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Dispute Settlement

Introduction

From the early days of the empire until its dissolution in 1923, the Ottoman state maintained diplomatic and trade relations with its neighbors in Europe and the broader Islamic world. Foreign merchants, envoys, diplomats, and ambassadors populated the imperial capital of Istanbul and in major port towns along the shores of the Mediterranean, the Red Sea, and the Gulf. While war was always an option for settling territorial and trade disputes, the empire and its competitors also had recourse to other forms of mediation. When legal disputes arose between foreigners and imperial subjects, as much as between empires, Europeans and Ottomans turned towards a series of mechanisms and institutions—some local and imperial, others international—to solve legal claims and to avert diplomatic crises. In the early modern period, disputes were settled within the empire through kadis, minority religious courts and the Ottoman imperial divan and resulted in various types of agreements, including the Capitulations and peace treaties. These mechanisms arose to facilitate trade and until the late the eighteenth century, were controlled and largely generated by the Ottoman empire. In the aftermath of the Napoleonic Wars, which is the focus of this chapter, dispute settlement between the Ottoman empire and its neighbors was less a result of imperial choice and instead linked directly to the Concert of Europe and Great Power diplomacy. The arena for dispute settlement expanded to include European intervention to resolve conflicts between the Ottoman central state and its subjects, as well as a more aggressive European interpretation of the Capitulations. By the 1830s, dispute settlement between empires was driven by European imposed limitations on Ottoman sovereignty in the form of economic, legal, and administrative mechanisms.

Older histories of the "Eastern Question," the persistence of the "decline thesis," and post-imperial national historiographies have long framed the late Ottoman empire's relationship with Europe in the nineteenth century in terms of failure—especially in terms of Great Power imposed limitations on Ottoman sovereignty in the aftermath of internal rebellion and interstate warfare.[1] Military and territorial losses, intervention in Ottoman administrative and economic affairs, and European imposed limitations on the full exercise of imperial sovereignty, cast the late Ottoman state as a passive observer to its own demise. In the Hobbesian world of European politics, the Ottomans were kept around only to frustrate the ambitions of one Great Power or another. Partition after the First World War was understood as a matter of when, not if. Such interpretations, which seldom considered the perspective from Istanbul, present a vision of unmitigated European power that undermines the significance of the Ottoman empire to the world of nineteenth century Europe and the international order established in the wake of revolutionary and the Napoleonic wars, and well as the world of expansionist empires in the lead up to the World War I. But more important, they obscure the significance the Ottoman Foreign Ministry attached to international law in its dealings with Europe from the mid-nineteenth century through the Treaty of Lausanne (1923), as much as the ways in which this strategy put pressure on European foreign ministries to justify their policies towards to the empire in legal terms.[2]

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[1] M.S. Anderson, *The Eastern Question 1774-1923: A Study in International Relations* (London, 1966); J.A.R. Marriott, *The Eastern Question* (Oxford, 1940). Davide Rodogno's monograph on the origins of humanity intervention discusses the Ottoman position in Europe and international law. See Davide Rodogno*, Against Massacre: Humanitarian Intervention in the Ottoman Empire 1815-1914* (Princeton University Press, 2012).

[2] New approaches to Ottoman engagement with Europe, have challenged the old Eastern Question literature and refashioned an old topic from the perspective of Ottoman archival sources. A series of recent articles, books and dissertations have placed the Ottoman Empire squarely within international and transnational framework. These works have analyzed Ottoman responses to European imperial expansion, the mobility of Ottoman and non-Ottoman subjects within and outside the empire, the territorialization of sovereignty and imperial boundaries, as well as Ottoman interpretations and uses of international law. Research concerning the Ottoman engagement with European international law has grown significantly over the last few years. See more below. For recent works see Umut Özsu

[Early Modern Dispute Settlement]

Nineteenth Century Interventions and Legal Experimentation

In 1884, Sultan Abdülhamid II gifted the Library of Congress hundreds of books, periodicals and bound photographs covering subjects ranging from history, ethics, and Quranic exegesis, to engineering, navigation, agriculture, and forestry. Among this eclectic assortment of Ottoman Turkish, Arabic and Persian publications, were several legal texts, including civil and criminal law compendia, treaties signed between the Ottoman empire, Europe and the United States, as well as the most recently published international law textbooks taught at the imperial law school, and treatises on the laws of war.[3][4] The content of Abdülhamid's law library reflected the particular ways in which the Ottoman legal landscape was perforated by questions of public and private and international law, but also how domestic legal reforms challenged European imposed limitations on Ottoman sovereignty, most notably the Capitulations—those treaties that

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and Thomas Skouteris "International Legal Histories of the Ottoman Empire: An Introduction to a Symposium" and accompanying articles especially, Berdal Aral "The Ottoman 'School' of International Law as Featured in its Textbooks," Will Hanley, "International Lawyers without Public International Law: The Case of Late Ottoman Egypt," and Will Smiley "War without War: The Battle of Navarino, the Ottoman Empire and the Pacific Blockade," in the *Journal of the History of International Law / Revue d'histoire du droit international,* vol. 18 (2016); Umut Özsu, "Ottoman Empire," in ed. Bardo Fassbender and Anne Peters eds., *The Oxford Handbook of the History of International Law* (Oxford: University Press, Oxford, 2012); Cemil Aydın, *The Politics of Anti-Westernism in Asia: Visions of World Order in Pan-Islamic and Pan-Asian Thought* (New York: Columbia University Press, 2007); Mustafa Serdar Palabıyık "International Law for Survival: Teaching International Law in the Late Ottoman Empire (1859-1922), *Bulletin of the School of Oriental and African Languages*, 78, 2(2015): p. 271-291; Turan Kayaoğlu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China* (Cambridge: Cambridge University Press, 2010); Aimee M. Genell, "Ottoman Autonomous Provinces and the Problem of "Semi-Sovereignty" in International Law," special issue "Autonomy and Federation in the Ottoman Empire," Journal of Balkan and Near Eastern Studies, 18, 6(2016): 533-549; Ozan Ozavcı, *Dangerous Gifts Imperialism, Security, and Civil Wars in the Levant, 1798-1864* (Oxford: University Press, 2021).

[3] Among other titles, Abdülhamid II's law collection included Ahmed Cevdet Paşa, *Mecelle-i Ahkâm-i Adliye*, (İstanbul: Matbaa-yi Osmaniye, 1300 [1884]); Mesut Efendi, *Mırat-ı Mecelle* ([İstanbul]: [Matbaa-yı Osmaniye], [1297 [1881]); Ali Rıza, *Muharrerat-i Adliye-yi Umumiye* (İstanbul: Kitapçı Karabit, 1301 [1883 /1884]); *Şerh-i Kanun-ı Ceza* (Dersaadet [Istanbul]: Mahmut Bey Matbaası, 1300 [1882 / 1883]; *Piyade Dâẖiliye Kânûnnâme-i Hümâyunu* (İstanbul: Mekteb-i Fünûn-i Ḥarbiye-i Şahâne Maṭaʿası, 1299 (1883); Abdüssettar*, Teşrîḥ ül-Kavâʾid ül-Külliye* (İstanbul: Mahhmut Bey Mattbası, 1301[1883/1884]; Said Kemalpaşazade, *Hukuk-ı Düvel* (Kostantiniye: Matbaa-yı Ebüzziya, 1299 [1881/1882]); Ottokar Maria Schlechta von Wschehrd, *Hukûk-i milel* (İstanbul: Elcevâip Mattbaʿası, 1295[1878/1879]); Hasan Fehmi, *Telhis-i Hukuk-i Düvel,* (İstanbul: Matbaa-yı Osmaniye, 1300[1883]); Serkiz Orpelyan, *Miftah ül-Mecelle*, (İstanbul: Kasbar, 1299[1881/1882]).

[4] Will Hanley, "What Ottoman Nationality was and was Not," in Lâle Can, Michael Christopher Low, Kent Schull, Robert Zens, eds., *The Subjects of Ottoman International Law* (Bloomington: Indiana University Press, 2020).

exempted Europeans from the reach of local law, taxation and conscription.[5] The corpus of laws, treaties and regulations included a copy of the 1856 Treaty of Paris, which welcomed the Ottoman Empire into the European "family of nations," the 1869 Nationality Law—which policed the boundary of imperial subjecthood, the original Capitulations, and the new Civil Code, the *Mecelle.*[6] Several historians have interpreted the sultan's gift to the United States, and to corresponding European governments, as an imperial "self-portrait"—one that sought to demonstrate modernity, "civilization," and equivalence between the Ottomans and European empires.[7] But law, especially international law, wasn't just one more arena to establish the empire's European credentials, it was the perilous battleground between empires for much of the nineteenth century leading up to the catastrophes of the First World War and its shattering aftermath.

Learning the science of international law was not a choice for the Ottoman Foreign Ministry. The incipient discipline, whose modern usage was forged out of disputes between the Ottoman and European empires, arrived in Istanbul as a cudgel. In the 1830s, European empires first limited Ottoman control over administration in Balkan provinces, in the 1840s and 1850s they imposed a broader range of legal and financial restrictions over the full exercise of imperial sovereignty. The most spectacular displays of European interference in the empire's domestic affairs in the name of international law took the form of costal bombardments of port cities along

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[5] Private international law deals with questions of legal jurisdiction between private citizens and touches on issues of personal status, citizenship, nationality, and identity documentation. Public international law covers relations between states, such as war and peace, bilateral and multilateral treaties, agreements, acts, and conventions between powers, but also customary practices as far as war, peace, and trade. In the Ottoman case, it is not always possible to draw a clean line between these two bodies of law due to European imposed limitations on Ottoman sovereignty, particularly the Capitulations.

[6] Hariciye, *Mu'ahedet Mecmu'ası* (İstanbul: Tercüman-ı Hakikat, 1294-1298 [1877-1881]); *Düstur*, (İstanbul: Matbaa-i Amire 1279 [1863]-1289 [1872]); Ahmed Cevdet Paşa, *Mecelle-i Ahkâm-i Adliye*, (İstanbul: Matbaa-yi Osmaniye, 1300 [1884]).

[7] Carney, Gavin E. S., Şinasi Tekin and Gönül Alpay Tekin, eds., "Imperial Self Portrait: The Ottoman Empire as Revealed in Sultan Abdul Hamid's Photographic Albums," *Journal of Turkish Studies*, 12 (1988): 1-269.

the Eastern Mediterranean and more prolonged military interventions inland—acts that often resulted in international agreements securing autonomous administration.[8] By the 1880s, Europeans controlled sovereign debt collection on behalf of the empire's creditors. But it was the Capitulations, the unequal treaties that exempted European residents and their protégés from Ottoman law and taxation, that proved to be the most vexing, and a source of perennial conflict for the government and among imperial subjects.[9] In all these cases, European states justified intervention through reference to existing treaties, or by arguing that the empire lacked the institutional capacity to protect Europeans in the Ottoman domains. It was precisely because such claims were made in legal terms that the Ottoman Foreign Ministry was driven to not only master international law, but to use law to attempt to establish equality in international relations and to preserve imperial sovereignty. Among the many unintended consequences of this process was the development of public knowledge and interest in international law, especially among Ottoman intellectuals and non-specialists, as well one of the main catalysts of domestic legal reform. For much of the Ottoman nineteenth century, international law was the ground upon which Ottoman-European political contests unfolded.

From the start, international law was linked to those older diplomatic histories that contemporaries, as much as later historians, cast as the Eastern Question—a shorthand for both European intervention in Ottoman affairs and the consequences of Ottoman weakness in the international system for European politics. Legal historians of the empire, like their diplomatic counterparts, often begin their story with the Treaty of Küçük Kaynarca concluding the Russo-

[8] For example, in Egypt, Mt. Lebanon, Crete and other cases.
[9] Edhem Eldem, "Capitulations and Western Trade: Western Trade in the Ottoman Empire," in Suraiya N. Faroqhi ed., *The Cambridge History of Turkey*, vol. 3, "The Later Ottoman Empire, 1603-1839" (Cambridge: University Press, 2006); Turan Kayaoğlu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China* (Cambridge: Cambridge University Press, 2010).

Ottoman War of 1768-1774. Among other things, the treaty recognized the independence of the Crimean Khanate and restored Wallachia and Moldavia to Ottoman sovereignty, which had been under Russian military occupation. The occupation ended with strings attached, including vague administrative requirements that supposedly dictated how the provinces would be reassimilated into the empire. While much ink has been spilled over how Russia later used Küçük Kaynarca to claim the rights to intervene in the Ottoman empire on behalf of Christian subjects, this moment has generally been accepted as the starting point of a newly aggressive Europe that enshrined restrictions on Ottoman sovereignty by treaty.[10] Yet in the same way that Russia later misinterpreted the 1774 treaty to provide legal cover for intervention on behalf of all Ottoman Christians anywhere in the empire, the Russian Foreign Ministry similarly push for an expanded interpretation of the treaty with regard to the administration of Wallachia and Moldavia. Starting in the Napoleonic Wars, but continuing through the 1820s and early 1830s, Russia insisted that the 1774 treaty provided complete internal administrative rights to the principalities, and then used this purported existing imperial model to push for administrative autonomy under control of a Christian prince in Serbia—a province that unlike Wallachia and Moldavia never had any sort of privileged administrative status—and as the initial model for Ottoman Greece. It was in this moment of multiple imperial crises and institutional building that we should look for the interpretive key to this story.

Rather than 1774, the 1820s are a more meaningful starting point for understanding how and why the new Ottoman Foreign Ministry would come to embrace international law in its dealings with Europe. First, there were divisions among the bureaucrats who controlled pre-

[10] Davison, Roderic H. '"Russian Skill and Turkish Imbecility": The Treaty of Küçük Kainardji Reconsidered," Slavic Review, 33:3 (September 1976): 463-483. Reprinted in Davidson, Roderic H. Essays in Ottoman and Turkish History, 1774-1923: The Impact of the West. Austin: University of Texas Press, 1990; *Muahadet Mecmuası*, vol 3, S. 254-74; Martens; Hurewitz; Nobuyoshi Fujinami, "Between Sovereignty and Suzerainty"

Tanzimat foreign affairs, and they held radically different visions of what engaging in European politics could do for the empire—a debate that did not vanish in the Tanzimat era. As Ozan Ovacı recent work has shown, after an internal power struggle, the Ottomans opted not participate in the Congress of Vienna concluding the Napoleonic Wars in 1815.[11] Instead of the Eastern Question literature that has insisted that the empire was either excluded, or too ineffectual to understand what was at stakes in the formation of the European concert, we find an empire deeply distrustful of European politics in the aftermath of Napoleonic era broken alliances, military occupations, and imperial uprisings supported by erstwhile allies. Much like Foreign Ministry officials on the eve of the First World War, the Reis ül-Küttab viewed the world of European politics as a dangerous game, without clear benefits for the empire. More important, the empire simply didn't require Europe and its territorial guarantees in 1815—a position that would change dramatically by the late 1820s.

Secondly, it was only in the 1820s that European imposed administrative demands gained any traction. Throughout the Greek crisis in the 1820s and the Russo-Ottoman war (1828-29), Russia pushed for, and ultimately succeeded in, formalizing administrative autonomy in Wallachia and Moldavia and Serbia—claiming such privileges were embedded in the Treaty of Küçük Kaynarca (1774) and in the Treaty of Bucharest (1812). The island of Samos, kept out the boundaries of the new Greece, likewise achieved a special administrative standing in 1832. In each case, Britain, and France—led by Russia—guaranteed the special status of these provinces by treaty and demanded that the Ottoman state issue imperial decrees that confirmed a varying range of privileges on each province. The Moldavia, Wallachia, Serbia and Samos were awarded

[11] Ozan Ozavcı, *Dangerous Gifts Imperialism, Security, and Civil Wars in the Levant, 1798-1864* (Oxford: University Press, 2021); "A Priceless Grace? The Congress of Vienna of 1815, the Ottoman Empire and Historicising the Eastern Question," *The English Historical Review*, 136, 583(December 2021): 1450–1476.

different degrees of autonomy and had individual agreements with Istanbul, but they shared one important commonality: all three provinces remained legally part of the Ottoman constitutional order, a status that was guaranteed in imperial decree and by treaty in international law.

While Greece was the first post-Ottoman state recognized by Europe—and was very much seen as an experiment to neutralize an unstable European periphery—an equally important administrative experiment emerged out of the years of crisis and intervention in the Balkans. Until 1878, statehood on the model of Greece was the exception, whereas the autonomy compromise—hashed out between the European powers and what would become the new Ottoman Foreign Ministry—was the norm and would remain so through the end of the Ottoman empire in 1923. European powers compelled the Ottoman state to extend autonomy to several provinces over the course of the nineteenth century, up through 1914—all of which were rooted in experimental models worked out in the Balkans in the 1820s and 1830s.[12] From a European perspective, autonomy was as much a tool for stabilizing Europe as it was a way of managing political claims among Ottoman subjects.

Lastly, the 1820s and early 1830s laid the institutional groundwork for the Tanzimat Foreign Ministry. Diplomacy and actual correspondence between Istanbul and the courts of Europe broke down with the destruction of the Phanariot network in 1821.[13] The principal diplomatic conduits between European empires and the Ottomans, namely the chief imperial dragoman, the dragoman of the fleet, and the two *voyvodas* of Moldavia and Wallachia—all Phanariots—were removed from their offices in 1821.[14] The fact that the Ottoman diplomatic

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[12] In addition to the Danubian Principalities, Serbia and Samos, the Ottoman state counted Egypt, Mt. Lebanon, Crete, Montenegro, Cyprus, Eastern Rumelia, Bulgaria, Bosnia-Herzegovina, Tunisia, Kuwait, Yemen, Trablusgarb, among the "privileged provinces" (*eyalet-i mümtaze*) of the empire.
[13] Christine Philliou, *Biography of an Empire: Governing Ottomans in the Age of Revolution* (Berkeley: University of California Press, 2011), chap. 4-5.
[14] *Ibid.*, p. 88.

corps remained in various states of disorder through the 1820s and early 1830s determined the degree to which the Ottomans could launch an effective response to European demands first in regards to Greece and later in Wallachia, Moldavia and Serbia. It is why Russia, followed by Britain and France, were able to impose rather negotiate so much throughout the crisis. The fact that the Ottomans were able to negotiate the status of Samos in 1832 marks a resurgence of the new Foreign Ministry and a general shift in the diplomatic dynamics between empires.[15] At the same time, the newly reformed Ottoman Foreign Ministry suddenly found that it had to rely upon European guarantees to uphold the territorial order of the state—a turn of events that grew out the search for a solution to the crisis that began in Ottoman Greece.

Insurrections, Interventions and Military Occupations

European powers intervened militarily in the Ottoman empire.[16] Nineteenth century European interventions were framed in humanitarian terms and were often made on behalf of Christian subjects in the aftermath of rebellion or domestic disputes.[17] Concert diplomacy solved these crises, which more often than not rose to the level of international politics, by insisting upon administrative and legal reforms in exchange for the evacuation of foreign troops. Starting in the 1830s, the exigencies of the Eastern Question—European intervention in Ottoman affairs—resulted in the creation of a new type of province. Categorized as "exceptional" by the Ottoman state, the new autonomous provinces (*eyâlet-i mümtaze*) were the product of an uneasy compromise between the Ottoman and European empires. Far from being ineffectual or weak, as

[15] *Ibid*. p. 109-117.
[16] The next few paragraphs are based on my manuscript.
[17] Davide Rodogno's monograph on the origins of humanity intervention discusses the Ottoman position in Europe and international law. See Davide Rodogno*, Against Massacre: Humanitarian Intervention in the Ottoman Empire 1815-1914* (Princeton University Press, 2012).

depicted in earlier scholarship, Ottoman lawyers and bureaucrats tackled encroachments in their sovereign realm with experimentation and compromise.

The new category of "privileged" or autonomous province, was designed to respond to European critiques and give local authorities more direct rule. The provinces included imperial hotspots such as Serbia, Romania, Egypt, Mt. Lebanon, Crete, and Bulgaria. There was no single formula for gaining autonomy, nor blueprint for what it would look like in practice in terms of taxation, law, or administration—each privileged provinces had individual agreements with İstanbul. In Mt. Lebanon for instance, power resided in the hands of a non-local Christian governor appointed from İstanbul who was assisted by an administrative counsel composed of representatives from each religious community in the province. In contrast, Egypt had a hereditary governor and far greater control over local finances and expenditures but had to remit a much heftier tribute to the capital. Some of these provinces were exempted from empire wide polices such as the secular or *nizamiye* courts (1864) and others not—but they shared one important commonality. They remained legally part of the constitutional order of the empire. The Sultan guaranteed the status of these provinces in an imperial edict (*ferman*), as did the "public law and system of Europe"—in other words, the status of such provinces was guaranteed in international law by treaty and in Ottoman administrative law, the kanun.

Before the nineteenth century, the Ottoman Empire had long maintained flexible administrative arrangements throughout its vast domains. Egypt for instance was always exceptional from an administrative perspective within the empire, but in other ways it was entirely ordinary. When the province was conquered and incorporated into the empire in 1517, instead of establishing the regular system of land tenure and tax collection practiced in Anatolia and the Balkans, Egypt became the first of several special provinces, known as *salyaneli*, where

the governor remitted an annual lump sum tax payment to the imperial treasury. Ottoman sultans created more and more such provinces across Ottoman North Africa in Algeria (*Cezayir-i Garb*), Tunisia, Libya (*Trablus-i Garb*), and Abyssinia (*Habeş*), in the Ottoman Gulf in Yemen, Kuwait (*al-Hasa*), and Basra.[18] Egypt served as a model for other provinces, just as it would in the nineteenth century. Many of these provinces had their own provincial budgets and their governors with a high degree of autonomy and authority, which in some cases was exercised by powerful local families, rather than governors.[19] For example, in frontier provinces along the Iranian border, Sultan Süleyman (r. 1520-1566) granted Kurdish emirs an array of privileges including hereditary rule over sub-provinces (*sancak*) and tax exemptions in exchange for loyalty to the state—especially military aid.[20] Early modern provinces that were excepted from the general rules of taxation and control were known as "excepted provinces" (*müstesna eyaletler*).[21] In all these cases, as in Egypt, local rulers recognized Ottoman sovereignty, many sent annual remittances to the imperial treasury or were exempted entirely from taxes, and in other cases supplied local troops to military campaigns elsewhere in the empire.[22] Privileges were never accorded without something essential to the functioning of the state being given in return.

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[18]It should be noted, that in early period of expansion, the empire often retained local rulers in exchange for a tribute and soldiers, which Colin Imber has pointed out was always less secure than annexing a territory outright. Colin Imber, *The Ottoman Empire* (London: Palgrave, 2009), p. 167; Gábor Agoston, "A Flexible Empire: Authority and Its Limits on the Ottoman Frontiers," in K. Karpat, ed., *Ottoman Borderlands: Issues, Personalities and Political Changes* (Madison: University of Wisconsin Press, 2003), p.16-17. İnalcik, *An Economic and Social History*, 84-88; Ekinci, "Osmanlı İdaresinde," p. 30.

[19] Mehmet İnbaşi, "XVIII. Yüzyılda Bitlis sancağı ve İdareciler" *Ankara Üniversitesi Türkiyat Araştırmaları Enstitüsü Dergisi* 33 (2007): 243–26; Agoston, "A Flexible Empire," p. 18-23.?

[20] As Baki Tezcan has argued, an agreement between Kurdish Emirs and Süleyman (r. 1520-1566), shows that in exchange for loyalty to the state—especially military aid in the conquest of Iraq—the sultan granted them an array of privileges including hereditary rule and tax exemptions. Baki Tezcan, "The Development of the Use of 'Kurdistan' as a Geographical Description and the Incorporation of this Region into the Ottoman Empire in the 16th Century," in *The Great Ottoman-Turkish Civilisation*, edited by Kemal Çicek et al (Ankara: Yeni Yürkiye, 2000), vol. 3, 540–553. On the transformation of "vassals" see his *The Second Empire: Political and Social Transformation in the Early Modern World* (Cambridge: University Press, 2010), especially chap. 3.

[21] EI2, VII "Eyalet" Müstethna Eyaletler" p. 756; Mehmet Zeki Pakalin , Osmanlı Tarih Deyimleri Ve Terimleri Sözlüğü vol 2, p, 632-33

[22]Colin Imber, *Ebu's-suud: The Islamic Legal Tradition* (Edinburgh: University Press, 1997), see chapter 3.

Added to these provinces, the Ottoman state laid claim several protected "tributary" principalities, located largely in Southeastern Europe (Moldavia and Wallachia, Ragusa, Transylvania, a handful of Aegean islands), and at the eastern edges of the empire in the Crimean Khanate.[23] In the case of the Christian majority provinces in the Balkans, inhabitants paid an annual tribute, known as the *haraç* or *cizye* (the tax on people of the book) to the imperial treasury in exchange for imperial protection—they were also at times in Ottoman documents referred to as *haracgüzar*, or "one who pays tribute (gift)."[24] In contrast, the Crimean khans did not send a tax payment to Istanbul, in fact they received substantial subventions from the sultan, and had far more control over relations with their neighbors than other provinces.[25] While many historians, have interpreted this relationship between the so-called tributaries and the Ottoman empire to be one merely of protection rather than one of sovereignty, the reality is that submission to Istanbul and the annual tribute were manifestations of imperial control.[26] According to early modern Ottoman theories of empire, which were based in part on Hanafi iterations of Islamic law, these provinces were part of the empire and distinct from states such as Aceh, Kashgar, Morocco and the Bornu Sultanate, which maintained relations with the Ottoman

[23] One of the best books on the so-called tributary states is Gábor Kármán and Lovro Kunčević's *The European Tributary States of the Ottoman Empire in the Sixteenth and Seventeenth Century* (Leiden: Brill, 2013). The collected volume looks at Moldavia and Wallachia, the Crimean Khanate, Transylvania, Ragusa and Cossack Ukraine. See especially Viorel Panaite's contribution, "The Legal Status of Wallachia and Moldavia in Relation to the Ottoman Porte." For North African provinces, Algeria, Tripoli, Tunisia, see Joshua M. White, *Piracy and Law. In the Ottoman Mediterranean* (Stanford: University Press, 2018) and Giancarlo Casale *The Ottoman Age of Exploration* (Oxford: University Press, 2010); Ceylan, Ayhan. *Osmanlı Taşra İdarî Tarzı Olarak Eyâlet-i Mümtâze ve Mısır Uygulaması* (Istanbul: Kitabevi, 2014).
[24] Viorel Panaite, "The Legal Status of Wallachia and Moldavia in Relation to the Ottoman Porte," in *The European Tributary States*, p. 43. See his *Ottoman Law of War and Peace: The Ottoman Empire and Its Tribute-Payers from the North of the Danube* (Leiden: Brill, 2019).
[25] Natalia Królikowska, "Sovereignty and Subordination in Crimean-Ottoman Relations (Sixteenth–Eighteenth Centuries)," *The European Tributary States*, p. 43-65; Alan Fisher, *Between Russians, Ottomans and Turks: Crimea and Crimean Tatars* (Istanbul: Analecta Isisiana, 1998); Halil İnalcik, "Yeni vesikalar göre Kırım Hanlığının Osmanlı tabiliğine girmesi ve Ahidnamesi meselesi, *Belleten* 8(1944): 185-229; Brian Davies, *Warfare, State and Society on the Black Sea Steppe, 1500-1700* (Routledge, 2007); Salzmann, p. 46
[26] Viorel Panaite, "The Legal Status," p. 21. Uzunçarlı, *Osmanlı Tarihi*, vol. 4, pt. 2, 41–77; Salzmann, p. 46

empire within the framework political protection and military alliance, but were not considered part of the imperial domains.[27]

While there were differences between the Christian majority provinces and the *salyane* provinces, not least how autonomy was justified by the state, it is more profitable to treat autonomy in the early modern empire as an option rather than as an exception. Indeed after 1525, Egypt offered a blueprint for imperial incorporation for other newly conquered parts of the empire. When the Ottomans set their sights on Moldavia and Wallachia (*Eflak ve Boğdan voyvodalıklar*, or *Memleketeyn* in Ottoman), the former governor of Egypt and later Grand Vizier, Koca Sinan, argued that both provinces should be incorporated into the empire "in the way of the province of Egypt ("*vilayet-i Mısriyye gibi*")."[28] Though there is a tendency to view centralization as the hallmark of the era of Ottoman expansion, exceptions abounded, and those provinces and sub-provinces with hereditary governors and local administrative control and other privileges, were no less part of the empire.[29] The projection of state power was irregular and the sultan depended on locals at vulnerable frontiers of the empire to serve as fortification against neighbors to the west as much as to the east. As the Turkish legal historian Ekrem Ekinci has argued, historians should take one of the official names of the empire seriously. The "well-protected domains" (*Memâlik-i Mahrûsa*) "emphasized that the Ottoman lands were an empire

[27] Ekrem Huğra Ekinci "Osmanlı İdaresinde Adem-i Merkeziyet ve Imitayzlı Eyaletler," *Türk Hukuk Tarihi Araştırmaları*, 6(2008), p. 12. Panaite, Viorel. "The Legal Status," p 21; Catalina Hunt.
[28] Sándor Papp "The System of Autonomous Muslim and Christian Communities, Churches, and States in the Ottoman Empire," *The European Tributary States*, p. 387-88; Cevdet Paşa, *Tarih-i Cevdet* (Istanbul, 1309), vol. 8, 24–28. *Eflak ve Boğdan voyvodalıklar*, or *Memleketeyn* – _ the governsherships of Wallachia (Eflak) and MoldaCIA (BÖĞDAN) the two countries, Wallachia and Moldavia
[29] Agoston argues that the dominance of the imperial centralization during the so-called "classical age" has been massively overdrawn, and that the empire was far more pragmatic and flexible in the borderlands in contrast to the timar system applied throughout Anatolia, the Balkans and parts of the northern fringes of the Arab provinces. See Gábor Agoston, "A Flexible Empire: Authority and Its Limits on the Ottoman Frontiers," in K. Karpat, ed., *Ottoman Borderlands: Issues, Personalities and Political Changes* (Madison: University of Wisconsin Press, 2003), p.16-17. Lale Can & Genell.

consisting of many countries, kingdoms, principalities and sultanates."[30] The empire was an amalgam of different polities all absorbed and assimilated into the imperial machinery of the state. In sum, the varying administrative and legal arrangements throughout the Ottoman domains reflected the method of imperial incorporation, as much as the territory's distance from Istanbul or its value to the state as a frontier province, a source of military aid, or its revenue generating capacities. Autonomy was a privilege, or an exemption, that was given in exchange for something else (usually money or soldiers) with explicit submission to the sultan.[31]

While elements of the old autonomies would find their way into the new nineteenth iteration imposed by Europe, the autonomous provinces, first hashed out in the 1820s, were fundamentally different administrative and legal structures. Before the 1830s, none of the autonomous provinces were guaranteed in international law, nor subject to foreign protection and intervention. The sultan had awarded administrative privileges to locals when and where he saw fit and for the benefit of the empire and state coffers. Europe played no part in the equation. That changed in the aftermath of the regional crises stemming from the Greek revolution that shook the empire and ushered in new governing, legal and administrative changes throughout imperial lands.

The Greek revolution, a rebellion from the Ottoman perspective, broke out in the capital of Moldavia in 1821and soon inflamed the Peloponnese. By the time the conflict was fully settled in the early 1840s, war, naval bombardment, foreign intervention, and military occupation touched not the old autonomies in Egypt, Wallachia and Moldavia, but also Ottoman Greece, Serbia, Samos, Crete, the Syrian provinces and Anatolia. By 1841, the Ottoman relationship with

[30] Ekrem Huğra Ekinci "Osmanlı İdaresinde Adem-i Merkeziyet ve Imitayzlı Eyaletler," *Türk Hukuk Tarihi Araştırmaları*, 6(2008), p. 5.
[31] Cemal Kafadar, "The Question of Ottoman Decline" *Harvard Middle Eastern and Islamic Review*, 4 (1997-1998), 1-2: 30-75

Europe would be transformed. For the first time, European powers would insist upon a specific set of administrative arrangements within the Ottoman domestic order and these arrangements would not only be subject to international agreement but confirmed in imperial legal instruments as well. At the same time, the newly reformed Ottoman Foreign Ministry would rely upon European guarantees to uphold the territorial order of the state—a turn of events that grew out the search for a solution to the crisis that began in Ottoman Greece.

After 1841, European imposed administrative restrictions became a go to remedy to solve internal imperial crisis that threatened the "peace of Europe." By the 1870s, European Great Powers, especially Britain, regularly threated the Ottomans with more autonomous provinces whenever local imperial crises threatened to expand—in Macedonia, Armenia, the Gulf and beyond. In the lead up to World War I, Britain and the European powers attempted to impose autonomous administrations in the "kaza of Kuwait" as well as the six eastern provinces, that European states designated as "Armenia." The Armenian Reform Agreement of February 1914 created two large autonomous provinces "on the model of Mt. Lebanon" with each overseen by a European inspector.

The significance of the autonomous provinces is two-fold. Like the Capitulations, an early modern institution, administrative autonomy was yet another arena in which the Ottomans clashed with European powers. Whereas for European states autonomy was often understood as a way to limit the sultan's reach and diminish Ottoman sovereignty, for the state they became a means to satisfy locals in the provinces, and to shore up territorial claims as well as effective political control, across North Africa and the Arabian Peninsula. Secondly, like the legal work and reform that emerged out of attempts to undo the Capitulations, the autonomous provinces

posed yet another sovereignty problem for the empire and pushed state bureaucrats to embrace international law as part of its diplomatic arsenal.

While the state dealt with this new class of autonomous provinces on an ad-hoc basis from the 1830s, by the 1880s, autonomous provinces were lumped together as a type of province. Ottoman bureaucrats and subjects wrote about them as group, and they were recognized as constitutional category. For instance, the very first article of the 1876 Ottoman Constitution stated that the territory of the Ottoman Empire was indivisible and "comprised the present territory and "the *eyalat-ı mümtaze* and no part could be detached from the whole."[32] European diplomats and international lawyers too commented upon Ottoman efforts to assert greater centralized control over the privileged provinces through this office.[33] The last Ottoman official to head the Office of Autonomous and Privileged Provinces, Mahmud Kemal İnal—the great chronicler of late Ottoman bureaucrat poets—analogized it to a European colonial office.[34] Provinces like Mt. Lebanon and Samos did not cause much trouble for the new Office, but others, notably Egypt, Crete and Eastern Rumelia, were among the most sensitive in terms of Ottoman relations with Europe and recurring hotspots.

Administrative patterns were never static and fluctuated enormously over time, they also could not easily be divided between centralization and its exceptions, there was a continuum of possibilities throughout the life of the empire. Ottoman "tributaries" and autonomies were a feature of Ottoman administration, not necessarily a derogation of sovereignty. While the mid-century story was one of ambiguity, by the 1880s semi-sovereignty and the assortment of feudal

[32] *Kanun-i Esasi* (Istanbul: Matbaa-i Amire, 1292/1876).
[33] Fedor Martens, *Traité de droit international* (Chevalier-Marescq et cie., 1883-87), p. 331.
[34] İbnülemin Mahmut Kemal İnal, *Son Asır Türk Şairleri* (İstanbul: Millu Eğitim Basımevi, 1970), vol. 4 (Ş-Z), p. 2155; Carter Findley, *Bureaucratic Reform in the Ottoman Empire: The Sublime Porte, 1789-1922* (Princeton University Press, 198.

terms were applied almost exclusively to Ottoman autonomous provinces and among European lawyers meant less than sovereign—though Ottoman lawyers would fight back.

Equality through Legal Reform

New forms of European military intervention in Ottoman affairs, along with demands for administrative reforms and reorganization, were accompanied by a shift in the function and meaning of the Capitulations. In the nineteenth century, the early modern privileges, known as the Capitulations, which exempted European merchants from local courts, were increasingly understood as unequal treaties governing the rights of foreign residents in the empire.[35] Like the early modern peace treaties with Europe, these concessions were unilateral and issued at the will of a particular sultan. Initially the privileges provided foreign merchants with protection and security while traveling and trading through the Ottoman domains, as well as immunity from the jurisdiction of local courts. When a particular sultan died, all the concessions issued by his command ceased to be binding and new Capitulations had to be negotiated again. Thus, the Capitulations were not seen as a derogation of Ottoman sovereignty, but by the nineteenth century lawyers and diplomats treated the Capitulations as permanent treaties, they no longer expired with the death of the Sultan, and as a mark of inequality in international relations. increasingly, European ambassadors and counsels insisted that the Capitulations not only released their subjects from the sultan's jurisdiction, but also from taxation and conscription. This transformation of the Capitulations from a unilateral privilege granted by the sultan, into a mark of sovereign difference between empires laid the foundation for domestic legal reform for

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[35] Eldem, "Capitulations"; M. van den Boogert, *The Capitulations and the Ottoman Legal System: Qadis, Consuls and Beraths in the 18th Century* (Brill, 2005); Fabiana Zarinebaf, *Mediterranean Encounters*; Natalie Rothman, *Brokering Empire Trans-Imperial Subjects between Venice and Istanbuli;* W. Hanley *Identifying with Nationality Europeans, Ottomans, and Egyptians in Alexandria* (Columbia University Press, 2017); Faroz Ahmad, "Ottoman Perceptions of the Capitulations, 1800-1914," 11 *Journal of Islamic Studies*,1 (2000); Umut Özsu, "Ottoman Empire," in *The Oxford Handbook of the History of International Law*, ed. Bardo Fassbender and Anne Peters (2012): 429-48.

the remainder of the empire's history. One of the driving goals of Ottoman foreign policy from the mid-nineteenth century through their abolition in 1914, was to dismantle the system of unequal treaties with Europe—and for much of the period in question, Ottomans cast the Capitulations as *imtiyaz* or privileges. As Ottoman lawyers regularly pointed out, the Capitulations sat uncomfortably alongside the empire's long and continued history of treaty making with Europe.[36]

The drive to destroy the Capitulations facilitated the empire's turn to international law as a tool to manage European imposed limitations on Ottoman sovereignty.[37] This was manifested through both learning international law as a tool of diplomacy, as much as harmonizing domestic legal institutions to be legible to Europeans who claimed that the Ottoman state lacked the capacity to treat their subjects fairly in a court of law.[38] While domestic reasons were just as important in propelling imperial legal reform, the inequality of the Capitulations were another major incentive for reform. Between the 1860s and 1880s, new and reformed legal institutions and codification projects proliferated in Istanbul and the provinces—including the introduction of a three-tiered system of secular courts, codification of the Islamic jurisprudence in the Ottoman Civil Code (*mecelle*), and the establishment of the Imperial Law School, which included international law as a required subject of study.[39]

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[36] Aimee M. Genell "Ottoman Autonomous Provinces and the Problem of "Semi-Sovereignty" in International Law," *Journal of Balkan and Near Eastern Studies,* special issue: "Autonomy and Federation in the Ottoman Empire," 18, 6 (2016).
[37] Hanley; Michael Christopher Low, "Unfurling the Flag of Extraterritoriality: Autonomy, Foreign Muslims, and the Capitulations in the Ottoman Hijaz," *Journal of the Ottoman and Turkish Studies Association*, Vol. 3, No. 2 (November2016), pp. 299-323
[38] Avi Rubin, *Ottoman Nizamiye Courts: Law and Modernity* (Palgrave Macmillan, 2011) and "Modernity as Code: The Ottoman Empire and the Global Movement of Codification," *Journal of Economic and Social History of the Orient*, 59 (2016) 828-856
[39] İhsanoğlu, *Darülfünun: Osmanlı'da Kültürel Modernleşmenin Odağı* (2010).

The Foreign Ministry's Office of Legal Counsel (*hukuk müşavirliği istişare odası*) played an outsized role policing the sovereign edges of the empire in the age of high imperialism.[40] The Foreign Ministry's Office of Legal Counsel was established as a result of the catastrophe of the 1877-78 Russo-Ottoman War. Before that point, the Ottoman state relied upon international law and employed European lawyers as advisors on an occasional basis. It was only in the in the centralizing Hamidian era (1876-1909), which was marked by ambitious state building projects, that international law became central to Ottoman engagement with Europe and diplomatic practice.

European and later Ottoman trained international lawyers developed expertise in both private and public international law. The Capitulations demanded Ottoman engagement with questions of personal status, while the autonomous provinces compelled lawyers to regulate the line between domestic and international law.[41] The lawyers scrutinized the relations between the exceptional provinces and European empires. Whenever a local governor exceeded his privileges, the lawyers drafted opinions to assert the proper order. Legal opinions were transformed into diplomatic cables that made their way into European Foreign ministries. Incredibly this strategy worked well through 1908, Europeans responded favorably to Ottoman demands. But the constant recourse to asserting Ottoman sovereign rights based on treaty law slowly hollowed out the meaning of sovereignty—a point the Ankara government would later be quick to capitalize upon at Lausanne.

It was only during the Young Turk era (1908-1918) that the strategy of appealing to international law in dealing with Europe started to fray. When Italy illegally invaded and

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[40] Aimee M. Genell "The Well-defended Domains" in Lâle Can, Michael Christopher Low, et. al., *The Subjects of Ottoman International Law* (Indiana University Press, 2020).
[41] Can, *Spiritual Subjects*; Low, *Imperial Mecca;* Hanley.

occupied Ottoman Libya in 1911, the Office of Legal Counsel was responsible for crafting the legal case against Italy. Ottoman lawyers made both *jus ad bellum* and *jus in bello* arguments and claimed that not only had Italy provoked war without legal grounds, the Italian methods of warfare—including the use of exploding bullets and dropping bombs from airplanes—were prohibited by the Hague Conventions (both Italy and the Ottomans were signatories). The lawyers requested mediation at the Hague, but these arguments were met with a shrug from Europe. In the aftermath of this war, Ottoman public opinion judged the merits of international law in harsh terms and increasingly viewed war as the best means to save the state and maintain sovereignty over imperial lands.[42]

The Ottoman international lawyers who directed the Foreign Ministry's Office of Legal Counsel and held the title of Chief Legal Advisor—a position shared by one Muslim and one non-Muslim subject—were few in number but played a major role in late Ottoman political affairs, even after leaving the Office.[43] The two most authoritative international law experts in the empire, Gabriel Noradounghian (Noradunkyan) and İbrahim Hakkı Bey (later Paşa), were assigned to important bureaucratic posts in the tumultuous years leading up to the First World War, and in İbrahim Hakkı's case, during the war itself. Noradounghian, who edited the definitive collection of Ottoman-European treaties and agreements, was the only Armenian Foreign Minister in the history of the empire and occupied the post during the Italian invasion of Libya and the First Balkan Wars.[44] During the Lausanne Conference, after being dispossessed of his property in the empire, he represented Armenian interests and met privately with İsmet Paşa and the Ankara government's chief legal advisor, Mehmet Münir (Ertugün)—a former employee

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[42] Mustafa Aksakal, "Not by those old books of international law."
[43] Genell," Well-defended domains."
[44] Gabriel Noradounghian, *Recueil d'actes internationaux de l'empire ottoman*, 4 vol. (F. Pichon, 1897–1903); Y. G. Çark, *Türk Devlet Hizmetinde Ermeniler, 1453–1953* (Istanbul: Yeni Matbaa, 1953).

in the Office of Legal Counsel and later Chief Legal Advisor to the empire. İbrahim Hakkı Paşa, who held the position of Grand Vizier during the Young Turk era, acted as the Ottoman Ambassador to Berlin during the First War until his death in July of 1918. Moreover, Mehmet Münir, the Legal Advisor to the Ottoman Foreign Ministry and later Ankara was instrumental to crafting İsmet Paşa's legal arguments at Lausanne.

What is critical here is that Ottoman international legal lawyers had spent over thirty years crafting arguments to keep Europe at bay and to preserve the far edges of the empire. They accommodated European demands for reform but did so by doing everything possible to preserve imperial sovereignty. Ottoman lawyers were the authority on the problem of sovereignty in the age of empire. They were highly adept at dealing with the challenges posed by "privileges," whether personal legal or special administrative, in an empire that was desperate to assert its authority more definitively at its frontiers, as much as to assert its sovereignty and to claim equality in the world of competing empires.

Questions of legal privileges didn't just concern lawyers and high government officials. During the Second Constitutional period, the major debates among the empire's subjects concerned imperial organization. While the Committee of Union Progress (CUP) favored administrative centralization, the liberal opposition, which included Noradounghian, preferred administrative decentralization on the model of the autonomous provinces like Egypt and Mt. Lebanon.[45] Even before the First World War broke out, there were massive debates in the Ottoman press—in Armenian, Ladino, Arabic, Kurdish, Ottoman, Albanian and Greek—about

[45] Hasan Kayalı provides one of the best and clearest assessments of this debate before the war. See Hasan Kayalı, *Arabs and Young Turks: Ottomanism, Arabism, and Islamism in the Ottoman Empire, 1908-1918* (Berkeley: University of California, 1997), especially chapter 4. Bedross Der Matossian examines the question of administrative decentralization and the "extension of administrative responsibility" (*tevsi'-i mezuniyet*) in the Arabic, Armenian, Hebrew, Ladino and Ottoman press. See *Shattered Dreams of Revolution: From Liberty to Violence in the Late Ottoman Empire* (Stanford, Calif.: Stanford University Press, 2014), especially chap. 2.

legal and administrative privileges and the role they should play in the domestic legal order of the empire.[46] When the CUP seized the government in 1913, those dreams of expanding autonomy were put on hold and centralization briefly won out, but they would return with a force as soon as the dust seemed to settle in 1918 and wartime press censorship was relaxed.[47]

Congresses, Conferences and Peace Settlements

Conclusion

The fact that the Ottoman Empire found itself in a far weaker position vis-à-vis Europe in the nineteenth century does not mean that the empire was excluded from the realm of European diplomacy and international law. On the contrary, Ottoman diplomacy relied heavily upon international law arguments, especially treaty law, in its dealings with European states, the United States and its Muslim neighbors—arguments that succeeded far frequently more than not. Understanding how, when, and why the Foreign Ministry embraced international law as a "tool of the weak" to preserve imperial sovereignty against expansionist Europe is critical for understanding not only the logic of late Ottoman foreign policy, but also the empire's slow realignment away from international law as a diplomatic strategy.[48] In the aftermath of Italy's illegal invasion and occupation of Libya in 1911, Ottoman foreign policy increasingly embraced force and a military alliance with teeth over international law as the savior of empire—a position

[46] Der Matossian, *Shattered Dreams of Revolution*; Campos.

[47] Throughout World War I, the C.U.P. continued to pursue a policy of centralization. Indeed, incorporating the autonomous provinces into the regular administration of the empire was an Ottoman war aim - the Unionists cancelled the contentious Armenian Reform Agreement in December of 1914, which would have reorganized the six eastern provinces into two autonomous provinces and in July 1915 Mount Lebanon, the *mutasarrifiya*, lost its privileged status. That August, Cemal Paşa, the wartime governor of Syria, publicly executed Syrian dissidents who had favored decentralized administration before the war. See Ahmed Cemal (Ahmed Djemal), *Memoirs of a Turkish Statesman, 1913-1919* (London: Hutchinson & Co., 1922) and Yusuf Hikmet Bayur, *Türk İnkilabı Tarihi* (Ankara: Türk Tarih Kurumu, 1983), vol. 3, part 3, p. 12; For Cemal Paşa's wartime activities in Syria, see Talha Çicek, *War and State Formation in Syria: Cemal Pasha's Governorate during World War I, 1914-1917* (New York: Routledge, 2014).

[48] For the idea of international law as a "weapon of the weak" against Europe and the United States, see John Peter Stern, *The Japanese Interpretation of the "Law of Nations," 1854-1874* (Princeton: University Press, 1979).

that would be carried out through the First World War and into the establishment of the Republic of Turkey.[49] This earlier history is essential for understanding both wartime decisions and the actions of Armistice era governments in Istanbul under occupation and the opposition in Ankara. The Foreign Ministry's preoccupation with preserving sovereignty at any cost ultimately had catastrophic consequences for the empire's populations, notably for Armenians and Arabs, but also for other groups in the post-war era. Late Ottoman negotiations with Europe over imperial sovereignty would fundamentally shape the states, mandates and protectorates that emerged out of the wreckage of empire.

[49] Mustafa Aksakal,"Not 'by those old books of international law, but only by war': Ottoman Intellectuals on the Eve of the Great War," *Diplomacy & Statecraft*, 15, 3(2004): 507-54; Mustafa Aksakal and Aimee M. Genell, "Salvation through War? The Ottoman Search for Sovereignty in 1914," *The Justification of War and International Order: From the Past to the Present*, edited by Lothar Brock and Hendrik Simon (Oxford University Press, 2021); Stefan Hock, "Waking us from this Endless Slumber": The Ottoman–Italian War and North Africa in the Ottoman Twentieth Century," *War in History*, 26, 2(2017): 204-226.