

The Legal Recourse of Minorities in History: Eighteenth-Century Appeals to the Islamic Court of Galata

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The current problems of minority representation in the former Yugoslavia and the former Soviet Union, South Africa, India, England, and the United States raise significant issues concerning the legal jurisdiction of minorities: how should the rights of these minorities be secured? The nationalist discourse which defines these minorities as equal participants in its imagined community of citizens often fails to guarantee this equality. Yet many instances in history predating nationalism have at least provided, if not equality, some legal recourse to minorities. The legal status of the Greek, Armenian, and Jewish communities of the Ottoman empire is a case in point. In addition to maintaining legal autonomy in communal affairs, the members of these communities also brought some cases to the Islamic court, thereby utilizing both the Islamic and their communal legal system. Little is known about how and when such minority recourse to the Islamic court occurred, however.

This paper focuses on a random sample of three volumes of Galata court registers representing the years 1729, 1769, and 1789 to determine the social

pattern behind Ottoman minority recourse to Islamic courts. The selection of the district of Galata in Istanbul, the capital of the empire, controls for the possible factor of geographical proximity as a determinant of choice of court by minorities, as it is almost equidistant from both the Muslim court and the communal courts of the non-Muslims. My analysis reveals that the legal recourse of minorities to the Islamic court of Galata increased throughout the eighteenth century, and that the Ottoman Armenians and Greeks in the Galata district utilized the Islamic court much more than the Ottoman Jews. I argue that it was the intersection of the individual needs of the community members with the boundaries set by the physical space of Galata, the legal space of the Islamic court, and the communal space of legal resolution that determined this diverse intercommunal pattern of non-Muslim recourse to Islamic courts in eighteenth-century Galata.

Historical Sources on Ottoman Minorities

Our knowledge of the internal dynamics of the non-Muslim communities in the Ottoman empire is still fragmentary. The Armenians, Greeks, and Jews who formed the three main non-Muslim minorities¹ in the Ottoman empire had protected legal status as ethnic-religious communities. Each was granted some internal autonomy, and had to pay a special protection and military exemption tax in return. This internal autonomy often comprised the right to elect communal administrators to oversee communal property, to adjudicate conflict within the community, and to represent the community to the Ottoman state at large. The legal adjudication of disputes was often perceived as the most significant right and responsibility of the community.

Imperial decrees and religious opinions concerning minorities have often been taken as indicators of communal behavior in the Ottoman empire. The scholarship and the sources it utilizes produce the following portrait. Imperial decrees throughout the eighteenth century (Ahmet Refik 1930: 30–31, 88–89, 83–84) command, for instance, that “Christians should not reside in the vicinity of the mosque in Galata,” “Jews should not inhabit buildings near the Yeni Cami mosque,” or “Christians and Jews should have shorter buildings than

Muslims.” The religious opinions of distinguished Muslim scholars of their times, such as those of Ebussuud Efendi in the sixteenth century (Düzdağ 1983: 94, 99), contain opinions on such questions as “Is it permissible to rent to a Jew a house which has inscribed on its wall verses from the Qur’an?” or “If Zeyd the Jew goes from Istanbul proper to Galata to conduct business and if Amr the Christian, claiming [Zeyd the Jew] needs to settle a transaction, takes him to the Islamic court of Galata, would Zeyd the Jew have the right to state that he wants the case heard instead by the Islamic court in his neighborhood in Istanbul proper?” The response is negative in the first case and affirmative in the second. Similarly, specific studies on the position of non-Muslim minorities in the Ottoman empire mostly focus on imperial decrees and law codes in the fifteenth and sixteenth centuries (Ercan 1983), land surveys and population registers in the eighteenth century (Özkaya 1985), poll-tax registers of non-Muslims in the eighteenth and nineteenth centuries (Bağış 1983), statistical surveys (Eryılmaz 1990) and constitutional law (Bozkurt 1989) during the late nineteenth and early twentieth centuries. Some others concentrate on the interaction of non-Muslim minorities with foreign merchants (Mantran 1982, Davison 1982), or with Muslims (Findley 1982).

These studies on non-Muslim communities in the Ottoman empire often point to legal restrictions rather than actual behavior, however. It is in this context that the Islamic court records of individual cases brought to court reveal the delicate link between theory and legal practice. Works on Ottoman court records of such scholars as Halil İnalcık (1953–54), L. Fekete (1965), Abdulkarim Rafeq (1966), Jon Mandeville (1966), Amnon Cohen (1973, 1984), Ronald Jennings (1975, 1978), Yüzo Nagata (1976a, 1976b), Yavuz Cezar (1977), Bernard Lewis (1984), Giles Veinstein (1979, 1981), Haim Gerber (1980), Abraham Marcus (1983), Murat Çizakça (1985), Beshara Doumani (1985), Judith Tucker (1986), Tülay Artan (1989), and Yvonne Seng (1991) are therefore crucial in demonstrating Ottoman legal practice in everyday life, and the frequent minority utilization of the Islamic court.² Islamic court records thus reflect the entire Ottoman experience by covering all segments of Ottoman society. A systematic analysis of this archival source through random sampling would help explore the nature and scope of court use by different segments of the populace.

Methodological Issues in the Employment of Court Records

The most significant contribution of court records to historical analysis is the information they provide on the lives of ordinary people.³ The significance of court records for sociological analysis centers on the social spectrum they cover. By providing information on the underclasses, these records disclose the entire social structure and facilitate the analysis of all social groups in a society. Yet, a word of caution is necessary here: court records in and of themselves do not have any explanatory power unless they are randomly sampled and interpreted within a theoretical context. Also, these records only permit inferences and only approximate possible patterns of social behavior.

The Ottoman court records can be used as the unit of historical sociological analysis only after their historical contextualization, that is, after their social, spatial and temporal placement within Ottoman society. The origins of these court records can be traced to Islamic law which mainly consists of the maxims laid down in the Qur'an,⁴ the prescriptions of the Prophet in his teachings, and the pre-Islamic customs prevailing among the Arab tribes near Mecca and Medina (Chowdhury 1964; Coulson 1971). The Ottomans accepted the Ḥanafī school of interpretation of the Qur'anic prescriptions and used Ibrāhīm al-Ḥalebī's *Multaqāʾ al-abḥur* as the source-book in applying Islamic law. Ottoman practice closely followed the general principles laid down by the law, with some practical qualifications. A judge (*kadı*)⁵ at the religious court heard the cases and adjudicated.⁶ The legal organization reflected the Ottoman stratification between officials and subjects as separate judges oversaw the sultan's officials and his subjects. Ottoman officials had their own "military" (*askerî*) judges, as opposed to subjects, who had "local" (*beledi*) judges. The military judges did not reside in each judicial district like the local ones, but resided in Constantinople instead and listened to cases at the sultan's palace on Tuesdays and Wednesdays and at their residences the rest of the week. The cases these judges adjudicated over the centuries throughout the empire form a vast source of information on social life.

Since Ottoman court records exist in vast numbers, I employed a sampling method to draw cases that would both address my research question and also be representative of Ottoman society at large. The employment of the sampling method does have certain limitations, however. First, the sample population: the court records were drawn up only upon the request of the par-

ties and therefore did not include either those cases settled without judiciary assistance or those cases which belonged to anyone who could not afford to bring cases to court. The sample population is therefore biased toward large and complicated cases and does not cover the target population of all the inheritance cases in eighteenth-century Ottoman society. Second, the nature of the court records: they are often incomplete. All the information about a case is sometimes spread out under separate entries within one or more registers. Hence the sampling of cases may fail to capture the judicial process in its entirety. In spite of these problems, however, the court records are a significant historical source in Ottoman social history since they contain detailed individual-level information about Ottoman society that expands beyond the material in the official state correspondence for and by the administrators, and in travelers' accounts for and by Westerners.

Islamic Court Records of Eighteenth-Century Galata

The sampling method I employed comprised a number of stages. Given my query into the minority access to Islamic courts, I needed to focus on major cities that had both Islamic and minority courts. The capital of the empire, Constantinople, provided one such significant context where the communal courts coexisted with Islamic ones and minorities thus had access to both. Within the context of Constantinople, I needed to focus on local rather than military court records since the minorities were not permitted to join this social group in the empire. Since geographical constraints could influence the use of one court over the other, I had to select within Constantinople a district that contained both communal and Islamic courts within traveling distance. According to the archives of the Istanbul court records located at the Office of the Religious Opinion (*Müftülük*), in the course of the eighteenth century, the city of Constantinople had the following Islamic courts: Kasımpaşa, Üsküdar, Ahi Çelebi, Davut Paşa, Bakırköy, Kartal, Adalar, Beykoz, Galata, Havass-ı Refia (Eyüp), Balat, Yeniköy, Hasköy, Beşiktaş, Tophane, and Mahmut Paşa.

Among these, in the eighteenth century, Galata contained both Islamic and communal courts as well as Muslim and minority populations. After its establishment in the late fifteenth century, the Islamic court of Galata was

one of the most important courts in the Istanbul area, especially for the inhabitants on the western side of the city (Yazgan 1988). Not only was Galata's court the main seat of justice for the province of Rum's coast, but the court deputies of three hundred villages and forty administrative districts including Kasımpaşa and Beşiktaş were subject to the judge of Galata as well (Uzunçarşılı 1984: 133–34).

In order to draw my sample, I selected the period from 1705 to 1809, the century before Mahmud II and the major reforms of the Tanzimat era that radically altered the judicial system. I randomly selected, from three clusters of approximately thirty-five years, the registers corresponding to the years 1729, 1769, and 1789, and studied these in their entirety.⁷ The register from 1729 contained 275 cases, most of which were inheritance cases with a few property disputes; the 1769 register contained 182 cases; and the register from 1789 included 246 cases. In these records, non-Muslim oarsmen as well as moneychangers, porters as well as furriers, fishermen and chief translators appeared on the same page as Muslim itinerant coffee sellers, subjects in the service of the head of the palace doorkeepers, and janissaries. The range of litigants can be illustrated with several examples from my sample. For instance, the *dalyancı*, a fisherman attached to a fishing station raised on poles above the water, known as Mihail son of Zahir (14/493, #8) had the distinction of being the poorest Christian found in these documents. He owned only two pairs of baggy trousers and a sheep-lined cloak, in addition to 732 *akçes*. In sharp contrast, the Armenian translator Musan son of Hursadr (14/395, #162) owned eight fur coats, a horse, and 1,711,852 *akçes*. The wife of the Armenian tailor Mğrduç son of Karabet, Tamank daughter of Boghos (14/493, #24), had an estate valued at 3,555 *akçe* of mostly clothing, bedding, and a trunk upon her death, whereas the Armenian Serpuhi, daughter of Mardaros, (14/493, #133) had an estate worth 154,520 *akçes* of which one-third was diamond jewelry and 12,000 *akçe* was in cash.

Raw data on the social and economic conditions of non-Muslim subjects found in Islamic court records thus contain information on material goods, source and location of wealth, property ownership, quarter of residence, religion, gender, children, family, gender of the steward of the estate and guardian of minors, and value of goods. These records establish social and economic patterns in Ottoman society that are more representative of all classes and religio-ethnic affiliation than other official Ottoman sources. In addition

to the socioeconomic data, patterns of non-Muslim decision-making can also be gleaned from the records.

Social Boundaries of Minority Participation in Ottoman Society

In Ottoman society, subjects were identified as Armenian, Orthodox, Jewish, and Muslim semi-autonomous ethno-religious communities administered by a recognized religious authority and communal council. It is important to note that the Orthodox community was predominantly Greek in Istanbul, but Arab in the Arabophone provinces and Serbian in the Balkans. The Muslim community included Turks, Kurds, Arabs, and many other distinct communities. The Jewish community had no recognized leader who had any authority outside of Istanbul, whereas the Armenian and Orthodox church hierarchies allowed a patriarch; the Muslims were represented by the Seyhülislam. The courts were situated within the communal space in which they functioned. In return for paying a poll-tax, *cizye*, members of non-Muslim communities were excused from military service and hence placed themselves under the protection of the Sultan. In return for paying the *cizye*, the adherents of recognized religious communities were allowed to work and worship freely, and to live according to the rules of their own religion as long as they symbolically declared that Islam was the superior religion through various, yet often un-enforced, sumptuary laws. The autonomous religio-ethnic status was especially noticeable within Ottoman urban centers as the different communities tended to group together in particular neighborhoods, although the neighborhoods were not exclusive to one community.

Within this legal and communal framework, my research shows that radically increasing numbers of inheritances of Armenian and Greek subjects appear in the court records over the century while those of Jews, who should have had many reasons to seek legal recourse at the Islamic court, do not appear. Confirming previous studies, my analysis indicates that non-Muslims frequently used the Islamic court. Non-Muslims represented 2.9% of all cases in 1729, but 28.3% by 1788. I conjecture that non-Muslims who were both dissatisfied with the inheritance partitioning within the context of their local communities, and willing to defy the hold of the communal courts and taxing authority, brought cases to the Islamic court.

(i) *Minorities within the Physical Space of Galata.*

The specific historical and demographical background of Galata in Istanbul constructed the physical space and influenced the course of action of Ottoman non-Muslims. Galata is a particularly significant city to study since the existence of large non-Muslim communities and the proximity to non-Muslim and Muslim courts allows me to study their decisions concerning adjudication. Galata, separated from the predominantly Muslim and Turkish part of Constantinople by the Golden Horn and from the Asian part by the Bosphorus, had been a Genoese commercial colony under Byzantine rule (Arseven 1989, Maniran 1982). Following Sultan Mehmet's conquest in 1453, Galata retained its Christian character as it transformed itself from an Italian and Greek city to a cosmopolitan trading center with Greek, Armenian, and Jewish merchants, foreign traders, middlemen, and European embassies.

With the Armenians and remaining Latins, Galata had a Christian majority and a Muslim minority. Indeed, non-Muslim identity in Constantinople in general and in Galata in particular persisted. In 1830, for instance, Constantinople had fifty-four Greek churches, forty-three Armenian churches and neighborhoods, and eighteen Jewish neighborhoods (Karpas 1985: 202). The existence of an Armenian quarter in Galata centered around St. Gregory the Illuminator church, established in 1391 and recorded in the Ottoman survey of 1455, attests to the continuation of the Byzantine Armenian presence into the Ottoman period (İnalçık 1991: 35).

A survey conducted in 1478 shows that the Greeks were the largest community in Galata with 592 households, followed by 535 Muslim and 62 Armenian households (İnalçık 1991: 97). Notebooks of the businesses and homes and the religio-ethnic identity of their owners, mapped for the Sultan's boat trips around the coast of Galata in the mid-to-late fifteenth century (*hostancı başı defterleri*), corroborate the existence of a dense Armenian concentration in the eastern half of Galata (Üyepazarıcı 1992: 110–14). Indeed, some scholars have argued that Galata “had been the living heart of the Armenian community” (Kevorkian and Pabudjian 1992: 99). In the eighteenth century, the residences of Ottoman Armenians spread in all directions except for western Galata, and moved well beyond the Byzantine core north, west, and eastward into Kasımpaşa, Dört Yol/Pera, Beşiktaş and Tophane. From church buildings and the Sultan's boat trip maps, I know that Greeks were also concentrated in eastern and central Galata in the late fifteenth century. Decrees prohibiting

the construction of housing by non-Muslims in eighteenth-century Beşiktaş, Ortaköy, and Tophane point to a sizeable and growing Christian presence although the Greeks remained the “largest non-Muslim population on the European shore of the Bosphorus” (Artan 1989: 163, 189). An early nineteenth-century English map denotes a “Jewish ward” in eastern Galata as well, and the sultan's boat trip notebooks also confirm a significant number of Jewish households in the area. Furthermore, the quarters of residence recorded in the inheritance records show that Armenians and Greeks lived in Tophane, Beşiktaş, Dört Yol/Pera, Kasımpaşa, and quarters in eastern Galata itself, especially Sultan Bayezid and Bereketzade. The only concrete data I have on numbers of Armenians, Greeks, Jews, and Muslims are drawn from the 1927 census, which points to the Greeks as the largest community in Galata (İnalçık 1991: 105, Üyepazarıcı 1992: 110–14, Atlas 1836).

Eighteenth-century Galata court records confirm the spatial concentration of non-Muslims in the eastern half of Galata. The western half contained the court in a neighborhood anchored by the Arab Mosque. In 1711, a French traveler described the area as a Muslim quarter (Ortaylı 1989: 133). One would not want to leave the reader with the impression that the quarters were rigidly Armenian, Greek, Jewish, or Muslim, however. The court records demonstrate that Armenians and Greeks lived in the same quarter as Muslims, for example, in Bereketzade in eastern Galata. Nevertheless, it can be stated that eastern Galata was predominantly Christian, as was Galata as a whole. The court's location in a predominantly Muslim neighborhood did not hinder non-Muslims in bringing their appeal to the Islamic court for justice.

Court records indicate that, in the eighteenth century, Galata retained its distinction as a cosmopolitan trading center with Greek, Armenian, and Jewish merchants. The occupations of the subjects listed in my sample of non-Muslim inheritance registers point to many artisans who chose to reside in Galata and engaged in trade. Of the non-Muslims in my sample who came to this court in the middle and end of the century, 38% and 48% of men were artisans, and 58% and 39% were merchants, in 1769 and 1789 respectively. For instance, the Armenian grocer Avak son of Boghos (14/395, #118) owned his own store, which was one-sixth of his estate. All but a few of the Armenians and Greeks were merchants of timber, flour, soap, tobacco, and oil, and artisans such as tailors, furriers, and carpenters. The full list of artisans includes barbers, stone-masons, printers of cloth, stone-cutters, metal cutters,

clothiers, gardeners, makers of fish nets and augers. The full list of merchants includes fruit-drink sellers, grocers and greengrocers, butchers, store owners, sesame-oil sellers, vegetable vendors, wine sellers, millers, and shoeshines.

(ii) *Minorities within the Legal Space of the Islamic Court.*

When a non-Muslim entered a Muslim court in Istanbul two hundred years ago, subtle language within the texts recorded by the scribe identified Christians and Jews in distinction to Muslims. The language deployed in the text reflects and reproduces the status of non-Muslims in the social hierarchy of eighteenth century Galata. The systematic deployment of certain language was crucial in determining and reproducing the symbolic boundaries of identity within the Ottoman empire. At the same that judges upheld the rights of non-Muslims who appealed to them for justice, they did so by deploying language and categories which reconfirmed non-Muslims' status within the social structure. Although non-Muslims appeared in court, had property rights, and often owned substantial estates, the court language privileged the societal status of male Muslims over non-Muslim males, and female Muslims over non-Muslim females.

In my sample, only 3 out of the 128 documents involving Christians refer to the claimants or to the deceased as "Christian." Only 2 of the 55 Armenians are referred to as "Armenian," and only 3 of the 73 Greeks were called "Greek." However, the lone Jewish claimant in my sample, Katyana daughter of Judah (14/493, #71) from Beşiktaş, is referred to as a Jew as is her father. The scribe clearly states Stephan son of Yorgi's identity (14/268, #14) as "the one who perished in unbelief being Stephan son of Yorgi son of Asarmank, a Christian name." In another case (14/268, #49), Zoi daughter of Persek is described as "the one with the Christian name," whereas the man who inherits from her, Petro son of Manos, is called a "dhimmi." These are rare cases, however. The prevailing pattern in these documents is not to use the terms "Christian," "Armenian," or "Greek."

However, certain language is deployed by the scribe that, even without such a label as "Christian," delineates the fact that the individual in question was not a Muslim. In the texts, a Muslim man was most often given honorifics such as *hacı*, *efendi*, *çelebi*, *emin*, *paşa*. Non-Muslim men were referred to by occupational status. Muslim women were referred to as *hatun*, lady. Non-Muslim women were defined through their husband's occupational

standing. The texts did not use such terms for pejorative reasons, but repeated the social segmentation of society. More specifically, the first several lines forming a Muslim woman's inheritance refers to the woman as "one who had been living or dwelling in a certain neighborhood (*sakine*)," followed by the name of the woman prefaced by the honorific title "lady (*hatun*)," whom "God drew back to Himself (*vefat eden*)." In contrast, the first two lines of a non-Muslim woman's inheritance read as "one who had settled in a place (*mittemekkin*)," succeeded by the name of the woman without any honorific titles, who "perished in unbelief (*halike olan*)." Although not referred to as "infidel" (*kâfir*), nevertheless there certainly is a great difference in being gathered back to God upon death and in expiring like fruit. Furthermore, to live or dwell in a place sounds more dignified than settling in like a late guest. A male Muslim is the "son of a certain man (*ibn ül*)," whereas a non-Muslim male is the "child of a certain man (*veled-i*)."

The legal language of the inheritance of the Armenian razor-maker, Sahak son of Abraham, demonstrates this portrayal of minorities (14/493, #43). The court record reads in part:

In the city of Galata domiciled in Sultan Bayezid neighborhood, the razor-maker Sahak son of Abraham perished in unbelief with debts which were greater than his estate . . . in accordance with Islamic law, his inheritance is limited to his wives, Lalab daughter of [illegible] and Huri daughter of Artin, and his sister from the same father, Hanım, and his sister from the same mother, Suhuman. The aforementioned Lalab and Huri and Hanım and Suhuman are mentioned as creditors in the claiming and requesting the registration of and paying the debt of the estate of the aforementioned perished one.

I note that in this particular text, a man, defined by profession, father's name, and his lack of true faith, has his estate registered by his surviving relatives, who submit the inheritance to a Muslim judge to dispense with according to Islamic law. Like many entries of unbelievers, the correct spelling, vocalization, and rendering of those with Armenian, Greek, or Hebrew names in the text is often an unsatisfactory endeavor since their names were often altered beyond recognition—if not spelled different ways in the same

their subjects. In addition to the Muslim courts, which ruled by Hanafi law and custom on personal matters including inheritance, marriage, divorce, custody, and guardianship for all members of society, the Jews and the recognized Christian communities at the time—Armenians and the Greek Orthodox—had their own courts, which were free to administer justice in all matters except criminal cases. The Christian and Jewish leadership could excommunicate, banish, fine, and chastise their members concerning internal matters, but not in issues involving Muslims and Muslim authority.

The non-Muslim courts adjudicated disputes within the communities; most cases involved inheritances and disputes over the sale of property and personal matters such as marriage. For instance, for the Armenian community, “the patriarch was allowed his own court and prison at the capital for trying members of the community in all cases except those involving ‘public security and crime’ [and he] had jurisdiction in matters of personal status, divorce, inheritance, guardianship, and no Ottoman official could interfere in his decisions” (Artinian 1988: 15–16). The Greek jurisdiction was similar. Their patriarch was also “invested with rights of a purely civil character (to exercise judicial powers) against laymen among whom divergences may arise in connection with everything that related to marriage, divorce, and the like” (Papadopoulos 1990: 33–34). The Jewish community also had its law court (*bet din*). The head of the Jews, according to one historical document (Goitein 1970: 115), decided, “as the highest legal authority, all matters of marriage and divorce, supervised the moral and religious conduct of his flock, including the general authority of ordering people to act properly and to prevent them from acting improperly, imposed and removed bans and orders of excommunication, expounded authoritatively on the Scriptures, either orally or in responsa, appointed and dismissed judges, cantors and other religious officials and defined their rights and duties, supervised the actions of social service officers and other persons holding public office, and sometimes delegated his authority in any town or country to any reliable person chosen by him.”

Within the Ottoman legal system, multiple spaces of adjudication for different minority communities thus existed alongside each other. One would expect these non-Muslims to adhere to the decisions of their leaders and to have little reason not to do so. Legal adjudication was perceived by the Christian and Jewish community leaders, if not by the lay persons, as one of their

document—as the names were transformed into Ottoman script. For instance, the name of the Armenian translator’s wife (14/395, #162) is spelled three different ways in the text. The systematic deployment of formulaic terms which distinguish non-Muslims from Muslims thus reflect and reproduce the societal difference between the Muslims and the rest.

(iii) *Minorities within the Communal Space of Legal Resolution.*

Our sample reveals that during the eighteenth century, radically increasing numbers of Ottoman Armenians and Greeks bypassed their communal courts and took their inheritances instead to the Islamic court. Whereas Christians comprised two percent of all cases heard there in the beginning of the century in my 1729 sample, the proportion of Christians taking their cases to the Islamic court of Galata had increased to thirty percent of all cases heard in 1789. Only a few cases involved any other issue than inheritance, and these were exclusively property disputes and sales. The Armenians and Greeks appear often in these court records, at times more Armenians than Greeks in a given year and vice-versa, but always in rising numbers over the century: seven Greeks in 1729 and forty-six in 1769, for example.

The number of Armenians and Greeks who came to court to register the inheritances was at least three times the number of the deceased. The size of Galata’s Armenian and Greek population increased over the century significantly. Although the precise extent of the growth cannot be determined, the increase cannot have been as proportionately large as the proportionate increase in court usage. Even though cases involving the inheritances of men were always frequent, there was a marked increase in the number and proportion of cases involving deceased non-Muslim women also increased, from one-third to over one-half. It is clear that Christian men and women went to the court to press their inheritance claims. The numerical breakdown of the documents is as follows: of the 703 cases, 18% concerned non-Muslims; 72% of the non-Muslim cases concerned males. The number of cases concerning non-Muslims rose precipitously during the century, nearly six-fold from 1729 to 1769 and another 50% to 1789; 6% of those appearing were non-Muslims in 1729, 39% in 1769 and 55% in 1789.

These figures need to be understood within the context of the Ottoman legal system, which allowed Muslim, Armenian, Orthodox, and Jewish courts to flourish. The rulers of the empire employed a multi-tiered court system for

most significant rights and responsibilities and as a location in which to exercise their power. Decisions pertaining to non-Muslim property and personal matters were made by their leaders, as individual members of the community related to the central government through their community, which was responsible for intracomunal legal matters. Yet, in spite of this communal legal system, why did many minorities seek adjudication in the Islamic courts? Also, why were there differences among the Ottoman Greeks, Armenians, and Jews in court usage? If these communities had viewed Muslim judicial authorities with the force of the Sultan and army and governing authority behind them as a final arbiter bearing much more weight in their decisions than their communal courts, why would not all communities have utilized Islamic courts to the same degree?

Non-Muslim cases might have been brought to court because of the relatively unfair shares given to non-Muslims according to their communal laws of inheritance *vis-à-vis* the Muslim shares. According to the Islamic law of inheritance, women were guaranteed shares not allowed, for example, in Jewish law. Jewish women could not divorce their husbands according to Jewish law; Jewish daughters received considerably less than Muslim daughters in inheritances. I would expect Jewish men and women, not an insignificant population in eighteenth-century Galata, to appear in the Islamic court to register and to seek shares of inheritances not allowed by Jewish law. Only one Jewish inheritance was recorded in my sample, however. Another study on Jews in Istanbul during this period notes that the Jews used the Islamic courts in settling commercial disputes, not in cases concerning personal law; it lists only one inheritance case in which the sons of the deceased declared before the Muslim judge that they had all received their fair share in the inheritance and that there were no other claimants (Gerber 1982: 31). According to the same study, Christians most often came to the court for the purposes of marriage and conversion to Islam.

Perhaps Galata Jews took their cases to courts elsewhere, or, more likely, the silence in my sample displays the effective social control of the Jewish communal leaders over their members,⁸ one not displayed to the same degree by the Armenian and Greek communal leadership. Until 1908, the main Jewish court was located in a synagogue in Balat, across the Golden Horn from Galata. The chief rabbi in Istanbul during my earliest sample of 1729 was Samuel Levi, a rabbi of notable distinction, whose communal presence

may have prevented the Jewish subjects in the area from bringing their cases to the Islamic court (Galante 1985: 247). Furthermore, the chief rabbi was sometimes the judge at the *bet din*, i.e. the leader of the law court, whose authority was so great that "it could even enforce (itself) on those who wished to withdraw from the court" and its authority (Galante 1985: 221). One could argue that the rabbinical hold over the Ottoman Jewish community, which increased after the Sabbatai Sevi incident, lasted until the end of the Ottoman empire.⁹ Indeed, among the three minority communities, the Jewish traditional leadership as exercised by the rabbis of the community (Epstein 1982: 101) far outlasted that of the Greeks and Armenians, which were quickly overtaken by lay leadership.

Yet the tension between the leadership and the community was also ever-present (Dumont 1982). Additional evidence of the tension between the power of religious authorities to induce and maintain order in their community and that of the individual to avoid it comes from the Jewish community of Izmir. Haim Falaji, a mid-nineteenth-century rabbi, lamented that "there is no power in the hands of the rabbis" as the Jews avoided the decisions of the *bet din* (Barnai 1982: 59). He further mourned the "chaos" that ensued as individuals "did what their hearts desire" and ended up evading paying their share of the community's tax obligation to the Ottoman authorities (Barnai 1982: 60). The communal order was rent as the rabbis could not impose their will. Still, they were able to force all members of the community to sign an agreement not to go outside the authority of the *bet din* or risk excommunication, though such a document was rarely put into practice (Barnai 1982: 58). Yet, I should also note that the high degree of effective communication and coordination between Jewish and Muslim courts (Goitein 1970: 116) may be another factor explaining the infrequent Jewish use of the Islamic court in Galata.

The condition of the leadership of the Armenian and Greek communities was much different during this period. The Greek community at the time was experiencing a crisis in authority (Frangakis 1985). After 1763 I see an explosion in the number of Greeks coming to the court in Galata, which is certainly related to "the loss of the effective authority of the Patriarch, and the reduction of the authority of the officials to insignificance" (Papadopoulos 1990: 59). Indeed, lay representatives assumed authority and aided the reorganization of the community in the nineteenth century (Augustinos 1992: 125). The decrease in the authority of the patriarch is noted especially

as some members stopped paying their share of the communal taxes; the metropolitan of Nicea wrote, on one occasion, to the patriarch in Istanbul that "it would be desirable if his Holiness took steps to . . . send an order to them because their behavior is scandalous for the others" (Augustinos 1992: 137). This increasing rupture between the religious and lay leadership would certainly have allowed and encouraged the Ottoman Greeks to seek justice in the Islamic court.

Less is known about the Armenian patriarchate, although one can conjecture that a similar crisis also occurred within this non-Muslim community as the increasing tension between the clergy and laypeople in assuming communal leadership peaked during the course of the eighteenth century. Armenian literati did indeed "battle against the entrenched forces (of the Armenian religious authorities) in an effort to democratize their institutions" (Sarkiss 1937: 447). The lay intervention in patriarchate affairs started in 1612 when a group of laymen, led by the influential Hoca Astuocatur, "reacted against the despotic rule of Grigor Kesaraci and demanded his resignation and replaced him with Zakaria Veneci" (Artinian 1989: 27). The significance of the Armenian laity increased especially after 1725 when "the Patriarch Hovhannes Kolot called a general assembly to elect a new catholicos for all Armenians and invited, in addition to the high ranking clergy and magnates, the leaders of all the Armenian guilds¹⁰ in Constantinople" (Artinian 1981: 193; 1989: 28). By the end of the eighteenth century, there were 65 Armenian guilds, and these had doubled in size by the second quarter of the nineteenth century (Artinian 1989: 24). The wealthy leaders of the Armenian community continued to acquire a much stronger presence in the eighteenth and nineteenth centuries as they accumulated large fortunes through their association with the Ottoman government, especially in the fields of finance and industry (Barsoumian 1982: 171; Artinian 1981). These influential Armenians either lent capital to Ottoman officials and individuals on interest to secure appointments and revenue collection, or were directly employed by the Ottoman government as directors of imperial powderworks and textile manufacturing and as architects (Artinian 1989: 21). The religious tension among the Catholic, Orthodox, and Protestant churches within the Armenian community also enhanced the fragmentation (Artinian 1989: 40).

In addition to these communal factors that affected the course of legal action taken by individual minority members, one could also conjecture that

during the course of the eighteenth century and later, some individuals in all minority communities no longer saw themselves as members of a subject religio-ethnic community, but rather started to identify themselves either with the Ottoman authority itself or with foreign embassies. A case in point are the minority merchants who started to trade under the protection of Western powers (Bağış 1983). In my sample, the three wealthy translators, Musan son of Hursadr (14/395, #162), the translator to the French embassy Dominick Kurtani son of Conyateste and Dominick's son Karlo (14/268, #14), could be such examples of minorities who ended up bestowing their allegiance on their European employers rather than on their communities or Ottoman society at large. Many individuals could also be seen as the emerging members of a new bourgeoisie whose new forms of wealth outside of the communal leadership's control bestowed upon them in the nineteenth century a new consciousness that trespassed communal boundaries (Göçek, 1996). For instance, the Greek ship captain (*re'is*) Dimitri son of Dimo could be an example of this phenomenon (14/493, #29).

Conclusion

The individual minorities who came to the Islamic court thus seem to have enacted their needs within the boundaries set by their interpretation of their physical, legal, and communal space. The significance of individual needs in setting the boundaries of legal action is demonstrated by Dale Eickelman when he argues that social structure ought to be "conceived with individuals as the fundamental units of social structure rather than their attributes or statuses as members of groups" (Eickelman 1974: 281). Members of the minority communities of Galata do indeed illustrate the deployment of "tactics" of manipulation of identity and institutions to gain the best advantage for oneself (de Certau 1984) as individual Armenians, Greeks, and Jews acted or did not act according to the assumed benefit or loss of using the Islamic court or their own. They were acting outside of their community, taking advantage of their greater subjectness, not to their birth-identity, but to their membership in the total city of Galata. Yet, the physical, legal and communal space did nevertheless determine the social boundaries of their individual needs as they interpreted and took legal action within these constraints.

To return to the issue with which I started, namely the possible minority legal recourse in contemporary situations, I conclude by arguing that only by analyzing the practices of everyday life and the structures of physical, legal, and communal space can one determine how to enhance minority participation in society.

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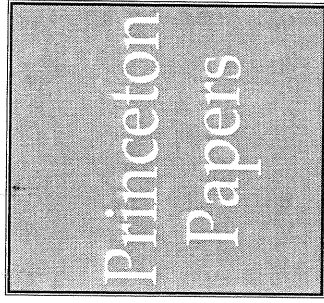
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Notes

1. The term "minority" is used here with its sociological meaning; it denotes any social group that does not share equally in the resources of the society at large.
2. For instance, one specific study (Jemmings 1978) on the court records in a seventeenth-century Anatolian city illustrates that non-Muslims accumulated land and buildings and, even though they did not engage in loan and credit to the same degree as Muslims, they nevertheless engaged in substantial interaction with Muslims and utilized the Islamic courts. For a more thorough discussion of the social location of minorities within Ottoman society, see Göçek 1996.
3. The great bulk of what has been written throughout history has been by and for elites. Literacy among non-elites has been commonplace only for a few hundred years in the West, and literate common people have infrequently left any record of their actions, relationships, or attitudes. Court records balance the historical accounts centering on the elite by providing material on the ordinary people.
4. The extent of use of the rules laid down in the Qur'an varies in practice (Schacht 1964: 76): its hold is strongest on the law of family, inheritance, and religious endowments, weakest on penal law, taxation, constitutional law, and law of war—with the law of contracts and obligations standing in the middle.
5. The extent of the judge's power and jurisdiction extended beyond matters of personal status such as marriage, divorce, inheritance, and child custody to include (Uzunçarşılı 1984: 134; Doumani 1985: 156-57) supervising and registering economic transactions, overseeing all religious institutions including endowments, overseeing trade, fixing prices of goods and transportation costs, controlling weights and measures, supervising the currency, adjudicating criminal and civil cases, overseeing poll-tax payments, endorsing heads of guilds, approving construction of new buildings and renovations. Hence the judge at once performed the functions of a legal executor, notary, and state official; he had to approve almost all societal transactions (Bayındır 1984).
6. The judges and the religious court did not have separate work quarters; they operated out of the house of the judge.
7. The archival inventory numbers of these three registers were, consecutively, 14/268, 14/395, and 14/493.
8. I would like to thank Ehud Toledano for alerting me to this possibility.
9. This observation is taken from a personal conversation with Bernard Lewis, June 1994.
10. An Ottoman census of 1850 estimated the Armenian artisans in Constantinople at 35,979, with 32,999 master and regular apprentices (Artinian 1989: 9).



Interdisciplinary Journal of Middle Eastern Studies

PRINCETON PAPERS: Interdisciplinary Journal of Middle Eastern Studies

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Articles appearing in this journal are abstracted and indexed in *Historical Abstracts* and *America: History and Life*.

ISSN 1084-5666

The paper used in this publication is acid-free neutral pH stock and meets the guidelines for permanence and durability of the Committee on Production Guidelines for Book Longevity of the Council on Library Resources.

Printed in the United States of America

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