II: *He dikaiosyne kai to dikaio* [Justice and law] (Athens, 1967); Menelaos A. Tourtoglou, 'He nomologia ton kriterion tes Mykonou (17ος–19ος ai.)' [The case law of the courts of Mykonos (seventeenth-nineteenth centuries)], *Epeteris tou Kentrou Ereunes tes Historias tou Hellenikou Dikaiou* 27–28 (1980–1981), 1–257 (esp. 9–10); Eleni E. Koukkou, *Hoi koinotikoi thesmoi stis Kyklades kata ten Tourkokratian* [The communal institutions of the Cyclades in the period of Turkish rule] (Athens, 1980).

[39] Tourtoglou, 'He nomologia', 1; Elias Kolovos, *He nesiotike koinonia tes Androu sto othomaniko plaisio* [The insular society of Andros in the Ottoman context] (Andros, 2006), 57–58; Siatras, *Hellenika koinotika dikasteria*, 28–34. To my knowledge, it is the only surviving Greek translation of one of these decrees (Siatras, *Hellenika koinotika dikasteria*, 31) that refers explicitly to 'trials' with 'priests' as judges. None of the decrees about the Cyclades survives in the original. Kolovos argues that the so-called *ahdname*s are in fact *berat*s; Kolovos, *He nesiotike koinonia*, 56 n. 119.

Non-Muslims and Qadi *Justice*

The fact that the non-Muslims regularly brought their contested and non-contested cases before the *qadi* suggests that, much as this court represented a different culture, it was not alien to them.[40] The knowledge that they could win their cases against Muslims certainly encouraged them to use the Islamic court of law.[41] Indications that the court could be more flexible towards non-Muslims than one would in principle have expected also helped; for instance, there are a few cases where the non-Muslims' testimony against Muslims was admitted in breach of the principles of the *shari'a*.[42] In addition, the presence of non-Muslim interpreters,[43] or the much rarer presence of non-Muslims who served the court in other capacities, such as expert witnesses, inspectors, bailiffs, or procedural witnesses (*shuhud al-hal*),[44] must have also made the *qadi* court look a more familiar place. On the other hand, one cannot but wonder how the non-Muslims felt towards a court in whose records derogatory terms were systematically used against them, their religions and cultural values.[45]

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[40] Various scholars have calculated what percentage of the *qadi* court cases that they have studied included non-Muslim litigants: Gradeva, 'Orthodox Christians', 41–42, 43; Fatma Müge Göçek and Marc David Baer, 'Social Boundaries of Ottoman Women's Experience in Eighteenth-Century Galata Court Records', in Madeline C. Zilfi, ed., *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era* (Leiden, New York, and Cologne, 1997), 58; Ronald C. Jennings, *Christians and Muslims in Ottoman Cyprus and the Mediterranean World, 1571–1640* (New York and London, 1993), 133, 163–164, 166.

[41] Many such cases can be found throughout the literature that deals with non-Muslims in the *qadi* courts, including the works that are cited in this chapter, as well as in published and unpublished series of *qadi* court archival registers (*sijill*). For a characteristic case, see Nikolaos S. Stavrinidis, *Metaphraseis tourkikon historikon eggraphon aphoronton eis ten historian tes Kretes* [Translations of Turkish historical documents relating to the history of Crete], Vol. 5 (Heraklion, 1985), 10–12 (Nos 2506b–2507—H. 1166 / CE 1752).

[42] Al-Qattan, '*Dhimmī*s in the Muslim Court', 437; Gradeva, 'Orthodox Christians', 67–68.

[43] See, for instance, Kemal Çiçek, 'Interpreters of the Court in the Ottoman Empire as Seen from the Sharia Court Records of Cyprus', *Islamic Law and Society* 9 (2002), 1–15.

[44] Gradeva, 'Orthodox Christians', 67–68; Kermeli, 'The Right to Choice', 200.

[45] See, for instance, Anastasopoulos, 'Hoi christianoi sten Tourkokratia', 79; Boğaç Ergene, 'Legal History "From the Bottom Up": Empirical and Methodological Challenges for Ottomanists', in Antonis Anastasopoulos, ed., *Political Initiatives 'From the Bottom Up' in the Ottoman Empire. Halcyon Days in Crete VII: A Symposium Held in Rethymno, 9–11 January 2009* (Rethymno, 2012), 381–398; cf. Göçek, 'Legal Recourse', 56–58. However, Najwa Al-Qattan has argued against viewing the *qadi* court as a place of institutionalized *dhimmi* inferiority; Al-Qattan, '*Dhimmī*s in the Muslim Court', 430, 436, 438–440, and 'Inside the Ottoman Courthouse: Territorial Law at the Intersection of State and Religion', in Virginia H. Aksan and Daniel Goffman, eds., *The Early Modern Ottomans: Remapping the Empire* (Cambridge, 2007), 209–211.

Obviously, as has been pointed out, it is impossible to calculate what proportion of all the disputes among non-Muslims ended up in the *qadi* courts (that is, if one excludes their disputes with Muslims, since one assumes that they had no choice but to refer these to this court[46]). Likewise, in most cases it is impossible to know why these non-Muslim litigants who opted for the *qadi* court did so. Apparently, a factor that played an important part in their decision must have been the fact that this was the official court, and thus in principle the chances that its decisions would be carried out were higher than they were for the decisions of any non-Muslim court, whose authority often was, as noted above, unofficial.[47] Another practical reason for people to go to the *qadi* court might simply be the absence of alternative dispute-resolution mechanisms in their region.

In this respect, it would be interesting to know what percentage of the cases brought by non-Muslims to a given *qadi* court were contested versus non-contested (transactions, loans, appointment of proxies, etc.). A high percentage of non-contested cases should suggest that the non-Muslims used the *qadi* court mostly when they had no other—or at least no better—option, for example when they wished to secure the validity of their contracts,[48] and thus safeguard their property. Rossitsa Gradeva has noted that the purpose of registration of intra-familial property transactions might be to prevent contestation by the Ottoman authorities of the inheritance rights of the family members after the death of the original property owner.[49]

'Legal pluralism', that is, the availability (at least in some places) of various judicial alternatives meant that the non-Muslims could manipulate, so to speak, the judicial institutions. Thus, they could decide to use one or the other court of law depending on where they felt or knew that it was easier or more likely that they would win their cases or serve their interests.[50] For instance, the register of the *qadi* court of the imperial camp that had been set up outside Candia in Crete, during the long siege

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46 Gradeva, 'Orthodox Christians', 41.

47 Gradeva, 'Orthodox Christians', 68–69.

48 Gradeva, 'Orthodox Christians', 46–47, has noted that real estate transactions were often brought to court months or years after they had been concluded, and that such cases revolved around the issue of payment of the agreed price for the piece of property that had been sold.

49 Gradeva, 'Orthodox Christians', 48.

50 Al-Qattan, '*Dhimmī*s in the Muslim Court', 433–435; Gradeva, 'Orthodox Christians', 41, 62–63; but see Göçek and Baer, 'Social Boundaries', 58–59.

of this town by the Ottomans in the mid-seventeenth century, relates the case of a married Christian woman who converted to Islam. Her Christian husband refused to do the same, which meant that, according to the precepts of the Islamic holy law, the couple could no longer remain married, as Muslim women are not allowed to be the spouses of non-Muslim men. Thus, the woman gained the right to divorce her husband, and marry a Muslim, in all probability himself also a convert, as his patronymic suggests ('the son of Abdullah', i.e., 'the son of God's servant', a fabricated name which does not expose the convert's non-Muslim descent).[51]

Furthermore, non-Muslims could put pressure on their religious authorities to relax their rules on issues for which the *qadi* court provided a more convenient solution or a less demanding procedure.[52] The best-known example on the Orthodox Christian side is the issue of divorces: recourse of the Christians to the *qadi* court for their divorces forced the Church to start to accord divorces on grounds, such as mutual consent of the spouses, for which in earlier times it was impossible to obtain a divorce.[53] An eighteenth-century canon law collection warns bishops to be mild and fair or else run the risk of estranging their flocks, and handing them over to the Muslim unbelievers.[54]

The religious and lay leaderships of the various non-Muslim groups were generally vehemently opposed to the recourse of non-Muslims to the Islamic courts of law,[55] but this disapproval of the 'infidel' judicial

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[51] Stavrinidis, *Metaphraseis*, Vol. 1 (Heraklion, 1975), 139 (No. 194—H. 1074 / CE 1663).

[52] Gradeva, 'Orthodox Christians', 58–59. Cf. Pantazopoulos, *Church and Law*, 102–107, and Giannoulis, *Kodikas*, 50–51, 54–55.

[53] Sophia Laiou, 'Christian Women in an Ottoman World: Interpersonal and Family Cases Brought Before the *Shari'a* Courts during the Seventeenth and Eighteenth Centuries (Cases Involving the Greek Community)', in Amila Buturović and İrvin Cemil Schick, eds., *Women in the Ottoman Balkans: Gender, Culture and History* (London and New York, 2007), 246–247.

[54] Charalambos K. Papastathis, 'Nomokanon Georgiou Trapezountiou. He eis ten neohelleniken metaglottisis ton "Diatagon ton Hagion Apostolon" kata to Ms. GR. 696 (297) tes Roumanikes Akademias' [The collection of canon law by Georgios Trapezountios: the translation into modern Greek of the 'Orders of the Holy Apostles' according to Ms. GR. 696 (297) of the Romanian Academy], *Epeteris tou Kentrou Ereunes tes Historias tou Hellenikou Dikaiou* 27–28 (1980–1981), 414–416. The original was most likely compiled in the late fourth or late fifth century in Syria (ibid., 370–371).

[55] For the Christian side, see Phokion Kotzageorgis, 'Christian (Ecclesiastical) and Muslim (Ottoman) Juridical Procedure for Settlement of Litigations according to Athonite Documents (15th c.–ca. 1820)', in *XIV. Türk Tarih Kongresi. Ankara: 9–13 Eylül 2002. Kongreye Sunulan Bildiriler* [14th Turkish History Congress: Ankara, 9–13 September 2002. Papers read at the congress], Vol. 2, Part 1 (Ankara, 2005), 854; Gradeva, 'Orthodox Christians', 44. For eighteenth-century canon law codes condemning the recourse of Christians to Ottoman justice, see Papastathis, 'Nomokanon Georgiou Trapezountiou', 440–441; Ghinis, ed.,

system should be treated as an opposition whose rationale lay more in pragmatism rather than in ideology and faith. The religious functionaries condemned the use of the *qadi* court by non-Muslims on theological and ethical grounds, but in fact political considerations must have been a more important factor in their opposition, as they despised the involvement of 'outsiders', in particular Ottoman officials, in the affairs and power balance of their communities, and were aware of the blow to their prestige, authority, and income that was caused by their flock's preference for the *qadi* court. This is demonstrated by the fact that the non-Muslim religious and lay leaders, or the monasteries, usually had no reservations themselves about appealing to the *qadi* or even to the sultan when they felt that their authority, power, property, or income was challenged from within their communities.[56]

Conclusion: Justice, the Imperial State, and Plural Society

In summary, we observe a situation in which the non-Muslims were inferior by law, but, as this law guaranteed respect of their religious practices, it gave them at the same time the opportunity to create a niche of judicial separateness—or even autonomy (a term which has to be used cautiously)—at the institutional level, and the chance to perform 'forum shopping' among 'internal' ecclesiastical (or other) and 'external', that is, Muslim, judicial bodies (*ekklesiastikos kai exoterikos*, in Greek-language sources)[57] at the individual or group level. In my view, the right of litigants to amicably settle their affairs out of court was a crucial concept which allowed the non-Muslim authorities to expand their jurisdiction, and the Ottoman authorities to condone or accept this expansion.

Nomikon, 246 (§ 72). But for the acceptance of the legitimacy of Muslim justice in the statutes of Christian guilds, see Giannoulis, *Kodikas*, 45, 77; Spyros I. Asdrachas et al., *Hellenike oikonomike historia. IE'-ITH' aionas* [Greek economic history, fifteenth-nineteenth centuries], Vol. 2: *Tekmeria* [Evidence], Eutychia D. Liata, ed. (Athens, 2003), 289–290.

[56] There are many cases of clerics and notables who brought lawsuits against fellow non-Muslims to the *qadi* court or the imperial council; see, for instance, Gradeva, 'Orthodox Christians', 46, and Ioannis K. Vasdravellis, ed., *Historika archeia Makedonias. A'. Archeion Thessalonikes, 1695–1912* [Historical archives of Macedonia. I. Archive of Salonica, 1695–1912] (Salonica, 1952), 203–204 (No. 157—H. 1146 / CE 1734); cf. ibid., 166–167 (No. 128—H. 1134 / CE 1722). See also Konortas, *Othomanikes theoreseis*, 328–334, and Kotzageorgis, 'Christian (Ecclesiastical) and Muslim (Ottoman) Juridical Procedure', 849–855.

[57] See, for instance, Giannoulis, *Kodikas*, 45, 51, 77; Pantazopoulos, *Church and Law*, 103 and n. 44. Cf. Odorico et al., *Conseils*, 298 (§ 8).

Ottoman society has been famously described as 'plural'. Benjamin Braude and Bernard Lewis used this term to define multi-ethnic, multi-religious and multi-cultural societies where different religious and/or ethnic groups co-exist without living together, in the Ottoman case under a regime of institutional inequality. As Eleni Gara notes, the principal characteristic of 'plural' societies is 'tolerance, which expresses itself not necessarily in the absence of discriminations, but in the fact that the minority ethnic or religious groups do not suffer persecution'.[58] This much is certainly true, as far as society itself is concerned; but what if we put our stress on the attitude of the state, and the effect that governing a 'plural society' had on it? 'Tolerance' is a notion with positive connotations: Braude and Lewis define it as 'the willingness of a dominant religion to coexist with others'.[59] But the equation does not include only 'a dominant' and 'other' religions, as the political context, and thus the state within which this relationship develops, is one of the important factors that determine what kind of tolerance will exist. When viewed from the perspective of the state towards society, 'tolerance' can emanate from an ideological base of 'contemptuous' protection, if, for instance, it is the result of a long religio-political tradition and, possibly, detachment from a part of the subject population (for instance, the 'infidels'). As many students of the Ottoman state have remarked, the latter often appeared unwilling to interfere in the internal workings of society as long as order and tax collection were not disrupted. In this respect, even though the Ottoman Empire undoubtedly provided its non-Muslim population with an environment where their religious and cultural traditions and practices could be observed and even flourish (particularly in comparison with the attitude of its contemporaneous Christian European states towards their minority groups), one should not overlook manifestations of reciprocal distrust and scorn between Muslims and non-Muslims, but also between different non-Muslim groups;[60] these phenomena do not alter the overall

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[58] Braude and Lewis, 'Introduction', 1; Gara, 'Christianoi', 28–33 (the quotation is from p. 29; the translation is mine). Cf. Gradeva's comment on the issue of tolerance in her 'Orthodox Christians', 69.

[59] Braude and Lewis, 'Introduction', 3.

[60] For cases of Jewish-Christian antagonism, see Maria Efthymiou, *Evraioi kai christianoi sta tourkokratoumena nesia tou N.A. Aigaiou: hoi dyskoles pleures mias gonimes synyparxes* [Jews and Christians in the islands of the south-eastern Aegean under Turkish rule: the difficult sides of a fruitful coexistence] (Athens, 1992); Eyal Ginio, 'Coping with Decline: The Political Responses of the Jewish Community to the Eighteenth-Century Crisis in Salonica', in Anastasopoulos, ed., *Political Initiatives*, 69–90; Odorico et al., *Conseils*, 82–84 (§ 13); Vasdravellis, ed., *Historika archeia Makedonias. A'*, 380–381 (No. 265—H. 1216 / CE 1802).

picture but add an important nuance to it. Non-Muslims were generally allowed—in the wider spirit of the *dhimma* cultural tradition—to operate their institutions and settle their affairs 'internally', but only up to the point where the dominant Muslim community and the state did not feel scandalized, annoyed, or menaced. The non-Muslims, on their part, reciprocated by likewise generally treating the Muslims as 'abominable infidels', even if they did not have the institutional means to express this attitude; according to Synadinos, Christians and Muslims in Serres did live together, but also exchanged derogatory names such as 'dogs' (*skylous*) and 'infidels' (*apistous*).[61] The end result of this situation is that society and, by extension, the state were lacking in cohesion, and the latter could not count on the support of a significant segment of its population. This, of course, was not a situation that applied exclusively to the Ottoman Empire, but may be seen as one characteristic of empires.

As it was bound by its respect for the *dhimma*, the central state itself forbade, through sultanic orders, the *qadi*s, that is, its formal judicial network, from handling or interfering in the affairs which fell under the jurisdiction of the Christian metropolitans.[62] From a modern point of view, the principles that underpinned the traditional 'plural' society in the long run worked against the interests of the central state. When, in the course of the Tanzimat reforms of the mid-nineteenth century, the Ottoman central authorities sought to impose a more centralized control over the Empire and promote a common Ottoman identity and legal equality for all their subjects, the non-Muslims re-invented—with the support of the European powers—the so-called 'privileges' (such as adjudicating on family law matters) of their leadership as communal, and claimed that they should have the right to maintain them in the new circumstances; in reality, though, these 'privileges' had in most cases been accorded through patents, *berat*s, to religious and lay leaders as individual office-holders[63] and not to local communities or other groups.[64] Thus, the non-Muslim

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[61] Odorico et al., *Conseils*, 72 (§ 4). Cf. ibid., 88 (§ 14), 90 (§ 15). Cf. Kermeli, 'The Right to Choice', 171.

[62] See, for instance, Pantazopoulos, *Church and Law*, 93; Gradeva, 'Orthodox Christians', 58 n. 69. Cf. İnalcık, 'Ottoman Archival Materials', 440; Konortas, *Othomanikes theoreseis*, 83–84, 89.

[63] The patents issued to some Aegean islands are an exception to this.

[64] Sia Anagnostopoulou, *Mikra Asia, 19os ai.–1919, hoi hellenorthodoxes koinotetes: apo to Millet ton Romion sto Helleniko Ethnos* [Asia Minor, nineteenth century–1919, the Greek-Orthodox communities: from the *Rum milleti* to the Hellenic nation], 2nd edition (Athens, 1998), 23–24, 276ff.

communities benefited from the declaration of legal equality between the Muslims and the non-Muslims, but furthermore were able to legally obtain a degree of autonomy from the Ottoman state. In an age of strong nationalistic and irredentist feelings, and with European imperialism on the ascent, the Ottomans found it impossible to avoid estrangement from a significant part of their population, especially in the Balkans, Istanbul and Anatolia, and centralization remained incomplete. It is interesting to note that judicial autonomy—a concession which at first sight did not seem to pose a political danger—was one of the 'privileges' that the non-Muslim communities claimed for themselves, and were able to partly maintain up to the beginning of the twentieth century, that is up to the time when the Empire met its downfall.[65]

[65] For the tension that was created when the Ottoman state attempted to centralize control of and unify the judicial and educational systems of its Muslim and non-Muslim subjects, see Konortas, *Othomanikes theoreseis*, 102–103; Anagnostopoulou, *Mikra Asia*, 285–287. Cf. Braude and Lewis, 'Introduction', 32–33.