ABSTRACT

Title of Dissertation:	LEGAL PLURALITY IN FAMILY LAW: MUSLIM AND CHRISTIAN FAMILIES IN SEVENTEENTH-CENTURY ISTANBUL
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The Ottomans ruled a vast empire incorporating many different religious and ethnic groups. The Christians and Jews among them, who were regarded in an Islamic context as "the people of the book," were allowed to appeal to their religious authorities for issues of marriage and divorce. They were also permitted to appeal to the Sharia courts if they so wished. The existence of multiple legal orders created a complex system within the Empire, yet the practical workings of this legal system have rarely been studied. In this context, this dissertation focuses on the institutional practice and family dynamics of Ottoman legal pluralism as evidenced in the registers of the Sharia courts and the Patriarchal court in late seventeenth-century Istanbul.

The appearance of non-Muslims in Sharia court registers has led many historians to conclude that non-Muslims widely used the Sharia courts since they were cheaper, more flexible, and more easily accessible, with the decisions of a Muslim judge possessing stronger enforcement power than non-Muslim community courts. This study challenges these assumptions and demonstrates that, at least in issues of divorce and remarriage, Greek Orthodox community members often frequented the Patriarchal court either exclusively or after getting a *hüccet* (legal writ) from the Sharia courts in order to have the decision of the Muslim judge

approved by the Patriarchal synod. Ignoring their return to the Patriarchal court has led some scholars to assume that some Greek Orthodox community members opted for the Sharia court to the exclusion of ecclesiastical courts. Their appeal to the synod despite having an official divorce decree from the Sharia court presents substantial evidence regarding the authority - if not autonomy - and enforcement power of the Church. Despite the seemingly uncompromising attitude of the Church towards coreligionists who turned to the Islamic courts, this study shows that the Church was forgiving of its "unruly" members, a phenomenon indicating the co-dependent nature of their intra-communal relations.

In terms of court use practices of Greek Orthodox subjects, this study shows that legal plurality in some cases created an exigency for them to use both courts in view of the different functions they served, rather than a situation of choosing between the two competing and exclusive options in view of their legal interests. Last but not least, this dissertation reveals that Greek Orthodox women were the primary users of the Patriarchal court since the decisions of the synod on some divorce cases were more favorable than the Sharia court rulings. In addition, the synod was for various reasons more lenient towards women. Although some scholars have claimed that Greek Orthodox women found the Sharia courts more suitable because of the option of *hul* divorce, *hüccet* references in the Patriarchal court registers and the Sharia court records show that it was predominantly Greek Orthodox men who took advantage of the legal plural system.

LEGAL PLURALITY IN FAMILY LAW: MUSLIM AND CHRISTIAN FAMILIES IN SEVENTEENTH-CENTURY ISTANBUL

by

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This dissertation follows Modern Turkish usage for Ottoman Turkish names and terms. It adopts the transliteration system employed by *Redhouse Yeni Türkçe-İngilizce Sözlük: New Redhouse Turkish-English Dictionary* (Istanbul, 1979). In interest of consistency, I have retained the original orthography with Greek usage as it appears in contemporary documents, the only exception being some proper names, such as Dimitrios or Maria.

CHAPTER 1

INTRODUCTION

1.1. Family History in the Ottoman Context.

Although not completely neglected, family history is still not an established field in Ottoman historiography. The key period for Ottoman historiography is the 2000s, during which most of the critical works on family history were published by Beshara Doumani, Margaret Meriwether, Iris Agmon and others. In European literature, the family was recognized as a legitimate area of study, as early as the 1960s-70s, essentially with two groundbreaking works by Philippe Ariès and Lawrence Stone. While Ariès' *L'Enfant et la vie familiale sous l'Ancien Régime*[1] was critical in terms of turning the family into a separate unit of historical analysis as a part of burgeoning social history, Stone's *The Family, Sex and Marriage in England 1500-1800*[2] was particularly influential in examining the family as a changing institution that accommodates itself to the political, economic, and social transformations of the time. Another classical and influential work on family history is an edited volume by Peter Laslett and Richard Wall, *Household and Family in Past Time*[3] (1972). Working primarily with local censuses and employing a

[1] Phillipe Ariès, *L'enfant et la vie familiale sous l'Ancien Régime*, [Nouv. éd.] (Paris: Éditions du Seuil, 1973).

[2] Lawrence Stone, *The Family, Sex and Marriage in England 1500-1800* (Harmondsworth: Penguin, 1979).

[3] Peter Laslett and Richard Wall eds., *Household and Family in Past Time: Comparative Studies in the Size and Structure of the Domestic Group Over the Last Three Centuries in England, France, Serbia, Japan and Colonial North America, with Further Materials from Western Europe* (Cambridge, England: University Press, 1972).

quantitative methodology, the studies in this volume demonstrated the variability of household size and structure in different periods and places. More recent studies on the family and household in European historiography challenged the assumptions of these classical works and introduced more revisionist theories, methodologies, and sources, further contributing to the understanding of the regional variations of household forms and family practices.[4]

Admittedly, Ottoman historians who study family and household structures adopted and also developed many of the theories and methods used in European historiography. First and foremost, most agree that broad generalizations about pre-modern families should be questioned and reexamined with solid historical findings. They have already demonstrated that joint/multiple (more than one married couple) or extended households were far from being the norm; instead, simple/nuclear/conjugal households (one married couple with/without children) seem to have predominated. Moreover, studies have shown that it would be incorrect to talk about a single type of household structure, as often misleadingly referred to as "Ottoman," "Middle Eastern," or "Islamic" households. Beshara Doumani's study on Nablus and Tripoli, for instance, convincingly illustrates that the household patterns even in these two adjacent towns were not identical, especially when it came to property devolution practices.[5] While a stricter patrilineal strategy was observed in the former, the latter tended to include female descent more

[4] For examples, see Steven E. Ozment, *When Fathers Ruled : Family Life in Reformation Europe* (Cambridge, Mass.: Harvard University Press, 1983); Helen Berry and Elizabeth A Foyster, eds., *The Family in Early Modern England* (Cambridge: Cambridge University Press, 2007); Silvana Seidel Menchi, ed., *Marriage in Europe, 1400-1800* (Toronto Ontario: University of Toronto Press, 2016); Suzanne Desan, *The Family on Trial in Revolutionary France* (Berkeley: University of California Press, 2004); Suzanne Dixon, *The Roman Family* (Baltimore: Johns Hopkins University Press, 1992); Beatrice Gottlieb, *The Family in the Western World from the Black Death to the Industrial Age* (New York: Oxford University Press, 1993); Jack Goody, *The Oriental, the Ancient, and the Primitive: Systems of Marriage and the Family in the Pre-Industrial Societies of Eurasia* (Cambridge: Cambridge University Press, 1990).

[5] Beshara B. Doumani, *Family Life in the Ottoman Mediterranean: A Social History* (Cambridge, England: Cambridge University Press, 2017), 16.

often. Like Doumani, studies by Margaret Meriwether, Iris Agmon, Abraham Marcus, Alan Duben and Cem Behar, and Philippe Fargues underline the significance of variations in household size and structure among local families.[6]

Together with regionalism, historians have also underlined that the family, historically, is not an unchanging, stagnant institution. In fact, several studies in Ottoman literature on the family tend to concentrate around the nineteenth century to study changes occurring in family patterns with the transformations coming with "modernity" or "westernization." Alan Duben and Cem Behar's work *Istanbul Households: Marriage, Family and Fertility 1880-1940* (1991) is pioneering in this regard. They compare two censuses from Istanbul, one from 1885 and the other 1907. The authors' main purpose is to compare the demographic data from these censuses and question the influence of Western ideas and criticisms on age at marriage, arranged marriages, women's position in society, and child rearing. Like their counterparts working on the same or earlier periods, Duben and Behar found that although the simple household structure was more widespread, both simple and joint families existed in the late nineteenth and early twentieth centuries. They also demonstrate that fertility was low even in the late nineteenth century and that marriage age for men was late and was also becoming later for women. Their work, therefore, was highly influential in challenging stereotypical assumptions of "Ottoman"/ "Muslim" families and encouraged further studies.

[6] Margaret L. Meriwether, *The Kin Who Count: Family and Society in Ottoman Aleppo, 1770-1840* (Austin: University of Texas Press, 1999); Iris Agmon, *Family & Court: Legal Culture and Modernity in Late Ottoman Palestine* (Syracuse, N.Y.: Syracuse University Press, 2006); Abraham Marcus, *The Middle East on the Eve of Modernity: Aleppo in the Eighteenth Century* (New York: Columbia University Press, 1989); Alan Duben and Cem Behar, *Istanbul Households: Marriage, Family, and Fertility, 1880-1940* (Cambridge, England: Cambridge University Press, 1991); Philippe Fargues, "Family and Household in Mid-Nineteenth-Century Cairo," in *Family History in the Middle East: Household, Property, and Gender*, Beshara Doumani, ed. (Albany: State University of New York Press, 2003).

Eight years after *Istanbul Households*, another monograph on family history was published by Margaret Meriwether, *The Kin who Count: Family and Society in Ottoman Aleppo, 1770-1840* (1999). Hers is not a demographic study like that of Duben and Behar; rather, she studies Sharia court registers to trace over a hundred Muslim elite households of Aleppo and their notions of family, inheritance practices, and family patterns through the late eighteenth to the mid-nineteenth century. Although she indicates that it is quite hard to designate the predominant household structure for the pre-modern period in the absence of demographic data, she demonstrates that family patterns adopted by Aleppine notables were flexible in the sense that one could embrace a simple household at a certain point in his/her life and an extended household later on or vice versa.[7]

Iris Agmon's *Family and Court: Legal Culture and Modernity in Late Ottoman Palestine* (2006) is another work focusing on the nineteenth century. Like Meriwether, she studies Sharia court registers and employs primarily a qualitative methodology. One of her main concerns is the relationship between the state and the family, which she examines through detailed analysis of court cases. She focuses on the concept of "social justice," a new emphasis that the reformed Sharia courts placed on the relationship with court clients. Before Doumani's above-mentioned work, *Family Life in the Ottoman Mediterranean: A Social History* (2017), his earlier edited volume, *Family History in the Middle East: Household, Property, and Gender*[8] (2003), included twelve studies by historians, anthropologists and historical demographers covering the period from the eighteenth to the twentieth century. The articles address family, household forms, family in Islamic law, and discourses on family, gender, and property relations. The study by

[7] Meriwether, *The Kin Who Count*, 208-209.

[8] Beshara Doumani, ed., *Family History in the Middle East: Household, Property, and Gender* (Albany: State University of New York Press, 2003).

Tomoki Okawara is particularly interesting in that he compares the data of the 1907 census concerning Damascus which Duben and Behar also use for its results on Istanbul. By demonstrating that the rates for polygyny were higher in Damascus and extended households were more widespread compared to Istanbul, he underlines the danger of generalizations about family structures and also the differences between the Ottoman capital and the provinces.

One immediate observation on the above-mentioned studies, which constitute the bulk of the literature, is that they center around changes in household patterns and family relations and practices during the transition period from the pre-modern to the modern period. One can also notice that, except for Duben and Behar's study on Istanbul, they primarily concentrate upon the Arab lands of the Empire.[9] A significant exception with regard to both time period and place is Haim Gerber's enormously influential article, "Anthropology and Family History: The Ottoman and Turkish Families," which was published earlier than the other works, in 1989. Gerber studied the Ottoman estate inventories (*tereke*) of a major commercial Anatolian town, Bursa, in the seventeenth century. His findings were striking since he was among the first historians who demonstrated the low average family size in the pre-modern period and low rates for polygyny. He contended that families were small because of high mortality rates, particularly caused by plague.

It should also be noted that the above-mentioned studies focus on Muslim subjects in general. Ottoman literature on the family tends to disregard or only briefly mention the non-Muslim subjects of the Empire, who indeed made up a significant portion of the population, depending on period and place. There are some exceptions, however. Maria Todorova's *Balkan*

[9] Elbirlik's dissertation is another important study on Istanbul. Leyla Kayhan Elbirlik, "Negotiating Matrimony: Marriage, Divorce, and Property Allocation Practices in Istanbul, 1755-1840"(PhD diss., Harvard University, 2013).

Family Structure and the European Pattern: Demographic Developments in Ottoman Bulgaria[10] (2006) is a major contribution to this subject. Through her study of demographic data, she compares Balkan family structure, birth, fertility, and marriage to the western European pattern in the nineteenth century. She demonstrates, for instance, that the extended family type was practiced more widely in the former than the latter. Apart from Todorova's study, several articles examine the family and marriage practices of non-Muslim subjects. These studies have emphasized the diversity in practices of dowry, inheritance, and marriage based on different local cultures.[11] However, the limited number of studies prevents us from developing a thorough understanding about Christian and Jewish families. They also mostly focus on the Balkans and the Aegean islands, overlooking the capital, Anatolia, or the Arab lands. It is hard to establish, therefore, whether the data on the Orthodox Christian inheritance practices from the Aegean islands apply to other parts of the Empire.

In conjunction with the literature mentioned above, this dissertation studies Christian and Muslim family laws and their enforcement in late seventeenth-century Istanbul. Examining the Patriarchal and Sharia court registers, I investigate institutional practices regarding the family, legal procedures followed by these two courts, and the conceptions of the family and gender as appear in the court records and related accounts. Using the registers of two legal systems, I

[10] Maria Todorova, *Balkan Family Structure and the European Pattern: Demographic Developments in Ottoman Bulgaria* (Washington, D.C.: American University Press, 1993).

[11] For examples, see Aglaia E. Kasdagli, "Family and Inheritance in the Cyclades, 1500–1800: Present Knowledge and Unanswered Questions," *The History of the Family* 9, no. 3 (2004): 257-274; Evdoxios Doxiadis, "Kin and Marriage in Two Aegean Islands at the End of the Eighteenth Century," *Across the Religious Divide* (2009): 238-255; Minna Rozen, "Jamila Ḥarabun and Her Two Husbands: On Betrothal and Marriage among Ottoman Jews in Sixteenth-century Salonika," *Journal of Family History* 43, no. 3 (2018): 227-252; Yaron Ben-Naeh, "The Ottoman-Jewish Family: General Characteristics," *Open Journal of Social Sciences* 5, no. 1 (2017): 25-45; Eleutheria Papagianni, *'Η Νομολογία των Εκκλησιαστικων Δικαστηρίων της Βυζαντινής και Μεταβυζαντινής Περιόδου σέ Θέματα Περιουσιακού Δίκαιο, II* [The Jurisprudence of the Ecclesiastical Courts of the Byzantine and Post-Byzantine Periods on Matters of Domestic Law] (Athens-Komotini, 1997).

compare the issues pertaining to marriage contracts, dowry, deserted women, polygamy, divorce, and remarriage. I study the multiplicity of legal frameworks, diversity in marriage and divorce practices in "Ottoman society," and to what extent Muslim and Greek Orthodox[12] families were structured and organized through their religious regulations. The family presents an ideal field of inquiry to study religio-legal differences since Greek Orthodox religious authorities were allowed to exercise absolute authority on issues of marriage and divorce, unlike other legal realms and processes which were overseen by the imperial authority.

1.2. Legal Pluralism

This study takes a legal pluralistic approach when addressing the question of how the Ottoman legal system, given the existence of multiple courts, worked in practice. It focuses on the ways the Sharia courts and the Patriarchal court handled the same type of legal matters and how this multiplicity affected the court use practices of the Greek Orthodox population. While attempting to reveal similar and different marriage and divorce practices of Muslim and Greek Orthodox Ottoman subjects, I also emphasize the different ways the Patriarchal and Sharia courts may have been integrated. Studying their integration helps me uncover: 1) the degree of legal autonomy enjoyed by the Patriarchal court; 2) "forum shopping" practices of Greek Orthodox community members; and 3) the complexity of the Ottoman legal system. To that end, the legal pluralistic analysis provides some fundamental theoretical principles to study the Ottoman legal framework thoroughly.

[12] I use "Greek Orthodox" when I refer to the Greek-speaking subjects in the Patriarchal court registers. In the Ottoman context, not every Orthodox Christian was Greek and not every Greek was Orthodox Christian. There were, for instance, Catholic Greeks and Bulgarian or Serbian Orthodox Christians. Thus, I use "Orthodox Christian" only when I refer to the broader religious category.

Legal pluralism has been defined by John Griffiths, one of the major exponents of the concept, as a "state of affairs, for any social field, in which behavior pursuant to more than one legal order occurs."[13] According to Griffiths, the theoretical framework of legal pluralism enables historians to go beyond the narrow scope of "legal centralism" and adopt a broader legal perspective in their analysis. Legal centralism, as he sees it, is the understanding of the law as a uniform state law "administered by a single set of state institutions." He claims that this interpretation ignores alternative legal orderings and prevents the historian from accurately capturing complexity.[14] Another advocate of legal pluralism, Sally Engle Merry, maintains that we need a broader definition of the law which should include "nonlegal forms of legal orderings" besides the court system.[15] According to this comprehensive definition of the law, alternative legal venues might include church, family, universities, corporations, moral norms, or ethics.[16]

The theory of legal pluralism has come under fierce criticism, particularly for its broad definition of the law.[17]Tamanaha, for instance, argues that the way legal pluralists define law equates it with all forms of social control.[18] According to the critics, the existence of multiple nonlegal orders does not indicate legal pluralism; at best, it suggests "normative pluralism,"

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[13] John Griffiths, "What is Legal Pluralism?" *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (1986): 2.

[14] Ibid., 3-4.

[15] Sally Engle Merry, "Legal Pluralism," *Law & Society Review* 22, no. 5 (1988): 869-870.

[16] Griffiths, "What is Legal Pluralism?" 3; Merry, "Legal Pluralism," 870.

[17] For a detailed work on the criticisms of legal pluralism, see Baudouin Dupret, "Legal Pluralism, Plurality of Laws, and Legal Practices: Theories, Critiques, and Praxiological Re-Specification," *European Journal of Legal Studies* 1 (2007): 296-318.

[18] Brian Z. Tamanaha, "The Folly of the Social Scientific Concept of Legal Pluralism," *Journal of Law and Society* 20, no. 2 (Summer 1993): 193. Tamanaha published two more articles on legal pluralism: Brian Z. Tamanaha, A Non-Essentialist Version of Legal Pluralism, *Journal of Law and Society*, Vol. 27, No. 2 (June, 2000): 296-321 and Brian Z. Tamanaha, "Understanding Legal Pluralism: Past to Present, Local to Global," *Sydney Law Review* 30, no. 3 (September 2008): 375-411.

"regulatory pluralism," or "rule system pluralism."[19] Vanderlinden explains that these objections are based on the fact that "competing legal orders only exist by virtue of [the] state's 'toleration' or 'recognition.'" Therefore, alternative normative orders would be "recognized" by the state and be "subordinate" to it. They only exist due to the state's ambition to exercise full legal authority in multiple realms and its incapacity to do so. In that regard, alternative legal orderings do not have complete "autonomy," which leaves us with "relative pluralism" rather than "legal pluralism."[20]

The theory of legal pluralism has been formulated within the context of colonial or post-colonial history. Nevertheless, despite negative criticisms, scholars continued to work on it in different frameworks.[21] Considering such criticisms, to what extent does the concept of legal pluralism apply to the Ottoman context? It should be noted that even the harshest critics approve of the basic definition of legal pluralism as "the presence of more than one legal order in a social setting."[22] Tamanaha considers it an "unobjectionable definition."[23] By focusing on the registers of two courts, this study relies on this primary definition of legal pluralism. As will be clearly seen in the next chapter, the Patriarchal court in the seventeenth century effectively operated as a

[19] Tamanaha, "The Folly of Social Scientific Concept of Legal Pluralism," 199; Jacques Vanderlinden, "Return to Legal Pluralism: Twenty Years Later," *Journal of Legal Pluralism and Unofficial Law* 28 (1989): 154-156.

[20] Vanderlinden, "Return to Legal Pluralism," 151-153.

[21] For the use of legal pluralism in different contexts, see Lauren Benton and Richard J. Ross, eds. *Legal Pluralism and Empires, 1500-1850* (New York: NYU Press, 2013); Ido Shahar, "Legal Pluralism and the Study of Shari'a Courts," *Islamic Law and Society* 15, no. 1 (2008): 112-141; Elham Manea, *Women and Shari'a Law: The Impact of Legal Pluralism in the UK* (London: Bloomsbury Publishing, 2016); Russell Sandberg, ed., *Religion and Legal Pluralism* (Burlington: Ashgate Publishing, Ltd., 2015); Uriel I. Simonsohn, *A Common Justice: The Legal Alliances Christians and Jews Under Early Islam* (Philadelphia: University of Pennsylvania Press, 2011); Ido Shahar, *Legal Pluralism in the Holy City: Competing Courts, Forum Shopping, and Institutional Dynamics in Jerusalem* (London: Routledge, 2016).

[22] Griffiths, "What is Legal Pluralism?" 1.

[23] Tamanaha, "The Folly of the Social Scientific Concept of Legal Pluralism," 193.

legal system, at least in its limited jurisdictional capacity with regard to divorce and remarriage. It is true that, as noted by Vanderlinden, the functioning of the Patriarchal court became possible only through the privileges the state granted. In addition, the existence of the Sharia courts with stronger enforcement power and non-Muslims' right to apply to them for every kind of legal matter call into question the degree of autonomy enjoyed by community courts. However, available records from the Patriarchal court demonstrate that at least on issues regarding divorce and remarriage, the Patriarchal court exercised complete judicial authority. Regardless of whether it presented a "competing" legal order, it served as an alternative legal mechanism with considerable enforcement power in a specific realm of law.

Taking a legal pluralistic approach enables the study of "interlegality" between the Patriarchal and Sharia courts. In so doing, it challenges the prevailing view in the historiography which tends to study the Ottoman legal system only through the Sharia courts. The prevalence of the Sharia courts throughout the Empire, the availability of their records, the relatively frequent appearance of non-Muslims in the Sharia court records, and the unavailability of the registers of non-Muslim community courts have justified this concentrated focus in the literature. Indeed, by no means do I suggest a complete parity between the Sharia courts and the Patriarchal court. At present, we have evidence only for a scattering of community courts, so the data from the Patriarchal court in Istanbul is particularly valuable. As I discuss below, in the context of Istanbul, we can only talk about "partial legal pluralism" restricted to the jurisdiction of marriage and divorce since other legal matters, such as property law, inheritance law, or civil contracts were exclusively the domain of Islamic law.

1.3. Legal Pluralism in the Ottoman Context

Adopting a plural legal system was a pragmatic act for early modern empires to accommodate the multiple local populations they incorporated through their massive expansions. It was also a way to compensate for their economic, administrative, and coercive incapacities and could be employed effectively to reach out to their large flock.[24] In the Middle Eastern context, based on early Islamic regulations, Christians and Jews were considered "people of the book" (*ahl al-dhimma*) and enjoyed a considerable amount of religious freedom in return for an additional tax (*jizya*). Certain restrictions were imposed, at least in theory, on their clothing, riding on horseback, carrying arms, or repairing their religious buildings or constructing new ones. Non-Muslims also enjoyed relative legal autonomy; they were allowed to keep their judicial institutions and apply to them for their internal affairs.[25] The degree of their legal autonomy and the limits of their jurisdiction might have differed in diverse contexts. However, their right to appeal to Islamic courts was maintained through the early modern period.

Although our knowledge of non-Muslim legal institutions in the Ottoman Empire is still limited, we have evidence of Orthodox Christian courts from the Aegean islands, mainland Greece, northwestern Anatolia, and Istanbul, and we have scattered records of the Jewish

[24] Karen Barkey, "Aspects of Legal Pluralism in the Ottoman Empire," in *Legal Pluralism and Empires, 1500-1850*, eds. Lauren Benton and Richard J. Ross (New York: NYU Press, 2013), 83; Lauren Benton and Richard J. Ross, "Empires and Legal Pluralism: Jurisdiction, Sovereignty, and Political Imagination in the Early Modern World," in *Legal Pluralism and Empires, 1500-1850*, eds. Lauren Benton and Richard J. Ross (New York: NYU Press, 2013), 10.

[25] Cl. Cahen, "Dhimma," in: *Encyclopaedia of Islam, Second Edition*, eds. P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs, accessed February 19, 2022 http://dx.doi.org.proxy-um.researchport.umd.edu/10.1163/1573-3912_islam_SIM_1823; Albrecht Noth, "Problems of Differentiation between Muslims and Non-Muslims: Re-Reading the "Ordinances of 'Umar' (Al-Shurut al-'Umariyya)," in *Muslims and Others in Early Islamic Society*, ed. Robert Hoyland (Aldershot, Hants; Burlington, VT: Ashgate, 2004); Simonsohn, *A Common Justice*, 1-6.

responsa literature (rabbinical responses to various religious matters). Legal plurality in the Ottoman context has been discussed predominantly based on Sharia court registers.[26] Nevertheless, some historians have focused on Orthodox Christian or Jewish sources.[27] This dissertation is the first attempt to study the ecclesiastical court registers from Istanbul and set them side by side with Sharia court records from the same location and period. I believe that examining ecclesiastical court registers from a religiously mixed environment which was, unlike the focus of scholarship to date, not semi-autonomous or predominantly populated by Christians, will enhance our knowledge of community courts and their operation. As I will discuss in more detail below, Istanbul will provide us with a perspective on the center, where the Ecumenical Patriarchate was located, though it may not necessarily reflect circumstances in the provinces. As

[26] Najwa Al-Qattan, "Dhimmīs in the Muslim Court: Legal Autonomy and Religious Discrimination," *International Journal of Middle East Studies* 31.3 (1999): 429-444; Rossitsa Gradeva, "Orthodox Christians in the Kadı Courts: The Practice of the Sofia Sheriat Court, Seventeenth Century," *Islamic Law and Society* 4, no. 1 (1997): 37-69; Svetlana Ivanova, "Judicial Treatment of the Matrimonial Problems of Christian Women in Rumeli During the Seventeenth and Eighteenth Centuries," in *Women in the Ottoman Balkans: Gender, Culture and History,* eds. Amila Buturovic and Irvin Cemil Schick (New York: IB Tauris, 2007); Ronald C. Jennings, "Zimmis (Non-Muslims) in Early 17th Century Ottoman Judicial Records: The Sharia Court of Anatolian Kayseri," *Journal of the Economic and Social History of the Orient* (1978): 225-293; Kemal Çiçek, "Cemaat Mahkemesinden Kadı Mahkemesine Zimmilerin Yargı Tercihi," *Pax Ottomana Studies in Memoriam Prof. Dr. Nejat Göyünç* (2001): 31-49; Barkey, "Aspects of Legal Pluralism," Sophia Laiou, "Christian Women in an Ottoman World: Interpersonal and Family Cases Brought before the Shari'a Courts during the Seventeenth and Eighteenth Centuries (Cases Involving the Greek Community)," in *Women in the Ottoman Balkans: Gender, Culture and History,* eds. Amila Buturovic and Irvin Cemil Schick (New York: IB Tauris, 2007); Amnon Cohen, *Jewish Life under Islam* (Cambridge, Mass. Harvard University Press, 2013); Christian Roth, "Aspects of Juridical Integration of Non-Muslims in the Ottoman Empire: Observations in the Eighteenth-Century Urban and Rural Aegean," in *Well-Connected Domains: Towards an Entangled Ottoman History*, eds. Pascal Firges, Tobias Graf, Christian Roth, and Gülay Tulasoğlu (Leiden: Brill, 2014).

[27] Antonis Anastasopoulos, "Non-Muslims and Ottoman Justice (s?)," in *Law and Empire: Ideas, Practices, Actors,* eds. Duindam, Jeroen, Jill Diana Harries, Caroline Humfress, and Hurvitz Nimrod (Leiden: Brill, 2013); Eugenia Kermeli, "The Right to Choice: Ottoman Justice vis-à-vis Ecclesiastical and Communal Justice in the Balkans, Seventeenth–Nineteenth Centuries," *Journal of Semitic Studies,* (2007): 165-210; Joseph R. Hacker, "Jewish Autonomy in the Ottoman Empire, its Scope and Limits: Jewish Courts from the Sixteenth to the Eighteenth centuries," *The Jews of the Ottoman Empire* 185 (1994): 341-388; Ayşe Ozil, *Orthodox Christians in the Late Ottoman Empire: A Study of Communal Relations in Anatolia* (London: Routledge, 2013); Evdoxios Doxiadis, "Property and Morality: Women in the Communal Courts of Late Ottoman Greece," *Byzantine and Modern Greek Studies* 34, no. 1 (2010): 61-80; Evdoxios Doxiadis, "Kin and Marriage"; Aryeh Shmuelevitz, *The Jews of the Ottoman Empire in the Late Fifteenth and the Sixteenth Centuries: Administrative, Economic, Legal, and Social Relations as Reflected in the Responsa* (Leiden: Brill Archive, 1984).

impossible as it is to cover the whole empire, Istanbul still stands as one of the most revealing cities to be studied, not only for its political and cultural projection, but also for its size and demographic mix, with a population in the hundreds of thousands divided almost evenly between Muslims and non-Muslims.

Heavy reliance on the Sharia court registers, in which non-Muslims raised almost every kind of legal matter, led scholars to ask why non-Muslims resorted to the Sharia courts if they were allowed to establish/keep their own judicial frameworks. In the absence of available data from community courts, especially in Anatolia and the Arab lands, some scholars concluded that the Sharia court was their only option: there were either no community courts at all, or the authority of the available legal structure was too weak.[28] Others have suggested, however, that the low numbers of non-Muslims in the Sharia court registers indicate that non-Muslims resorted to their denominational courts.[29] More often than not, it appears that the population of non-Muslims in a given town was overlooked by historians when discussing the rate of non-Muslim cases in the Sharia courts. In fact, the number of non-Muslims living in a given town could tell whether Christians and Jews could build up a strong community to establish an effective legal order of their own or the extent to which the number of their cases in the Sharia court records represents their numerical presence there.

More widely, the question of why non-Muslims resorted to the Sharia courts has been explained as a function of the advantageousness of Islamic law and the Sharia courts compared to Jewish and Christian laws, especially for women. It has been suggested that fees in the Sharia

[28] Jennings, "Zimmis," 250-251, 271; Al-Qattan, "Dhimmīs in the Muslim Court," 439.

[29] Metin Coşgel and Boğaç Ergene, *The Economics of Ottoman Justice: Settlement and Trial in the Sharia Court* (Cambridge: Cambridge University Press, 2016), 179; Rossitsa Gradeva, "A Kadı Court in the Balkans: Sofia in the Seventeenth and Eighteenth Centuries," in *The Ottoman World*, ed. Christina Woodhead (Milton Park, Abingdon, Oxon; New York: Routledge, 2012), 61.

courts were lower than community court fees, that it was easier to obtain a divorce according to Islamic rules, that Muslim dowry and inheritance practices were more favorable for Jews and Orthodox Christians, especially for women, and that the decisions of the Muslim judge held stronger enforcement power. In this dissertation, I address these assumptions and try to demonstrate that they are somewhat problematic in different respects, at least in the Greek Orthodox context. As I will further explain below, the way scholars have defined the limits of the patriarch's and the bishops' jurisdiction has led to some hasty conclusions regarding the court use practices of non-Muslims.

The jurisdiction of the Greek Orthodox patriarch, and his various other rights and privileges, were established in *berat*s (diploma) granted by the sultan upon his accession to the throne or a new patriarch's election.[30] There are only a few *berat*s surviving from the pre-eighteenth century period, the authenticity of some of which has been disputed.[31] Based on these Patriarchal *berat*s, scholars have pointed out that the patriarch was granted the right to handle legal matters related to family law and inheritance. However, this description presents a knotty problem for the understanding of "forum shopping" practices of the Greek Orthodox population and might result in misleading inferences.

When we look at the available published *berat*s between 1477 and 1768, an interesting point reveals itself concerning inheritance and the patriarch's authority over it. Among thirty-one *berat*s, only two (those from 1483 and 1525) state that the patriarch shall adjudicate the

[30] Elif Bayraktar-Tellan, "The Patriarch and the Sultan: The Struggle for Authority and the Quest for Order in the Eighteenth-Century Ottoman Empire" (PhD diss., Bilkent University, 2011), 24-25.

[31] Macit Kenanoğlu, *Osmanlı Millet Sistemi: Mit ve Gerçek* (Istanbul: Klasik, 2004), 110; Bayraktar-Tellan, "The Patriarch and the Sultan," 32-33.

inheritance matters of the "infidels."[32] None of the other *berat*s, earlier or later, mentions the issue of inheritance except when it concerns clergy members. Kenanoğlu has already observed the same inconsistency and raised suspicion as to authenticity, especially of the 1483 *berat.*[33] This discrepancy between the *berat*s certainly begs for an explanation. Is our judgment on the patriarch's authority over inheritance cases based only on these two *berat*s? If so, should we also consider the possibility that the patriarch was not officially granted the right to try inheritance cases of lay community members? Although the records of different Sharia courts may show variation in the number of non-Muslim inheritance cases they contain, I observe that the Bab court registers of Istanbul include many such cases, which, sometimes, the court scribe gathered on the same page.[34]Regardless of what the practice was, which is hard to establish, at least in a theoretical level, it seems difficult to convincingly argue that the patriarch had the authority to handle the inheritance cases of lay coreligionists.

As for the adjudication of issues pertaining to family law, we are left with a vague definition. "Family law," as we understand it today, did not exist as a judicial category in the pre-

[32] Hasan Çolak and Elif Bayraktar-Tellan, *The Orthodox Church as an Ottoman Institution: A study of Early Modern Patriarchal Berats* (Istanbul: The Isis Press, 2019), 69-72. For the translations of these *berat*s, see 196-199.

[33] Kenanoğlu, *Osmanlı Millet Sistemi,* 110. According to Bayraktar-Tellan, berats of 1483 and 1525 cannot be counterfeit because "the right of patriarchs on the issue of inheritance is clear in the *berat* documents of the eighteenth century. Inheritance was one of the many areas of family law that the patriarchs were responsible for according to their *berat*s. Moreover, the berats Zachariadou published were found in monasteries. It is unlikely that monks would fabricate these documents, as they would gain nothing from such forgery." However, she does not discuss the fact that the eighteenth century *berat*s only address the inheritance of clergymen, not all Greek Orthodox community members. Bayraktar-Tellan, "The Patriarch and the Sultan," 26-27.

[34] The frequency of non-Muslims' inheritance cases in the Sharia court registers could vary a great deal. According to Çiçek, in Lefkoşa between 1698 and 1726, out of 822 cases belonging to non-Muslims, 82 of them concerned their inheritance. Kemal Çiçek, "Cemaat Mahkemesinden Kadı Mahkemesine Zimmilerin Yargı Tercihi," 35. In the Galata and Istanbul court registers between 1602-1697, 74.9% of all inheritance cases belonged to Muslims and the remaining included at least one non-Muslim in court trials (in court registrations the rates were as follows: 76.4% all Muslims and 23.6% at least one non-Muslim; the rate of Muslims to non-Muslims in these registers was 78.1% Muslims, 20.8% Christians, and 1.1% Jewish). Timur Kuran, *Mahkeme Kayıtları Işığında 17. Yüzyıl İstanbulu'nda Sosyo-Ekonomik Yaşam-Social and Economic Life in Seventeenth-Century Istanbul,* Vol. 1 (Istanbul: Türkiye İş Bankası Yayınları, 2010), 25-26.

modern period. It is rather a contemporary method of classifying different fields of the law that we project onto the past. In its modern meaning, family law can broadly incorporate any subject related to the family. Thus, when the term is used for the pre-modern period, marriage, divorce, dowry, child custody, fosterage, maintenance, or waiting period after the termination of marriage could all be considered as part of family law. Furthermore, pre-modern legal texts do not recognize "the family" as a legal concept. Islamic law recognizes the marital unit between husband and wife and deals with matters related to children separately, rather than considering them all "family members." Any concept that could directly or indirectly refer to what we understand as "family" today, such as *'aile* or *hane,* is mostly absent in pre-modern juridical texts, including the fatwa literature.[35] Although the use of "family law" in the scholarship is firmly established and widely used, it might lead to unreliable conclusions in some cases.

The language of the *berat*s in the sections regarding the patriarch's authority over issues related to family law is actually ambiguous. The *berat*s only mention marriage, divorce, and women who flee their husbands. Rather than openly specifying the judicial limits of the patriarch, the *berat*s state that on certain issues, the patriarch is the sole authority: "If a woman flees her husband, or if an unbeliever wants to divorce a woman, no one apart from the patriarch shall intervene. If an unbeliever marries or divorces a woman [in contravention of] their rite, he shall not be allowed in churches."[36] Are we to understand that any legal matter outside of runaway women, marriage, and divorce could also be handled by the Muslim judge in addition to the patriarch, or that outside of these three issues, the patriarch had no power of adjudication?

[35] For uses of *aile*, *hane*, *beyt*, *dar* in different contexts, see Meriwether, *The Kin who Count*, 16-18; Alan Duben, "Turkish Families and Households in Historical Perspective," *Journal of Family History* 10, no. 1 (1985): 77-81; Nejat Göyünç,"'Hane' Deyimi Hakkında," *Tarih Dergisi* 32 (1979): 331-348.

[36] With little modifications, this part reappears in almost every *berat* until the eighteenth century. Çolak and Bayraktar-Tellan, *The Orthodox Church as an Ottoman Institution*, 195-203.

Because the *berat*s are silent about additional details concerning the patriarch's legal authority, scholars tend to assume that the Ottoman sultans did not officially grant patriarchs further judicial privilege. The problem arises not because of what the *berat*s say but how their content is described in the scholarship. If our knowledge of the judicial authority of the patriarch is based on the *berat*s, then we should specify that his legal authority was limited to marriage and divorce. Defining it broadly as "family law" misrepresents the evidence and leads to the assumption that the patriarch could also handle cases of dowry, custody, and maintenance, none of which we can be absolutely sure of based on the available data. The *berat*s, of course, only explain what was officially laid down on paper and not what the actual practice was.

According to Anastasopoulos, despite the limited jurisdictional rights granted by the state, Greek Orthodox subjects, at least in the Aegean islands, had recourse to their religious authorities for various matters and could in any case settle their disputes out of court. However, the informal nature of out-of-court settlements would require litigants to appeal to the Sharia courts if official documentation was needed.[37] Similarly, Hacker points out that "Jewish judicial authority was limited by the government to religious affairs, i.e., judging matters concerning religious violations of either a moral or a ritual nature, matters concerning marriage and divorce, and internal community affairs."[38] Accordingly, although the Jewish authorities tried cases of their coreligionists on various issues, their verdicts carried no official recognition apart from the above subjects. Therefore, Jewish subjects appealed to the Sharia courts when they needed official registration, sometimes after they had resolved their disputes in the Jewish court. Hacker observes that Jewish judicial autonomy was "not a completely legitimate judicial system

[37] Anastasopoulos, "Non-Muslims and Ottoman Justice (s?)," 281-285.

[38] Hacker, "Jewish Autonomy in the Ottoman Empire,"183-184.

alongside Muslim judicial institutions, but rather as a practical solution meeting the needs of the Jewish population in the proper administration of their ritual and religious affairs."[39]

On the other hand, scholars who study Greek Orthodox community courts tend to agree that the Church had the opportunity to extend its authority over legal matters with the adoption of the tax-farming (*iltizam*) system in the second half of the seventeenth century. Participation in the tax-farming system enabled local community leaders to serve as tax-collectors in their villages or town neighborhoods, as the communities became responsible for their payments en masse. Bishops were also permitted to punish those who failed to take this responsibility. This collective action and the extension of legal authority reinforced community ties and extended communal jurisdiction, especially in the eighteenth century.[40] The common historiographical assumption is that the community courts gradually started to try cases outside their officially recognized legal fields, i.e., outside of religious matters, issues concerning clergy members, marriage and divorce.[41] Therefore, what was spelled out in the *berat*s cannot represent the later developments and changing relations between the state and the Greek Orthodox community. In addition, for this very reason, it is especially important to emphasize that the conclusions of this dissertation are restricted to the late seventeenth century; I do not seek to generalize them for different periods.

[39] Ibid., 183-186.

[40] Kermeli, "The Right to Choice," 176; Eleni Gara, "In Search of Communities in Seventeenth Century Ottoman Sources," Turcica 30 (1998): 147, 161. Some scholars refer to an imperial order from 1764 that, for the first time, officially authorized Greek and Patriarch to punish those who failed to pay their taxes. With this development, community ties gradually strengthened as the judicial authority of the patriarchs increased. Anastasopoulos, "Non-Muslims and Ottoman Justice (s?)," 281-282; Gradeva, "Orthodox Christians in the Kadı Courts," 65; Halil İnalcık, "Ottoman Archival Materials on Millets," in *Christians and Jews in the Ottoman Empire: The Functioning of a Plural Society*, eds. Benjamin Braude and Bernard Lewis, Vol. 1 (New York: Holmes & Meier Publishers, 1982), 440.

[41] Anastasopoulos, "Non-Muslims and Ottoman Justice (s?)," 282-287.

Based on the available *berat*s on the judicial authority of the community courts and the records of the Patriarchal court, this dissertation suggests that rather than their advantageousness, non-Muslims appealed to the Sharia courts due to exigencies. Either the community courts did not provide coreligionists with judicial service on certain issues or their informal service necessitated non-Muslims to apply to the Sharia courts when official documentation was needed. Chapters 4 and 5 of this dissertation demonstrate that on matters of marriage and divorce, over which the patriarch's authority was undeniable, decisions of the Patriarchal synod could be more favorable than the decisions of the Muslim judge, especially for Greek Orthodox women. I also address some common assumptions in the literature that contend that non-Muslims used the Sharia courts because Muslim dowry and divorce regulations were supposedly more accommodating to non-Muslim women. These inferences, however, attribute too much power to non-Muslim women and their families who, according to those assumptions, would have had to persuade their husbands to an arrangement that would be against the men's interests and religious regulations.

I also show that contrary to what has been suggested, it was predominantly Greek Orthodox men, not women, who took advantage of the multiple legal frameworks. The divorce and remarriage data from the seventeenth-century Patriarchal court registers indicate that Greek Orthodox women were the primary users of the Patriarchal court. I argue that this situation results from the fact that the Patriarchal synod, in this period at least, was more lenient with women in granting them a divorce and permission to remarry. The Church, which desired to offer financial support to its impoverished female community members but lacked the means to do so, allowed them to divorce their absent or "useless" husbands and remarry for the second or third time. In addition, turning to prostitution or marrying a non-Orthodox man was a real

possibility for women and a serious problem for the integrity of the community. Allowing women to escape their unwanted marriages and remarry was a way to keep them within the community as good Christians.

By analyzing divorce cases from both the Patriarchal and Sharia court registers, I demonstrate that conclusions based only on Sharia court registers can be misleading. The Patriarchal court registers show that after having applied to the Sharia courts to register their divorces, many Greek Orthodox men and women also appealed to the Patriarchal synod to request ecclesiastical divorce and remarriage permission. Ignoring their return to the Patriarchal court has led some scholars to assume that some Greek Orthodox community members opted for the Sharia court to the exclusion of the ecclesiastical courts. Their appeal to the synod, despite having an official divorce decree from the Sharia court, presents substantial evidence regarding the authority, if not autonomy, and enforcement power of the Church to permit divorce and remarriage. Those community members who did not want to risk being expelled from their community circles, and the Church which could be quite forgiving to its "unruly" members, demonstrate the "co-dependent" nature of intra-communal relations within the Greek Orthodox community. Finally, I suggest that rather than offering an option to Greek Orthodox subjects to choose between the two courts, in some cases, "partial legal plurality" on marriage and divorce required them to apply to both courts since they served different functions.

1.4. Sources and Methodology

This dissertation mainly uses court registers from the Istanbul Bab court and the Patriarchal court from 1660 to 1685. Based on in-depth qualitative analysis of court cases, I make a comparative

analysis of various legal issues regarding marriage contracts, dowry, divorce settlement, and remarriage. Every single case in the registers provides a spectrum of possibilities for understanding the sociolegal practices of Muslim and Greek Orthodox subjects, regardless of their overall representativeness. This study is mindful of various limitations of the court registers that scholars have pointed out; it thus also incorporates discussion of court proceedings when interpreting court cases. Chapter 2 specifically deals with the procedural operation of the two courts, their use of witnesses, oaths, punishments, and record-keeping as a way to recognize the legal textuality of court records. Registers of both courts are written in legal jargon, usually using standardized models in fill-in-the-blank format, concealing many significant details about the negotiations between the parties or between parties and the Muslim judge or Patriarchal synod. Even if only to a certain extent, discussing the court proceedings and how they are reflected in the records of cases on various issues might help eliminate some of those limitations.

Court registers can also be problematic for quantitative analysis for a number of reasons. For one, without knowing whether the amounts registered in debt, dowry, or property sale cases were accurate, or knowing that settling disputes out of court was a possible, or even an attractive option, historians cannot reach broader conclusions about the whole society. Another problem specific to the studies on Istanbul is the availability of multiple Sharia courts. In the late seventeenth century, there were more than twenty Sharia courts in Istanbul in general and at least four courts in the walled city (*Suriçi*) alone. In that context, an inevitably selective study only on some of the courts of Istanbul restrains the historian from making broad generalizations about the capital. Nevertheless, for the sake of providing the reader with some impressionistic ideas, I resort to quantitative analysis on the gender distribution of some cases, dowry amounts, and grounds for divorce as evidenced in the Patriarchal court registers. Where available, I also

compare that data with the studies on the eighteenth-century Bab registers[42] and studies from different parts of the Empire.

This dissertation also makes an important methodological contribution by bringing together Ottoman and Greek sources, something that has rarely been attempted. Many individuals from the Greek Orthodox community who appear in the Patriarchal court registers had also applied to the Sharia courts with the same issues, allowing us to fill gaps in the registers of the two courts. Grounds for divorce, which were only rarely mentioned in the Sharia court registers, are recorded in detail in the Patriarchal court registers and help enhance our knowledge on the issue. The juxtaposition of the cases from the two courts also helps us reveal the integration and the conversation between them through the *hüccet*s (legal writ) taken from the Sharia courts and brought to the Patriarchal court.

Apart from court registers, especially in Chapter 3, I examine various Muslim and Greek Orthodox legal texts in order to understand the approach of Islam and Orthodox Christianity to issues related to the family and marriage. On the Muslim side, I examine hadiths, fatwas, and legal manuals, such as that of Burhan al-Din al-Marghinani (d.1197) and İbrahim el-Halebi (d.1549). On the Orthodox Christian side, I use various *nomokanon*s, legal manuals that combine religious and secular legislation, from the fourteenth-century Byzantine and Ottoman periods up to the eighteenth century. By comparing late-Byzantine *nomokanon*s to their Ottoman counterparts, I explore some continuities and changes in their content and style as evidenced in these texts. In the same chapter, I examine advice/prescriptive sources, such as those of

[42] For the eighteenth-century registers of the Bab court, I refer to Madeline C. Zilfi and Leyla Kayhan Elbirlik's studies. Medeline C. Zilfi, "'We Don't Get Along': Women and Hul Divorce in the Eighteenth Century," in *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era*, ed. Madeline C. Zilfi (Leiden: Brill, 1997); Elbirlik, "Negotiating Matrimony."

Kınalızâde Ali Çelebi (d.1572), Mustafa Ali (d.1600), Yusuf Nabi (d.1712), and Birgivi Mehmed (d.1573), to understand contemporaries' conception of "ideal marriage."

1.5. The Setting and Historical Context

The dissertation works with the registers of two courts that are located in the walled city of Istanbul. It focuses on the second half of the seventeenth century, from 1660 to 1685, mainly for practical reasons: Patriarchal divorce records are available only from this period. Istanbul served as the capital of the Empire for over four hundred years, and it was the most populated and culturally and socially most vibrant city. In terms of education, the social mix of Muslim and non-Muslim populations, and its urban culture, Istanbul had a unique character. Moreover, although studies on court registers have gained considerable momentum since the 1970s, the enormously rich registers of Istanbul still await more research. The seventeenth century has received scant attention, especially in comparison to the eighteenth and nineteenth centuries. More specifically, family history in Ottoman literature lacks a substantial monograph; except for Gerber's studies, this period remains mostly unexplored.

The first half of the seventeenth century is notable for crises in many areas of political and economic life, such as the high military expenditures caused by long wars with the Safavids and Habsburgs, rebellions in Anatolia, population growth, and price increases due to currency debasements. The second half of the century under the Köprülü viziers is usually accepted as a period of recuperation with a stabilized currency and waning uprisings, despite long and costly wars in Crete and eastern Europe, not to mention the second failed siege of Vienna in 1683 with its dire consequences. The period between 1660 and 1685 corresponds to the reign of Mehmed

IV (1648-87), who was renowned as a "hunter," "ghazi" or "convert-maker."[43] Being more inclined towards his personal passions and less towards state affairs, the sultan, in this period, resided mostly in Edirne and left state administration to his grand vizier Köprülü Fazıl Ahmed Pasha (d.1676) partly in collaboration with the queen mother Hatice Turhan Sultan (d.1683). Another major faction was led by Vani Mehmed Efendi (d.1685), the third leading, and seemingly the most influential, figure of the Kadızadeli movement in these years. Vani Mehmed was a prominent mosque preacher who became the sultan's confidant and close companion to the queen mother and the grand vizier.

The context of late seventeenth-century Istanbul is most relevant to this study in terms of its connection to the non-Muslim population of the city.[44] In the 1600s, the population of the capital was around 400,000, with non-Muslims, predominantly Orthodox Christians, constituting approximately half.[45] The second half of the seventeenth century was a critical period for Christian and Jewish subjects as their relationship with the state was reshaped in different ways. According to Baer, under the reign of the quartet faction of the sultan, grand vizier, palace preacher, and the queen mother, Islamization and conversion took a different form and

[43] For a detailed account on Mehmed IV and his different depictions in contemporary accounts, see Marc David Baer, *Honored by the Glory of Islam: Conversion and Conquest in Ottoman Europe* (New York: Oxford University Press, 2008).

[44] For a discussion on the Greek Orthodox population of Istanbul, see Karen A. Leal, "Communal Matters," in *A Companion to Early Modern Istanbul*, eds. Shrine Hamadeh and Çiğdem Kafesçioğlu (Leiden: Brill, 2021).

[45] Robert Mantran, *İstanbul Tarihi* (İstanbul: İletişim Yayınları, 2001), 268. Mantran's population estimate for the seventeenth century is 600,000-700,000, which has been found exaggerated by some scholars. A late fifteenth-century census suggests that the population of the capital was not even 100,000 at that time. Çiğdem Kafesçioğlu, *Constantinopolis/Istanbul: Cultural Encounter, Imperial Vision, and the Construction of the Ottoman Capital* (University Park, Pa.: Pennsylvania State University Press, 2009), 178. Various historians have estimated that the population of the city must have been between 400,000 and 500,000 at the end of the eighteenth century. Yunus Koç, "Osmanlı Dönemi İstanbul Nüfus Tarihi," *Türkiye Araştırmaları Literatür Dergisi* 16 (2010): 188-190; Betül Başaran, *Selim III, Social Control and Policing in Istanbul at the End of the Eighteenth Century: Between Crisis and Order* (Boston: Brill, 2014), 56-62. Nonetheless, the ratio of non-Muslims to Muslims is still considered valid.

encompassed not only non-Muslim people but also geographical space.[46] Contemporary chronicles report that during his campaigns in eastern Europe, Mehmed IV encouraged hundreds of Christians to convert to Islam, sometimes having ceremonies take place in his presence, during which the sultan bestowed clothing or subsidies (*kisve bahası*) on the new converts.[47] The increasing number of neomartyrologies composed by Orthodox Christians in this period reflects growing concerns about conversion to Islam in particular and tensions with the state in general.[48]

In the capital, Christian and Jewish inhabitants faced social, political, and religious oppression, partly at the hands of Vani Mehmed Efendi and his puritanical agenda. Sunnitization efforts of the Kadızadeli movement, the roots of which go back to the sixteenth century, accelerated in this period under Vani Mehmed's leadership as the opportunity arose to execute his intentions not only against "heterodox" Sufi brotherhoods but also "non-believer" Christians and Jews.[49] A decree was issued in 1662 forbidding non-Muslims from wearing certain colors

[46] Marc David Baer, "The Great Fire of 1660 and the Islamization of Christian and Jewish Space in Istanbul," *International Journal of Middle East Studies* 36, no. 2 (2004): 159-181.

[47] Baer, *Honored by the Glory of Islam*, 179-203; Anton Minkov, *Conversion to Islam in the Balkans: Kisve Bahası Petitions and Ottoman Social Life, 1670-1730* (Leiden: Brill, 2004), 111-127.

[48] Tijana Kristić, *Contested Conversions to Islam: Narratives of Religious Change in the Early Modern Ottoman Empire* (Stanford, California : Stanford University Press, 2011), 132-142; Marinos Sariyannis, "Aspects of 'Neomartyrdom': Religious Contacts, 'Blasphemy' and 'Calumny' in 17th-Century Istanbul," *Archivum Ottomanicum* 23 (2005): 250.

[49] There is a growing body of literature on the religious reform efforts in the sixteenth and seventeenth centuries. For some earlier and more recent examples, see Madeline C. Zilfi, *The Politics of Piety: The Ottoman Ulema in the Postclassical Age (1600-1800)* (Minneapolis: Bibliotheca Islamica, 1988); Madeline C. Zilfi, "The Kadizadelis: Discordant Revivalism in Seventeenth-Century Istanbul," *Journal of Near Eastern Studies* 45, no. 4 (1986): 251-269; Marinos Sariyannis, "The Kadizadeli Movement as a Social and Political Phenomenon: The Rise of a 'Mercantile Ethic'?," *Political Initiatives from the Bottom-Up in the Ottoman Empire: Halcyon Days in Crete VII, a Symposium Held in Rethymno 9-11 January 2009*, ed. Antonis Anastasopoulos (Rethymno: Crete University Press, 2012); Derin Terzioğlu, "How to Conceptualize Ottoman Sunnitization: A Historiographical Discussion," *Turcica* 44 (2012): 301-38; Derin Terzioğlu, "Where 'İlm-i Ḥāl Meets Catechism: Islamic Manuals of Religious Instruction in the Ottoman Empire in the Age of Confessionalization," *Past & Present* 220, no. 1 (2013): 79-114; Tijana Krstić, "From Shahāda to 'Aqīda: Conversion to Islam, Catechization, and Sunnitization in Sixteenth-century Ottoman Rumeli," *Islamisation: Comparative Perspectives from History* (2017): 296-314; Tijana Kristić, *Contested Conversions to Islam;* Semiramis Çavuşoğlu, "The Kadızâdeli Movement: An Attempt of Şeri'at-minded Reform in the Ottoman Empire" (PhD diss., Princeton University, 1990); Vefa Erginbaş ed., *Ottoman*

associated with Muslims, and another decree in 1670 barred wine consumption and taverns, though the decrees could be at best enforced only for a brief period.[50] Vani Mehmed also targeted churches and synagogues, several of which burned down after the great fire in Galata and Eminönü in 1660. As controversial as it was, rebuilding churches and synagogues was prevented in the region on a large scale; although such properties were confiscated by the state, some Christians managed to buy them though only for nonreligious purposes, at least officially.[51] The fire affected Jews more seriously as they not only lost their synagogues but also were forced to leave the Eminönü district, a major commercial hub at the center of the city, where they had resided even before the Ottoman conquest of Istanbul.[52] With the displacement of Jews to different neighborhoods, especially to Hasköy on the Golden Horn, and the disappearance of many churches and synagogues, the region was reclaimed from non-Muslims. After the construction of the New Mosque (Yeni Cami) in Eminönü, and the sale of some former non-Muslim properties to Muslims, the region was symbolically and practically Islamized at the end of the seventeenth century.

By the late seventeenth century, Jewish subjects of the Empire started to lose their strength and prominence in the Empire, due partly to the decline of the textile industry, a major source of wealth monopolized by Jews, their exclusion from the center of the city and positions in the palace, and also to the capture and forceful conversion of an influential Jewish messianic

Sunnism: New Perspectives (Edinburgh: Edinburgh University Press, 2019); Tijana Krstić and Derin Terzioğlu, eds., *Historicizing Sunni Islam in the Ottoman Empire, c. 1450-C. 1750* (Boston: Brill, 2020).

[50] Zilfi, *The Politics of Piety,* 151-152.

[51] Baer, "The Great Fire of 1660," 170-171.

[52] Ibid., 166-167.

leader, Sabbatai Tzevi, to Islam.[53] In contrast, despite Vani Mehmed's attacks, Orthodox Christians were able to consolidate their power as a community in this period. They replaced Jews in key palace positions, and served as bureaucrats and diplomats. The eminent Greek Orthodox elite group, the Phanariots, started to build up around the 1660s, and provided the state with wealthy and well-educated manpower. In the following century, many were able to acquire major positions in the Ottoman governance, especially serving as dragomans and voivodes.[54] Although the Patriarchate itself became a less stable position with the number of overthrown patriarchs doubling in the seventeenth century compared to the sixteenth, the community as a whole strengthened its position in the bureaucracy, taxation offices, and provincial administration.[55]

1.6. Structure of the Dissertation

This dissertation consists of six chapters, including the introduction (Chapter 1) and conclusion (Chapter 6). In Chapters 2 and 3, I aim to establish a structural and theoretical framework for the following two thematical chapters (Chapters 4 and 5) based on the analysis of court cases. Chapter 2 focuses on the structure and legal proceedings of the Sharia courts and the Patriarchal court. It describes the location of these courts, their clients, realm of authority and to what extent legal procedures they followed differed, especially regarding issues pertaining to the family. This

[53] Benjamin, Braude and Bernard Lewis, *Christians and Jews in the Ottoman Empire: The Functioning of a Plural Society* (New York: Holmes & Meier, 1982), 25-26; Baer, "The Great Fire of 1660," 161-162.

[54] Christine Philliou, "Communities on the Verge: Unraveling the Phanariot Ascendancy in Ottoman Governance," *Comparative Studies in Society and History* 51, no. 1 (2009): 155.

[55] Molly Greene, *The Edinburgh History of the Greeks, 1453 to 1774: The Ottoman Empire* (Edinburgh: Edinburgh University Press, 2015), 164; Gara, "In Search of Communities," 161.

chapter shows that the Patriarchal court in the late seventeenth century presented an effectively functioning legal framework, at least in matters of divorce and remarriage. The operational profiles of these courts were also similar in many respects, despite some significant differences in their record-keeping practices. Chapter 3 analyzes Greek Orthodox and Muslim normative legal sources on which decisions of the Muslim judge and the Patriarchal synod were based. Together with the analysis of the court cases in Chapters 4 and 5, this chapter investigates the extent to which normative regulations were applied in practice. In addition, based on my study of *nomokanon*s from the late Byzantine to the Ottoman period in this chapter, I observe that except for some minor changes, the content of the *nomokanon*s regarding issues concerning marriage and divorce largely remained the same.

Chapter 4 examines court cases from the Bab court and Patriarchal courts on various issues such as marriage permissions, registration of marriages, dowry, polygamy, and deserted women. It addresses certain assumptions based on the Sharia court registers and questions their validity in light of data from the Patriarchal court. It shows that decisions of the Patriarchal court could actually be more favorable for Greek Orthodox women, especially when their husbands deserted them. Along these lines, Chapter 5 on divorce and remarriage points out that contrary to Orthodox Christian canons, the Patriarchal synod was often quite lenient in terms of granting divorce to coreligionists, particularly to women. Chapter 5 also scrutinizes various grounds for divorce as evidenced in the Patriarchal registers and their distribution within the available data. This chapter also deals with the remarriage practices of Muslims and Greek Orthodox Christians. It argues that the Patriarchate, through the ecclesiastical divorce and remarriage permissions it was entitled to grant, was able to exercise absolute judicial authority on those issues.

CHAPTER 2

THE STRUCTURE OF THE SHARIA COURT AND THE PATRIARCHAL COURT

2.1. Introduction

The literature on legal pluralism in the Ottoman Empire is quite limited, not to mention studies on how it functioned in practice. The scholarship heavily relies on Sharia court records and the appearance of the non-Muslims in these registers, while the discussion on non-Muslim community courts remains preliminary. Scholars mostly turn to Sharia courts to find out about the experiences of the non-Muslims in a society where different bodies of law were available to them.

There is a tendency in the literature to associate the large numbers of non-Muslims in the Sharia court registers with the unavailability of the communal courts, or, alternatively, to associate the sparseness of non-Muslims to the greater availability of their community courts. Based on his study on Kayseri Sharia court registers in the seventeenth century, Jennings indicates that the relatively frequent use of the Kayseri Sharia court by non-Muslims (including at least one non-Muslim in 20% of all cases) and the lack of reference to community courts might be the result of the "weakness" or absence of a non-Muslim communal judicial institution in the town.[56] On the other hand, according to Gradeva, the fairly small numbers of non-Muslims who brought their cases to the Sharia court in Sofia in the seventeenth and early eighteenth

[56] Jennings, "Zimmis," 250-251, 271.

centuries could be explained by the existence of adequately functioning communal institutions.[57] Similarly, in the court registers of Kastamonu in the eighteenth century, non-Muslims appear only in 3% of all the disputes (compared to constituting 15% of the population), which Ergene and Coşgel attribute to non-Muslims' preference for resorting to their own denominational courts.[58]

Indeed, in the absence of community court registers, it is hard to figure out whether or not a communal judicial apparatus was available to non-Muslims, as well as to make sense of the use of Sharia courts by non-Muslims. One may consider that these community courts were much less systematized and so modest that they simply did not leave any trace for the historian. In light of available Greek Orthodox court registers from the Aegean islands and Balkans, we already know that the records are problematic. On the one hand they are quite dispersed and mostly missing, while on the other hand those that exist are recorded in an unsystematic manner.[59] By all means, however, even if we lean towards accepting that there were no Christian or Jewish community courts, at least in certain parts of the empire, it is important to discuss the reasons for their absence. Is it that there was not a strong community with a significant population to establish a judicial institution in a given town? Is it possible that the Ottoman sultan did not grant them certain privileges to be able to undertake such an effort in every part of the empire? Is lack of community court records a result of a reliance on out-of-court settlements?[60] Equally difficult to

[57] Gradeva, "A Kadı Court in the Balkans," 61. She also points out that the proportion of Orthodox Christians, Jews, and Armenians in Sofia Sharia court registers differ; Jews and Armenians appear much less compared to Orthodox Christians.

[58] Cosgel and Ergene, *The Economics of Ottoman Justice*, 179.

[59] Anastasopoulos, "Non-Muslims and Ottoman Justice(s?)," 283-284; Kermeli, "The Right to Choice," 178.

[60] As discussed in the Introduction, Anastasopoulos discusses the prevalence of out-of-court settlements in the Aegean islands. Anastasopoulos, "Non-Muslims and Ottoman Justice (s?)," 281-285. Ayşe Ozil also shows that in nineteenth-century northwestern Anatolia, despite the existence of community courts, communal authorities took

trace, were there such institutions in the pre-Ottoman period? What was the situation during the Byzantine or Seljuk and *beylik* periods?

Due to lack of evidence, at least up to this point in contemporary research, and the difficulty of answering these questions, historians inevitably turn to available communal registers from the Aegean islands, mainland Greece, the Balkans, and Anatolia for the case of the Greek Orthodox community, and to the responsa literature for the Jewish experience, so as to understand how the internal judicial structure of non-Muslim communities worked, and why their members possibly resorted to Sharia courts. According to Hacker, although there are no court records left by the Ottoman Jews, the extensive responsa literature, accounts of European travelers, and accounts by Jewish scholars make various references to Jewish courts. According to Goodblat, for instance, in sixteenth-century Thessaloniki, each Jewish congregation had its own court.[61] Although Jewish rabbis were not granted the judicial privileges that the Greek Orthodox patriarchs had, Jews enjoyed unofficial judicial autonomy in both civil and penal law - mostly due to inconsistent supervision and enforcement exercised by the Ottoman state - except for cases involving the death penalty. The rabbi was the head of this complex legal structure; either by himself or with a small group of laymen, he was in charge of legal jurisdiction and was responsible for answering the legal questions of his coreligionists through responsa, written rabbinical responses to matters of Jewish law.[62] However, Hacker points out that the decisions of the rabbi on issues other than marriage and divorce were not officially recognized by the state.

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care of various legal issues, such as issuing divorce decrees. Ozil, *Orthodox Christians in the Late Ottoman Empire*, 88.

[61] Morris S. Goodblat, *Jewish Life in Turkey in the XVIth Century: As Reflected in the Legal Writings of Samuel De Medina* (New York: Jewish Theological Seminary of America, 1952), 87. It should be noted that Thessaloniki had a substantial Jewish population in that period.

[62] Joseph R. Hacker, "The Structure and Scope of Jewish Organization and Self-Government in the Ottoman Empire in the 15th-17th Centuries," *Türk Tarih Kurumu Yayinlari* 26, no. 4 (1990): 348-349.

Thus, many lay Jewish subjects were required to appeal to the Sharia courts if they needed official registration or documentation, in some cases after they had already applied to the rabbi.[63] Multiple studies confirm that Jews appealed to the Sharia courts both for notarial purposes and for litigation.[64]

On the other hand, we know next to nothing when it comes to Armenian courts. While Semerdjian does not discuss the possible absence of Armenian courts per se, she notes that the records of these courts are not available for us today.[65] By the same token, scholars of Armenian history in the pre-modern Ottoman period have observed that although there might be different practices in different parts of the Empire, at least in Istanbul, there is no mention of an institutional judicial system in contemporary Armenian sources.[66]

Studies on Greek Orthodox courts are much more extensive compared to those on Jewish and Armenian courts,[67] especially when we add the considerable literature published in Greek.[68] As noted above, these studies mostly work on the registers of the communal courts in the Aegean

[63] Hacker, "Jewish Autonomy in the Ottoman Empire,"183-184.

[64] For example, see Richard Wittmann, "Before Qadi and Grand Vizier: Intra-Communal Dispute Resolution and Legal Transactions among Christians and Jews in the Plural Society of Seventeenth Century Istanbul," (PhD diss., Harvard University, 2008); Amnon Cohen, *Jewish Life Under Islam*; Jennings, "Zimmis"; and Eyal Ginio, "The Administration of Criminal Justice in Ottoman Selanik (Salonica) during the Eighteenth Century," *Turcica* 30, no. 192 (1998): 185-209.

[65] Elyse Semerdjian, "Armenian Women, Legal Bargaining, and Gendered Politics of Conversion in Seventeenth and Eighteenth-Century Aleppo," *Journal of Middle East Women's Studies* 12, no. 1 (2016): 6.

[66] Wittman, "Before Qadi and Grand Vizier," 66.

[67] For a study on Catholic courts in Istanbul, see Edhem Eldem, "The French *Nation* of Constantinople in the Eighteenth Century as Reflected in the Saints Peter and Paul Parish Records, 1740-1800," in *French Mediterraneans: Transnational and Imperial Histories*, eds. Patricia M. E. Lorcin and Todd Shepard (Lincoln: University of Nebraska Press, 2016).

[68] For an extensive bibliography on studies in Greek, see Kermeli, "The Right to Choice," 167-168.

islands, mainland Greece, and the Balkans.[69] Our knowledge, so far limited to these places, has been broadened thanks to Ayse Ozil's study, which demonstrates that in many northwestern Anatolian towns with a substantial Greek population, such as Erdek, Bandırma, Gemlik, Bursa, and Peramos, community courts indeed existed, at least in the late nineteenth century.[70]

Given what is known about extant Greek Orthodox courts in the pre-modern period, it appears that the framework of the Greek Orthodox courts was rather complicated, as there were actually two different kinds of court structures in operation: notarial[71] and ecclesiastical courts.[72] According to Kermeli, who works on the registers of the Aegean islands and mainland Greece in the late seventeenth and eighteenth centuries, while the ecclesiastical courts only dealt with family matters, the jurisdiction of the notarial courts was more extensive; they handled various cases of taxation, inheritance, inter-communal administration, family law, and in some rare cases criminal law as well.[73]

Scholars who write on the Greek Orthodox patriarch's status in the Ottoman period tend to agree that the patriarch's realm of authority undisputably increased in the eighteenth century by virtue of the changes that came with the tax farming (*iltizam*) system in the late seventeenth century. Accordingly, as the patriarch started to be granted life-long tax-farms (*malikane*), he

[69] For studies published in English, see Doxiadis, "Property and Morality"; Evdoxios Doxiadis, "Legal Trickery: Men, Women, and Justice in Late Ottoman Greece," *Past and Present* 210, no. 1 (2011): 129-153; Nikolaos I Pantazopoulos, *Church and Law in the Balkan Peninsula during the Ottoman Rule* (Amsterdam: A.M. Hakkert, 1984); Kermeli, "The Right to Choice," Anastasopoulos, "Non-Muslims and Ottoman Justice(s?)."

[70] Ozil, *Orthodox Christians in the Late Ottoman Empire,* 84.

[71] There might be a confusion over the use of some terms related to the Greek Orthodox legal institutions. I use "communal courts" or "community courts" as an umbrella term for Christian, Jewish, and Armenian courts in general but "notarial court" and "ecclesiastical court" for two different Orthodox Christian legal frameworks. Kermeli, and some other scholars, however, use "communal courts" for the Greek Orthodox notarial courts.

[72] In the late nineteenth- century north-west Anatolian context, they are referred to as "mikto symvoulion" (mixed council), "pneumatikon dikastirion" (ecclesiastical court), Ozil, *Orthodox Christian in the Late Ottoman Empire,* 84.

[73] Kermeli, "The Right to Choice," 170.

took on the responsibility of taxation management, administering its collection from his community, and punishing those who failed to pay taxes. In all likelihood, the Ottoman state was concerned with ensuring the functioning of this newly introduced *malikane* system in places where it could use the Church's hierarchy and authority, yet unintentionally it consolidated the authority of the Church in criminal law. [74]

To my knowledge, there are no studies on how this increasing authority of the Church is reflected in the communal court registers in the eighteenth century. However, according to Ozil's study, in the nineteenth century, the only option for most Greek Orthodox petitioners was to bring their cases related to criminal law to the Sharia courts and later to the Ottoman Nizamiye courts, which started to be established following the promulgation of the Tanzimat reform edict in 1839.[75] She believes that rather than this practice being a broad trend, the isolated and semi-autonomous structure of the Aegean islands, especially the Cyclades, presented an exception that enabled the adjudication of some criminal cases.[76] Given what is known thus far, the question of whether the increasing authority of the Church in matters of taxation extended to other areas of criminal law can only be answered partially. Ozil notes that in northwestern Anatolia, while the ecclesiastical courts dealt with religious and civil matters, notarial courts were only in charge of the financial aspects of those issues.[77]

The above-mentioned outline presents the complex, apparently localized, framework of the communal courts only to a limited extent. This framework becomes much more intricate when

[74] Greene, *The Edinburgh History of the Greeks*, 179; Gara, "In Search of Communities,"138-139; Kermeli, "The Right to Choice," 175.

[75] Ozil, *Orthodox Christians in the Late Ottoman Empire,* 89.

[76] Ibid.

[77] Ibid., 84.

we add Sharia courts to it as one of the options open to non-Muslim litigants. Historians' tendency to focus either on the Jewish or Christian internal judicial system, or on Sharia court records has left significant gaps in our understanding of how this legal plurality actually functioned in the pre-modern Ottoman Empire. Clearly, studying Sharia courts together with communal courts is a challenging task to undertake not only because of language barriers but also because of the difficulties in finding records of different courts from the same period. This dissertation aspires to open up a new window onto Ottoman legal history in general, and the history of legal pluralism in particular, by integrating an analysis of the records of the Bab court and the Patriarchal court of Istanbul, from 1660 to 1685. This chapter will try to establish a structural base for the analytical chapters (Chapters 4 and 5) of this dissertation where I will be discussing the entries related to marital issues in these registers in detail. To that end, below, I shall introduce and compare the operational profiles of these two courts: their locations and accessibility, clients, court personnel (e.g., the deputy judge (*naib*) and the synod), court processes (use of evidence, witnesses, oaths, etc.), and the structure of their registers. By doing so, I illustrate that while there are clear procedural parallels between the courts, studying the registers of the Sharia courts and the Patriarchal court, which are recorded with different concerns and in different manners, helps us to circumvent some of the disadvantages of relying solely on the Sharia court registers to a considerable extent.

2.2. The Bab Court and the Patriarchal Court

Our knowledge of non-Muslim community courts is quite limited both in terms of their availability and in terms of their location in Istanbul. In comparison, we are remarkably lucky

with regard to the registers of Sharia courts. In Istanbul, there were around twenty-seven Sharia courts, including some courts with more specific functions, registers of which date from the sixteenth century to their abolition in 1924. According to Bayındır, there are almost ten thousand ledgers left from these courts,[78] most of which still await scholars' interest. While we are fortunate to have abundant records from the Istanbul courts, we also face a disadvantage when attempting to reach some broad conclusions about the city. There are no comprehensive studies on Istanbul, even for the "inner city," the precincts within Istanbul's famous walls (*Suriçi*), which try to investigate some broader court practices in a certain period, such as the issues they dealt with, the profile of their clients, or their occupancy. Including the present study, scholars tend to work on one or several courts, which, in the end, limits our overall understanding of the workings of social and legal life in Istanbul. Although there were no ghetto-like settlements for non-Muslims, and neighborhoods were mostly confessionally and economically mixed, the composition of different religious groups in each neighborhood could differ significantly. For instance, in the second half of the seventeenth century, the number of Jews exceeded both Muslims and other non-Muslim groups in Hasköy, a district on the Golden Horn,[79] while the Muslim population predominated in many other neighborhoods. Moreover, we still do not know whether there were courts that specialized on different issues, or what kind of criteria the Istanbulites considered when they were deciding to which court to take their cases. There are many such unanswered questions about the use of pre-modern courts, especially in places where there were multiple courts, such as Istanbul.

[78] Abdülaziz Bayındır, *İslâm Muhakeme Hukuku: Osmanlı Devri Uygulaması* (İstanbul: İslâmî İlimler Araştırma Vakfı, 1986), 27.

[79] Cengiz Şişman, *The Burden of Silence: Sabbatai Sevi and the Evolution of the Ottoman-Turkish Dönmes* (New York: Oxford University Press, 2015), 64.

There were four judges in Istanbul: those of Istanbul, Galata, Eyüp, and Üsküdar. The Istanbul judge was above the other three in the judicial hierarchy and was burdened with some municipal affairs besides his responsibility to hear cases.[80] The four judges were in charge of different parts of the city: the Istanbul judge was in charge of the areas within the walled city; the judge of Galata for the coastline of Rumeli, the European side of Bosphorus; the Eyüp judge in today's Çatalca, Büyük Çekmece, Küçük Çekmece, Silivri and surroundings; and the Üsküdar judge for the Anatolian coast line. In 1556, when there were only five courts in the city, the people of Istanbul voiced complaints about the number of courts not being adequate to serve their needs, and also not being in easy access to some. The judge of Istanbul was given the right to establish new courts where needed by assigning a deputy (*naib*) for each.[81] In seventeenth-century Istanbul, when the population was about 400,000, there were twenty-six deputy judges in Eyüp, five in Üsküdar, and forty-four in Galata who were in charge of hearing cases.[82]

The Bab court, whose registers this study focuses on, is one of the courts governed by a deputy judge. The deputy judge of the Bab court was the deputy of the Istanbul judge. It is not known when exactly this court was first established, but its registers date back to 1665 and go up until 1909.[83] Initially, this deputy judgeship was established because the judge of Istanbul was also busy with various other municipal and market duties, and was not able to handle the

[80] İsmail Hakkı Uzunçarşılı, *Osmanlı Devletinin İlmiye Teşkilatı* (Ankara: Türk Tarih Kurumu Yayınları, 1988), 140-142.

[81] If they are not talking about two different firmans, Arık dates it to 1585, whereas Uzunçarşılı to 1556. Feda Şamil Arık, "Osmanlılarda Kadılık Müessesesi," *OTAM* 8, no. 8 (1997): 14; Uzunçarsılı, *Osmanlı Devletinin İlmiye Teşkilatı*, 142.

[82] Uzunçarşılı, *Osmanlı Devletinin İlmiye Teşkilatı*, 133-134.

[83] Mehmet İpşirli, "Bab Mahkemesi," TDV *İslâm Ansiklopedisi*, https://islamansiklopedisi.org.tr/bab-mahkemesi accessed March 13, 2022.

jurisdictional needs of his court. According to Uzunçarşılı, the deputy judge of the Bab court sat in the residence of the judge of Istanbul and did not have a separate courthouse for his deputy judgeship.[84] More often than not, before the nineteenth century there were no official buildings for courts; most of the time the *selamlık* (the portion of a house reserved for men and public business) part of the mansion of the judge served as the courthouse, and every time the judge changed, so did the location of the court.[85] Even so, courts were placed in easy access to the commercial centers or near the congregational mosques.[86] Even though it is hard to spot the exact location of the Bab court, it seems most plausible that the Istanbul judge still resided somewhere central within the walled city.[87] In addition to the Bab court, the other courts headed by the deputy judges of the Istanbul judge were also within the walled city: the Mahmut Paşa, Ahi Çelebi, Davud Paşa, and Balat courts.[88]

According to Sakaoğlu, the Bab court and other deputy judgeships started to be specialized in family law in the nineteenth century,[89] which has led some historians to assume that it functioned specifically in this area also prior to this period. Zilfi's study on the eighteenth-

[84] Uzunçarşılı, *Osmanlı Devletinin İlmiye Teşkilatı*, 142. According to Leslie Peirce, the judge of Ayntab court also used his residence as the courthouse, which presumably made it more accessible for women and non-Muslims. Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley: University of California Press, 2003), 98.

[85] Arık, "Osmanlılarda Kadılık Müessesesi," 14-15. Sakaoğlu, *Dünden Bugüne İstanbul Ansiklopedisi*, 513. Galata court might be an exception as it is known that there was a designated building for the Galata court near Arab mosque, most probably in today's Galata Mahkemesi street. İsmail Hakkı Uzunçarşılı, "Istanbul ve Bilâd-ı Selâse Denilen Eyüp Galata ve Üsküdar Kadılıkları," *İstanbul Enstitüsü Dergisi* I (1956): 26.

[86] Halil İnalcık, "Mahkama," in *Encyclopaedia of Islam, Second Edition*, eds. P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs et al., doi:http://dx.doi.org/10.1163/1573-3912_islam_COM_0625 accessed March 13, 2022.

[87] Uzunçarşılı notes that the Istanbul judge of 1773 resided in Saraçhane. Uzunçarşılı, *Osmanlı Devletinin İlmiye Teşkilâtı*, 139.

[88] Uzunçarşılı, "Istanbul ve Bilâd-ı Selâse," 31-32.

[89] Necdet Sakaoğlu, "Bab Nâibliği," *Dünden Bugüne İstanbul Ansiklopedisi* (1993): 513.

century Bab court registers, however, shows that there was no such specialization as of the eighteenth century; the deputy judge of the Bab court heard many guild-related cases, inheritance cases, and property sale cases as well.[90] Likewise, apart from some other matters which appear infrequently, the seventeenth-century registers of this court include entries mainly regarding six subjects: inheritance, property sales, credits, divorce and dowry disputes, guild-related issues, and missing slaves or slave emancipation.[91]

The overwhelming majority of the clients of the Bab court came from more than fifty different neighborhoods within the walled city. Some of the clients were originally from various other cities but they happened to have some sort of legal issue during their visits to Istanbul. There also appear some residents from other major parts of the city such as Galata, Üsküdar, and Eyüp, yet most of the time their entries in the registers are disputes that include multiple people, such as an inheritance apportioning among the heirs. The availability of multiple courts could create a conflict between the defendant and the plaintiff who resided in different parts of the city. In such a case, it was the defendant who enjoyed the right to decide the court that they appealed to.[92] Since the registers tend to include only the residence of the plaintiff,[93] we are not able to

[90] Zilfi, "'We Don't Get Along'," 275.

[91] It should be remembered that our categorization of the entries according to their content may not be reflecting the legal categories of the contemporaries. One of the ledgers that is used in this study, for instance, includes marginal notes next to each entry with a couple of words that hint at the subject matter of the entry. Apparently, there was an increasing tendency in the eighteenth century to take such notes, since more ledgers seem to have them then. Although it is hard to state the purpose of providing these marginal notes, it seems as though the aim was to facilitate the court officials' ability to find a certain entry when it was needed in the future. According to these marginal notes, an entry that we simply consider to be an inheritance entry, for instance, could have been categorized by the court scribe as an "amicable agreement" (*sulh*), "alienation from inheritance" (*vasiyetten ferağ*), "collection of the inheritance" (*kabz-ı tereke*), or "proof of debt" (*deyn-i isbat*), etc.

[92] Bayındır, *İslâm Muhakeme Hukuku*, 95-96.

[93] It should be noted that in the registers of some courts, in the Balat court register from 1563 for instance, even the residence of the plaintiffs is not recorded.

trace the residence of all the parties in an entry. As noted above, the question of whether there were other concerns at stake when choosing between the available courts, judges, or deputy judges cannot be fully answered.[94]

While historians enjoy an abundance of sources with Sharia court records, they are deeply disappointed by the lack of community court registers. Thanks to the tremendous effort of Greek scholars in publishing considerable amounts of Greek archival documents, we have records from the Patriarchal court of Istanbul from the second half of the seventeenth century and the eighteenth century. Although limited in scope and number, as will be discussed below, these available records are invaluable not only for the rich content of the entries but also as sufficient proof of the existence of an effectively functioning ecclesiastical court for the Greek Orthodox population of Istanbul.

The Patriarchal court of Istanbul had a long history well before the Ottomans. It had been operating in the Byzantine capital since the early middle ages, yet its eminence increased especially after the tenth century in administering a wide range of legal issues related to the Patriarchate and clergy.[95] A century before the Ottomans conquered Constantinople, it was one of the two major courts in the city along with the imperial court, which served as the secular court. While, in theory, in terms of their judicial functions, imperial and Patriarchal courts have been regarded as secular and ecclesiastical, respectively, Byzantine historians have observed that their jurisdictions were not clearly defined. Rather, there are cases of people forum shopping between these courts, bringing their cases to the one that fit their needs better, or taking their

[94] The editors of the ISAM (Center for Islamic Studies) court registers project observe that compared to Galata, Eyüp, and Üsküdar court registers, the registers of the courts in Istanbul proper are much richer in terms of the varieties of the issues brought to these courts.

[95] Abdulkerim Kartal, "Crime and Punishment in the Patriarchal Court of Constantinople in Late Byzantium, 1261-1453" (PhD diss., Queen's University, 2020), 16.

case to the other when they were not satisfied with the decision of the court to which they initially appealed.[96] Through the late Byzantine period, it seems that more and more lay cases were brought to the Patriarchal court, while cases under family law were also tried in the imperial court, although they were supposed to be handled by the ecclesiastical authorities.[97]

The Patriarchal court and the imperial court cooperated in critical trials in the late Byzantine period.[98] They also seem to have substituted for each other in times of civil crises. The fourteenth-century Patriarchal court records show that during times of political instability, it seems as though more people preferred to have recourse to this court, since civil courts became politically corrupt, or were unable to function properly. Thus, the number of cases brought to the Patriarchal court tends to decrease in politically stable periods.[99]

The fourteenth-century Patriarchal court records reveal that the court tried various types of cases, primarily on marital issues, inheritance, financial disputes, and ecclesiastical administration.[100] There are clear parallels between the Byzantine and Ottoman (or post-Byzantine, or Tourkokratia as it is referred to by Greek scholars) periods not only in terms of the types of cases that the Patriarchal court dealt with but also in terms of certain litigation processes. As will be discussed below, ignoring these continuities might result in misperceiving the raison d'être of the Patriarchal court and misinterpreting its capacity in the Ottoman period.

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[96] Christos Malatras, "Trial Process and Justice in the Late Patriarchal Court," in *The Patriarchate of Constantinople in Context and Comparison*, eds. Christian Gastgeber et al. (Wien: Verlag der Österreichischen Akademie der Wissenschaften, 2017), 163.

[97] Ibid., 161-63.

[98] Ibid., 164.

[99] Spyros Troianos, "Byzantine Canon Law from the Twelfth to the Fifteenth Centuries," in *The History of Byzantine and Eastern Canon Law to 1500*, eds. Wilfried Hartmann and Kenneth Pennington (Washington D.C: The Catholic University of America Press, 2012), 196; Kartal, "Crime and Punishment," 23.

[100] Kartal, "Crime and Punishment," 23; Malatras, "Trial Process and Justice," 163; Troianos, "Byzantine Canon Law," 170-71.

Following the conquest of Constantinople in 1453 and Mehmed II's decision to preserve the Patriarchate of Istanbul, the monk Gennadius Scholarius was considered as a fit and proper figure to be the first patriarch. Allegedly, Gennadius was granted a *berat* by Mehmed II, according to which he was given certain privileges. The absence of this document from the historical record has led historians to question whether or not he was indeed given a sultanic document. Nevertheless, the fact that the metropolitans in the Balkans had been granted such official documents by former Ottoman sultans proves that this was a practice before 1453 and could well have been followed by Mehmed II as well.[101]

Gennadius' appointment was symbolically approved by the Holy Synod, as was the tradition, and he officially assumed the office in January 1454.[102] The new patriarch and the synod, however, could not remain in the former Byzantine Patriarchal seat, Hagia Sophia, since it had been converted into a mosque. Thus, the Patriarchate moved to the church of Holy Apostles, which used to stand in the same location as the later Fatih Mosque, in the district of the later-named Fatih. The neighborhood being mostly deserted by Christians or inhabited by Muslims, however, it did not provide a safe environment for the Patriarchate and it had to move again after two years, in 1456, to the church of Pammakaristos, which was situated around the Balat and Fener neighborhoods, which were mostly populated by the Greek Orthodox community. Nevertheless, the journey of the Patriarchate did not end there. When Murad III decided to convert Pammakaristos into the Fethiye Mosque upon his return from a successful

[101] Greene, *The Edinburg History*, 29.

[102] G. Georgiades Arnakis, "The Greek Church of Constantinople and the Ottoman Empire," *The Journal of Modern History* 24, no. 3 (1952): 237.

campaign in Azerbaijan in 1586, the Patriarchate was transferred again, to the church of Saint George's in Phanar this time, where it stands today within the walled city.[103]

The status of the patriarch and the privileges that were granted to him have been studied by various scholars through existing *berats*. The fact that only the Greek translation of some earlier *berat*s (*berat*s of 1483, 1525, and 1662) are available, whereas the original Ottoman documents are missing, has created suspicion with regard to their authenticity.[104] On the other hand, their content is mostly consistent with later authentic documents, if we accept that they were not copied from the later versions.[105] According to these *berats*, the patriarch was granted the right to administer church property, collect taxes from his community members, manage the appointment and dismissal of the church clergy and metropolitans, and try cases related to marital issues, such as marriage, divorce.[106] The cases under penal law and civil law, however, were to be tried by the Muslim judge according to Islamic law.[107] As stated above, Greek Orthodox community members, like Jews and Armenians, also enjoyed the right to apply to the Sharia courts even for matters that fell under the church's jurisdiction, i.e., marriage and divorce.

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[103] Steven Runciman, *The Great Church in Captivity: A Study of the Patriarchate of Constantinople from the Eve of the Turkish Conquest to the Greek War of Independence* (London: Cambridge University Press, 1968), 169, 184, 190; Elizabeth Zachariadou, "The Great Church in Captivity 1453-1586," *Cambridge History of Christianity* 5 (2006): 173; Theodore H. Papadopoullos, *Studies and Documents Relating to the History of the Greek Church and People under Turkish Domination* (New York: AMC Press, 1973), 3.

[104] For a recent study on a newly discovered earliest *berat* from 1475-76, see Phokion Kotzageorgis, "The Newly Found Oldest Patriarchal Berat," *Turkish Historical Review* 11, no. 1 (2020): 1-27.

[105] Bayraktar-Tellan, "The Patriarch and the Sultan," 27. For a critical analysis of the early *berat*s and their comparison with the later ones, see Bayraktar-Tellan's dissertation, specifically Chapter 2 "The Patriarchate up to 1700."

[106] Arnakis, "The Greek Church," 242; Bayraktar-Tellan, "The Patriarch and the Sultan," 30-31; Anastasopoulos, "Non-Muslims and Ottoman Justice (s?)," 283; Greene, *The Edinburgh History,* 30-31. For the original *berat*s and their translation in English, see Çolak and Tellan, *The Orthodox Church*. For the discussion on the content of the *berat*s regarding the limits of the patriarch's judicial authority, see Chapter 1.

[107] Bayraktar-Tellan, "The Patriarch and the Sultan," 30-31; Kermeli, "The Right to Choice," 204.

Although this study is mostly concerned with the jurisdictional part of these above-mentioned privileges of the patriarch, it is important to touch upon the broader discussions on the patriarch's status under Ottoman rule. These discussions mainly revolve around the question of whether the patriarch was seen more as a spiritual community leader or a tax farmer (*mültezim*) by Ottoman rulers. As noted above, the patriarch and metropolitans in the provinces came to be responsible for collecting taxes from their community in the later seventeenth century. This role as a life-long tax farmer and the considerable wealth possessed by the church, which derived from landed property (vineyards, mills, orchards, gardens etc.)[108] that had accumulated for a long time led some scholars to assume that the Ottoman state primarily established a financial relationship with the Patriarchate and regarded the patriarch merely as a tax-farmer.[109] According to another perspective, which has long been disputed, the patriarch was the head of the community (*milletbaşı*) who was able to exercise self-rule for his community, *millet*. This idea of self-rule, almost as a "state within a state" as a *millet*, has been challenged not only because the term *millet* was not in use with this conception prior to the nineteenth century[110] but also because, as the *berats* reveal, the Ottoman state did not recognize the Patriarchate as an institution; rather it established a personal relation with each patriarch, to be reaffirmed with each new patriarch's appointment or a new sultan's accession to throne.[111] In the *berat*s, the patriarch is also referred to as "the patriarch of Istanbul and its surroundings," not as the

[108] Zachariadou, "The Great Church," 180; Greene, *The Edinburg History*, 31.

[109] Tom Papademetriou, *Render unto the Sultan Power, Authority, and the Greek Orthodox Church in the early Ottoman Centuries* (New York: Oxford University Press, 2015); Kenanoğlu*, Osmanlı Millet Sistemi.*

[110] For different uses of the term millet prior to the nineteenth century, see Daniel Goffman, "Ottoman Millets in the Early Seventeenth Century," *New Perspectives on Turkey* 11 (1994): 135-158.

[111] Greene, *The Edinburg History*, 34; Zachariodou, "The Great Church," 173.

patriarch of the Greek Orthodox community.[112] Elif Bayraktar-Tellan rightly points out that the arguments which emphasize the role of the patriarch as a tax-farmer tend to overlook the patriarch's authority over his flock. Although he cannot be considered a *milletbaşı* per se, the patriarch should be seen both as a spiritual leader and an Ottoman administrator.[113] The analysis of the Patriarchal court registers in this dissertation also demonstrates that the patriarch had indeed established full judicial authority on matters of divorce and remarriage. Many Greek Orthodox community members recognized and respected this authority and appealed to the Patriarchal synod to request divorce and permission to remarry even after registering their divorces in the Sharia court.

Scholars have mentioned that the Patriarchal archives suffered from a series of mishaps. The records of the official documents (original or copies) are mostly missing or dispersed into different archives. According to Arabatzoglou, who published various official documents of the Patriarchate of Istanbul in two volumes, a considerable number of Patriarchal documents were destroyed by frequent fires that occurred in Istanbul, the fire of 1738 being especially disastrous for the archive.[114] Moreover, he adds, another reason for the loss of the official documents was that some patriarchs or scribes took certain documents with them when leaving office.[115] Today, the majority of the archival documents that belonged to the Patriarchate of Istanbul are found in various libraries and archives in Europe, such as in London, Oxford, Rome, and Paris, having been transferred there by various Europeans.[116] The most renowned of these individuals was

[112] Greene, *The Edinburg History*, 30.

[113] Bayraktar-Tellan, "The Patriarch and the Sultan," 15.

[114] Gennadios Arabatzoglou, *Φωτίειος Βιβλιοθήκη* [Library of Photius] Vol. I (Istanbul, 1935), θ/9.

[115] Ibid., η/8.

[116] Ibid., στ/6.

Ogier Ghiselin de Busbecq (d.1592), who served as an envoy of the Holy Roman Empire in Istanbul during the sixteenth century. He is reckoned to have taken some manuscripts from the Patriarchate to Vienna, which included some late Byzantine documents as well.[117]

What has been published so far from available Patriarchal documents mostly pertain to various Patriarchal orders, appointments or depositions of clergymen, elections, episcopal pledges etc., with some chronological gaps.[118] As for the court registers, Nomikos Vaporis published the translation of a manuscript found in Yale University Library, the Ziskind MS, which contains eighty-five entries from 1655 to 1763. These documents include entries on inheritance, loan and credit, rental or sales contracts, partnership or cooperation, etc., which, overall, seem to be related to financial matters.[119] Although the entries predominantly involve clergy, there is also a considerable number of laypeople, possibly lay elite, that appear in the registers, who brought their financial and marital issues to the Patriarchal court.[120] Although quite rarely, Jews and Muslims also appear in the records if they entered into a financial relationship with a Greek Orthodox.[121] Another source for the Patriarchal court registers is

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[117] Kartal, "Crime and Punishment," 26, Arabatzoglou, ζ/7.

[118] Nomikos Vaporis has published two archival codices: Codex Beta and Codex Gamma. Nomikos Vaporis, ed., *Codex (b') Beta of the Ecumenical Patriarchate of Constantinople: Aspects of the History of the Church of Constantinople* (Brookline, Mass.: Holy Cross Orthodox Press, 1975); Nomikos Vaporis, ed., *Codex Gamma of the Ecumenical Patriarchate of Constantinople Brookline* (Mass.: Holy Cross Theological School Press, 1974).

[119] Nomikos Vaporis, *Some Aspects of the History of the Ecumenical Patriarchate of Constantinople in the Seventeenth and Eighteenth Centuries: A Study of the Ziskind MS No.22 of the Yale University Library* (USA: 1969).

[120] Interestingly enough, the greater part of the entries that include laypeople are from the eighteenth century, whereas the entries from the seventeenth century mostly include members of the clergy. It is quite curious whether this is a mere coincidence, or rather connected to the increasing authority of the patriarch in the eighteenth century, as discussed above. Unfortunately, however, the data are so small and scattered to reach a conclusion with regard to the appearance of laypeople in the Patriarchal court with financial issues, which is accepted to be outside of the church's authority of jurisdiction.

[121] There are two entries that include Jews. In the first entry, the issue is about a Greek Orthodox from Rhodes borrowing money from a Jew, who is from Rhodes as well. The dispute arising from this loan had been resolved first in front of a Jewish rabbi and then recorded in the Patriarch court in 1707. Varopis, *Ziskind MS.*, 85. The second

Arabatzoglou's above-mentioned publication. There are approximately a hundred divorce-related entries from 1660 to 1685, which are available only in Greek. Since chapters 4 and 5 are devoted to the analysis of these entries, suffice it to say here that we do not know if they are complete records from these years or if there are some missing entries as well. In addition, unlike the entries in the Ziskind MS, the divorce entries here do not involve anyone from other religious communities.

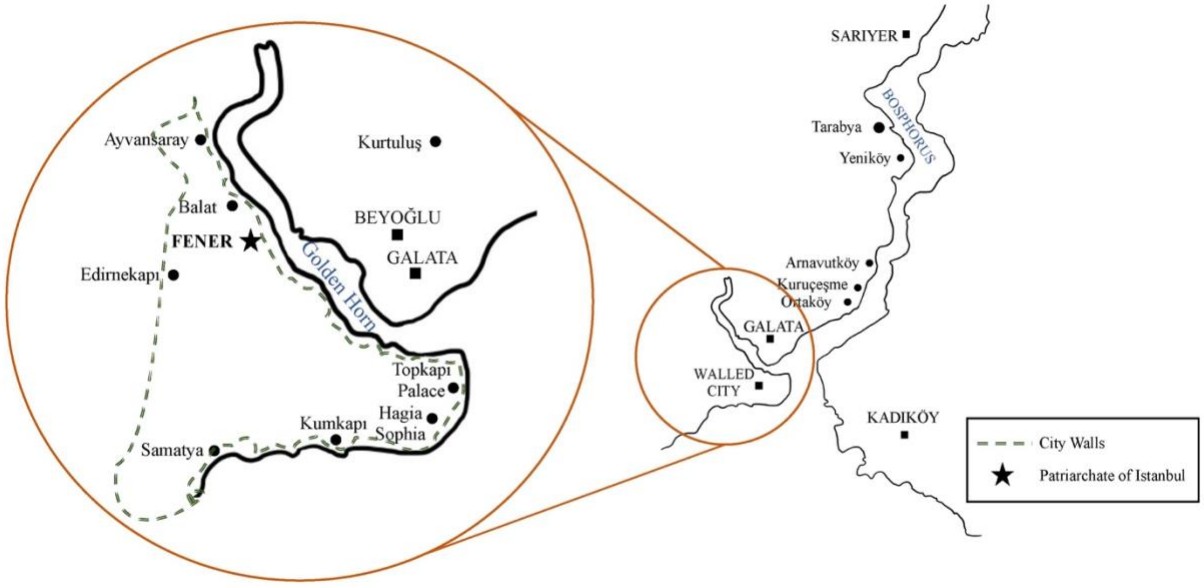

Figure 2.1. Map showing the residential quarters of the clientele of the Patriarchate in late seventeenth-century Istanbul

entry is a rental agreement between a Jew and a Greek Orthodox from 1727. Vaporis, *Ziskind MS.*, 92. The entry with a Muslim, however, is not a lay case. The record is about the Patriarch of Alexandria who borrowed 500 *aslan guruş* from a certain Hasan Ağa, in 1666, possibly a former *kethüda* (chamberlain), to be paid back with 75 *guruş* interest. The entry also includes the record of an extension of the agreement after four years, in 1670. Vaporis, *Ziskind MS.*, 23. In a later entry from 1678, perhaps the same Hasan Ağa from Alexandria, this time titled as *kaimakam,* appears again in the registers. Grand Logothetes John and Grand Dragoman Alexander purchased a diamond-studded belt from him to be paid in two installments. This case was witnessed and signed by six Muslims. Vaporis, *Ziskind MS*., 51.

Unlike the Bab court, the clientele of the Patriarchal court was not restricted to the walled city. While the Greek Orthodox from Samatya, Ayvansaray, Kumkapı, and Edirnekapı from within the walled city appealed to the Patriarchal court, the entries in Arabatzoglou are mostly from the European part of the city, and the neighborhoods on its coast such as Arnavutköy, Yeniköy, Kuruçeşme, and Ortaköy. There also appear people from Tatavla (Kurtuluş), Beyoğlu, and quite a few from Galata.[122] There are entries involving people from provinces as well, such as Edirne, Izmir, or from the islands of Lesbos or Chios. A similar problem also exists in the Patriarchal records as in the Bab court records with regard to recording the residence of the parties: only the plaintiff's residential quarter was recorded in the registers. Therefore, it is hard to know what brought them from the provinces to Istanbul, or whether one of the litigants had moved to Istanbul or for some reason happened to be in the capital.

What is striking in this picture is that all the clients from Istanbul were either from the walled city or from the European part of the city; no one from across the Bosphorus came to the court. Obviously, there are also neighborhoods which were inhabited by Greek Orthodox community members, such as Kuzguncuk, and Kadıköy, despite the fact that the Anatolian side might not have hosted as many Greek Orthodox subjects as the European side. As is mentioned above, in the *berat*s, the patriarch is mostly referred to as "the patriarch of Istanbul and its surroundings." In addition, in the *berat* of 1483, it is stated that the patriarch governs Anatolia and Rumelia so as to specify the geographical jurisdiction of the patriarch.[123] As also appears in the court records, Orthodox Christians had the right to appeal to the Patriarchal court even

[122] Arabatzoglou, Vol. II, 124-167.

[123] Bayraktar-Tellan, "The Patriarch and the Sultan," 29-30.

though a local community court was available to them.[124] Hence, it is rather curious not having any residents of the Anatolian side while people from more distant provinces appear in the registers. This might be related to the fact that the registers are incomplete and thus we cannot find out whether it is an unfortunate coincidence that they do not appear in the available registers. On the other hand, since we do not know if there were other ecclesiastical or notarial courts in Istanbul in the seventeenth century, we should also consider the possibility that the Greek Orthodox of the Anatolian side of the capital and its environs appealed to a court which was more accessible to them. It should also be noted that they always had the option to resort to a local bishop to settle their disputes.[125] Thus, the metropolitan bishopric in Kadıköy might have handled the legal issues of community members on the Anatolian side, although we have no records to prove that.

The entries in the Ziskind MS are less helpful as to inform us about the residence of the Patriarchal court's clients. It seems as though the scribes did not tend to acknowledge the residence of the parties in entries related to financial matters. In several of the entries on family matters, however, such as divorce, dowry, and reconciliation between spouses, the residence is again recorded. Here too, we encounter Arnavutköy, Tarabya, and Beyoğlu, districts from the European side of the city. There is also a considerable number of entries that involve metropolitans from provinces, which were mostly promissory notes for their diocesan debts.

[124] Runciman, *The Great Church*, 175.

[125] Anastasopoulos, "Non-Muslims and Ottoman Justice (s?)," 283.

2.3. Court Proceedings

When a case was brought by a petitioner, it was the judge (*kadı*) or the deputy judge (*naib*) in the Sharia courts, and the synod (*σύνοδος ἐνδημοῦσα*, resident synod) in the Patriarchal court who were responsible for trying the cases. The synod also dealt with various other church affairs, and it was particularly powerful with respect to the authority it asserted in electing and dismissing the patriarch. As such, the patriarch's sanctions largely depended on the approval of the synod.[126]

The patriarchal synod, which was headed by the patriarch, was composed of metropolitans who were in easy access to Istanbul or who happened to be there, along with the permanent officers of the Patriarchal administration.[127] The permanent members of the synod were the officials of the first *pentas* (administrative series of five officers): The grand Oeconomos (financial administrator), the Grand Sakellarios (superintendent of the monasteries), the Grand Skevophylax (keeper of the sacred icons and relics), the Grand Chartophylax (secretary general), the Sakellion (superintendent of the churches).[128] This hierarchical structure was inherited from the Byzantine tradition, and since then the first *penta*s, particularly, preserved its ecclesiastical authority until these titles became rather "empty honorific names" in the nineteenth century.[129]

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[126] Papadopoullos, *Studies and Documents*, 40. According to Zachariodou, while it was the synod who elected the patriarch and the sultan approved the appointment, the opposite case was applied for Gennadius; the synod approved him upon his election by Mehmed II. Zachariadou, "The Great Church," 172. For a discussion on how the synod operated in the late Byzantine period, see Johannes Preiser-Kapeller, "Patriarchate and Synod in the Late Byzantine Period (1204-1453)," in *A Companion to the Patriarchate of Constantinople*, eds. Christian Gastgeber, et al. (Leiden: Brill, 2021).

[127] Papadopoullos, *Studies and Documents*, 41; Zachariadou, "The Great Church,"173-174.

[128] For a detailed description of these officials, see Papadopoullos, *Studies and Documents*, 61-85.

[129] Papadopoullos, *Studies and Documents*, 60-61.

While the Sharia judge and the deputy judge were the only authorities who could try a case in a Sharia court, in intricate cases they could resort to a mufti's legal opinion. All the other court personnel, such as the *kâtib* (scribe), *muhzır* (the official in charge of summoning people to court), and *çukadar* (the official who arrests the culprit) were kept outside of the litigation processes, except for occasionally serving as notarial witnesses in some cases.[130]

In entries related to family law, both in the registers of the Bab court and the Patriarchal court, the use of witnesses, oath-taking, and amicable settlement were among the most widely followed legal procedures. In this respect, it seems as though, as two pre-modern legal institutions, their procedures highly depended on orality with regard to arbitration, as well as adjudication. The absence of references to the use of written evidence in Sharia courts led historians to opine that the Greek Orthodox communal courts, both ecclesiastical and notarial, relied more heavily on the use of written evidence in litigation.[131] Be that as it may, despite some differences in registration practices and evidence use, similarities in legal procedures between the two courts become immediately evident, as demonstrated below.

2.3.1. Witnesses

There are two types of witnesses used both in the Sharia courts and the Patriarchal court: notarial witnesses and circumstantial witnesses. As echoed in their registers, both the synod and the deputy judge of the Bab court largely relied on the testimony of the circumstantial witnesses, when making their final decisions. The lawsuit processes in both courts were also open to be

[130] Arık, "Osmanlılarda Kadılık Müessesesi," 21-22; Ronald C. Jennings, "Kadı, Court, and Legal Procedure in 17th century Ottoman Kayseri: The Kadı and the Legal System," *Studia Islamica*, 48 (1978): 148-157.

[131] Kermeli, "The Right to Choice," 194-195.

observed by witnesses, whose names appeared underneath each entry. While this practice was more systematic and more strictly followed in the Sharia courts, as will be discussed below, its use in the Patriarchal court registers is more arbitrary and seems to be dependent upon the type of issue at stake.

2.3.1.1. Notarial Witnesses

The literature on the use of witnesses in the Sharia courts is much richer compared to the literature on Greek Orthodox court practices. The major discussion centers on the notarial witnesses (*şuhûdü'l hâl*), their backgrounds, functions, whether or not they possessed legal knowledge, and the extent to which their presence affected the judge's decision. The discussion on circumstantial witnesses (*şuhûdü'l-'udûl*), however, is much more limited.

The identity of the notarial witnesses and how they were recruited can not be conclusively evidenced from the registers. Yet, scholars have speculated on this issue based on the existence of certain honorific religious or military titles, such as *seyyid*, *ağa*, *çelebi*, etc., titles which reveal witnesses' status as notables. Studies on the Sharia court registers, in general, tend to acknowledge the frequent appearance of people bearing some of these titles among notarial witnesses.[132] Whether or not these notables constituted a "class," however, is much disputed. According to Jennings, large numbers of notarial witnesses, which could reach more than ten people in some cases, do not allow us to consider them as a particular group of

[132] Boğaç Ergene, *Local Court, Provincial Society and Justice in the Ottoman Empire: Legal Practice and Dispute Resolution in Çankırı and Kastamonu (1652-1744)* (Leiden: Brill, 2003), 21-22; Hülya Canbakal, *Society and Politics in an Ottoman Town: 'Ayntāb in the 17th Century* (Leiden: Brill, 2007), 137-138; Jennings, "Kadı, Court, and Legal Procedure," 143-144.

people.[133] Ergene, on the other hand, leans towards accepting the existence of a small group of notables in a town or area of the city who frequently served in that capacity, and also possibly influenced the judge's decision.[134] Canbakal also points out the substantial number of witnesses with honorific titles in seventeenth-century Ayntab (today's Gaziantep). Yet, like others, she acknowledges the likelihood that these notables happened to be in court on a certain day for their own matters and were recorded as witnesses in others' cases.[135] By the same token, these notables possibly appealed to the court more often than laypeople as they were more experienced in legal matters and had more issues to bring to court.[136] Another group of people who made a frequent appearance as notarial witnesses were the above-mentioned court officials.[137] Wilkins assumes that just like notables, those court officials might have influenced the judge's final decision.[138] It is quite possible that courts in different parts of the Empire adopted different practices on witness use, since, after all, it seems as though, on witness use, the Sharia courts followed some pre-Ottoman proceedings with certain adaptations, rather than an imperial order or a provision based on Islamic law.[139]

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[133] Jennings, "Kadı, Court, and Legal Procedure," 143-145.

[134] Ergene, *Local Court*, 28. Mustafa Akdağ also states that the notarial witnesses were not some random people; rather they were chosen from local notables. Mustafa Akdağ, *Türkiye'nin İktisadi ve İçtimaî Tarihi* (Ankara: Türk Tarih Kurumu Basimevi, 1959), 144-145.

[135] Canbakal, *Society and Politics*, 131; Peirce, *Morality Tales*, 96.

[136] Canbakal, *Society and Politics*, 141.

[137] Charles Wilkins, "Witnesses and Testimony in the Courts of Seventeenth-Century Ottoman Aleppo," in *Lire et écrire l'histoire Ottomane*, eds. Vanessa Guéno and Stefan Knost (Beyrouth: Presses de L'ifpo, 2015), 114; Ergene, *Local Court*, 25.

[138] Wilkins, "Witnesses and Testimony," 125.

[139] İsmail Erünsal, "Osmanlı Mahkemelerinde Şâhitler: Şuhûdü'l-'udûlden Şuhûdü'l-hâle Geçiş," *Osmanlı Araştırmaları* 53, no. 53 (2019): 1-49.

No clear consensus exists among historians on the function of the notarial witnesses. It has been asserted that these witnesses observed and maintained the legality and accuracy of the lawsuit and the judge's decision,[140] all of which attribute considerable religious and legal knowledge to them.[141] Erünsal questions this capacity ascribed to the witnesses. According to him, the registers preclude such a conclusion; they only reveal that the court proceedings were open to the public and the witnesses ensured the validity of a *hüccet*.[142] In addition, Hülya Taş assumes that in the absence or loss of *hüccet*s, the judge could call upon notarial witnesses to confirm the validity of the litigants' claim on a past lawsuit.[143] Along these lines, Peirce and Ergene support the view that witnessing court cases allowed for the conveyance of communal memory within society.[144]

As for the notarial witnesses in the Patriarchal courts, we lack such fruitful discussions in the literature. As mentioned above, unlike in the Sharia court registers, notarial witnesses below each entry cannot be found in the Patriarchal registers. Divorce registers, for instance, lack them to a great extent, with only a few exceptions.[145] Most of the records on financial matters in the Ziskind MS include notarial witnesses, the number of which ranges from two to sixteen. It is dubious whether or not it was the value of the case that made more people witness a case, such as

[140] Peirce, *Morality Tales*, 97.

[141] Ergene, *Local Court*, 30.

[142] Erünsal, "Osmanlı Mahkemelerinde Şâhitler," 39.

[143] Hülya Taş, "Osmanlı Kadı Mahkemesindeki "Şühûdü'l-Hâl" Nasıl Değerlendirilebilir?," *Bilig* 44 (2008): 31.

[144] Peirce, *Morality Tales*, 97; Ergene, *Local Court*, 25.

[145] While none of the divorce cases in Arabatzoglou includes witnesses (there is a possibility that it is the editor's intervention), some of the divorce cases in the notarial court register of Kos island from the eighteenth century contain notarial witnesses. In some others, on the other hand, only the signatures of the parties were put, while no witness names were recorded. For examples on the use of witnesses, see E. Karpathios, *Αρχείον Ιεράς Μητροπόλεως Κω* [Archive of the Holy Metropolitan See of Kos] (Athens: 1958-1962), 76, 91.

being an ecclesiastical matter or including clergy among the parties. However, there are also some lay cases with more than ten witnesses recorded on partnership, dowry settlement, or financial disputes.[146]

Similar to the Sharia court registers, the notarial witnesses in the Patriarchal records are predominantly court officials, clergy, or some notables. Some of the above-mentioned church officials from the first *pentas*, as well as from the second and third *pentas*, regularly appear among notarial witnesses, regardless of the subject matter of the case. In some cases, there could be additional witnesses who were in some way related to the litigants. For instance, a dispute settlement case between a certain George the priest and Stergios the grocer in 1722 was witnessed by the Grand Chartopylax, the Grand Primikerios, the Grand Diermeneutes, the Repherentarios, the Protapostolarios, and the Rhetor as the court officials, together with ten Christian men from the guild of grocers.[147] Another record of a dowry settlement from 1690 also includes laymen besides church officials.[148] Nevertheless, it seems as though the tendency was to register available church officials as notarial witnesses, and in most of the cases they were the only witnesses. Unfortunately, however, we lack evidence as to whether or not these officials who appear as witnesses were part of the church synod. Still, we can speculate that the presence of laypeople, albeit random and not so frequent, might be proof of lawsuits that were open to the public as in Sharia court practice.

Apart from notarial witnesses in the Patriarchal registers, most entries in the Ziskind MS also had the signatures of the litigants below the records. In some records of agreements or

[146] Vaporis, *The Ziskind MS.*, 88, 74, 85.

[147] Vaporis, *The Ziskind MS.*, 88.

[148] Ibid., 74.

promissory notes on loans, it is noted that the document was "signed and sworn" by each party.[149] Some entries were also sealed by the Patriarch, metropolitans, church officials, or the dragoman, in the cases in which they were involved as litigants.[150] Arabatzoglou notes that all divorce entries were approved and signed by the patriarch, although not shown in the edited documents.[151] Limited data and narrow literature on this issue, however, do not allow us to establish the standard procedure in the Patriarchal court.

2.3.1.2. Circumstantial witnesses

Both in the Bab court and the Patriarchal court, testimonies of witnesses about an ongoing lawsuit are the most common evidence used in cases on family matters. The standard procedure is quite similar in both courts: after a case is brought to court by the petitioner, the defendant is summoned to court and investigated. Should the defendant deny the accusations, the plaintiff is asked to present oral or written evidence to support his/her claims. If no evidence could be provided, then the defendant is offered the option to take an oath as to the veracity of his/her accusations.[152] Confession and acknowledgment provide full proof in both courts and settle the lawsuit. For instance, in 1674 Ioannis accused his wife Lambrini of being adulterous, on account of which he demanded a divorce. After being questioned by the synod, Lambrini made a confession "with her own mouth" (*ὡμολόγησεν ἰδίω στόματι*) and agreed that she had engaged in

[149] For some examples, see Vaporis, *The Ziskind MS*., 22, 34.

[150] These entries appear as "signed and sealed." For instance, see Vaporis, *The Ziskind MS*., 23, 35, 39, 53, 57.

[151] Arabatzoglou, Vol. I, 24.

[152] Ömer Nasuhi Bilmen, *Hukukı Islamiyye ve Istılahatı Fikhiyye Kamusu* (İstanbul: Bilmen Basım ve Yayınevi, 1967-69), 85-86; Bayındır, *İslâm Muhakeme Hukuku,* 142-143.

adulterous behavior, which led to the synod's decision on the couple's ecclesiastical divorce.[153] In a different kind of issue which was brought before the deputy judge of the Bab court in 1672, a certain Aişe sued her former spouse Musa for not paying her delayed dowry (*mehr-i müeccel*) upon their irrevocable divorce, and stated that the amount was two thousand *akçe*s. As Musa acknowledged his debt and the amount stated, the deputy judge closed the case after admonishing Musa to pay his debt.[154]

If the above-mentioned Lambrini or Musa did not accept the accusations, Ioannis and Aişe were going to be required to present evidence, which consists, in most cases, of bringing witnesses who were supposedly eyewitnesses to the plaintiff's claims. According to Islamic law, a witness cannot be someone blind, needs to be an eyewitness, and must be a rational and an honest person. The witnesses should also be male, unless the issue at hand necessitates a woman's testimony, such as for questions involving virginity, menstruation, or childbirth.[155] Indeed, all the circumstantial witnesses are male in the registers of both courts, with a single exception from the Patriarchal court from 1676/1677. In that particular case, when Manolis claimed that his wife Balasa had not been sane since the beginning of their marriage and had grown worse in time so much so that he was unable to live with her anymore, the synod asked Balasa's mother about her daughter's condition as to whether or not she had a mental issue prior to the marriage.[156] Moreover, in the Sharia courts non-Muslims could not testify for or against a Muslim; they were allowed to testify only in proceedings involving non-Muslims.[157] Regardless,

[153] Arabatzoglou, Vol. II, 141.

[154] İstanbul Bab Mahkemesi Şeriyye Sicilleri [Hereafter: İBMŞS], 13 Numaralı Sicil, Varak [114-b].

[155] Bayındır, *İslâm Muhakeme Hukuku*,144-154; Wilkins, "Witnesses and Testimony," 109.

[156] Arabatzoglou, Vol. II, 145.

[157] Bayındır, *İslâm Muhakeme Hukuku*, 160.

all circumstantial witnesses were expected to be righteous, and they were specified so in the Sharia court registers, as *'adl* in the singular, or in plural *'udul.*

Both in the Bab court registers and in the registers of the Patriarchal court, witnesses were mostly local notables. They seem to have come from the neighborhoods or the parishes of the litigants. Besides appearing as notarial witnesses, notables and clergy frequently gave witness testimonies as well. Parish priests, for instance, were often called upon for their testimonies on a specific case, just as were *imam*s of the neighborhood mosques. It seems that these local notables were among the most trustworthy people who were supposed to be knowledgeable about their community members, and whose opinions mattered a great deal.

As testimony of witnesses carried considerable weight in making the final decision on a case, courts paid careful attention in investigating these witnesses when there was suspicion as to their trustworthiness. In both courts, although not very frequently, the judges or the synod inspected some witnesses for an unspecified reason. The note in the Sharia court registers that "the testimonies of the witnesses were found acceptable after investigation" (*ba'de't-ta'dil ve't-tezkiyye şahadetleri makbule olmağın*) briefly highlights the process following such suspicion.[158] In a couple of entries in the Bab court registers, when the witnesses were suspected of being dishonest, the scribe of the court was entrusted to investigate the character of the witnesses (*keyfiyyet-i halleri sual için*) in the plaintiff's neighborhood by conferring with some local notables.[159] Similarly, in the Patriarchal court registers some witnesses were referred to as "the witnesses who were examined by us" (*οἵτινες ἐξετασθέντες παρ'ἡμῶν*), which indicates a similar

[158] Erünsal, "Osmanlı Mahkemelerinde Şâhitler," 11; Bayındır, *İslâm Muhakeme Hukuku*, 20; Wilkins, "Witnesses and Testimony," 109.

[159] İBMŞS, 21 Numaralı Sicil, Varak [106-b], Varak [97-a].

practice.[160] The synod also attempted to ensure the trustworthiness of testimonies by issuing the "threat of excommunication" on witnesses.[161] In some cases, it is also noted that the witness "testified with the fear of God."[162]

As noted above, Islamic law requires that for a testimony to be considered acceptable it has to be an eyewitness account.[163] The summaries of the court cases in the registers were formulated in such a way that most of the time it was underlined that the witnesses gave eyewitness testimony. The standard phrase of the witnesses goes as follows: "we witnessed this issue and we also give our testimony on it" (*biz bu hususa şahitleriz ve şahadet dahi ederiz*). Nevertheless, in certain cases, such as birth, death, marriage, or dowry, hearsay evidence by witnesses could be accepted on account of the fact that only a small number of people could witness such occurrences, while this kind of information widely circulates within small communities.[164] Historians have pointed out that neighborhoods in the pre-modern Ottoman period were closed communities, where the inhabitants assumed a sense of collective identity and were held responsible for each other's actions and wrongdoings.[165] Fikret Yılmaz has demonstrated, for instance, that in sixteenth-century Edremit (northwestern Turkey) neighbors were well informed about even "private" matters of one another, such as who was involved in

[160] Arabatzoglou, Vol. II, 145.

[161] Arabatzoglou, Vol. II, 125, 131, 133, 134, 144.

[162] Arabatzoglou, Vol. II, 141.

[163] Bayındır, *İslâm Muhakeme Hukuku*, 145-146.

[164] Bayındır, *İslâm Muhakeme Hukuku,* 147-148; Bilmen, *Hukukı Islamiyye,* 141.

[165] Özer Ergenç, "Osmanlı Şehrindeki 'Mahalle'nin İşlev ve Nitelikleri Üzerine," *The Journal of Ottoman Studies* IV (1984): 69-78; Işık Abel-Tamdoğan, "Osmanlı Döneminden Günümüz Türkiye'sine 'Bizim Mahalle'," *İstanbul Dergisi* 40; Cem Behar, *A Neighborhood in Ottoman Istanbul: Fruit Vendors and Civil Servants in the Kasap İlyas Mahalle* (Albany: State University of New York Press, 2003), 4.

illicit sex, or who worked as a pimp.[166] Thus, the court acknowledged that it was not unexpected for people to know basic information about their neighbors. Likewise, the Patriarchal court also seems to have accepted hearsay evidence. In a divorce case, for instance, witnesses stated that they heard from Aikatherini's mouth (*οἵτινες ἐμαρτύρησαν ταῦτα ἅπερ ἤκουσαν ἐκ στόματος τῆς γυναικός*) that she did not want to cohabit with her husband Frantezko.[167]

Overall, in both courts, witness testimonies are quite limited in terms of disclosing further details on a case. Typically, the scribes recorded the testimonies of witnesses with the exact same verbiage as the statements of the litigants. It seems as though when asked in court, the witnesses did not add any other information besides what had already been stated by the litigants on a specific issue. For purposes of the courts, rather than finding out any additional facts, what mattered most was whether or not the witnesses approved the statements of one party.

2.3.2. Written Evidence

When the defendant rejected the accusations of the plaintiff, the latter could also present written evidence to support his/her claim, although this rarely happened. As explained above, the litigants mostly sought support through oral testimony of "righteous" witnesses. Similarly, in the Patriarchal court registers, most people relied on oral testimony instead of written documentation. On the other hand, regardless of how frequently or infrequently written evidence was used, Kermeli and Doxiadis, who work on the notarial registers of the Aegean islands and

[166] Fikret Yılmaz, "XVI. Yüzyılda Osmanlı Toplumunda Mahremiyetin Sınırlarına Dair," *Toplum ve Bilim* 83, (2000): 97.

[167] Arabatzoglou, Vol. II, 163.

mainland Greece, observe that these courts placed heavier importance on written evidence than on oral.[168] Moreover, it is argued that in the records of the fourteenth-century Byzantine Patriarchal registers, documents were accepted as the strongest evidentiary proof.[169] Nevertheless, although there are scarce references in the registers of the Patriarchate and the Bab court to the use of documents by litigants, we infer that their significance for existing and future disputes could not be ignored.

The pre-modern Ottoman world has often been described as being primarily oral, where social relations were mostly established based on oral contracts and commitments, not to mention the impact of low literacy rates.[170] Students of both Sharia court registers and Greek Orthodox communal court registers observed that written evidence was distrusted, which sometimes led courts to insist on confirming the validity of the documents with witness testimony.[171] For instance, when the woman Angelos presented her divorce *hüccet* from the Sharia court to the Patriarchal synod, the synod required witnesses to approve the authenticity of the *hüccet* and verify that Angelos indeed obtained a divorce from her husband in the Sharia court.[172] Likewise, Ergene mentions the tendency to discredit written evidence as an evidentiary instrument, not only because it would alienate illiterate clients of the court but also because documents could not be interrogated, and therefore could not be trusted. He also shows that in

[168] Kermeli, "The Right to Choice," 191-200; Doxiadis, "Women and Property," 65-66.

[169] Kartal, "Crime and Punishment," 166.

[170] James Grehan, "The Mysterious Power of Words: Language, Law, and Culture in Ottoman Damascus (17th-18th centuries)," *Journal of Social History* 37, no. 4 (2004): 991-992; Ergene, "Evidence in Ottoman Courts," 477.

[171] Boğaç Ergene, "Document Use in Ottoman Courts of Law," *Turcica* 37 (2005): 99; Boğaç Ergene, "Evidence in Ottoman Courts: Oral and Written Documentation in Early-Modern Courts of Islamic Law," *Journal of the American Oriental Society* (2004): 473.

[172] Arabatzoglou, Vol. II, 145.

Çankırı (northern Anatolia), in the seventeenth and eighteenth centuries, document use in the court registers was as low as 11%.[173] This could also be related to court fees charged on documents, which tended to restrict the use of documents to those people who had acquired basic literacy and were able to afford the fees.[174] Moreover, while accepting the prevalence of oral testimony, Peirce asserts that in the sixteenth-century Ayntab court registers, there are quite a few cases in which documents, such as land titles or manumission certificates, were used and also given prominence.[175]

In divorce-related entries in the Patriarchal court, *hüccet*s from Sharia courts appear to be the most frequently used document. As will be further discussed in Chapter 5, in many cases, like that of the above-mentioned Angelos, some Greek Orthodox community members presented a divorce *hüccet* to the court synod, which undisputably helped them to get an ecclesiastical divorce letter as well. The registers specify that in such cases the parties received an official divorce document from the synod.[176] Their urge to receive that document, to which permission to remarry was attached, however, suggests the significance of these documents for a future use. In the Bab registers, in entries related to marital issues, the only documents mentioned are letters, usually sent by a man to his wife. Such a letter would state that the husband had abandoned his wife and gone to a different town, and irrevocably divorced her in the presence of witnesses. This letter could be of crucial importance for a woman in her endeavor to prove the divorce before the judge.

[173] Ergene, "Evidence in Ottoman Courts," 473.

[174] Ergene, "Evidence in Ottoman Courts," 483.

[175] Peirce, *Morality Tales*, 102.

[176] For examples, see Arabatzoglou, Vol. II, 148, 149, 150, 151.

Another major discussion on written evidence is about the use of court records as evidentiary instruments in future disputes. According to Ergene's research, neither in the Çankırı nor Kastamonu registers are there any references to the use of earlier recorded cases. In addition, he continues, since the registers are simply short summaries of litigation processes, with many details omitted, which could hardly be helpful or meaningful for a future reference, it could be assumed that past registers were not used as documentary evidence.[177] He also acknowledges, as do Gerber and Peirce, that the voluminous court registers that are full of records of various transactions, sale contracts, manumission registrations, etc., indicate the importance of these registers.[178] It is most probable that with the existence of these records many disputes were avoided without even being brought to court since parties could foresee the judge's decision.[179] Such an argument, of course, presupposes that people in the pre-modern Ottoman world acquired some knowledge of legal procedures and Islamic law. According to Laiou, for instance, some Orthodox Christian women in the Aegean islands and mainland Greece in the seventeenth and eighteenth centuries were knowledgeable enough to choose between the Sharia courts and their community courts as they saw fit. Laiou assumes that this kind of knowledge could have been conveyed by neighbors or relatives who earlier had experience in these courts.[180] Especially the Sharia courts were part and parcel of social life such that many townspeople used their local courts for various reasons. Therefore, it is not unreasonable to assume that especially those who

[177] Ergene, "Document Use," 88-89.

[178] Ergene, "Evidence in Ottoman Courts," 482; Haim Gerber, *State, Society, and Law in Islam: Ottoman Law in Comparative Perspective* (Albany: State University of New York Press, 1994), 48; Peirce, *Morality Tales*, 282.

[179] Gerber, *State, Society, and Law*, 48.

[180] Laiou, "Christian Women in an Ottoman World," 259.

were more likely to have legal issues, such as local notables, traders etc., gained some legal knowledge through experience and transmitted it to others.

2.3.3. Oath-Taking

Oath-taking in both courts came into play when the litigants were unable to present either oral or written evidence. Deciding a case solely based on oath-taking is the clearest reflection of the pre-modern oral culture in the legal system. Both in the Sharia courts and the Patriarchal court, when the charges of the plaintiffs were rejected by the defendant and the former could not present any witnesses or instruments to support himself/herself, the synod or the judge could offer the defendant the option to take an oath. The defendant's decision to take an oath or not to accept the opportunity would be a clear indicator of whether or not the plaintiff had a valid claim.[181] The weight and significance of oath-taking can be observed in an entry from 1662 in the Patriarchal court registers: Before the synod, Panayiotis accused his wife Vasiliki of being adulterous as he caught her in the middle of the night with a strange man in their house. He did not have any witnesses, naturally so, and therefore the synod offered Vasiliki the opportunity to take an evangelical oath that she did not commit adultery. Somewhat surprisingly, Vasiliki hesitated and did not want to take an oath, as a result of which the synod decided that she was guilty (*ἀπεφηνάμεθα δεχθῆναι ταύτην ὅρκον εὐαγγελικον, και ἀθωῶσαι ἑαυτήν, ἡ δε διστάζουσα καὶ μὴ Θέλουσα δεχθῆναι ὅρκον ἔδειξεν ἑαυτὴν ὑπαίτιον*), and granted Panayiotis divorce, as was his demand.[182] In such an incident, Panayiotis did not have a chance to find evidence for something

[181] Bayındır, *İslâm Muhakeme Hukuku*, 8-9; Erünsal, "Osmanlı Mahkemelerinde Şâhitler," 10-11; Kermeli, "The Right to Choice," 194; Runciman, *The Great Church*, 172.

[182] Arabatzoglou, Vol. II, 124.

that occurred in the middle of the night, in their "private space." It is most probable that had Vasiliki taken an oath on her innocence, there was not much option for Panayiotis to prove his accusation. Vasiliki definitely knew that not taking an oath was equal to confessing her guilt. Here, we can only speculate as to her motivations -- whether it was the fear of God, the possibility of her lover's confession, or her desire to obtain a divorce like her husband. In a different kind of case in the Bab court in 1670, Hızır stated that Saime owed him a certain amount of money in return for her purchase of a kaftan from him. Saime denied having made that purchase, and Hızır was unable to prove her wrong. Obviously, a debit voucher had not been written, nor were there any eyewitnesses to the sale. When the deputy judge offered Saime the opportunity to take an oath that she had not bought a kaftan from Hızır, she did not accept it (*Saime'ye yemîn teklîf olundukda ol dahi yemînden nükûl etmeğin mucebince*), and so it was decided that Saime was to pay her debt to Hızır.[183]

Although there are several more examples of refusals of oath-taking in both courts, in most of such entries, the more prevalent practice was agreeing to take an oath. Grehan discusses possible reasons for refusing to take an oath in court in seventeenth- and eighteenth-century Aleppo, which he notes to be a rare occurrence, and indicates that taking a false oath could damage one's "social credibility." In a context where social and economic relationships were established on oral promises or contracts, ruining one's reputation by taking a false oath would be too much of a risk in small and closed communities.[184] Definitely, both Vasiliki and Saime might have had that concern of falling into disrepute and being regarded as unreliable. Also, they had to swear before God, so fear of God or committing a sin must have caused their hesitation.

[183] İBMŞS, 11 Numaralı Sicil, 370 [69a-1].

[184] Grehan, "The Mysterious Power of Words," 992; Hülya Canbakal, "Vows as Contract in Ottoman Public Life (17th-18th Centuries)," *Islamic Law and Society* 18, no. 1 (2011): 101.

That could also be why instead of taking a simple oath and getting away from accusations, both women decided to remain truthful. Another question, however, as to why Panayiotis and Hızır went to court despite knowing that without evidence they did not have much of a chance to win the case unless the defendants made a confession or refused to take an oath is harder to answer. Nor do we know whether or not the litigants had an out-of-court settlement before coming to court. While Panayiotis had to bring his case to court to obtain an ecclesiastical divorce letter, Hızır and Saime could well have resolved their dispute without appealing to the court. The motivations of the litigants aside, oath-taking appears to have been widely used in both courts in a very similar procedure and carrying similar weight.

2.3.4. Amicable Settlement

Lack of evidence also led to the use of another procedure in both courts: amicable settlement. The literature on its theory and practice in Islamic law and Sharia court registers, respectively, is again much more extensive as compared to the literature on canon law and ecclesiastical courts.[185] Scholars who have written on the Islamic practice of amicable settlement (*sulh*) tend to agree that there were two major types, one of which is produced outside court, and one that is reached in the Sharia court itself. Both options could include both Muslim and non-Muslim parties. There is disagreement, however, as to whether or not amicable settlements were negotiated out of court in cases where the parties had no access to court. While Aida Othman believes so, others present out-of-court settlement as a legitimate option that could be up to

[185] For a detailed study on the place of *sulh* in Islamic law, see Bilmen, *Hukukı İslâmiyye*, 5-28.

people's preferences.[186] According to Bayındır and Mutaf, at some point during the legal procedure, the Muslim judge could offer the litigants the option to resolve their disputes amicably, which did not have to be accepted by the parties. Jennings observes that when an amicable settlement occurred outside of court, it was possibly the neighbors, relatives, friends, or some others from the community, who mediated between the disputants. When it was negotiated in the Sharia court, however, the mediators must have been the very same people as notarial witnesses (court officials or local notables), who, in both options, were defined as "Muslim mediators" (*Müslimin-i muslihun*) in the registers.[187]

Amicable settlement records in the Patriarchal court registers similarly conceal many details that could allow us to determine what the conditions were to enter into such negotiations or who the mediators were. The registers explain the process very briefly, for example that the case was settled "with the intervention of peace-making Christians'" (*μεσο λαβησάντων κ(αί) τινων εἰρηνοποιῶν χριστιανῶν*).[188] A record from 1723, in which the mediators were defined as such, is about a married couple and a financial dispute between them: Dr. Andreas Rosos from Samatya filed a lawsuit against his wife Horia Vlaha, who bought a house with Andreas' money and registered it in the Sharia court under her own name. Horia initially denied that the money belonged to Andreas, and although Andreas was not able to present any witnesses, he stated his

[186] Işık Tamdoğan, "Sulh and the 18th century Ottoman Courts of Üsküdar and Adana," *Islamic Law and Society* 15, no. 1 (2008): 56; Aida Othman, "'And Amicable Settlement Is Best': Sulh and Dispute Resolution in Islamic Law," *Arab Law Quarterly* 21, no. 1 (2007): 68; Abdülmecid Mutaf, "Amicable Settlement in Ottoman Law-Un règlement à l'amiable dans le Droit Ottoman," *Turcica* 36 (2004): 127-128; Jennings, "Kadı, Court, and Legal Procedure," 147.

[187] Jennings, "Kadı, Court, and Legal Procedure," 148. Tamdoğan as well states that "Several actors – the qadi, other court officials, local notables, family members, and acquaintances – were involved in the process of establishing a *sulh* agreement." Tamdoğan, "Sulh," 56.

[188] Vaporis, *The Ziskind MS*., 89. For the record in its original version in Greek see Vaporis, *The Ziskind MS*., 143.

intention to obtain a divorce on account of his wife's unacceptable act. As noted in the record, the "peace-making Christians" intervened and convinced Horia to re-register the house in the name of her husband, their child, and Horia's child from a previous marriage. Paying for the expenses of the new *hüccet* was Andreas' compromise in this amicable settlement. The couple came to the Patriarchal court to register this settlement and the exchange.[189] The laconic language of the record precludes further information on the "peace-making Christians." We can assume that they were acquaintances of the couple within the community who tried to prevent a marriage from dissolving. In some other records, such mediators were described as "useful people" or "useful Christians,"[190] but again we are not given much detail. Whether there was a group of Christians assigned specifically as mediators, however, could not be inferred from the documents. In some cases, the patriarch himself appears as a mediator as in the example from 1763, of an uncle and nephew who had a violent dispute over inheritance apportioning.[191] In another case from 1738, "clergy of the Great Church" intervened in a financial dispute between a certain furrier and the Grand Primikerios.[192] It seems plausible that the clergy or the patriarch mediated disputes of critical importance, such as a violent one, or ones that involved a clergy member. According to Kermeli, for an amicable settlement in the notarial registers in the Aegean islands to be valid it had to be registered in a Sharia court as well;[193] this, however, does not appear as an imperative in the Patriarchal registers. However, those who needed official

[189] Vaporis, *The Ziskind MS.*, 143. Vaporis' translation on page 89 is a short summary of the record on page 143 and does not contain some of the details in the original document.

[190] Vaporis, *The Ziskind MS.*, 71, 91.

[191] Ibid., 101.

[192] Ibid., 95.

[193] Kermeli, "The Right to Choice," 181.

documentation might have appealed to the Sharia courts, as in the case of above-mentioned Horia. Her dispute was settled in the Patriarchal court but she needed to register the house in others' name in the Sharia court. Obviously, a document she would have received from the Patriarchal record was not going to be instrumental in the future. It is also interesting that the authorities in the Patriarchal court recognized the necessity of applying to the Sharia court for official registration purposes. It seems that they understood that property matters were the domain of Islamic law.

According to Islamic law, an amicable settlement could be used in any kind of dispute other than *hadd* offences (crimes against God).[194] Studies on the registers of various towns in the seventeenth and eighteenth centuries by Tamdoğan and Mutaf show that amicable settlement was more commonly used in disputes arising from financial issues, such as debts, inheritance, or property sales.[195] Limited examples of amicable settlements from the Ziskind MS as well prove its widespread use in financial matters. In loan cases from both courts, at the end of the settlement, the parties agreed upon a considerably lower amount to be paid by the debtor.[196]

[194] Tamdoğan, "Sulh," 64. *Hadd* offences in Sharia are five: fornication, apostasy, false accusation of fornication, theft, and highway robbery.

[195] Mutaf, "Amicable Settlement," 134; Tamdoğan, "Sulh," 67-68. Mutaf works on the court registers of Istanbul, Balıkesir, Manisa, Konya, Edremit, while Tamdoğan studies Üsküdar (İstanbul) and Adana registers. Tamdoğan also shows that amicable settlements over wrongful death and bodily harm also constituted a large portion of the total number of *sulh* cases.

[196] Tamdoğan observes that it could be up to 50 percent less. Tamdoğan, "Sulh," 70. In one example from the Ziskind Ms., the debt amount lowers to 37 percent, and in another one, it is 97 percent. Vaporis, *The Ziskind MS*., 71, 91.

2.3.5. Legal Enforcement

Both in the Bab court and the Patriarchal court, issues that concern family law did not necessitate the infliction of any kind of punishment. In the Bab court, the entries are mostly the registration of the settlements of financial disputes on dowry after divorce or the resolution of these disputes, whereas it was divorce settlements in available registers of the Patriarchal court. Such dispute settlements arising from various debt issues are resolved by admonitions (*tenbîh*) to the debtor in the Sharia courts, or by promises (*υπόσχεση*) of the debtor to pay his/her debt in the Patriarchal court. Almost all debt disputes in the Bab court were settled in this way: after a petitioner was able to prove the debt owed to him/her, mostly with witness testimony, the judge's ruling states that the debtor is admonished to pay the amount owed (*edâ ve teslîme tenbîh*). In the reverse scenario, in which the petitioner could not present any evidence to support his/her claim and the defendant took an oath on being free of debt, the judge enjoined the plaintiff from quarreling with the defendant on that issue (*mu'ârazadan men' olunub*).

Interestingly enough, although admonitions were one of the most frequently observed rulings in the Sharia court registers, they have not attracted scholarly attention. Even in studies that specifically focus on crime and punishment, admonitions do not take a special place. As stated above, admonitions are predominantly used in debt, inheritance, or property cases. Whether or not they entailed effective enforcement power, however, is harder to grasp. In fact, the language in the records is formulated in such a way that it seems as though the petitioner came to court so that the judge would admonish the debtor to pay. Usually, the petitioner said "I demand the defendant be admonished" (*tenbîh olunmak matlubumdur*) with regard to his/her accusations. According to Ginio, who worked on the court registers of Thessaloniki from the

eighteenth century, strong enforcement power was not attached to this term since there are examples of cases in which it is stated that despite previously being admonished, the accused person was not "corrected" (*mütenebbih olmayub*).[197] Admittedly, it is impossible to trace the process after the judge's verdict. We do not know what happened after a man was admonished in court to pay his dowry debt to his wife after divorcing her irrevocably. What happened if he did not do so? To what extent did the verdict of the judge strengthen the woman's hand in receiving her delayed dowry? It is also interesting that there is no mention of a term or installments for the debt. When the judge "admonishes" the debtor, he does not specify any details with regard to the payment process.

While Ginio is right in his observation on the enforcement power of admonitory orders, it should also be noted that in the Bab court registers, there are no such cases of reapplying to court for an unresolved problem i.e., unpaid debt, or unreturned property, an absence which raises further issues. We might assume that even if there was no prosecution by the court, registering the debt you are owed in court, in front of multiple witnesses, both notarial and also in many cases circumstantial, could have been sufficient to make someone pay his/her debt. As discussed above, in neighborhoods where all the residents knew one another, spreading the word when someone wins a case probably put the debtor under considerable social pressure. After all, although claimants might know that the best they could get in court was an oral order, they were still not discouraged from applying to court.

Legal power was attempted to be enforced with a notable difference in the Patriarchal court. In some records, it is stated that the debtor promised to pay his/her debt under the threat of

[197] Ginio, "The Administration of Criminal Justice," 195-197.

"ecclesiastical or civil punishment,"[198] which mainly meant "aphorism." Aphorism (or excommunication) was a powerful tool that enabled the church to ensure the enforcement of its decisions.[199] In the registers, it usually appears as "threat of aphorism," which indicated a temporary suspension of a community member from participating in church rites in case of possible wrongdoing, the duration of which could range from a few days to years.[200] This threat was uttered especially against false testimony and perjury. Rarely was it used in promissory notes in the Ziskind MS. According to Meline, the threat of aphorism created a genuine fear for Greek Orthodox subjects, and it was quite effective in making individuals confess the truth in trials.[201] Although it is hard to determine how frequently the Patriarchate subjected its members to aphorism, there are several instances in divorce entries, in which we find out that some men who deserted their wives had been excommunicated.[202] Regardless of how often it was implemented, aphorism was primarily preventive and repressive, and the purpose was the correction of the "wrongdoer" and his/her return "home," rather than administering a heavy punishment.[203] Aphorism could also entail the refusal of burial in Christian cemeteries.[204] Although there are no such examples from the Patriarchal registers or the Bab court, this refusal seems to have been an effective means of punishment. In a quite interesting case from

[198] Vaporis, *The Ziskind MS.*, 92, 100.

[199] Panagiotis D. Michailaris, *Αφορισμός: 'Η Προσαρμογή μιας Ποινής στις Αναγκαιότητες της Τουρκοκρατίας* [Excommunication: The Adjustment of a Penalty to the Necessities of Turkish Rule] (Athens, 1997), 13-14.

[200] Pantazopoulos, *Church and Law*, 54; Mark Merlino, "The Post-Byzantine Legal Tradition: In Theory and in Practice" (MA. Thesis, Bilkent University, 2004), 79.

[201] Merlino, "The Post-Byzantine Legal Tradition," 83.

[202] Arabatzoglou, Vol. II, 127, 130, 131, 134.

[203] Michailaris, *Αφορισμός*, 58-59.

[204] Papadopoullos, *Studies and Documents*, 34.

seventeenth-century Cyprus, we see that a Greek Orthodox woman who went to the Sharia court and stated that because she had married a Muslim man, though never converting to Islam herself, her entrance to church was banned, and as a result she was afraid that the religious authorities might not bury her according to Christian rites. Given this possibility, she asked the Muslim judge to issue a memorandum (*tezkere*) to show that she was still an "infidel," which she presumably presented to the local church authorities.[205]

It has been argued that the Church's right to punish its flock extended after the eighteenth century, which was mainly an outcome of the above-mentioned changes in the tax-farming system, and the patriarch's right to punish those who failed to pay taxes.[206] The Church had been enjoying the right to punish members of the clergy, yet according to İnalcık, only after 1764 was the Greek Orthodox patriarch, as well as the Armenian patriarch, granted the right to punish their community members.[207]

On the other hand, studies on the fourteenth-century Byzantine registers demonstrate that the Patriarchate did not tend to impose heavy punishments even in penal cases. According to Kartal's work, the synod imposed imprisonment, financial punishment, or aphorism in only four out of forty-eight criminal cases.[208] The Byzantine Patriarchate lacked the means to inflict corporal punishment, and even aphorism was rarely imposed. As in the seventeenth-century registers, the Patriarchate in the Byzantine period heavily relied on the threat of

[205] Ronald C. Jennings, *Christians and Muslims in Ottoman Cyprus, and the Mediterranean World, 1571-1640* (New York: New York University Press, 1993), 142.

[206] Kermeli, "The Right to Choice," 181.

[207] İnalcık, "Ottoman Archival Materials," 440; Anastasopoulos, "Non-Muslims and Ottoman Justice (s?)," 282.

[208] Kartal, "Crime and Punishment," 196.

excommunication.[209] It seems that the Patriarchate did not go through a major procedural break in terms of its punishment capacity in the Ottoman period.

Nor did the Sharia courts tend to administer severe punishments; rather it heavily relied on fines,[210] at least up until the eighteenth century.[211] In some cases, even for *hadd* offenses, corporal punishment was meted out together with fines, which were paid according to one's status (being a Muslim, non-Muslim, or a slave) and economic condition.[212] Furthermore, it has been suggested that the Ottomans could have inherited this strong reliance on fines from Byzantine practices,[213] but the issue needs further research.

2.3.6. Recording Procedures in Courts

The most obvious observation with regard to the registers of cases in the Sharia courts and the Patriarchal court is that they were both recorded in the form of short summaries, and a particular officer was in charge of recording the proceedings: a *kâtib* (scribe) in the former and Grand Chartophylax (secretary general) in the latter. As will be further discussed below, formulaic legal language was used in the registers of both courts that omitted many details of the court proceeding, such as litigants' own words, negotiations between litigants or with the judge or the

[209] Malatras, "Trial Process and Justice," 167-168; Kartal, "Crime and Punishment," 195.

[210] Uriel Heyd, *Studies in Old Ottoman Criminal Law*, ed. V. L. Ménage (Oxford: Clarendon Press, 1973), 227; Fariba Zarinebaf-Shahr, *Crime and Punishment in Istanbul, 1700-1800* (Berkeley: University of California Press, 2010), 163; Metin Coşgel, Boğaç Ergene, Haggay Etkes, and Thomas J. Miceli, "Crime and Punishment in Ottoman Times: Corruption and Fines," *Journal of Interdisciplinary History* 43, no. 3 (2012): 354.

[211] Zarinebaf-Shahr, *Crime and Punishment*, 173; Coşgel, Ergene, Etkes, and Miceli, "Crime and Punishment," 368-369.

[212] Heyd, *Studies in Ottoman Criminal Law*, 227, 287; Zarinebaf-Shahr, *Crime and Punishment*, 163.

[213] Coşgel, Ergene, Etkes, and Miceli, "Crime and Punishment," 357-358.

synod.[214] What are also excluded in both registers are the legal sources that the judges and the synod relied on for their decisions. It is understood that the cases were recorded only after they were settled; multiple sessions, collection and examination of oral and written evidence, and the final decision could all be compressed in a single entry.[215]

Scholars have discussed whether every single case that was tried in Sharia courts was registered, or only those which litigants paid to be recorded. According to the imperial law codes issued by the sultan (sing., *kanunname*) from the late sixteenth to the late eighteenth centuries, fees were to be collected not only for receiving a personal copy of the decision but also to register the cases in court on various issues, such as the manumission of slaves, registration of marriage, inheritance, etc.[216] Leslie Peirce, however, suggests that the extensive use of the Ayntab court in the sixteenth century might have resulted from the fact that no fees were charged for regular court use.[217] This seems to be a strong possibility since the large number of entries in the late seventeenth-century Bab registers seems to be too numerous to be the record of only the paid ones.

Similar to the Sharia courts, the Patriarchal court also collected registration fees. Kermeli indicates that the fees were quite high, and that these hefty fees charged in Greek Orthodox courts might be the reason for the limited number of recorded cases.[218] In addition, scholars who

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[214] Dror Ze'evi, "The Use of Ottoman Sharīʿa Court Records as a Source for Middle Eastern Social History: A Reappraisal," *Islamic Law and Society* 5, no. 1 (1998): 43.

[215] Peirce, *Morality Tales*, 102; Ergene, *Local Court*, 126.

[216] Peirce, *Morality Tales*, 285; Boğaç Ergene, "Costs of Court Usage in Seventeenth and Eighteenth-Century Ottoman Anatolia: Court Fees as Recorded in Estate Inventories," *Journal of the Economic and Social History of the Orient* 45, no. 1 (2002): 21.

[217] Peirce, *Morality Tales*, 285.

[218] Kermeli, "The Right to Choice," 178.

have discussed the possible motivations of non-Muslims for appealing to the Sharia court assume that the fees paid in Orthodox Christian community courts were higher than those in Sharia courts.[219] Be that as it may, it is hard to draw a valid comparison between the fees in the two courts since we lack data on the fees of the two courts in the same period. Ergene shows that even the data on fees of the Sharia courts from the *kanunname*s might not have been applied in the same amount, and actually could have been higher,[220] which further complicates such a comparison. Along these lines, there seems to be a consensus among scholars that the very poor might have been prevented from applying to the Sharia courts, since they were possibly not able to afford the fees.[221] Divorce entries from the seventeenth-century Patriarchal court registers, however, reveal that some women who were left in financially desperate situations by their husbands went to the court with the hope of getting an ecclesiastical divorce letter.[222] The existence of people from the very low strata makes it possible to assume that either the registration or document fees were not so unaffordable that the very poor could not pay them, or else the doors of the Patriarchal court were open to its needy community members free of charge. As of yet, since we cannot make conclusive arguments on either the fees applied in the two

[219] Gradeva, "Orthodox Christians in the Kadı Courts," 60; Ivanova, "Judicial Treatment of Matrimonial Problems," 165.

[220] Ergene, "Costs of Court Usage," 29.

[221] Iris Agmon, *Family and Court,* 199.

[222] The cases of those women will be analyzed in detail in Chapter 4. Suffice it to note here that those deserted women described the situation they were placed in as being in poverty (*ένδεια*) and destitute (*άπορια*), and being deprived of their basic needs (*ζωάρκεια*). It can be argued that depicting themselves in a severe deprivation was a strategy that those women employed so as to be eligible to obtain a divorce, or the synod formulated those cases in the registers in such a way to legitimize their decision for granting divorce. Nevertheless, it seems as though the synod was concerned with verifying the statement of those women through the testimony of circumstantial witnesses. In many cases the witnesses were residents from the women's parish or the neighborhood, who were supposed to be informed about the condition of those women.

courts or on the status of their clients, we are still far from making comparisons between the two courts with regard to the amount of fees.

Another point of similarity between the registers of the two courts is the formulaic language that the scribes followed when recording cases. Manuals of samples on how records should have been kept are found both for Sharia courts and ecclesiastical courts.[223] These manuals, which include models for records of different types of issues, were in fill-in-the-blank format with certain missing parts, such as names of the litigants, the neighborhood of the plaintiff, names of witnesses, etc.[224] A bishopric manual of this kind is found from the nineteenth century for divorce records, which were put down separately for divorces initiated by men and by women.[225] For divorce entries, Zilfi also pointed out that because of this pre-arranged structure of divorce entries, essential details of a divorce are not recorded; apart from minor exceptions, grounds for divorce appeared simply as discordance between spouses, without further detail.[226]

The use of standardized models which do not allow for much information specific to each case is considered one of the major disadvantages of the Sharia court registers, as well as the ecclesiastical court registers. Peirce has observed that for Sharia court registers, although they seem to record cases as short summaries without valuable details, the registers included what

[223] Ümit Ekin, "Sakk Mecmualarının Tarih Araştırmalarında Kaynak Olarak Kullanılması Üzerine Bir Deneme," *Bilig* 53 (2010); Süleyman Kaya, "Mahkeme Kayıtlarının Kılavuzu: Sakk Mecmuaları," *Türkiye Araştırmaları Literatür Dergisi* 5 (2005); Madeline C. Zilfi, "Thoughts on Women and Slavery in the Ottoman Era and Historical Sources," in *Beyond the Exotic: Women's Histories in Islamic Societies*, ed. Amira El Azhari Sonbol (Syracuse, N.Y.: Syracuse University Press, 2005).

[224] Zilfi, "Thoughts on Women and Slavery," 135.

[225] Ivanova, "Judicial Treatment of Matrimonial Problems," 173.

[226] Zilfi, "Thoughts on Women and Slavery," 136.

was essential for future reference from the court's point of view, and excluded unnecessary information.[227] Judging from that observation, the juxtaposition of records from the Bab court and the Patriarchal court demonstrates that what mattered for these courts to record or not to record differed in certain aspects. For instance, reasons for divorce did not need to be recorded in the Sharia courts, since, especially men, could initiate a divorce on any ground as long as the spouses came to terms on their financial liabilities. In addition, rather than the registration of their divorce, the main concern that brought couples to the Sharia court was registering property exchanges after divorce, such as debt, dowry, or household items.

On the other hand, we face a quite different situation with the divorce records of the Patriarchate. First and foremost, Greek Orthodox petitioners went to the Patriarchal court with the hope of obtaining a divorce and, even more importantly, obtaining a divorce letter, in which permission to remarry was usually entailed. Thus, recording the grounds for divorce, in detail, was of utmost importance for the Patriarchate as it would justify granting not only the divorce but also the permission for remarriage. Unlike the Sharia court registers, however, no mention of financial exchanges appears in the Patriarchal court records.

Studying Sharia court registers along with the Patriarchal registers allows for a new approach that could help us partially overcome some of the disadvantages of the registers that come with their standardized structure. Out of ninety-seven divorce cases between 1660-1685 that were brought before the Patriarchal synod, twenty-two of them had been first registered in the Sharia court, the reasons of which will be further discussed in Chapter 5. Suffice it to note here that some Greek Orthodox community members appealed both to the Sharia court and the

[227] Leslie Peirce, "'She is Trouble…and I will Divorce Her': Orality, Honor, and Representation in the Ottoman Court of 'Aintab," in *Women in the Medieval Islamic World: Power, Patronage, and Piety*, ed. Gavin Hambly (New York: St. Martin's Press, 1998), 294.

Patriarchal court for essentially the same legal issue, although motivations for going to each court could have been different. Their cases, however, were recorded in different manners. For instance, in 1682 Vitoria from Beyoğlu went to the Patriarchal court and stated that her husband Ioannis divorced her in the "external court," i.e. the Sharia court. When the synod asked for the reason for their divorce, Vitoria explained it as her husband's uselessness, being drunk, squandering their possessions, and not being able to feed her. Only after the testimony of witnesses on the truthfulness of Vitoria's statement, did the synod decide to divorce them ecclesiastically as well, and to grant Vitoria permission to take another husband without any obstacle.[228] We do not know if Vitoria and Ioannis went to the Sharia court for the settlement of a financial dispute on marital property, for simply registering the divorce, or whether the divorce appeared as a *hul'* divorce or *talak*. Nevertheless, in all likelihood, Vitoria's explanation of their grounds for divorce was not recorded as such in the Sharia court registers; it did not include Vitoria's statement on the reasons for their divorce. Such examples not only enable us to fill in the gaps in the Sharia court registers but also to reveal more on conjugal relations as they appear in the Patriarchal registers.

In addition to disclosing considerable information on divorce cases, the Sharia court registers also conceal emotions that were possibly expressed by the parties in a courtroom. Zilfi mentions that it is not unreasonable to expect the manifestation of certain feelings under sensitive circumstances, such as cases including minor children.[229] The Patriarchal court registers, however, are more generous in that regard. In some entries, while it is hard to know whether or not it affected the decision of the synod, we see that emotions displayed by couples were

[228] Arabatzoglou, Vol. II, 158.

[229] Zilfi, "Thoughts on Women and Slavery," 136.

recorded in the registers. For instance, it was acknowledged that Aggeliki made her statement in tears on being widowed with two orphan children in a desperate situation;[230] Maroula, in tears, promised to stop being an adulteress,[231] or in a different case, Ionannis yelled at his wife for having an illicit affair with another man.[232]

Apart from these differences in content, the records in the registers of the Bab and the Patriarchal courts are structured in a remarkably similar way: entries commonly start with a) the name of the plaintiff, b) his/her father, c) sometimes also the occupation of the plaintiff, d) his/her residential quarter, e) name of the defendant, f) introduction of the issue at stake, g) the plea of the defendant, h) presentation of the oral or written evidence in case the defendant rejected the accusations, i) if no evidence could be given, the offer of oath-taking, j) decision of the judge or the synod. In Sharia court registers the introduction of a record typically starts as follows: *Emine* (name of the plaintiff), daughter of *Mehmed* (her father's name), who resides in *Çakırağa* neighborhood, in Istanbul, being present in the Sharia court, sued *Mehmed bey* (defendant's name), son of *Mahmud* (defendant's father's name) and stated that…[233] The introduction in the Patriarchal court registers roughly goes: Because *Maroula Varniotissa* (plaintiff's name), daughter of *Eleftheriou* (plaintiff's father's name), from the village of *Arnavutköy*, being present before the synod, says about her husband *Petros the furrier* that…[234] Obviously, there is a striking similarity here, not to mention the similarities in the above-

[230] Arabatzoglou, Vol. II, 125.

[231] Ibid., 148.

[232] Ibid., 141.

[233] Mahmiye-i İstanbul'da Çakırağa mahallesinde sâkin Emine bint Mehmed nam hatun meclîs-i şer'de Mehmed bey ibn Mahmud mahzarında üzerine da'va ve takrir-i kelâm edip…

[234] Ἐπειδὴ ἡ Μαροῦλα Βαρνιώτισσα, θυγάτηρ τοῦ Ἐλευθερίου, ἀπό χωρίου τοῦ Μεγάλου Ρεύματος, παραστᾶσα ἐπὶ συνόδου ἀνήγγειλε περὶ τοῦ ἄνδρος ἀυτῆς Πέτρου γουνάρεως…

mentioned legal procedures. At the current state of research, we cannot answer questions, such as whether or not the parallel structure is a result of an interaction between the two courts, whether the Ottomans followed the Byzantine legal tradition on certain legal practices, or whether they inherited pre-Ottoman court practices. Thus, to explain the roots of these similarities a broader comparison is needed which should include not just Ottoman Sharia courts and ecclesiastical courts but also Byzantine and pre-Ottoman courts.

2.4. Conclusion

This chapter draws a brief comparison between two courts in the walled city of Istanbul, the Bab court and the Patriarchal court, in the late seventeenth century. By focusing on their similarities and differences, the discussion attempts to reflect on how these legal structures might have functioned in practice. Admittedly, the data on the Patriarchal court registers are much more limited compared to the Bab court registers. Nevertheless, what is available to us from the Ziskind MS and Arabatzoglou compilation as sources on the Patriarchal court from the late seventeenth and early eighteenth centuries is of immense importance, although our knowledge is rudimentary. Much has been written on Sharia courts, their clients, legal proceedings, and the issues that were brought to these courts. On the other hand, whether Greek Orthodox subjects in Istanbul did indeed have an alternative legal venue, how it functioned in practice, or the extent to which it differed from the practices in the Sharia courts have remained largely overlooked. Except for Ozil's study on northwestern Anatolia, the Greek Orthodox community courts have only been discussed in a rather narrow context of the Aegean islands and mainland Greece. In places other than these, studies on the Greek Orthodox have been restricted to the Sharia court

registers. In this respect, this study attempts to be an exploratory one in terms of putting together these two research areas, which should be followed by further studies on this issue.

This chapter demonstrates that despite some notable differences, the Patriarchal court in Phanar functioned in a very similar way to the Sharia courts, especially with regard to the use of witnesses, oath-taking, use of amicable settlement, and record keeping. Together with the analysis of the application of the law in family matters in both courts in chapters 4 and 5, this study aims to arrive at a more profound understanding of the forum shopping motivations of the Greek Orthodox litigants.

The literature based on Sharia court registers explains the relatively frequent appearance of non-Muslim subjects in these registers by arguing that Sharia courts were more advantageous in terms of their availability, flexibility, lower court fees, and stronger enforcement power. This view is based on the assumption that those who went to Sharia courts bypassed their community courts, or the courts were not readily available to them. While I do not mean to underestimate the credibility of these arguments, I try to show that studies on community courts vis-à-vis Sharia court registers can offer a different picture. The fact that many among the Greek Orthodox of Istanbul who appealed to Sharia courts later brought their cases to the Patriarchal court, predominantly but not exclusively in divorce cases, reveals a telling aspect that has been ignored.[235] This should lead us to reconsider our assumptions on the authority of the church. It seems as though both the power of the ecclesiastical authorities and the community ties mattered for the Greek Orthodox of Istanbul, at least in the late seventeenth century. Their concern to get an ecclesiastical divorce and obtaining permission to remarry must have been a serious one,

[235] Gradeva and Ivanova talk about the opposite case, according to which some Orthodox Christians brought their cases to Sharia courts after appealing to their community courts, not vice versa. This situation, however, does not appear in the Bab court registers that this study worked on. Gradeva, “A Kadı Court in the Balkans,” 62-63; Ivanova, "Judicial Treatment of the Matrimonial Problems,” 165.

reflecting a wish to be accepted in the church and by their community members. Chapters 4 and 5 will suggest that we should also reconsider our premises on the flexibility and advantageousness of the Sharia courts, as ecclesiastical courts will appear to be more propitious in some cases.

CHAPTER 3

FAMILY LAW AND IDEALS OF MARRIAGE ACCORDING TO ISLAMIC AND ORTHODOX CHRISTIAN SOURCES

3.1. Introduction

The previous chapter has focused on the legal procedures followed by the Sharia courts and the Patriarchal court in an effort to form a background to the court cases that will be analyzed in the fourth and fifth chapters. In the same vein, this chapter scrutinizes various legal sources on which the Muslim judge and the Patriarchal synod based their decisions in cases related to matrimony. This chapter, in general, deals with how Islam and Orthodox Christianity defined marriage and the ways Islamic and Christian norms tried to regulate this institution in theory. The chapter will also discuss the ideal of marriage according to Islam and Orthodox Christianity, the restrictions placed on it, and the extent to which Muslim and Orthodox Christian norms differed from each other.

Through various *nomokanon*s (from both the late Byzantine and the Ottoman periods), *fiqh* (Islamic jurisprudence) manuals, fatwas, hadiths, and advice texts, I will examine the issues of marriage age, impediments to marriage, ideal husbandly and wifely behavior, and the importance attached to the marriage institution. Other fundamental issues relevant to marriage, such as dowry, divorce, and remarriage, will be discussed in detail in subsequent chapters. Together with the court cases, I will demonstrate that some of the legal rules on marriage and divorce were not necessarily followed in practice and that those rules remained as an

unattainable ideal. In addition, although, in general, the analysis of *nomokanon*s indicates a faithful reproduction of late Byzantine texts in the Ottoman period, some minor adjustments are reflected in the seventeenth-century legal texts.

3.2. Family Law and its Sources

In the Islamic context, family law is predominantly based on Islamic law, the Sharia, and therefore, it relies on the sources of the Shari'a. The Qur'an and God's commands constitute the most authoritative foundation of Islamic law. Although not every topic is directly addressed in the divine revelations, issues related to marital matters are well covered in the Qur'an.[236] Hadiths and the sunnah, practices and sayings of the Prophet, [237] supplement the Qur'an and constitute a rich source for scholars of Islamic jurisprudence (*usul al-fiqh*) to interpret the Qur'an (*tafsir*). These, together with various prescriptions and directives arrived at via recognized jurisprudential methods, namely *qiyas* (analogical reasoning), *ijma* (consensus among religious scholars), and *ijtihad* (exercising judgment to explain the Qur'an)[238] constitute the main corpus of Islamic law.[239]

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[236] Nicholas Awde, *Women in Islam: An Anthology from the Qur'an and Hadith* (London: Routledge, 1999); Mehmet Âkif Aydın, *İslam-Osmanlı Aile Hukuku* (Istanbul: İlahiyat Fakültesi Vakfı Yayınları, 1985), 4-5; Judith Tucker, *Women, Family, and Gender in Islamic Law* (Cambridge, UK ; New York : Cambridge University Press, 2008), 12-13.

[237] The Prophet's wives were also an important part of the sunnah, and their lives and sayings (especially of Aişe) provided the believers with a model to be emulated. Barbara Freyer Stowasser, *Women in the Qur'an, Traditions, and Interpretation* (New York: Oxford University Press, 1994), 3; Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven: Yale University Press, 1992), 47.

[238] On the discussion whether ijtihad remained in use as one of the primary sources of Islamic law after the ninth century, see Wael B. Hallaq, "Was the Gate of Ijtihad Closed?," *International Journal of Middle East Studies* 16, no. 1 (1984): 3-41.

[239] For more detailed information on the sources of Islamic law, see Noel James Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964), 38-42; Joseph Schacht, *An Introduction to Islamic Law* (Oxford:

During the Ottoman period, family law relied predominantly on Islamic law, although, in practice, non-Sharia elements were also instrumental in different ways.[240] Muslim judges in the Sharia courts consulted various legal texts of Islamic jurisprudence or fatwa manuals when delivering their judgments on matters that fell under family law. According to Aydın, the legal sources to which Muslim judges turned could vary depending on the period. Molla Hüsrev's (d.1480) *Durar'ul-Hükkâm* is accepted to be the most widely consulted legal text around the late fifteenth and sixteenth centuries until İbrahim el-Halebi's (d.1549) *Mülteka'l-Ebhur* took its place in the sixteenth century.[241] Schacht describes the importance of *Mülteka* as "one of the latest and most highly esteemed statements of the doctrine of the [Hanafi] school, which presents Islamic law in its final, fully developed form without being in any way a code."[242] This chapter will frequently refer to *Mülteka,* together with the *Hedaya* of Burhan al-Din al-Marghinani (d.1197), as two of the most authoritative Hanafi texts, as well as several fatwa collections, when outlining norms regarding the family.

Orthodox Christian law is also based on different kinds of sources, including secular/imperial (*nomos*) and religious/canonical rulings (*kanon*). Roman legal practice continued to carry weight in the Byzantine period and was adapted to Christian and local contexts.[243] In addition, ecumenical and local councils and decrees of prominent bishops from

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Clarendon Press, 1964), 112-116; Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009), 14-17.

[240] Aydın, *Aile Hukuku,* 65-66; Gerber, *State, Society, and Law,* 30-31.

[241] Aydın, *Aile Hukuku,* 80; Halil İnalcık, "Osmanlı Hukukuna Giriş: Örfi-Sultani Hukuk ve Fatih'in Kanunları," *Ankara Üniversitesi SBF Dergisi* 13, no. 02 (1958): 126.

[242] Schacht, *Islamic Law,* 126.

[243] Edwin Hanson Freshfield, ed., *A Manual of Roman Law: The Ecloga* (Cambridge: Cambridge University Press, 1926), vii.

the early Byzantine period made up a significant part of ecclesiastical law.[244] The relationship between imperial and church law was unsettled and changed in different periods. Scholars assume that imperial intervention against church rules eventually ceased by the twelfth century and *kanon* and *nomos* existed mostly in harmony, handling different aspects of legal matters or complementing each other.[245] Unlike Islamic law, family law in Byzantine legal tradition did not solely rely on religious law. While some aspects of issues regarding marriage, divorce, dowry, custody, and inheritance were regulated by church law, others were subject to imperial law.[246]

Several Byzantine scholars composed law books that brought together secular and religious legislation, *nomokanon*s, that were widely used until the end of the Empire in the fifteenth century. Among them, the Ecloga from the early eighth century was one of the first attempts to compile, in Greek, a revised version of the Justinianic laws (534) in Latin. The Ecloga was widely used and it provided a basis for later works, such as the Epanagoge/Eisagoge (also known as Basilika) from the mid-ninth century. Among others, the prominent scholar Theodore Balsamon's legal commentary from the twelfth century was also highly influential.[247] The fourteenth century witnessed the compilation of two leading *nomokanon*s that were both widely consulted in the Ottoman period and were also revised and copied by sixteenth- and seventeenth-century *nomokanon* compilers.[248] First, the Hexabiblos, or Proheiron Nomon,

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[244] Ruth J. Macrides, "Nomos and Kanon on Paper and in Court, in *Kinship and Justice in Byzantium, 11th-15th Centuries* (Aldershot: Ashgate, 1999), 66; John Meyendorff, *The Byzantine Legacy in the Orthodox Church* (Crestwood, N.Y.: St. Vladimir's Seminary Press, 1982), 31-35.

[245] For a detailed discussion of the evolution of the Byzantine law and the relation between imperial and church laws, see Macrides, "Nomos and Kanon,"61-86.

[246] Patrick Viscuso and Kristopher L. Willumsen, "Marriage between Christians and Non-Christians: Orthodox and Roman Catholic Perspectives," *Journal of Ecumenical Studies* 31, no. 3-4 (1994): 271.

[247] *The Ecloga*, vii; Macrides, "Nomos and Kanon," 82-83; Pantazopoulos, *Church and Law*, 46.

[248] Pantazopoulos, *Church and Law*, 45-47; Doxiadis, "Legal Trickery," 139-140; Merlino, "The Post-Byzantine Legal Tradition," 45-47.

written by Constantine Harmenopoulos in 1345, largely copied the Ecloga from the eighth century. With the *nomokanon* of Malaxos from the sixteenth century, the Hexabiblos was the most widely consulted law book in the Ottoman period, especially after the eighteenth century.[249] The Alphabetical Collection of Matthew Blastares, the Syntagma, was the other popular *nomokanon* from the fourteenth century. Its practical alphabetical format might have contributed to its extensive use, as indicated by the substantial number of extant manuscripts.[250] According to Merlino, a fifteenth-century *nomokanon* compiled by Kounales Kritopoulos, was largely based on Blastares' work.[251]

In addition to the Hexabiblos and Syntagma, this chapter also examines Malaxos' law book and a seventeenth-century anonymous *nomokanon* called Nomokritirion. Although it is hard to establish to what extent clergy adopted Nomokritirion as a legal source, its simple vernacular language suggests that it aimed to reach a wider audience who might have found the language of former legal manuscripts in classical Byzantine Greek hard to comprehend.[252] Like the other *nomokanon*s mentioned above, Nomokritirion followed former legal works, especially Syntagma and the *nomokanon* of Kritopoulos. It will be shown below that there is a continuity between the fourteenth-century and Ottoman period *nomokanon*s as the later ones tend to repeat or paraphrase earlier texts.[253] The *nomokanon*s that are studied here are written in a similar way,

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[249] Pantazopoulos, *Church and Law*, 45-47; *The Ecloga*, 2-3, 14; Doxiadis, "Legal Trickery," 139-140.

[250] Patrick Demetrios Viscuso, *Sexuality, Marriage, and Celibacy in Byzantine Law: Selections from a Fourteenth-Century Encyclopedia of Canon Law and Theology: The Alphabetical Collection of Matthew Blastares* (Brookline, Mass: Holy Cross Orthodox Press, 2008), 1-3. [Hereafter: Blastares]

[251] Merlino, "The Post-Byzantine Legal Tradition," 46.

[252] Ibid., 61.

[253] By comparing the *nomokanon* of Kritopoulos and Nomokritirion, Merlino observes a similar continuity between these texts. Merlino, "The Post-Byzantine Legal Tradition."

in prose, explaining various issues under different chapters and subchapters, which could differ in each *nomokanon*, such as debt, lease, slaves and manumission, betrothal, marriage, dowry, divorce, or sale and purchase. Marriage and divorce as recurring categories in each *nomokanon* tend to reproduce the same regulations of the earlier examples. However, some *nomokanon*s are more detailed, such as that of Malaxos, in terms of the different types of marriage-related matters they deal with. Although *nomokanon*s in general tend to paraphrase earlier examples to a great extent, as indicated by Merlino, Nomokritirion tended to include some Turkish words such as *lala* or *emanet*.[254] Nomokritirion also slightly stands apart from other *nomokanon*s concerning the way it defines marriage. With these small details, Nomokritirion better reflects the context in which it was produced.

3.3. Definition of marriage

In both Islamic and Orthodox Christian contexts, what we categorize as "family law" corresponds to a set of rules regulating engagement, marriage, dowry, divorce, alimony, and maintenance of children. Scholars usually discuss Islamic and Christian marriage in contradistinction; Christian marriage is regarded as sacramental, whereas Islamic marriage is contractual. This perception is rooted partly in the different marriage rituals of Christians and Muslims. According to Islamic law, two individuals can contract a marriage without the presence of a religious functionary, in addition to not having to undertake it in a religious setting, such as the mosque. On the other hand, although the church's blessing on marriage was optional in the early Byzantine period, by the imperial order of Leo VI (886-912) it became mandatory, and

[254] Merlino, "The Post-Byzantine Legal Tradition," 61.

"marriage law and liturgical practice became inseparable."[255] Nonetheless, some authors offer opposing views to this contrast between Islamic and Orthodox Christian marriages. Al-Hibri, for instance, emphasizes that while the Islamic marriage contract (*'aqd*) between the parties is a civil one, fulfilling such a commitment could also be considered a divine order. She particularly refers to a prophetic hadith of "fulfill your *'uqud* [plural of *'aqd*] and most worthy of fulfillment is that of marriage."[256] Moreover, as much as Christian marriage was a sacrament, it has been acknowledged that it was also perceived as a contractual union, ideally a lifelong one. As discussed in the following chapter, marriage between two individuals required certain financial commitments through pre-marital gifts and elaborate dowry arrangements, reflecting the civil aspect of Greek Orthodox marriage.[257]

Opinions about the contrast between Islamic and Christian marriages also rest on varying divorce regulations of Islamic and Orthodox laws. As also indicated in Chapter 5, at least in theory, Muslim men enjoyed an absolute right to terminate a marriage. Undoubtedly, Orthodox Christian canons on divorce are much more restrictive and allow divorce only under limited conditions. Nevertheless, despite the flexible rules of Islamic divorce, marriage is considered a permanent institution and divorce is never encouraged unless the union is a troubled one.[258] In

[255] John Meyendorff, "Christian Marriage in Byzantium: The Canonical and Liturgical Tradition," *Dumbarton Oaks Papers* 44 (1990): 104-105. Some scholars identify an earlier date, the seventh century, for the time that church blessing became obligatory. Stanley Samuel Harakas, "Covenant Marriage: Reflections from an Eastern Orthodox Perspective," in *Covenant Marriage in Comparative Perspective*, eds., John Witte and Eliza Ellison (Michigan, Cambridge, U.K.: William B. Eerdmans Publishing Company, 2005), 102.

[256] Azizah Y. Al-Hibri, "The Nature of the Islamic Marriage: Sacramental, Covenantal, or Contractual?" in *Covenant Marriage in Comparative Perspective*, eds., John Witte and Eliza Ellison (Michigan, Cambridge, U.K.: William B. Eerdmans Publishing Company, 2005), 182, 188-189.

[257] Pantazopoulos, *Church and Law*, 101-102; Meyendorff, "Christian Marriage in Byzantium," 201; Doxiadis, "Kin and Marriage," 238-239.

[258] John L. Esposito and Natana J DeLong-Bas, *Women in Muslim Family Law* (Syracuse, N.Y.: Syracuse University Press, 2001), 28; Alī ibn Abī Bakr Marghīnānī, *The Hedaya, or Guide: A Commentary on the Mussulman Laws*, trans., Charles Hamilton (Lahore: New Book Co, 1957), 73.

addition, this study demonstrates that at least in the late seventeenth century, the Patriarchal court tended to extend the canonical legal grounds for divorce and could be quite lenient about granting a divorce to coreligionists.

The most widely used word to refer to marriage in Islamic legal texts is *nikâh,* the literal meaning of which is intercourse. Both *Mülteka* and the *Hedaya* describe marriage as a contract to legitimize carnal connection.[259] After the marriage offer is made by one party and accepted by the other, it is finalized through consummation, giving effect to its legal obligations, such as the prompt dowry and maintenance. In the Orthodox context, the definition of marriage is made in a slightly more concise manner. According to Blastares, "marriage is a union of a man and woman and a consortium for an entire lifetime, a sharing of divine and human law, through a blessing (*εύλογία*), crowning (*στεφάνωμαι*), or contract (*συμβόλαι*)."[260] Blessing, in his definition, refers to betrothal. Unlike engagement, a formal betrothal is considered a contract between the parties through benediction and its termination is equivalent to an ecclesiastical divorce. While crowning implies a sacred marriage rite, contract symbolizes the civil aspect of marriage. The requirement for agreement or consent of the marrying parties through contract is laid down by Byzantine secular law. [261]

Although marriage is defined very similarly by Hermenopoulos and Malaxos, both omit the last part of Blastares' definition regarding the blessing, crowning, and contract phases.[262]

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[259] İbrahim Halebi, *İzahlı Mülteka El Abhur Tercümesi*, trans. Mustafa Uysal (İstanbul: Dizerkonca Matbaası, 1968), 325-326; *The Hedaya*, 25. Also, see Colin Imber, "Women, Marriage, and Property: *Mahr* in the Behcetü'l Fetāvā of Yenişehirli Abdullah," in *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era*, ed. Madeline C. Zilfi (Leiden: Brill, 1997), 87-88.

[260] Blastares, 91.

[261] Ibid., 29-37.

[262] Constantine Harmenopoulos, *Πρόχειρον Νόμων: ή Εξάβιβλος* [Proheiron Nomon-Collection of Laws, the Hexabiblos] (Athens 1971), 226 [hereafter: *The Hexabiblos*]; Manuel Malaxos, "Νομοκάνονος (*Nomokanon*)" in

Why that section is discarded, especially by Hermenopoulos, a contemporary of Blastares, is not self-evident. Nevertheless, as the reproduction of an earlier canon, the definitions given by all three *nomokanon*ists agree on a couple of points: marriage is regarded as a lifelong union and its parties must adhere to the same divine and secular laws. On the other hand, the seventeenth-century *nomokanon*, Nomokritirion, gives a slightly different definition: "Lawful marriage is the one between Greeks (*Ρωμαῖοι*), following what is ordained by the law regarding marriages."[263] It is worth noting here that even though marriage with Jews, pagans, and heretics is outlawed by other legal texts as well, such an emphasis on the unlawfulness of marrying non-Greeks seems to be peculiar to Nomokritirion. As mentioned above, Nomokritirion tends to reflect some elements of Ottoman social, legal, and cultural realities, unlike former *nomokanon*s. In that regard, I assume that by the seventeenth century, inter-communal marriages of Greek Orthodox community members to Muslims, Jews, and Catholics necessitated greater attention directed to the regulation of marriage.

Nomokritirion differs from the other *nomokanon*s on the issue of the minimum lawful age of marriage as well. According to Blastares, Hermenopoulos, and Malaxos, the minimum age for betrothal and marriage is 14 for boys and 12 for girls.[264] Nomokritirion, on the other hand, increases the requisite age by one year and stipulates that boys before 15 and girls before 13 cannot be lawfully wedded.[265] While it is difficult to determine the basis of this modification,

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Θέμις ή Εξετάσις της Ελληνικής Νομοθεσίας [The Examination of Greek Legislation] (Athens, 1856), 195-196 [hereafter: Malaxos]. Their definition goes as "*γάμος ἐστιν ἀνδρός καὶ γυναικός συνάφεια και συγκλήπωσις πάσης ζωῆς, θείου και ἀνθρωπίνου δικαίου κοινωνία*."

[263] Demetrios Gkines, *Περίγραμμα Ιστορίας του Μεταβυζαντινού Δικαίου* [Historical Framework of Post Byzantine Law] (Athens 1966), 67. [hereafter: *Nomokritirion*]

[264] Blastares, 92; *The Hexabiblos*, 226; Malaxos, 175.

[265] *Nomokritirion*, 67.

it should be noted that in the eighth century, the minimum age for marriage had been designated as what appears in Nomokritirion and had been later lowered by one year.[266] Regardless of the motivations, such adjustments demonstrate that it would be incorrect to consider religious and secular laws in the Orthodox context to be static or frozen; rather, they could be altered according to contemporary views.

According to Islamic law, the critical stage for marriage is the attainment of puberty, around the age of 12 for boys and 9 for girls.[267] Once reaching legal majority, the bride-to-be's consent to marriage is sought to ensure the legality of the marriage such that the marriage contract could be suspended until she gives her approval to it. [268] Although a girl in her majority is permitted to marry someone of her own choice, if the bridegroom is not socially "equal" to her or she agrees to a lower amount than her "proper dowry," her male guardian has the power to annul the marriage.[269] Before legal majority, however, a minor girl could be married off to someone by her legal guardian without obtaining her authorization. Like other legal schools, Hanafi law grants the minor girl "the option of puberty" (*khiyar al-bulugh*), according to which she enjoys the right to repudiate her marriage immediately after she reaches puberty, unless, per Hanafi law, her legal guardian was her father or her grandfather.[270]

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[266] Linda Elizabeth Mitchell, *Family Life in the Middle Ages* (Westport, Conn.: Greenwood Press, 2007), 54; *The Ecloga*, 23.

[267] Aydın, *Aile Hukuku*, 22-23; Esposito and DeLong-Bas, *Women in Muslim Family Law*, 15.

[268] *The Hedaya*, 25-26.

[269] *Mülteka*, 359.

[270] Esposito and DeLong-Bas, *Women in Muslim Family Law*, 16; Judith Tucker, "Questions of Consent: Contracting a Marriage in Ottoman Syria and Palestine," in *The Islamic Marriage Contract: Case Studies in Islamic Family Law*, eds. Asifa Quraishi and Frank E. Vogel (Cambridge, Mass.: Islamic Legal Studies Program, Harvard Law School, 2008), 124-128. Various fatwas confirm "the option of puberty" as the minor girls' right and the critical role of the father and the paternal grandfather. For instance, according to Ebussuud, although the minor girl's marriage to a man is legal, unless her guardian is her father or grandfather, she might annul the marriage once she reaches majority. "*Mes'ele: Hind-i nâ-bâligayı Zeyd nikâh eylese sahih olur mu? El-cevab: Olur, amma velî babası*

Consent of the marrying parties, as well as approval of parents, was also crucial in Orthodox Christianity. The parents' consent was sought until the boy reached his legal majority and the girl was 25 years old.[271] In the Ecloga, it is underlined that it was not just the father's consent that the law required but also that of the mother.[272] According to Blastares, "The husband and wife having intercourse with one another does not form the marriage, but their consent for marriage does."[273] Without the authorization of the prospective husband and wife, however, the consent of the parents would not suffice to deem the marriage valid.[274] In the event that a woman and a man had illegitimate intercourse, they could be considered legally married if their parents later gave their consent.[275]

3.4. Impediments to marriage

Islamic and Orthodox laws impose restrictions on marriage between close kin, between individuals from different religions, within the requisite waiting period after divorce or the death of a prior spouse, or after the subsequent third marriage in the Orthodox context. At first glance, the approach of Islam and Orthodox Christianity to marriage and the ways they attempted to

yahud dedesi değil ise, hıyâr-ı feshi vardır, hîn-i buluğda." Mehmet Ertuğrul Düzdağ, *Şeyhülislam Ebussuud Efendi Fetvaları Işığında 16. Asır Türk Hayatı* (Istanbul: Enderun Kitabevi, 1983), 38.

[271] *Nomokritirion*, 67; *The Hexabiblos*, 226-227; Blastares, 92.

[272] *The Ecloga*, 23.

[273] Blastares, 92.

[274] Ibid., 92.

[275] *Nomokritirion*, 71.

regulate it seem to be alike. When examined more closely, however, each of the above impediments shows marked variations.

Prohibited degrees in both legal structures are determined according to different kinship levels, such as consanguinity, affinity, or fosterage/adoption.[276] In theory, the ideas behind these limitations are quite similar: both Islamic and Orthodox laws take account of ascending and descending degrees when establishing the forbidden kinship relationship. However, the restrictions imposed by Orthodox law are more extensive than those under Islamic law. Although prohibited degrees of kinship in the Orthodox context could be considered an inherent part of the law, most restrictions are actually a later adoption. In the early Byzantine period, endogamy, which ensured the preservation of the property within the family, was quite common. First cousin marriage, for instance, was allowed in the Justinianic Law until it was outlawed in the Ecloga in the eighth century.[277] Nonetheless, according to Laiou, rather than being an action against the preservation of the property within the family, the introduction of the new law should be seen as a moral/religious development.[278] Moreover, as in the changing regulations of the minimum legal age for marriage, adjustments in prohibited degrees of kinship reflect the somewhat dynamic aspect of Orthodox law.

In the most general sense, Orthodox canons forbid marrying kin within seven degrees. Each degree corresponds to a generation and our *nomokanon*ists use the metaphor of ascending or descending a ladder when explaining how prohibited degrees of kinship should be

[276] Esposito and DeLong-Bas, *Women in Muslim Family Law*, 17-18; *Mülteka*, 332- 337; Aydın, *Aile Hukuku*, 28-29; Malaxos, 180-181; Blastares, 67-71.

[277] Angeliki Laiou, "Marriage Prohibitions, Marriage Strategies, and the Dowry in Thirteenth-Century Byzantium," in *La transmission du patrimoine: Byzance et l'aire Méditerranéenne*, eds. Joëlle Beaucamp and Gilbert Dagron (Paris: De Boccard, 1998), 132-134; Mittchel, *Family Life*, 54-55.

[278] Laiou, "Marriage Prohibitions," 133.

understood.[279] A son to his father, for instance, would form the first degree and a son to his grandfather or brothers to each other the second. According to this scheme, a second cousin's daughter would be the last, i.e., the seventh, unlawful degree and a third cousin or granddaughter of a second cousin would correspond to the eighth degree with no impediments to a lawful marriage.[280] While the restrictions regarding these seven degrees refer only to consanguinity, prohibitions pertaining to affinity could be more complicated. For example, prohibited affinal links would hinder the marriage of two sisters to an uncle and his nephew or to two cousins.[281]

Islamic law forbids a man from marrying his mother, paternal and maternal grandmother, daughter, granddaughter, sister, and niece. Also forbidden to him are his paternal and maternal aunt, stepdaughter, father's or grandfather's wife, mother-in-law, daughter-in-law, and granddaughter-in-law.[282] The possibility of marrying as many as four women necessitated further restrictions: it is unlawful for a man to marry two sisters or an aunt and a niece at the same time.[283] In the event that someone married one of his/her unlawful kin, that marriage would be null and void. Islamic law only outlaws marriage with one's own nephew/niece, whereas according to Orthodox law, only the third degree nephew/niece would be allowed. Islamic law also does not hinder marriage to a first cousin.

The complicated rules of non-marriageable persons must have confused Muslims and Greek Orthodox subjects, because they occasionally sought clarifications from religious

[279] Blastares, 67; Malaxos, 180.

[280] Laiou, "Marriage Prohibitions," 133; Blastares, 67-70; Malaxos, 180-181; *The Hexabiblos*, 231-232.

[281] Laiou, "Marriage Prohibitions," 134.

[282] *Mülteka*, 332-336; *The Hedaya*, 27.

[283] *The Hedaya*, 27.

authorities. Various muftis received questions from Muslims as to whether their marriage to someone they were somehow connected to would be legal. The Chief Mufti İbn Kemal (d.1534), for instance, issued various fatwas on the issue. In one such fatwa, he stated that a man could validly be married to his second cousin.[284] In another fatwa, he asserted that the marriage of a man to his deceased younger brother's wife would be valid.[285] Although no direct counterpart of a fatwa is available in the Orthodox context, there is one case from 1729 in the Ziskind MS related to a similar inquiry. It was not the prospective couple who appealed to the Patriarchal court but rather "certain laymen" who wanted to ensure that the nuptial contract between Nikephoros and Mariora would be valid. Their case was a complex one because Mariora's grandfather and Nikephoros' father had once married two stepsisters. The synod decided that their marriage would be lawful because Nikophoros and Mariora were born from the second marriages of their father and grandfather upon the stepsisters' death.[286] Of course, it is hard to know the extent to which Muslim and Greek Orthodox subjects were knowledgeable about complicated legal rules on non-marriageable persons. In addition, canon law, particularly, is very restrictive on this issue such that it becomes curious how in small communities people were able to follow the rules and found a spouse outside of the seventh degree kin.

Orthodox law also restricted marriage with "heretics," particularly with Jews and pagans. The prohibition was imposed in the first centuries of Christianity, therefore mainly referred to

[284] Ahmet İnanır, *Şeyhülislâm İbn Kemal'in Fetvaları Işığında Kanûnî Devrinde Osmanlı'da Hukukî Hayat* (Istanbul: Osmanlı Araştırmaları Vakfı, 2011), 66. "*Mes'ele: Zeyd, kız karındaşının kızının kızını oğluna nikahlandırsa, şer'an nikahı sahih olur mu? Elcevab: Olur*."

[285] İbn Kemal, 65. "*Mes'ele: Zeyd fevt olub kebir karındaşı Amr, Zeyd'in zevcesini nikah etse, şer'an câiz olur mu? Elcevab: Câiz olur*."

[286] Vaporis, *The Ziskind M.S.*, 93.

pagans and Jews and no other religious groups.[287] According to Blastares, the restriction was introduced to prevent Jews from teaching heterodoxy.[288] Marriages would be allowed only if the Jewish partner promised to convert to Christianity. Otherwise, marriage with a non-Christian is unequivocally void.[289] Similarly, Islam seeks to regulate Muslims' marriage to non-Muslims and the Qur'an forbids marriage to pagans and Zoroastrians. Muslims' marriage to people of the book (*ahl al-dhimma*), i.e., Christians and Jews, is also restricted with a significant difference; while it is allowed for Muslim men to marry Christian or Jewish women, Muslim women are strictly forbidden to enter into such marriages.[290]

In two different ways, Islamic and Orthodox laws enforce a waiting period before remarriage after the termination of the marital union. According to Orthodox canons, a widowed woman must not remarry within a mourning period of one year. But because the law aims at eliminating the confusion of paternity, there is no such obligation for Orthodox men.[291] It is curious that the *nomokanon*s only mention the death of the husband and not a possible divorce, which could also create the same confusion. It could be related to the common ideal of marriage as a lifelong union that can only end in case of death. Islamic law also prescribes a waiting period (*'idda*) of three months or three menstrual cycles, reflecting the same concern about determining the paternity in case the woman was pregnant. If the woman was indeed pregnant,

[287] Meyendorff, "Christian Marriage in Byzantium," 103.

[288] Blastares, 114.

[289] Blastares, 144-115; Meyendoff, "Christian Marriage in Byzantium," 103.

[290] *The Hedaya*, 30-31.

[291] *The Hexabiblos*, 227; Blastares, 96; *Nomokritirion*, 75.

the waiting period continued until her delivery. Until then, the Muslim woman was not allowed to marry someone else.[292]

3.5. Importance of marriage

The central place of marriage both in Islam and Christianity is highly explicit. A notable difference is that while celibate asceticism is an option for a Christian, it is not a possible alternative for a Muslim. Indeed, a prophetic hadith firmly denies "monkery" in Islam.[293] Although the Byzantine church attempted to curb asceticism and strongly promoted marriage,[294] should one of the spouses decide to dedicate himself/herself to asceticism at some point during the marriage, Orthodox law recognizes that decision as a valid ground for divorce.[295]

Neither Islamic legal texts nor *nomokanon*s seem to consider it necessary to emphasize or even discuss the significance of marriage. According to Tucker, Muslim jurists presumed that marriage was a standard practice in society, which could explain the absence of such a discussion.[296] We might assume that the *nomokanon* compliers had a similar perspective. On the other hand, the virtues of marriage are reiterated in the Qur'an and multiple hadiths.[297] Marriage

[292] Esposito and DeLong-Bas, *Women in Muslim Family Law*, 20-21.

[293] Ibid., 14-15.

[294] Meyendorff, "Christian Marriage in Byzantium," 99; Alice-Mary Talbot, "Women," in *Women and Religious Life in Byzantium* (Aldershot, Hampshire; Burlington, Vt.: Ashgate, 2001), 118.

[295] Malaxos, 203.

[296] Tucker, *Women, Family, and Gender*, 39.

[297] For some Qur'anic references and hadiths on the significance of marriage, see Maulana Muhammad Ali, *Manual of Hadith* (London: Routledge, 2013), 266-269.

is incumbent upon all Muslims who have the financial and physical ability.[298] Impotence is a valid ground for divorce in both Orthodox and Islamic laws as procreation is the raison d'être of marriage in both contexts. In addition, the Prophet Muhammed's own marriages serve as a model for believers and encourage married life. In one of the most relevant hadiths, the Prophet states "marriage is my sunnah [practice, or way], so the one who turns away from my sunnah turns away from me."[299]

Although normative texts stress that marriage is imperative, there were opposing views in Ottoman society among some intellectuals, such as Mustafa Ali (d.1600) or Yusuf Nabi (d.1712). Texts written by these authors could be considered as books of etiquette or advice literature, addressing a more educated or socially prominent audience. Their opinions against marriage also reflect the misogynist views of the period. For example, according to Nabi, who addresses his son, being with only one woman is a great calamity. He warns his son about carefully investigating his bride-to-be before marrying her because if she is unattractive or ill-natured, the marriage might turn into life-long trouble.[300] Similarly, Mustafa Ali opines that most women are jealous or wicked and desire intimacy with every man they encounter.[301] Another advice text author from the sixteenth century, Kınalızâde Ali Çelebi (d.1572), indicates that marriage is an obligation for everyone to continue their bloodline, while he acknowledges some

[298] Esposito and DeLong-Bas, *Women in Muslim Family Law*, 14-15; Tucker, *Women, Family, and Gender*, 38.

[299] John Witte, Jr. and Joel A. Nichols, *Covenant Marriage in Comparative Perspective* (Michigan, Cambridge, U.K.: William B. Eerdmans Publishing Company, 2005), 13.

[300] Yusuf Nabi, *Hayriyye-i Nâbi: İnceleme-Metin / Nabi*, ed. Prof. Dr. Mahmut Kaplan (Ankara : Atatürk Kültür Merkezi, 2008), 263-264.

[301] *XVI. Yüzyil Osmanlı Efendisi Muṣṭafā 'Alī: Mevā'idü'n-Nefāis fī Kavā'idi'l-Mecālis "Tables of Delicacies Concerning the Rules of Social Gatherings*" (Cambridge, Mass.: Dept. of Near Eastern Languages and Civilizations Harvard University, 2003), 153-154.

anti-marriage views. He notes that marriage only brings dowry debts, disappointments, and misery for some men. In addition, according to those who are not in favor of marriage, the weal of marriage lasts only one month but its troubles continue a lifetime.[302]

Unfortunately, existing texts do not inform us as to whether such anti-marriage views prevailed among Greek Orthodox intellectuals from the Ottoman period. As mentioned above, the *nomokanon*s do not tend to discuss the significance of marriage. Marriage was regarded as vital also in Byzantine society not only for procreation but also for transmitting family property to future generations, being supported by one's children in old age, or ensuring proper burial and memorial after death.[303] Greek Orthodox community members in the Ottoman period were no doubt concerned with similar reasons, and marriage appears to have been a norm for most of them. However, it would be interesting to know the extent to which the ideal of asceticism and celibacy looked attractive to them.

Studies on Orthodox monasticism in the Ottoman context tend to focus on the waqf (pious endowment) status of monasteries, rather than their adherents.[304] In addition, the available literature is mostly on male monasteries; our information on female monasteries or nunneries is highly limited. In the Byzantine context, the monastic ideal required monks and nuns to cease their family ties, embrace celibacy by renouncing marriage and reproduction, and have no

[302] Kınalızâde Ali Çelebi, *Ahlâk-ı Alâî*, ed. Mustafa Koç (Istanbul: Klasik, 2007), 361-362.

[303] Talbot, "Women," 123-124.

[304] The Ottoman state permitted monasteries in the Balkans to continue their religious, economic, and social activities. Kolovos notes that "the Ottomans acknowledged that providing protection to religious leadership of the Orthodox populations served a legitimizing function towards the acquiescence to Ottoman rule during a period of marked political and ideological fluidity. At the same time, by offering protection to Orthodox clergy and monks, the Ottomans contributed to the economic and social stability among their Orthodox subjects at a time of immense economic and social instability." Elias Kolovos, *Across the Aegean: Islands, Monasteries, and Rural Societies in the Ottoman Greek Lands* (Istanbul: The Isis Press, 2018), 19-20. Also, see Halil İnalcık, "The Status of the Greek Orthodox Patriarch under the Ottomans," *Turcica* 23 (1991): 197-198. For an extensive bibliography on monasteries in the Ottoman period, see Kolovos, *Across the Aegean*, 22.

inheritance claims from their parents.[305] According to Talbot, various reasons might have led Christian men and women to enter a monastery or nunnery, such as "a child's loss of his parents, an unwanted betrothal, the death of a spouse, or the advent of old age." There were also examples of spouses going into different monasteries after their children reaching a certain age.[306] During the Ottoman conquest of Byzantine lands, the protection offered by monasteries and nunneries attracted vulnerable people in uncertain times.[307]

3.6. Husbandly and wifely roles

Neither Islamic nor Orthodox law specifically establishes the roles of men and women in marriage. Marital roles are included in the scope of the law, but only to a certain extent. Islamic normative texts, for instance, are indicative of the legal and financial obligations of husbands and wives. Through dowry (*mehr*) and maintenance (*nafaka*), Islamic law clearly assigns the role of provider to the husband. In return, Muslim women are traditionally expected to be obedient (*nashiza*) and sexually available to their husbands. A wife would be considered disobedient if she leaves home without her husband's permission or rejects his sexual demands. Failure to perform her wifely duties might cause her to lose her rights to maintenance.[308] According to

[305] Alice-Mary Talbot, "The Byzantine Family and the Monastery," *Dumbarton Oaks Papers* 44 (1990): 119. Of course, these ideals were not completely achieved in practice. In the middle and late Byzantine periods, there were examples of monks and nuns visiting or being visited by family members. Alice-Mary Talbot, "A Comparison of the Monastic Experience of Byzantine Men and Women, in *Women and Religious Life in Byzantium* (Aldershot, Hampshire; Burlington, Vt.: Ashgate, 2001), 13; Talbot, "The Byzantine Family and the Monastery," 120.

[306] Talbot, "The Byzantine Family and the Monastery," 121.

[307] Alice-Mary Talbot, "Late Byzantine Nuns: By Choice or Necessity?," in *Women and Religious Life in Byzantium* (Aldershot, Hampshire; Burlington, Vt.: Ashgate, 2001), 110.

[308] Tucker, *Women, Family, and Gender*, 53-55; Aydın, *Aile Hukuku*, 34.

Ebussuud, if the wife leaves home to visit her siblings and does not return for a long time, she might forfeit her maintenance right if her husband called her back or she stayed there more than 30 days.[309] Various other familial roles, which Islamic law was not expressly concerned about, were set down by cultural norms.

In their moralistic texts, some Muslim intellectuals discussed marital responsibilities in detail. Their prescriptions were not binding on individuals but provided moral guidance for them and constructed an "ideal" marriage. Kınalızâde's work of ethics, *Ahlâk-ı Alâî*, for instance, presented a quite comprehensive account on the issue. According to him, the primary role of a wife was to stay at home, act as her husband's deputy, protect the house in his absence, and manage household food supplies and necessities. In challenging situations, she should support her husband, advise him and console him. Husbands, on the other hand, were the masters of the house and the ones who managed the household members. In order to guide his dependents towards the good, men were expected to treat them in a kindly fashion, but at the same time frighten them into refraining from misdeeds.[310] Kınalızâde also advised men to leave the housekeeping and childcare to their wives. The husband should also not consult his wife about serious issues or tell her his intimate secrets. A man developing a strong attachment to his wife could cause her to feign reluctance. Even if he felt such attachment, he should try to avoid it because, out of a great fondness for her, he might find himself complying with all her requests. In addition, women should be kept away from the places where they might see good-looking men and also from reading or listening to "nonsense" love stories.[311]

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[309] Ebussuud, 55. "*Mes'ele: Hind zevci Zeyd'e "yine gelirim" deyu kardeşlerin görmeğe izin alıp, nice zaman gelmeyip, kardeşleri katında sâkin olup, Zeyd'den bu kadar zamân nafakasın almağa kâdire olur mu? Elcevab: "Gel" deyip gelmedi ise nafaka lâzım olmaz, ve illâ otuz günden ziyade oturdu ise yine sâkıt olur.*"

[310] Kınalızâde, *Ahlâk-ı Alâî*, 328.

[311] Ibid., 354-355.

Birgivi (d.1573), in his *Tarikat-ı Muhammediyye*,[312] also specifies that it was the wife's task to make bread, cook, and clean the house.[313] It should be noted, however, that for better-off households, domestic slaves could also take on such duties in the house.[314] A fatwa issued by Ebussuud, for instance, addressed a dispute between a husband and a wife concerning the sale of their slave. According to the fatwa, when the husband wanted to sell his slave, his wife objected to this by saying, "I have a little boy, I am not able to do all the housework." The questioner asked whether the wife can prevent her husband from selling the slave. In his answer, Ebussuud stated that the woman cannot prevent the sale, yet she is allowed not to do the housework.[315] Unfortunately, Ebussuud's interesting answer did not elaborate as to who should take charge of the housework if the woman decided not to do it and there were no slaves in the household.

Moreover, Kınalızâde provides women with guidance that would help them win their husband's respect. First, a wife should be chaste and never allow a stranger in their bed. The wife should also not waste her husband's property. In addition, men's tenacity and pride should make their wives be afraid of them and submit to them.[316] In a similar manner, Birgivi also designated

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[312] Birgivi was an influential scholar and preacher who produced several grammatical and legal texts and ethical-doctrinal works, such as *Tarikat-ı Muhammediyye* and *Vasiyetname*. Written in Arabic, with various references to the Qur'an and the Hadith, *Tarikat-ı Muhammediye* prescribed proper Islamic beliefs and practices to mosque preachers, provincial muftis, and provincial medrese teachers, while the actual reception of the work was wider than this group of middling ulama. Zilfi, *The Politics of Piety*, 45; Jonathan Allen, "Birgivî Mehmed Efendi," in *Christian-Muslim Relations 1500—1900*, ed., David Thomas, Brill Online, 2016.

[313] Birgivi Mehmed Efendi, *Tarîkat-ı Muhammediyye Sîret-i Ahmediyye / telîf eş-Şeyh el-İmam Muhammed b. Pir Ali el-Birgivi; Tahkik ve tahric Muhammed Hüsni Mustafa, Tercüme ve İlaveler Mehmet Fatih Güneş* (Istanbul: Kalem Yayınevi, 2004), 725; Madeline C. Zilfi, "Muslim Women in the Early Modern Era," in *The Cambridge History of Turkey* Vol. 3, ed. Suraiya N. Faroqhi (Cambridge, UK; New York: Cambridge University Press, 2014), 227.

[314] Zilfi, "Muslim Women," 234.

[315] Ebussuud, 53. "*Mes'ele: Zeyd mülk câriyesi Hind bey' eylemek istedikde, zevcesi Hatice "elimde sagîrim var, ben tenhâ evin cümle hizmetin edâ etmeğe kâdir değilim" deyu câriyeyi sattırmamağa kâdire olur mu? Elcevab: Olmaz, amma hizmet etmemeğe kâdire olur*."

[316] Ibid., 356.

some responsibilities of husbands and wives towards each other. Giving references to hadiths, Birgivi indicated that men should feed and clothe their wives and not beat them.[317] He also advised men to teach their wives the requirements of the religion, such as performing prayer and fasting.[318] Both Birgivi and Kınalızâde agree that couples should get along well and the husband should tolerate some intemperance on the part of his wife.[319]

Orthodox *nomokanon*s are mostly silent about the roles of husbands and wives in a marriage. Byzantine historians, however, defined marital roles in the middle and late Byzantine periods similar to Muslim ideals. The husband was the head of the family and had absolute authority over the family members. The mother or the male child could fulfill his governance tasks in his absence. The father was envisioned as the provider for the family, while the primary function of the wife was procreation. She was also expected to be obedient to her husband, run the household, and carry out domestic chores.[320] It will be evident in Chapter 5 that the role of the husband as the breadwinner and the wife's responsibility to be subservient to him are reflected in the Patriarchal court registers. Although not clearly stated in the *nomokanon*s, failing to comply with these obligations could result in the dissolution of the marriage upon one party's petitioning.

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[317] *Tarîkat-ı Muhammediyye,* 726.

[318] Ibid., 727.

[319] Kınalızâde, *Ahlâk-ı Alâî*, 356; *Tarîkat-ı Muhammediyye*, 727. There are also examples of hadiths which urge men to treat their wives well. One of them, reported by Abu Hurairah, states that "The messenger of Allah, peace and blessings of Allah be on him, said: 'The most perfect of the believers in faith is the best of them in moral excellence, and the best of you are the kindest of you to your wives.'" Maulana Muhammad Ali, *Manual of Hadith*, 377.

[320] Simon Ellis, "The Middle Byzantine House and Family: A Reappraisal," in *Approaches to the Byzantine Family*, eds. Leslie Brubaker and Shaun Tougher (Farnham, England: Ashgate Publishing, 2013), 249-250; Fotini Kondyli, "Changes in the Structure of the Late Byzantine Family and Society," in *Approaches to the Byzantine Family*, eds. Leslie Brubaker and Shaun Tougher (Farnham, England: Ashgate Publishing, 2013), 373; Talbot, "Women," 127-128; Angeliki Laiou, "The Role of Women in Byzantine Society," in *Approaches to the Byzantine Family*, eds. Leslie Brubaker and Shaun Tougher (Farnham, England: Ashgate Publishing, 2013), 233-234.

3.7. Conclusion

This chapter deals with three main issues: 1) how marriage is defined and regulated in Islamic and Orthodox Christian normative and prescriptive texts; 2) in what ways Islamic and Orthodox Christian marriage ideals are similar to or different from each other; 3) the extent to which the *nomokano*ns from the Ottoman period repeat the mandates of their late-Byzantine predecessors. Moreover, in an attempt to establish a connection between the previous chapter on the structures of the courts and the following ones on court cases, this chapter describes the sources of the law on marriage and the kinds of texts Muslim judges and the synod relied on when reaching a verdict.

On a theoretical basis, Islamic and Orthodox Christian laws share some fundamental similarities in their approach to family law. For instance, both laws impose a waiting period on women upon their divorce or the death of their husband before a subsequent marriage, in order to avoid suspicions concerning their possible pregnancy. However, the length of the waiting period differed: it was three months according to Islamic law and one year under Orthodox law. Both laws also impose restrictions on marriage with kin within certain consanguineal and affinal degrees. However, Orthodox law is stricter than Islamic law and the non-marriageable degrees it enforces are much more extensive. And there are some clear distinctions between the two regulatory systems regarding whether to allow a subsequent fourth marriage or to give permission to marry someone from another religion. As will be seen in Chapter 5, with regard to their decrees on divorce and remarriage, Islamic and Orthodox laws follow different paths.

Finally, this chapter points out that the Ottoman *nomokanon*ists copied the late Byzantine *nomokanon*s to a great extent. Except for some minor adaptations that we see in the seventeenth-century Nomokritirion, reproduction from earlier legal texts is obvious. Nevertheless, starting from the early Byzantine period, some *kanon* and *nomos* on family law were revised, such as those on marriage age or prohibition on first-cousin marriage. Yet, the extent to which normative regulations on marriage and divorce were practiced in everyday life is a different issue. The discrepancy between the theory and implementation becomes more evident with the study of the court registers in the following chapters, demonstrating that Islamic and Orthodox laws did not necessarily reflect everyday practice. As will be discussed in Chapters 4 and 5, this discrepancy can partly be explained by the limited knowledge of Muslim and Greek Orthodox subjects on their religious/legal liabilities, along with inadequate means of enforcement by the authorities. Particularly in the divorces of Greek Orthodox community members, changing political and social circumstances in the Ottoman context necessitated flexibility in religious norms.

In the next two chapters, it will become evident that what was established in the legal texts was not always followed in practice. The Patriarchal court registers, for example, demonstrate that contrary to what was prescribed, some Greek Orthodox men and women married for the fourth time or before their legal majority. Intermarriage between Greek Orthodox women and non-Orthodox men was also not unknown. Although the Sharia court registers are less explicit in revealing such deviations from the guidelines of Islamic law, several advice text compilers expressed counterviews on marriage. In some other cases, advice literature served as moral guidance to Muslims on certain aspects of married life for which Islamic law did not provide details, such as the responsibilities of husbands and wives.

CHAPTER 4

MARITAL CONFLICTS IN THE MUSLIM AND THE GREEK ORTHODOX POPULATIONS

4.1. Introduction

To what extent did Muslim and Greek Orthodox couples in Istanbul in the second half of the seventeenth century experience marriage in a similar way? How did Islamic law and ecclesiastical law regulate their marital lives? When Muslim and Greek Orthodox couples had marital disputes, what kind of legal frameworks were available to them that they could resort to? How differently or similarly did the Sharia courts and the Patriarchal court approach the same kind of marital issues? To what extent did these courts apply the provisions of Islamic law and ecclesiastical law in practice?

This chapter attempts to address these questions and analyzes some of the common issues regarding conjugal life at critical junctures through the registers of the Bab court and the Patriarchal court, between 1660-1685. The chapter will start with discussing pre-modern marriage in general, an institution whose parameters were primarily shaped and determined by oral usage. Orality brought about particular issues and ambiguities, whereby the line between being married and being divorced could become quite indistinct. In addition, issues related to

matrimony, such as dowry, polygamy, and deserted women will be examined with regard to the way in which they were handled in the Bab court and the Patriarchal court.

The primary purpose of this chapter is to demonstrate the extent to which family practices of Muslims and the Greek Orthodox population could differ both in theory and practice, along with their similarities. Moreover, I suggest that some of the common assumptions regarding non-Muslims' court use, their appeal to the Sharia courts, and the tendency to explain these by the advantageousness of the Sharia courts should be reconsidered in light of available data from the Patriarchal court. To that end, this chapter shows that the decisions of the Patriarchal court could actually be more favorable for Greek Orthodox women, especially for those who were abandoned by their husbands. In addition, although it has been claimed that Muslim dowry practices served the best interest of non-Muslim women and attracted them to the Sharia courts, these claims fall short of explaining how non-Muslim men and their families agreed to an arrangement which financially worked to their disadvantage.

4.2. Pre-modern Marriage and Marriage Contracts

In March 1675, Mehmed bin Abdullah went to the Bab court to complain about Abdünnebi, the muezzin of the mosque of the Kefeli neighborhood. Mehmed accused the muezzin of giving permission to a certain Hasan to marry off Mehmed's wife Fatima to Ahmed bin Mustafa. It appears that the muezzin had pretended that Fatima was a divorced woman and that he had received a few *akçe*s from Ahmed in return for granting Hasan the right to arrange Fatima's marriage to Ahmed. We infer from the register that the marriage between the two was indeed

contracted, yet what made Mehmed appeal to the deputy judge was not its annulment.[321] He did not make a complaint about Ahmed, the false husband, nor about Hasan, the mediator. Rather, Mehmed's concern was to make an allegation merely against the muezzin. In so doing, he seems to have aspired to bring the muezzin into public disrepute and even make him lose his position in the neighborhood mosque. Mehmed not only stated that the muezzin resorted to trickery by giving his wife into marriage to another man but also that such a treacherous man did not merit his position. According to Mehmed's statement, the muezzin Abdünnebi did not carry out his duty of reciting the azan during prayer times or his other responsibilities as a muezzin. Furthermore, besides constantly causing mischief himself, Abdünnebi had opened up a coffeehouse in the neighborhood, which caused many Muslims in the community to frequent the place and made them too lazy to perform the five-time prayer (*mezbur Abdülnebi cami'-i şerif-i mezburda evkat-ı salavatta ezan ve imamet ve sair hizmet-i lazimesini eda etmeyüp mahalle-i mezburede kahvehane ihdas edip nice Müslimin dahi vaktiyle eda-yı salavata tekasül bais olub ve nice tezvir ve şirret ve fesaddan hali olmamakla*). Mehmed asked the deputy judge to hear the testimony of some community members from the Kefeli neighborhood about the muezzin's behavior. When the deputy judge did so and heard testimony from six male neighborhood residents, all confirmed the statement of Mehmed.[322] Like many other cases in the Sharia court

[321] As explained below, as a matter of fact, the marriage between Ahmed and Fatima was legally invalid since Hasan was not appointed by Fatima herself, which made him an "unauthorized agent."

[322] İBMŞS 21 Numaralı Sicil, Varak [53-b]. Two years later, in February 1677, Abdünnebi went to the Istanbul court and sued Mehmed b. ( ) Çavuş, the new muezzin of the Kefeli mosque, for displacing him unjustifiably. Apparently, Mehmed's action in the Bab court had achieved its goal, and Abdünnebi had lost his position in the mosque. From the entry in the registers of the Istanbul court, we find out that the deceit of marrying Fatima off to Ahmed had actually happened ten years before Mehmed brought the case to the Bab court. Ultimately, by bringing up the former charges against Abdünnebi, presenting the official document of his appointment, and with the testimony of almost twenty neighborhood residents, the new muezzin was able to vindicate himself from the accusations of holding Abdünnebi's office illegally. Istanbul Mahkemesi, 18 Numaralı Sicil, 130 [19b-1].

registers, however, this case is also registered without acknowledging the deputy judge's verdict about the muezzin and leaves us with many questions.

The case of the muezzin is quite interesting in several respects. Although it is not the main focus here, one can find echoes of a contemporary discussion about coffeehouses and neighborhood morality. Upon the propagation of coffeehouses in the sixteenth century, the ulema, especially, considered them vicious places that made their clients neglect religious obligations.[323] It is curious whether or not the six witnesses from the Kefeli neighborhood were going to the coffeehouse of the muezzin in 1675 when coffeehouses were already quite widespread in the capital and were part and parcel of social life. Nevertheless, like Mehmed, they seem to have considered opening up a coffeehouse serious misconduct, maybe because it was unexpected from a religious functionary. Of course, the neighbors might have had some economic motives related to the coffeehouse, which, however, is not revealed in the court record.

What makes this case striking in our context, however, is the curious matter of the muezzin who was able to deceive Ahmed about Fatima being widowed, which can partly be explained by looking at the connections between the litigants. We are only informed that Mehmed and the muezzin were from the same neighborhood. Ahmed's residence, however, is not recorded. As stated in Chapter 2, residents of the same neighborhood were usually informed about certain key moments of one another's life, such as marriage, divorce, birth, or death. Therefore, Ahmed seems to have been an outsider to the residents of the Kefeli neighborhood, so much so that he did not know that Fatima was, in fact, married and probably did not know

[323] Colin Imber, *Ebu's-Suud*: *The Islamic Legal Tradition* (Stanford, Calif.: Stanford University Press, 1997), 94; Ayşe Saraçgil, "Kahvenin Istanbul'a Girişi: 16. ve 17. Yüzyıllar," in *Doğu'da Kahve ve Kahvehaneler*, eds. Hélène Desmet-Grégeon and François Georgeon (Istanbul: YKY, 1999). For a detailed discussion on the opposition against coffee and coffeehouses, see Ralph S. Hattox, *Coffee and Coffeehouse: The Origins of a Social Beverage in the Medieval Near East* (Seattle: University of Washington Press, 1985), 29-45.

anyone from the neighborhood who could warn him about that. As for Hasan, it is noted that he resided in the medrese of Fethiye, which was situated within the courtyard of the Fethiye mosque in the walled city, in close proximity to the Kefeli neighborhood. Although there is no way of knowing whether Hasan knew Fatima, one would expect him to have some sort of acquaintance with her. It seems in the register as though it was the muezzin who reached out to Ahmed and offered him the opportunity to marry Fatima. It would be interesting to know whether Ahmed had seen Fatima before agreeing to this arrangement. The register raises as many questions as it answers with regard to Mehmed's reaction to the false marriage and how they resolved the matter. The central question that deserves some consideration here is, how a woman who was already married could be given in marriage to another man, most probably without her knowledge.

The Ottoman state considered marriage and divorce private arrangements between spouses and did not require official registration until family law reforms were introduced in 1917.[324] Therefore, marriage was substantially an oral act, notwithstanding the fact that marriage contracts are found in some provincial records. Fundamentally, would-be spouses could marry without the presence of any civil or religious official or the requirement of registration.[325] The only obligation that the Hanafi jurists imposed was the presence of two male or one male and two female witnesses to the marriage. In addition, the presence of the bridegroom and bride was not obligatory; their proxies (or guardians of minors) could represent the parties in absentia.[326]

[324] Elbirlik, "Negotiating Matrimony," 98.

[325] Esposito and DeLong-Bas, *Women in Muslim Family Law*, 16; Mehmet Âkif Aydın, "Osmanlı Hukukunda Nikâh Akîtleri," *Osmanlı Araştırmaları* 3, no. 03 (1982): 1.

[326] Esposito and DeLong-Bas, *Women in Muslim Family Law*, 16; Kecia Ali, "Marriage in Classical Islamic Jurisprudence: A Survey of Doctrines," in *The Islamic Marriage Contract: Case Studies in Islamic Family Law*, eds. Asifa Quraishi and Frank E. Vogel (Cambridge, Mass.: Islamic Legal Studies Program, Harvard Law School, 2008), 17.

Judging from various fatwas and sultanic orders, it seems that the state allowed marriage contracts to be concluded only upon the issuance of a marriage permit (*izinname*) from the local judge.[327] This license would indicate that there were no legal impediments to a couple's nuptial arrangement. The state issued sporadic regulations concerning marriage permits, which forbade local imams from contracting marriages of those who did not have the license and similarly forbade judges from trying matrimonial cases of those people.[328] Nevertheless, despite the existence of some *izinname* documents in some random registers from different parts of the Empire, their number is quite limited.[329] *İzinname*s were also not registered in the Bab court registers from the second half of the seventeenth century, which suggests that the regulation might not have been strictly followed in practice, unless such documents were recorded in separate ledgers.

Even though local imams and judges appear to be the usual agents in contracting marriages, muezzins do not seem to have served a role in making marital agreements. Nevertheless, we can assume that, as religious functionaries, albeit minor ones, muezzins were treated with respect and earned people's trust, which might explain how Ahmed could fall into the trap of Abdünnebi. If Ahmed was an outsider, the lack of documentation on Fatima's existing marriage, and the possibility of contracting a marriage with her in her absence, easily explain the social and legal atmosphere that formed a basis for his deception. From this perspective, the case of Ahmed does not seem to be altogether exceptional.

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[327] Elbirlik, "Negotiating Matrimony," 38-40.

[328] Aydın, "Nikâh Akîtleri," 6-9; Elbirlik, "Negotiating Matrimony," 38-40; Cem Behar, "Neighborhood Nuptials: Islamic Personal Law and Local Customs—Marriage Records in a Mahalle of Traditional Istanbul (1864–1907)," *International Journal of Middle East Studies* 36, no. 4 (2004): 541.

[329] Elbirlik also points out the lack of *izinnames* in the eighteenth-century Istanbul court registers of the Bab, the Ahi Çelebi, and the Davudpaşa courts. Elbirlik, "Negotiating Matrimony," 38.

Indeed, Abdünnebi was not the only individual who attempted to take advantage of pre-modern marriages' ambiguous, unofficial, and oral nature. A similarly intricate case came to light when a certain Hüseyin went to the Bab court in 1670 and demanded that the deputy judge admonish his "lawful" wife, Hatice, to enter into a conjugal relationship (*ezvac muamelesi*) with him, which she had been avoiding. Some time ago, Hüseyin had married Hatice through her proxy Mehmed's mediation, and the two men had agreed upon 7000 akçes of *mehr*. When the deputy judge asked Hatice about the reasons for her avoidance of intimate relation, she declared that she had appointed Mehmed to marry her off to another Hüseyin, not to the plaintiff Hüseyin. Therefore, Mehmed had arranged her marriage to Hüseyin improperly (*fuzulen*). When she heard about the marriage, she took the opportunity of deciding whether or not to accept it, and eventually refused the arrangement (*istima' ettiğimde muhayyere olmamış idim*).[330] Upon her statement, the deputy judge demanded evidence from Hüseyin either as to Hatice's appointment of Mehmed as a proxy to arrange her marriage to himself or to the effect that she had approved the marriage to Hüseyin after having heard about it. However, Hüseyin was unable to provide proof. In the absence of evidence, Hatice was offered the opportunity to take an oath as to the veracity of her statement. When she did so, the deputy judge forbade Hüseyin from causing further dispute about this issue.[331]

Hatice's choice to appoint a proxy (*vekil*) for her marriage arrangement was a common practice among both women and men. As mentioned above, for a marriage contract to be valid, the marrying parties did not have to be present; they could both be represented by their proxies.

[330] "An unauthorized agent was someone who acted on a person's behalf without his/her authorization. When the agent is unauthorized, the contract becomes valid only when the person on whose behalf it was made gives his/her consent." Colin Imber, "Involuntary Annulment of Marriage and its Solutions in Ottoman Law," *Turcica* 25 (1993): 73. On unauthorized agents, see also *The Hedaya*, 42.

[331] İBMŞS, 12 Numaralı Sicil, Varak [7-b].

Like men, a woman in her legal majority could marry herself off to someone of her choice without the representation of an agent or permission of her parents as long as the groom was "suitable."[332] If she preferred to be represented by a proxy,[333] it could be a woman or a man, but it had to be a sane person.[334] It was imperative for a proxy to follow the instructions of his/her principal (*müvekkil*). For example, if a woman appointed a proxy to make a nuptial agreement on a certain amount of *mehr* and the proxy assented to a lower amount, the woman would have the right to repudiate the contract. Moreover, the marriage would be suspended if the proxy married off his/her principal to some person other than the designated one,[335] as in the above case of Hatice. In that case, Mehmed was an unauthorized proxy, and the marriage he contracted was not binding. Knowing that, Hatice seems not to have taken any action with regard to this invalid marriage, but the complainant, Hüseyin, might have been unaware that their marriage was, in fact, void. From the record, Mehmed's act does not appear to be a mistake of confusing two namesake men. What Mehmed did was described as an unlawful act, not as a misunderstanding. It is hard to know whether Mehmed had a personal interest in this arrangement, as in the case of Abdünnebi, who had gained a financial favor. Even if the complainant Hüseyin found out the "intrigue" before their appearance in the Bab court and had an out-of-court dispute on the issue with Hatice and Mehmed, apparently he believed that the marriage contract he entered into was

[332] The rules of suitability (*kafa'a*) attempt to prevent a mismatch between the marrying parties. Its detailed rules will be discussed in the following chapter regarding the way a mismatch led to a divorce.

[333] Women used *vekils* for their various court cases, not just for their marital arrangements. For a general study on the use of *vekil*s in different towns, see Ronald C. Jennings, "The Office of Vekil (Wakil) in 17th Century Ottoman Sharia Courts," *Studia Islamica* 42 (1975): 147-169.

[334] Bilmen, *Hukukı Islamiyye*, Vol. II, 58.

[335] Ibid., 59.

valid and he was determined to "demand justice" to make Hatice have a spousal relationship with him.

The fact that proxies could contract marriages in the absence of the marrying parties seems to have created complications in various ways. In *The Hedaya*, one of the most authoritative texts of Hanafi jurisprudence from the twelfth century, the consequences of marrying someone off without his/her knowledge are discussed in detail.[336] That is to say, what Mehmed did may not have been an uncommon occurrence in the sense that the possibility of such incidents had been foreseen by religious scholars or facing such problems had led them to offer legal clarifications. Therefore, Fatima and Hatice were possibly among many other women who were married off to someone without their knowledge. Whether women were aware of these irregularities and knew how to react in such "improper" arrangements is hard to answer.

One might expect the public to be somewhat knowledgeable about the formal and customary ways of undertaking such a widespread occurrence like a matrimonial arrangement. Yet, it might not always have been the case. Another "victim" was Şerife Raziye Hatun bt. Es-Seyyid Hasan Ağa, who resided within the walled city, in the Zeyrek neighborhood, apparently a woman of higher status, as her titles "*şerife*" and "*hatun*" suggest. Sometime around February 1670, she desired to go to Edirne and, before departing, she went to Nuh Bey b. Hüseyin Paşa's house to pick up a letter from him to be delivered to his two brothers who also resided in Edirne. When Raziye arrived in Nuh's house with her child, Nuh sent off the carriage, which had brought the two, and detained them in his house. Nuh tried to convince Raziye, who was probably a divorced woman, all night long to marry him. When Raziye told him that marriage

[336] *The Hedaya*, 42-43. For various fatwas on the use of proxy by the marrying parties and the problems it caused, see Çatalcalı Ali Efendi, *Açıklamalı Osmanlı Fetvaları, Fetâvâ-yı Ali Efendi / Şeyhülislâm Çatalcalı Ali Efendi (1674-1686)*, ed. H. Necâti Demirtaş (İstanbul: Kubbealtı, 2014), 47-49.

without witnesses would be void, Nuh assured her that witnesses were not required and they would be legally married, she stated in court. Raziye surrendered eventually. The two agreed on five hundred *guruş* of *mehr* and consummated the marriage the same day, and Raziye became pregnant thereafter. She appealed to the Istanbul court in October 1670 after eight months had passed from that night in Nuh's house. In the court, she stated that Nuh was not providing her with the maintenance (*nafaka*) she was entitled to receive as his rightful wife. The judge, however, disagreed and held that there was no need to hear the plea of Nuh; Raziye had no right to demand maintenance since her marriage without witnesses was unequivocally void.[337]

If we take Raziye's statement for granted, Nuh seems to have manipulated her, probably to have sexual intercourse. Whether Nuh disappeared immediately after that night in his house or they spent some time as a married couple is not recorded. In addition, knowing that her marriage was void, she might have attempted to portray herself as a victim so as to convince the deputy judge to make Nuh financially support her. The fact that she was indeed not legally married implies that she had committed adultery, but at least in this case, she does not seem to have been charged with such a crime.[338] It is hard to know the extent to which people in the late seventeenth century were knowledgeable about the obligation of witnesses. Was it Raziye's ignorance that caused her to be fooled by Nuh, or was it a reflection of a vague and ambiguous legal environment created by heavy dependence on orality regarding matrimonial matters? The deputy judge of the Bab court seems to have required only the existence of witnesses as to the

[337] İBMŞS, 11 Numaralı Sicil, 128 [19a-2].

[338] Adultery (*zina*), in the context of Islamic law, implies sexual intercourse outside marriage or concubinage. Betül Başaran also shows that even prostitutes in eighteenth-century Istanbul were not accused of *zina*. The tendency of the Sharia courts was to order the banishment of prostitutes from their neighborhoods upon neighbors' complaints. Başaran, *Selim III, Social Control and Policing*, 197-200.

validity of their marriage.[339] Other types of legal action, such as obtaining a marriage permit or delegating an imam to contract the marriage, seem to have served a secondary role at the very most. There are indeed several cases in the Bab court registers, in which one of the spouses denied being married to the litigant who claimed to be so, which were resolved relying merely on witness testimony.

As mentioned above, the principal reason for the occurrence of such complicated issues was the fact that registering marriage contracts in court was not an obligation. There are only few examples of marriage records in the Bab court registers from the late seventeenth century. As a matter of fact, many individuals probably avoided recording their marriage in court so as to avoid paying the registration fee.[340] While there is no evidence of systematic registration of marriages in Istanbul prior to the nineteenth century, Behar's study has shown that there are examples of neighborhood headmen (*muhtar*) or imams who kept records of nuptials as well as births and deaths in the late nineteenth century. The marriage records of the Kasap İlyas neighborhood, kept by its headman between 1864 and 1906, contain 679 entries.[341] Whether there were such notebooks belonging to neighborhood imams or separate ledgers kept by the Istanbul courts prior to the nineteenth century has not come to light so far.

Studies of various scholars, however, have demonstrated that keeping records of marriage contracts was a localized practice. Marriage contracts are found sporadically in certain parts of

[339] A fatwa by İbn Kemal also indicates the requirement of witnesses. According to him, the marriage by proxies is valid as long as witnesses were present: "*Mes'ele: Kız vekile 'vardım' dese, er vekili 'müvekkilim için kabul ettim dese' nikâh mün'akid olur mu? El-cevab: Olur, şâhideyn muhâzîrin olursa*." İbn Kemal, 65.

[340] For different kinds of fees charged for marriage contracts between the fifteenth and seventeenth centuries, see Uzunçarşılı, *Osmanlı Devletinin İlmiye Teşkilâtı*, 84-85.

[341] Behar, "Neighborhood Nuptials," 541-542.

the Empire, such as some Arab provinces and some towns in the Balkans, Crete, and Trabzon.[342] The record-keeping practices show considerable variance even in locations that are in relatively close proximity to one another or share a similar cultural structure. According to Gara, while marriage records are found for Mostar in the early seventeenth century, in some other towns in the Balkans, such as Sofia and Karaferye, registering marriages does not seem to have been a prevalent practice.[343] Furthermore, Sonbol also notes that although registering marriage contracts was a pre-Islamic practice in Egypt, regional variations are observed with regard to the content of the records in different towns of the province. Such diversity emerged mainly due to the socioeconomic differences of the towns; contracts in tribal towns tended to be short and straightforward, whereas in larger urban centers such as Alexandria, they were more detailed with some stipulations embedded in them in many cases.[344] Likewise, Gara also indicates that registering marriage contracts was an urban practice.[345]

[342] Eleni Gara, "Marrying in Seventeenth-Century Mostar," in *The Ottoman Empire, the Balkans, the Greek Lands: Towards a Social and Economic History*, eds. Elias Kolovos, Phokion Kotzageorgis, and Sophia Laiou (Piscataway, NJ: Gorgias Press, 2010); Abdal-Rehim Abdal Rahman Abdal-Rehim, "The Family and Gender Laws in Egypt," in *Women, the Family, and Divorce Laws in Islamic History*, ed. Amira El Azhary Sonbol (Syracuse, N.Y.: Syracuse University Press, 1996); Elias Kolovos, "A Town for the Besiegers: Social Life and Marriage in Ottoman Candia outside Candia (1650–1669)," in *The Eastern Mediterranean under Ottoman Rule: Crete* (1685-1840), ed. Antonis Anastasopoulos (Rethymno: Crete University Press, 2008); Gülsüm Mamaş, "Şer'iyye Sicillerine Göre XII. Yüzyılın Son Çeyreğinde Trabzon'da Boşanma" (M.A. Thesis, Karadeniz Teknik Üniversitesi, 2019).

[343] Gara, "Marrying in Seventeenth-Century Mostar," 118.

[344] Amira El-Azhary Sonbol, "A History of Marriage Contracts in Egypt," in *The Islamic Marriage Contract: Case Studies in Islamic Family Law*, eds. Asifa Quraishi and Frank E. Vogel (Cambridge, Mass.: Islamic Legal Studies Program, Harvard Law School, 2008), 100-101. Although Sonbol does not discuss it, unlike the Hanbalis, the Hanefi school of law did not allow for marriage contracts in which certain conditional terms concerning the marriage could be stipulated. For conditions in Islamic law, see Esposito and DeLong-Bas, *Women in Muslim Family Law*, 22; Wael B. Hallaq, Netton, I.R. and Carter, M.G., "Sharṭ," in *Encyclopaedia of Islam, Second Edition*, ed. P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs, accessed August 6, 2021; Schacht, *Islamic Law*, 163. Nevertheless, we know that some Hanafi muftis mention such conditions in their fatwas, as noted below, which prevents us from arriving at a precise conclusion.

[345] Gara, "Marrying in Seventeenth-Century Mostar," 118-119.

Conditions were not usually attached to the marriage contracts; the contracts found in the Balkans, Crete, Trabzon, as well as the limited number of contracts registered in the courts of Istanbul, provide only the most basic information, such as the names of the marrying parties, their proxies (if any), and the amount of *mehr* that was agreed upon. Nevertheless, for example in Alexandria and Dumyat, in Egypt, women laid down certain conditions in their nuptial contracts. Some women specified where they would like to reside during their marriage, some forbade their husbands from marrying another woman or from abandoning them for longer than a certain period.[346] Not fulfilling these stipulations would render the contract void, allowing women to obtain a legal annulment (*fesih*), and entitle them to receive the delayed portion of their dowry. *The Hedaya* implies that attaching conditions could come after some negotiations on dowry. Accordingly, a woman might settle for a lower amount of dowry than her proper dowry (*mehr-i misl*) in return for attaching conditions in the contract.[347]

In this context, are we to assume that in places where there were no stipulations embedded in the marriage contracts or only rare contracts were found, women were deprived of a privilege that women in certain parts of Egypt enjoyed? In the Bab court registers, there are no entries that would suggest that some spouses had laid down certain conditions orally at the time of making the marriage contract. Nonetheless, Ebussuud (d.1574), for instance, issued fatwas on conditional marriage to clarify some technical issues about the effectiveness of the annulment. In one of his fatwas, the question goes as follows: "Although the man married the woman under the condition that she reside in the town and then he took her to a village, would she be able to insist on staying in the town?" Ebussuud replies that "if the distance is not much, then she would not."

[346] Abdal-Rehim, "The Family and Gender Laws in Egypt," 98-102.

[347] *The Hedaya*, 50. According to Colin Imber, both men and women could add stipulations to the marriage contract and negotiate on the amount of dowry accordingly. Imber, "Women, Marriage, and Property," 101.

However, in accordance with the discussion in *the Hedaya*, he also adds that if she married with a lower amount than her proper dowry, then she would receive the full proper dowry should the husband take her to the village.[348] Here, it seems that the woman was considered to have sacrificed the proper amount of dowry that she deserved for having a say in her marital life.

Conditions could also be agreed on during the marriage. In fatwa compilations, we see the reflection of the fact that some women entered into such negotiations with their husbands, according to which the wife receives divorce should the husband not keep the vow that he took on a particular issue. Various muftis and chief muftis issued fatwas on conditional divorce, how it becomes legally effective, or circumstances that would render it void.[349] Also, in the Bab court registers, there are examples of such negotiations. In 1671, for instance, Fatima bint el-Hac Halid, represented by her nephew, filed a lawsuit against her ex-husband Mehmed Çelebi ibn Kapıcı Hüseyin Bey, who was attempting to have a conjugal relationship with her. According to the statement of her proxy, while they were still married, Mehmed Çelebi had made a vow about not visiting Salih Efendi, a relative of his. He had also stated that should he visit Salih Efendi, his wife Fatima would be divorced from him through "three divorces for one month, six divorces for two months, and nine divorces for three months." Triple divorce (*talak-ı selase*) already means an irrevocable divorce,[350] so here it seems as though six *talak* and nine *talak* were uttered to emphasize the husband's determination to keep his vow. It was not recorded as to why Fatima

[348] Ebussuud, 40. "*Mes'ele: Zeyd Hind'i, şehirde sakin olmak şartıyla nikâhladıktan sonra, karyeye iletse, Hind-i mezbure "karyede olmayup şehre giderim demeğe kâdire olur mu?" Elcevap: Mâbeyn mesafe-i seferce yok ise olmaz. Amma şart-ı mezbur üzerine mehr-i mislinden bir miktar eksik mehr ile nikahlandı ise karyeye çıkarmak ile tamam olur*."

[349] İbn Kemal, 70-73; Ebussuud, 44-45; Çatalcalı Ali Efendi, 127-144; Imber, "Involuntary Annulment," 39-73.

[350] Çatalcalı Ali Efendi clarifies the issue of *talak*s more than three times: "Question: If a man tells his wife 'you shall be divorced through five *talak*s, with how many *talak*s would she be divorced? Answer: She would be divorced through three *talak*s." [*Zeyd, zevcesi Hind'e "Beş talak boş ol!" dese Hind kaç talak boş olur? El-cevab: Üç talak boş olur.*] Çatalcalı Ali Efendi, 117.

demanded that her husband not visit Salih Efendi, but it must have been a serious matter to her such that she was ready to end her marriage if he did so. It is also possible that Mehmed Çelebi took this vow on his own initiative, without his wife's insisting. However, this possibility does not seem to be a strong one as Fatima found out that Mehmed Çelebi visited Salih Efendi's house six months prior to her appeal to the Bab court. The fact that he broke his vow effectively ended their marriage the moment he visited Salih Efendi. Whether or not the divorce was Mehmed Çelebi's deliberate intention when he made his vow or he was drunk or under duress, does not change the consequence. As long as he said that she would be divorced, he could not change the outcome.[351] The only solution for the couple, if they wished to continue their marriage, was to renew their marriage (*tecdid-i nikâh*), but both parties would have to agree. Fatima, however, seems to have accepted the divorce, and was determined to prevent Mehmed Çelebi's assaults through legal means. In court, although he accepted that he had been to Salih Efendi's house and stayed there for a few nights, he denied the fact that he had entered into a conditional divorce with his wife on this issue. Upon his denial, Fatima presented witnesses who confirmed that he had indeed made the vow a year ago in their presence. The case, however, was recorded without the decision of the deputy judge.[352]

While conditional divorce might have enabled some women to make their husbands do or not do something that they wished, in many other cases it might have worked to their detriment. It definitely made the marriage quite vulnerable and hard to rely on, as uttering a simple sentence could easily end it. Conditional divorce was also a factor that further contributed to the ambiguous nature of pre-modern marriages as there were many elements that complicated their

[351] Imber, "Involuntary Annulment," 59.

[352] İBMŞS, 12 Numaralı Sicil, Varak [87-b]-[88-a].

functioning. The format of the wording of the divorce formula or a conditional stipulation, for instance, had to be right: the divorce formula should be directed to the wife, and it had to use the imperative form.[353] It can be observed in the court registers that sometimes the couple stayed in limbo as they could not tell surely whether their marriage had ended or not due to the ambiguous vow that the husband had made. In 1684, for instance, Aişe bint Ramazan believed that she was divorced from her husband İbrahim Çelebi ibn Receb, but actually it was decided in court that they were still married. Eighteen days before Aişe's appeal to the Bab court, İbrahim Çelebi had made a vow that if he were indebted to somebody, his wife Aişe would be divorced from him. Based on his vow, Aişe went to the Bab court to demand the deputy judge admonish İbrahim Çelebi to pay the delayed portion of her *mehr* since she had found out that he owed fifty-one guruş to someone whose name does not appear in the register. While Aişe was confident that they were divorced, İbrahim Çelebi did not think so. In court, he accepted that he had made that vow but denied owing money to anyone, which meant that they were still married. Since Aişe could not prove her husband's debt, İbrahim Çelebi was offered the option to take an oath that he was telling the truth. As he took the oath, the deputy judge cautioned Aişe not to dispute the issue. In addition, a marginal note was taken next to her entry in the ledger as "no need for renewal of marriage."[354] It seems that Aişe was quite willing to end her marriage such that she took action within a couple of weeks after İbrahim Çelebi took the vow. It is also possible that, genuinely believing that their marriage had ended, Aişe was worried about having an unlawful relationship with İbrahim Çelebi. It is most probable that the couple discussed the issue before going to court; Aişe claimed that they were divorced, demanded her dowry, but when İbrahim

[353] Imber, "Involuntary Annulment," 60-61. "Boş olasın," for instance is invalid. The correct format is "Boş ol!"

[354] İBMŞS, 45 Numaralı Sicil, Varak [48-b].

Çelebi refused her, she decided to sue him and resolve the matter in court. Nevertheless, knowing that İbrahim Çelebi was not going to accept the charges, Aişe should have known that she did not have a chance to win the case without any evidence of her husband's debt, or she hoped that he would admit the debt by having to swear an oath about it. When the record is taken as written, it seems as though Aişe lied in court so that she could be divorced from her husband and receive her dowry. Yet, one might also think that not wanting to end his marriage, İbrahim Çelebi might have paid his debt before their appearance in court or convinced possible witnesses not to give a statement against him. Regardless of what actually went on between the two, it is not unreasonable to assume that after the decision of the deputy judge, Aişe was obliged to remain in an undesired marriage.

Greek Orthodox couples also made marriage contracts and recorded them, and these also reflected localized practice. Such contracts abound, especially as found in the notarial court registers of the Aegean islands and mainland Greece. Studies on the available records in the Cyclades islands have shown that the contracts contained the name and age of would-be spouses, benefactors of the dowry and its form (i.e., types of property/land or amount of cash).[355] At least in the Cyclades islands, although there was not a tendency to attach conditions in the contract, sometimes it was noted that "the conditions will be according to the custom of our land" or "according to the old usage." Such notes suggest that making stipulations prior to the marriage was not unknown in the islands. Yet, since custom had pervaded social life to such a degree, registering certain things that were known to everyone had become unnecessary.[356]

[355] Doxiadis, "Kin and Marriage," 241; Kasdagli, "Dowry and Inheritance in Seventeenth Century Naxos," 211.

[356] Kasdagli, "Family and Inheritance," 267-268.

Although the Orthodox church considered marriage a sacrament, it has been argued that Greek Orthodox marriage was also a contract and a permanent alliance between the consenting parties, not only in the Ottoman period but also in Byzantium.[357] The complicated dowry system used by the Greek Orthodox community, and its financial dimension, were significant elements of the civil aspect of marriage, besides its liturgical and ecclesiastical components.

Dowry contracts from Istanbul are found neither in the Ziskind MS nor in Arabatzoglou's compilation. One reason for their absence in the case of Istanbul might be the fact that the ones in the Aegean islands were registered in the notarial courts, not in the ecclesiastical courts. As discussed in the second chapter, notarial courts had been established in locations where Greek Orthodox subjects constituted the majority of the population. In Istanbul, however, there is no evidence of the existence of a notarial court. The involvement of church and local clergy was essential in an Orthodox Christian marriage, not only in a liturgical setting but also in its legal arrangement. However, as in Muslim marriage contracts, we might assume that registering dowry contracts in court was a localized practice and was not followed in Istanbul. It is also possible that the nuptial arrangements of the community members were handled by the parish priest and recorded in their local church, which are somehow not available to us today.

Ivanova talks about a marriage permit (*vula*) that bishops and priests granted to those who wanted to enter into a nuptial agreement. This practice, which appears in the Ottoman *berat*s, seems to have served a similar function with the *izinnames* mentioned above, in terms of confirming the permissibility of the marriage between would-be spouses.[358] Although the Patriarchal registers do not contain such documents, as will be discussed in more detail in the

[357] Meyendorff, "Christian Marriage in Byzantium," 201; Doxiadis, "Kin and Marriage," 238-239.

[358] Ivanova, "Judicial Treatment of Matrimonial Problems,"168-169.

following chapter, permission to remarry was attached to all the available divorce cases between 1660-1685, and it was usually granted to petitioners who obtained an ecclesiastical divorce. The records usually emphasized that the divorced person could enter into another marriage without intervention or prevention. Receiving a legal certification for remarriage must have become potentially effective in the event of opposition from neighbors or family members.

Consent for remarriage was also requested from the Patriarchal synod in the event of a fourth marriage, which the Orthodox church strictly proscribed. In 1663, Aggelina, from Galata, for instance, appealed to the Patriarchal court to be granted permission to enter into a fourth marriage. Before the synod, she explained in tears that she was 22 years old, a widow after three marriages, and a mother of two children. She had entered into her first marriage at 11, while she was still a minor. Her first husband had become bedridden six months after their marriage and had died soon after, when Aggelina was 12 years old. According to canon law, girls before the age of 12 and boys before 14 were not allowed to marry,[359] which renders her marriage to her first husband void. She had married twice after reaching her legal majority, but both husbands had also died. Aggelina's concern was to register her first marriage as null, which would enable her to enter into a fourth marriage legally. She had also emphasized that she was suffering from financial deprivation as a single woman, without a man to take care of her. The synod eventually granted her ecclesiastical divorce and permission for the fourth marriage. [360] Another similar case was brought before the synod by Dhimos from Yeniköy (a neighborhood on the European coastline of Istanbul) in 1673. Like Aggelina, he was still a minor when he entered into and ended his first marriage. His subsequent two marriages were also over at the time he appeared in

[359] Blastares, 92; *The Hexabiblos*, 226; Malaxos, 175.

[360] Arabatzoglou, Vol. II, 125-126.

court. The synod accepted his demand for marrying for the fourth time on the grounds that his first marriage was not valid.[361]

In an example from the Ziskind MS, from 1729, the Patriarchate's confirmation was sought, not for remarriage this time but for ensuring the legality of the marriage between Nikephoros and Mariora. According to the record, the inquiry was initiated by "certain laymen" who suspected the validity of the marriage between the two since "Nikophoros' father and Mariora's grandfather were married once to two step-sisters." Nevertheless, the sisters had died, the two men had remarried, and Nikophoros and Mariora were born from their second marriages.[362] The court decided that they were allowed to marry since the relationship between them was not violating church rules. Leaving the discussion on degree of kinship aside, the case is immediately relevant here to the issue of marriage permission. Although it is not clear who the "certain laymen" were, we might assume that they were people who knew Nikophoros and Mariora, as well as their families, quite well. It seems as though a sort of "community pressure" or "family pressure" worked as an unofficial agent for law enforcement. In the pre-modern period, when courts did not have the necessary means to investigate couples to see whether their marriage conformed to the law, kin and neighbors possibly proved to be very useful for maintaining marital order. The appeals of the above-mentioned Aggelina and Dhimos to the Patriarchal court to receive permission to remarry might also be related to similar social pressure. However, it still shows that church rules mattered to community members to some degree and imposed a collective responsibility to be fulfilled. It is also possible that these particular cases

[361] Arabatzoglou, Vol. II, 159-160.

[362] Vaporis, *The Ziskind MS.*, 93. For the analysis of this case with regard to degree of kinship in Christianity and church rules on that issue, see Chapter 3.

came to the Patriarchal court because they had a knotted nature, and not every marital arrangement necessitated the confirmation of the Patriarchal court.

Although we cannot precisely determine whether or not marriage contracts similar to those recorded in the Aegean islands were also registered in Istanbul, it can be observed that the Patriarchate and/or the local clergy were unable to maintain effective control over the legality of ecclesiastical marriages. It seems that a similar kind of ambiguous and obscure atmosphere prevailed in the marital status of Greek Orthodox community members as in the above-mentioned examples from the Bab court registers. To give but a few examples, in 1679, Fraggissa from Sinop (northern Turkey) went to the Patriarchal court and complained about her husband Nikolaos, who left her in Sinop and married another woman by hiding that he was already married to her.[363] It probably made it easier for Nikolaos to conceal his marriage to Fraggissa in another town where, possibly, no one knew him. The above-mentioned case of the muezzin Abdünnebi had similarly fooled Ahmed about Fatima being a divorced woman since, most probably, Ahmed was an outsider to the community.

In another example from the Patriarchal court registers, this time we see that not everyone resorted to the court for obtaining permission for a fourth marriage, and, in fact, some could evade the restrictions of the church. For instance, in 1678, Stwianos and his wife Rousani came to the court together, with the former making the following statement: He had already married three times and, by concealing this fact, he married Rousani as his fourth wife, and they had been together for nine years. Being afraid of God's judgment, Stwianos came to the court to be corrected and made this confession. Unlike Aggelina and Dhimos, Stwianos did not have the excuse of being a minor in at least one of his marriages, thus the synod showed no leniency

[363] Arabatzoglou, Vol. II, 153.

towards him. Since more than three marriages was absolutely unacceptable, as one would expect, the synod decided that Stwianos and Rousani had to be divorced. It was emphasized in the record that Rousani should no longer call him her husband and should stay away from him. It was also noted that, for an unspecified reason, it was forbidden for her to assault Stwianos, which might be because he had concealed from Rousani that his marriage to her was unlawful.[364] Despite the tight restriction imposed on the illegality of the fourth marriage, Stwnianos had been able to remain married to Rousani for nine years unnoticed. His crime came to light only through his own confession. Although Greek Orthodox community members had serious concerns about obtaining remarriage consent, Stwnianos' case reveals that it may not have been that difficult to break the church laws. Even in the cases of Aggelina and Dhimos, we see that they could unlawfully marry before they attained the legal age, which would not surface if they did not state it in court in their own interests.

There are also marriage contracts of non-Muslims found in the Sharia court registers.[365] As mentioned above, it was not a widespread practice in Istanbul, even for Muslims, to register their marriages in court. Indeed, the registration of marriages was not a requirement of Islamic law. In the Bab court register from 1660-1685, there is one such record from 1667 of a non-Muslim couple who registered their marriage together with the amount of dowry that they had agreed on. In a situation where we face an absence of systematic record-keeping of marriage contracts in the Sharia courts, as well as in the Patriarchal court, it is hard to determine the standard practice followed by the Greek Orthodox population. According to Wittman's study on

[364] Arabatzoglou, Vol. II, 134.

[365] It is mostly difficult to identify the denomination of the non-Muslims in the Sharia court registers accurately, since they are simply defined as *zımmi*s. Rarely do we see that they are designated as Jew (*Yahudi*), Christian (*Nasraniye*), or Armenian (*Ermeni*). The most helpful method for the researcher is paying attention to the litigant's name and associate it with one community.

the Sharia court registers of Galata and Hasköy in the seventeenth century, no marriage contract registered by a non-Muslim couple of the same religious community is found.[366] His observation might be, of course, related to the general lack of marriage contracts in those registers. With regard to Istanbul, Behar's study shows that although ten percent of the population of the Kasap İlyas neighborhood was composed of non-Muslims in the late-nineteenth century, not a single non-Muslim marriage was registered in the neighborhood headman's notebook.[367]

In the other parts of the Empire, where the records of marriage contracts are available, we also see relatively small numbers of non-Muslims registering their nuptials in the Sharia courts. In Trabzon, for instance, between 1688 and 1703, 2425 Muslim marriage contracts are found in the court registers, whereas the number was as low as 24 for the non-Muslim population.[368] Likewise, in Mostar, all 138 available marriage contracts from May 1632 to early March 1634 belonged to Muslims.[369] However, there are examples that do not follow this pattern, such as Patras, a town in mainland Greece with a substantial Christian population, where 63 out of 162 marriage contracts were registered by non-Muslims.[370]

Some historians have argued that one of the reasons the Sharia courts attracted Orthodox Christians was that registration fees for marriage were higher in church.[371] Especially in places where we cannot find sufficient records of marriage contracts, we can also question why a non-

[366] Wittman, "Before Qadi and Grand Vizier," 86.

[367] Behar, "Neighborhood Nuptials," 546.

[368] Mamaş, "Trabzon'da Boşanma," 69. According to the 1583 tahrir register, the distribution of the population in Trabzon was as follows: 53,62% Muslims and 46,38 non-Muslims (Greeks, Armenians, and Latins). Metin Tuncel, "Trabzon," *TDV İslâm Ansiklopedisi*, https://islamansiklopedisi.org.tr/trabzon#2-bugunku-trabzon, accessed May 29, 2021.

[369] Gara, "Marrying in Seventeenth Century Mostar," 119-125.

[370] Ibid., 118.

[371] Laiou, "Christian Women in an Ottoman World," 248; Kermeli, "The Right to Choice," 178.

Muslim should concern himself/herself with application to the Sharia courts. If we tend to accept that no obligations were imposed for registration even for Muslims, for whom the only absolute requirement was the presence of two witnesses to the marriage, it becomes even more puzzling to make sense of the existence of non-Muslims' marriage contracts in the Sharia court registers. We should also take into account the fact that most studies which have discussed this issue tend to talk about the broader category of "non-Muslims," encompassing Jews, Orthodox Christians, and Armenians. Yet, these communities had different marital customs and practices, which further complicates the situation in reaching some general conclusions about non-Muslims' motivations for applying to the Sharia court. Although there are exceptions, non-Muslims' use of the Sharia courts to register their nuptials should not be overstated in light of the small numbers of their appearance. Since the population distribution of each town varied, and we lack data on the availability of community courts and their requirements, the motivations and concerns of non-Muslims should be approached with caution. Higher fees charged in church or the unavailability of their community courts might have played a role in certain locations. Nevertheless, both the absence of marriage contracts in the Sharia courts and the existence of a functioning court of the Patriarchate challenge the validity of these assumptions in the case of Istanbul.

All in all, I suggest that it is crucial to understand that pre-modern marriage primarily remained in the oral realm, which brought about some significant repercussions, not only for Muslims but also for Greek Orthodox community members. The fact that there was no obligation to register marriage contracts seems to have resulted in a general tendency to avoid such a practice. The registration fees charged both in the Sharia courts and in church possibly contributed to avoiding the registration, at least in Istanbul. Even in places where records of

marriage contracts are found, it should be remembered that there was also a oral contract made between the parties, and the written contract mainly served to support and supplement the oral one.[372] This strong reliance on orality put pre-modern subjects into an ambiguous atmosphere in which some married people could easily conceal being married; women could be given into marriage without their knowledge; couples could not agree on whether their marriage was dissolved or not, or individuals might marry while being minors or for the fourth time although the church strictly outlawed both practices. Prevalence of oral contracts and orality in general, not just in nuptials but also in loans, sales, or divorce, led to constant disputes between both men and women as to the particularity of their oral negotiations.

4.3. Dowry[373]

Dowry practices of the Muslim and Greek Orthodox populations differed to a great extent given the influence of religious and cultural norms. We see a relatively more uniform dowry system adopted by the Muslims, whereas different dowry practices prevailed among Greek Orthodox community members, changing according to location and period. Dowry agreements were first and foremost financial settlements negotiated between couples and families and constituted an essential part of the marital institution. As discussed in Chapter 3, this financial aspect supports

[372] Nicolas Vatin, "Remarques sur l'oral et l'écrit dans l'administration Ottoman au XVIe siècle," *Revue des mondes Musulmans et de la Méditerranée* 75, no. 1 (1995): 151.

[373] The concepts of "dowry" and "dower" have different connotations; while the "dowry" is the money or property transferred from the bride to the bridegroom, the "dower" is delivered the other way around. However, since neither of these concepts does justice in explaining the complex Greek Orthodox "dowry" system, I will be using "dowry" instead of "dower" when talking about both Muslim and Greek Orthodox practices. Hereafter, "dowry" signifies any kind of nuptial transfer from either the bride's or the bridegroom's side.

the principle that Greek Orthodox marriages should also be considered civil arrangements, not just sacramental covenants.

Muslim women's right to receive a dowry from their husbands comes from a Quranic verse, and Islamic law precisely specifies that dowry (*mehr*) should be paid to the bride, not to her father or other male guardian.[374] Every Muslim groom or his family is obligated to pay a dowry to the bride, even if it is not specified in the marriage contract. The dowry was usually paid in two portions: the first part, the prompt dowry (*mehr-i muaccel*), after making the nuptial contract, and the second part, the delayed dowry (*mehr-i mueccel*), payable if the husband irrevocably divorces the wife or upon his death, to be drawn from his estate.[375] The trousseau (*jihaz*), on the other hand, was the bride's contribution to the marriage, commonly provided by her parents. It was usually in the form of clothing or furniture, and once it was delivered to the daughter, it became her personal property.[376] There was no legal requirement, however, for the parents to provide a trousseau.[377]

In the absence of nuptial contracts, divorce cases and dowry disputes in the Sharia court registers become the only possible means to find out about dowry practices and dowry amounts in Istanbul. Although there are numerous such cases in the Bab court registers, they usually concern the delayed portion of the dowry. Only a few cases include information about the prompt dowry since it was supposed to be paid at the initial phase of the marriage and thus

[374] Esposito and DeLong-Bas, *Women in Muslim Family Law*, 23.

[375] Rapoport demonstrates that the payment of dowry in two portions started to be practiced in Egypt as early as the eighth century. Yossef Rapoport, "Matrimonial Gifts in Early Islamic Egypt," *Islamic law and Society* 7, no. 1 (2000): 5.

[376] Imber notes that, in times, the ownership of *jihaz* could cause disputes between the family members. Imber, "Women, Marriage, and Property," 91-92.

[377] Judith Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* (Berkeley: University of California Press, 1998), 55-56.

generally did not cause a dispute at the time of divorce. In theory, the prompt dowry was a prenuptial payment, and women had the right to suspend the consummation of the marriage until they received the payment, either in cash or in kind.[378] Nevertheless, a few examples illustrate that some women did not receive their prompt dowry in a timely fashion, which led to disputes in the divorce process. In one such example from 1671, Fethi bint Abdullah went to the Bab court to register an amicable agreement between her and her husband Yusuf bin Ömer on the payment of her prompt dowry. According to Fethi, after Yusuf irrevocably divorced her, she had received the delayed portion of the dowry, which amounted to one thousand *akçe*s. However, they had not settled the payment of her prompt dowry, including a bracelet and a ruby ring. When she sued Yusuf about the items, he denied that he owed them. The two resolved the matter through amicable settlement, and Yusuf agreed to pay three hundred *akçe*s to Fethi as compensation (*bedel-i sulh*).[379] However, there is a chance that Fethi was indeed not telling the truth, and that Yusuf had delivered the bracelet and the ring that was promised at the time of making the contract. On the other hand, we do not know for how long they stayed married. If they were divorced after many years, Fethi might have had difficulty in finding witnesses or proof to support her claim.

The amount of prompt dowry could differ significantly according to one's social stratum and dowry customs in a location. It has been suggested that the ratio of the prompt dowry also varied significantly, ranging from one-fifths to four-fifth of the total dowry.[380] In one of the rare examples that gives us a clue on the amount of the prompt dowry in proportion to the delayed

[378] Tucker, *In the House of the Law*, 52-53; Imber, "Women, Marriage, and Property," 95.

[379] İBMŞS, 12 Numaralı Sicil, Varak [77-a].

[380] Meriwether, *The Kin Who Count*, 118; Tucker, *In the House of the Law*, 52.

dowry, Emine bint Süleyman registered that she had previously received her prompt dowry, which amounted to two hundred and twenty-five *akçe*s, and her delayed dowry upon divorce, which was four thousand *akçe*s.[381] The rate of the prompt dowry must have been varied according to the negotiations between the two parties.

The Muslim practice of paying dowry to the wife is explained as an exchange for access to the women's sexual organs. In a way, the husband "buys" the right to have sexual intercourse by paying her the dowry.[382] For women, while a substantial amount of the prompt dowry together with the trousseau arguably allowed them to enter into a marriage as an "empowered individual," a larger sum of the deferred dowry provided them with insurance when they had to remain on their own after a divorce or their husband's death.[383] In addition, the delayed dowry also ensured security for women who desired to obtain a divorce, as *hul'* divorce provided them with the option to release themselves from an unwanted marriage by relinquishing claim to the deferred sum.[384]

According to Tucker, in Nablus in the early nineteenth century, the delayed dowry constituted fourteen to twenty-three percent of the women's total estate, and it made up the main source of their wealth only in rare cases.[385] Although in the Sharia court registers, we can observe the amount of the deferred dowry that women received, its proportion of their total capital can only be determined through probate inventories (*tereke*). In the Istanbul Bab court,

[381] İBMŞS, 13 Numaralı Sicil, Varak [127-a].

[382] Imber, "Women, Marriage, and Property," 87.

[383] Tucker, *In the House of the Law*, 57; Meriwether, *The Kin Who Count*, 118.

[384] Zilfi, "'We Don't Get Along'," 273.

[385] Judith Tucker, "Marriage and Family in Nablus, 1720–1856: Toward a History of Arab Marriage," *Journal of Family History* 13, no. 2 (1988): 170.

between September 1670 and August 1672, almost 215 delayed dowries were recorded, predominantly in cases of disputes about it or registration of divorce. The distribution of the dowry amounts from these dates is consistent with Zilfi's results again from the Bab court registers from the eighteenth century. She had found that the dowry amounts mostly ranged between 1000 and 5000 *akçe*s.[386] The dowry sums from 1670 to 1672 fluctuated between 200 *akçe*s to 30000 *akçe*s, the average sum being approximately 3500 *akçe*s. There are 39 dowry records that were below 1000 *akçe*s and 35 above 5000 *akçe*s; 141 of all the registered dowries were between 1000 and 5000 *akçe*s. Towards the nineteenth century, however, Elbirlik indicates that the dowry amounts show an apparent increase in the Bab court registers; from 1782 to 1840, the rise was approximately 42 percent. This shift was mainly caused due to debasement of the currency, high inflation, and a rise in overall prices experienced in the early nineteenth century.[387]

According to Hanafi law, the dowry amount is supposed to be determined according to the bride's age, beauty, fortune, understanding, virtue, and the amount paid to other brides in the family, while the financial capability of the groom is not taken into account.[388] Ebussuud specifies that a woman's proper dowry (*mehr-i misl*) is determined according to the dowry amounts received by other women on her father's side. He adds that her dowry is also compared to that of her sisters.[389] Thus, there is a positive correlation between the social status of both the

[386] Zilfi, "'We Don't Get Along'," 280.

[387] Elbirlik, "Negotiating Matrimony," 198. Meriwether also observes an increase in the amount of dowry in Aleppo in the early nineteenth century. Meriwether, *The Kin Who Count*, 119.

[388] Esposito and DeLong-Bas, *Women in Muslim Family Law*, 24.

[389] Ebussuud, 41. "*Mes'ele: Hind mehr-i misli, anası mehriyle ma'lûm olur mu, ne ile ma'lûm olur? El-cevab: Babası canibinden olan nisâ' mehrine kıyas olunur. Cevâb-ı âhar: Hemşirelerine mukayese ile bilinir*."

groom and the bridegroom with the amount of dowry paid.[390] Virginity also seems to have played a role; virgin women tended to receive higher amounts of dowry compared to nonvirgin women who were entering into their second marriage.[391]

Unlike divorce cases in the Sharia court registers, in which we find dowry settlements made at the time of the dissolution of the marriage, divorce cases in the Patriarchal court registers do not include any information on the dowry. As will be discussed in detail in Chapter 5, the divorces registered in the Patriarchal court were first and foremost records of remarriage permissions granted by the synod. The absence of records of any dowry disputes or negotiations could be explained by the possibility of the existence of separate records on the financial aspects of divorce, which are unavailable to us today. We should also take into account the possibility that financial settlements were not handled by the Patriarchal tribunal, at least in the late seventeenth century. The majority of the loan and credit cases in the Ziskind MS from the seventeenth century included the clergy as one of the parties, whereas lay people, or at least the lay elite, appear more frequently with their financial matters in the cases from the eighteenth century in the same MS. Unfortunately, none of those cases from the eighteenth century is a divorce case, which does not allow for a comparison between the available divorce cases from the late seventeenth century. Financial issues of Greek Orthodox subjects related to their inheritance disputes or apportioning were brought to the Sharia courts quite frequently. Although it is a somewhat impressionistic observation, in the Bab court registers, the number of those inheritance-related cases of non-Muslims, in general, seems to be much higher than their

[390] Abdal-Rehim, "The Family and Gender Laws in Egypt," 103.

[391] Abdal-Rehim, however, notes that a woman of wealth who was entering into her second marriage could receive a higher amount of dowry than a virgin woman of modest means. Abdal-Rehim, "The Family and Gender Laws in Egypt," 99-100; Elbirlik, "Negotiating Matrimony," 208.

divorce-related cases. As discussed in the introduction chapter, inheritance-related cases outnumbering divorce cases could be related to the possibility that the state did not grant the authority to the patriarch to officially try inheritance cases of lay coreligionists. Even if the Church handled inheritance matters of community members, the tendency might have been to resort to the Sharia court for their financial concerns, though the issue of inheritances of non-Muslims, in general, needs further research.

While we lack data on dowry practices from the seventeenth-century Patriarchal court registers, the fourteenth-century registers of the same court in the Byzantine period contain entries concerning dowry settlements after the death of one of the spouses, upon the sale of dowry property, but most dominantly, regarding disputes related to women's portion of the dowry and its protection against the husbands' heirs. The great majority of these entries are concentrated between 1394 and 1401; none was a divorce case.[392] Unlike Muslim dowry practices, disputes over dowries of Orthodox Christians might have been provoked at the time of death, not of divorce, as the substantial portion of the dowry was considered premortem inheritance.

Although different dowry customs were followed, the core of the dowry system, both in Istanbul in the late Byzantine period and in the Aegean islands and mainland Greece in the seventeenth and eighteenth centuries, was basically the same. At the time of marriage, parental property, both from the groom's side and the bride's side, was transferred to the newlywed children. Family property was thus transmitted from one generation to the next.[393] The chief

[392] Ruth J. Macrides, "Dowry and Inheritance in the Late Period: Some Cases from the Patriarchal Register," in *Kinship and Justice in Byzantium, 11th-15th Centuries* (Aldershot : Ashgate, 1999), 89.

[393] Laiou, "Marriage Prohibitions," 140; Macrides, "Dowry and Inheritance," 93-94; Papagianni, *'Η Νομολογία των Έκκλησιαστικων Δικαστηρίων*, 35; Doxiadis, "Kin and Marriage," 239; Kasdagli, "Family and Inheritance," 267.

purpose of the dowry was to form a financial basis for the newlywed couple, and the tendency was to keep it as is for the next generation. The dowry could be in the form of land, livestock, jewelry, or cash. Ideally, the couple could use the revenues generated from the dowry and only spend the dowry sum in the event of a compelling need.[394] Although it was the husband who managed the bride's portion of the dowry, the woman was the legal owner of it, and he was not entitled to spend it or dispose of it without her authorization.[395]

In the event that a spouse died childless and intestate, the dowry of the deceased was supposed to be transferred to his or her family, usually to the next person in the succession line. That is to say, the couple could not take over the ownership of each other's dowry portion.[396] In an example from the Ziskind MS, for instance, in 1690, Helenitza demanded the dowry of her sister, Fioritza, who had died childless. According to the register, Fioritza's husband, Protovestiarios Andronakes, returned the dowry to Helenitza after deducting the funeral expenses. It was also noted that Andronakes kept all the prenuptial gifts he had given to Fioritza, as well as the ones he had given during the marriage.[397]

If the marriage ends with a divorce due to one party's fault, however, canon law stipulates that the "innocent" partner retains the dowry of the "guilty" one. According to that principle, if the wife commits adultery, or visits public places without her husband's knowledge and against his will, for instance, or if the husband "delivers his wife up to other men," or accuses her of being an adulteress but cannot prove it, and their marriage ends due to these

[394] Laiou, "Marriage Prohibitions," 140-141; Kasdagli, "Family and Inheritance," 270.

[395] Doxiadis, "Kin and Marriage," 239; Papagianni, *'Η Νομολογία των Έκκλησιαστικων Δικαστηρίων,* 88.

[396] Laiou, "Marriage Prohibitions," 140; Kasdagli, "Family and Inheritance," 269.

[397] Vaporis, *The Ziskind MS*., 74.

reasons, the "blameless" party retains the dowry of her/his "faulty" partner.[398] The fact that women enjoyed the right to keep their own portion of the dowry, except when they were guilty, allows for the assumption that they were provided with some sort of a financial basis in case of a divorce. As will be discussed below, it might also explain the question of how some women whom their husbands abandoned without any financial support could remain single and wait for many years before finally petitioning the Patriarchal court to obtain a divorce.

According to Macrides, it is usually challenging to determine the amount of dowry brought to the marriage since it was commonly in the form of land or other property rather than cash. Nevertheless, although there were cases in which the bride's portion of the dowry was higher than that of the bridegroom in fourteenth-century Constantinople, it was not the norm. There are also examples of couples who brought almost the same amount of dowry or of bridegrooms whose dowry portion was higher in value.[399] There were complaints, however, against those families who asked for prenuptial gifts from the bride's family for their sons. Since these gifts were usually not recorded in the dowry contracts, the husband preserved them in the event of divorce or the wife's death.[400] Pantazopoulos also talks about prenuptial gifts, *trachoma*, given by the bride to the bridegroom in the Ottoman period. Similarly, Patriarchal and synodical orders are found, especially from the eighteenth century, which condemned this practice upon the complaints of families on the bride's side.[401] It is hard to know, however, the extent to which the practice was followed, which was essentially against church laws.[402]

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[398] Blastares, 115-117; Ivanova, "Judicial Treatment of Matrimonial Problems," 155.

[399] Macrides, "Dowry and Inheritance," 93-94.

[400] Ibid., 93.

[401] Pantazopoulos, *Church and Law*, 56-63.

[402] Ibid., 74.

In terms of dowry practices, customs might have varied in different locations and periods.[403] For instance, Doxiadis' study indicates that, in the eighteenth century, in Naxos, both parties contributed to the dowry customarily, whereas in Mykonos, more often than not, it was the bride's family who was the primary benefactor in dowry contracts.[404] Doxiadis explains this divergence according to the different economic structures on the two islands, which otherwise shared a similar cultural and social pattern.[405] He also notes that while in the Byzantine period it was usually the father who provided the dowry, in the Aegean islands in the Ottoman period, a different kind of practice was followed. Property was transmitted through dowry in a method called materna-maternis, paterna-paternis, according to which the father transferred his property to the son, while the mother transferred hers to the daughter.[406]

The fact that the available divorce cases of non-Muslims in the Sharia court registers usually contain their dowry settlements and that these are recorded as *mehr,* not as *proika* (προίκα, the Greek term for dowry), for instance, has led some scholars to suggest that some non-Muslim subjects might have adopted Muslim dowry practices because it was more advantageous for women.[407] This assumption is based mainly on a misleading impression about the Greek Orthodox dowry system, in contrast to Muslim dowry practice. According to this

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[403] Papagianni, *'Η Νομολογία των Έκκλησιαστικων Δικαστηρίων*, 36.

[404] It should be remembered, however, that at least in theory, even in the event that the bride's family was the primary benefactor of the dowry, the bride was the absolute owner of it, and it was inviolable by the husband. Indeed, Macrides mentions that, in practice, some women had to defend their right to retain their portion of the dowry and brought their disputes to the Patriarchal court in the fourteenth century. Macrides, "Dowry and Inheritance," 89.

[405] Doxiadis, "Kin and Marriage," 241-250.

[406] Ibid., 240.

[407] Ivanova, "Judicial Treatment of Matrimonial Problems," 170; Laiou, "Christian Women in an Ottoman World," 248.

view, while the bride receives the dowry in Islam, the dowry is delivered to the bridegroom per Christian custom. However, as explained above, although there were some localized practices that put the bride's side into a financially unfavorable position, they cannot be considered the norm. Despite the fact that the Christian dowry system is admittedly not as uniform as the Muslim practice, from what is available, the dowry as premortem inheritance both to the bride and to the bridegroom seems to be the prevalent form of the Greek Orthodox dowry practice.

While discussing non-Muslims' dowry records in the Sharia court registers, we should also take into account the fact that the Sharia court registers used a markedly standardized and formulaic structure in recording most cases. This practice did not allow for litigants' voices to be heard, essential details to be recorded, and quite possibly any non-Muslim terms and customs to be recognized. Therefore, it is not unreasonable to assume that when a non-Muslim divorcing couple wished to register their dowry settlement in the Sharia court, the scribe recorded it just like a Muslim settlement. Moreover, even if non-Muslim couples wished to register their dowry settlement according to their own customs, it might not have been viable for a couple of reasons. First of all, whatever the regulations of non-Muslims were, the Muslim judge could only rule according to Islamic law.[408] In other words, a dowry dispute could only be resolved according to Muslim dowry arrangements. Second of all, a Muslim judge was unlikely to be schooled in the complicated canons and customs of not only the Greek Orthodox but also Jews and Armenians. In all likelihood, therefore, non-Muslims applied to the Muslim judge knowing that their case would be tried according to Islamic law and their registry would be recorded correspondingly.

In a divorce record from 1672, a Greek Orthodox woman, Sultana, went to the Bab court to register her divorce. It was registered as a *hul* divorce, which implies that it was Sultana who

[408] Tucker, *In the House of the Law*, 49; Laiou, "Christian Women in an Ottoman World," 248-249.

initiated it, disclaiming her delayed dowry in return for the divorce. Unlike the standard *hul* records, Sultana's divorce had been registered with a significant difference. A regular entry of a *hul* divorce notes that in order to obtain the desired divorce the woman more often than not forgoes her husband's dowry debt and other financial liabilities, i.e., her delayed dowry (*mehr-i mueccel*), her waiting-period allowance (*nafaka-i iddet*), and her accommodation expenses (*meunet-i sükna*). This statement reappears identically in almost every Muslim *hul* record in this period. The difference in Sultana's entry is that there is no mention of the delayed dowry; it was only stated that she paid her husband a "*hul* price" (*bedel-i hul*) worth a thousand *akçe*s.[409] The absence of the delayed dowry in the register hints that the Greek Orthodox couple did not follow Muslim dowry practice, and what they registered as "*hul* price" might have been the exchange of some gifts given in the prenuptial period or during their marriage. Their major concern seems to have been registering that they agreed to "acquit and absolve each other" (*ibra ve iskat*) from additional debts so that neither party could claim anything in the future.

Although it cannot be proved conclusively, the term "*hul* price" probably stands for a Greek term, which does not usually appear in the Sharia court registers.[410] This assumption is not to reject altogether the possibility that non-Muslims living together with Muslims for centuries, being exposed to the dominant culture, resorting to the Sharia courts frequently for various reasons, doing business together, etc., might have led some non-Muslims to adopt some Muslim practices in their everyday lives. In the specific case of the dowry, however, the assumption that non-Muslims turned towards adopting Muslim dowry practices because it was more favorable

[409] İBMŞS, 13 Numaralı Sicil, Varak [73-a].

[410] Although the Bab court registers from the late seventeenth century do not contain any Greek terms in the records of non-Muslims, in one example from Veria that Laiou mentions, instead of *mehr*, the dowry was registered as *brika*, i.e., *proika* (*προίκα*). Laiou, "Christian Women in an Ottoman World," 249.

for the woman can be somewhat problematic. That view implies that the bride's side made the bridegroom's side accept a deal that was not only against their own religious rites but also, maybe more importantly, was financially disadvantageous for the bridegroom and his family. If we are to accept this explanation, we should also question why the bridegroom's side would agree to an unfavorable arrangement.

4.4. Polygamy

It is now established that although Islamic law allowed men to marry up to four wives, even bigamy was not a common practice in the Ottoman world.[411] Polygyny among Muslim men was not a norm; it was an expensive institution and therefore adopted mainly by those who had the means to afford it.[412] Polygamy in Orthodox Christianity, on the other hand, was strictly condemned, and ecclesiastical laws considered it "bestial and contrary to the human way of life."[413] Nevertheless, the institution of *kebin*/*kepinion*, *kiambin* (*καπήνιον, κιαμπίν*), which connotes a clandestine or illegal marriage in the ecclesiastical context, allowed some Greek Orthodox men and women to practice polygamy. Although it is hard to determine how frequent its use was among the Greek Orthodox population, nine out of ninety-seven available entries

[411] Haim Gerber, "Social and Economic Position of Women in an Ottoman City, Bursa, 1600-1700," *International Journal of Middle East Studies* 12, no. 3 (1980): 232; Collete Establet and Jean-Paul Pascal, *Familles et fortunes à Damas: 450 Foyers Damascains en 1700* (Beirut, Lebanon: Presses de l'Ifpo, 1994), 55; Hüseyin Özdeğer, *1463-1640 Yılları Bursa Şehri Tereke Defterleri* (Istanbul: Bayrak Matbaacılık, 1988), 50; Ömer Lütfü Barkan, *Edirne Askerî Kassamina Âit Tereke Defterleri* (1545-1659) (Ankara: Türk Tarih Kurumu Basĭmevi, 1968), 13-14.

[412] In addition to the difficulty of affording a polygynous marriage, Zilfi points out that families from upper strata might not have favored it for the sake of preserving their lineage. Wealthier families might have desired to protect their daughters' interests and the inheritance rights of their grandchildren. (Personal communication, August 26, 2021).

[413] Blastares, 99.

from the Patriarchal court registers include *kebin* marriages. These entries are invaluable in illuminating not only the way *kebin* was practiced but also how religious and legal authorities approached it. Whether or not the institution of *kebin* was borrowed from the Muslim world, which will be briefly discussed below, there are substantial differences between *kebin* and Muslim polygyny. First and foremost, *kebin* marriage could be used both by men and women, whereas Muslim polygamy was a male privilege. Secondly, *kebin* seems to have worked as a polygamous marriage only in the sense that a person could be married to two people simultaneously, while the conjugal relationship with the first husband or wife seems practically to have ended in many such cases.

The Qur'anic verse on the permissibility of polygyny up to four wives is understood as having emerged as a result of ongoing wars in the Prophet Muhammed's lifetime, leaving many women widowed and children orphaned. It aimed to provide protection for those vulnerable women and children. It is specified in the Qur'an that if men do not believe that they can treat each wife equitably, they should refrain from marrying multiple women.[414] According to another view, the Qur'an actually limited the number of women a Muslim man could marry to four since, in the pre-Islamic period, a man could marry as many women as he desired.[415] Motivations of Muslim women and men in entering into polygamous marriage in the pre-modern Ottoman period might be hard to grasp from the Sharia court registers, since we find relatively few cases of polygamy.

[414] Syed Jaffer Hussain, "Legal Modernism in Islam: Polygamy and Repudiation," *Journal of the Indian Law Institute* 7, no. 4 (1965): 389.

[415] Leila Ahmed notes that both polygynous and polyandrous marriage was practiced in pre-Islamic Arabia. Ahmed, *Women and Gender in Islam,* 41-44.

Although the ratio of polygamous to monogamous marriage could vary in different locations, it never appears to have been a common practice. For instance, in seventeenth-century Bursa, only around 1 percent of the marriages seem to have been polygamous,[416] whereas in Damascus in 1700, it was 10.6 percent,[417] and 6 percent in Aleppo between 1770 and 1840.[418] In addition, among married men in Edirne between 1545 and 1659, only 7.18 percent were married to two or more women.[419] Since the ledgers from the seventeenth-century Bab court that I work on mostly lack estate inventories, I am unable to provide data on polygyny in Istanbul in that period. From a later period, however, according to Behar and Duben's study, very few people entered into polygynous marriage in the capital: in 1885, 2.29 percent, and in 1907, only 2.51 percent of men were married to more than one woman.[420]

Historians tend to agree that a man's financial capacity was the major determinant in polygynous marriages since, as mentioned, the maintenance and dowry expenses designated for each woman could be quite expensive for a man of modest means. Co-wives also had the right to oppose living in the same residence with each other. The husband, in that case, was supposed to provide each of his wives with separate housing, which would further increase the costs that he had to bear.[421] According to Meriwether, polygyny was adopted by some Aleppine notable men

[416] Haim Gerber, "Social and Economic Position of Women," 232. For Bursa, Hüseyin Özdeğer gives a little higher rate for polygyny between the years 1463-1640. 4.6 percent of married men had more than one wife. Özdeğer, *Bursa Şehri Tereke Defterleri*, 50.

[417] Establet and Pascal, *Familles et Fortunes à Damas*, 55.

[418] Meriwether, *The Kin Who Count*, 125.

[419] Barkan, *Edirne Askerî Kassamina Âit Tereke Defterleri*, 13-14. In Edirne, among 1516 married men, 103 of them were married to two women and only 6 of them to three women.

[420] Duben and Behar, *Istanbul Households*, 149-150.

[421] Tucker, *In the House of the Law*, 62.

as a way to emulate the sultans with large harems, through which they possibly aspired to raise their social status. Extending their household with multiple wives and, therefore, more children must have contributed to strengthening the notables' position in society.[422] On the other hand, Cuno adds that in an Egyptian village around the mid-nineteenth century, where approximately ten percent of men were polygynous, marrying more than one woman was not always related to wealth. Although it was not the predominant practice, some rural men, who were not landholders, adopted polygyny for the purpose of increasing their family labor force.[423]

While men had different motivations for entering into a polygynous marriage, a woman's point of view is somewhat obscure, although it is not very difficult to imagine that many women did not desire such an arrangement, which many would have thought degrading and harshly competitive.[424] For instance, marriage contracts from Egypt, to which certain conditions were attached, demonstrate that some women desired to ensure at the outset that their husbands did not take another wife.[425] As much as such stipulations show those women's readiness to annul their marriage in the event that polygamy occurred, they also reveal that polygyny was indeed a real threat for many women.[426] Some women might have also negotiated with their husbands through a conditional divorce, and tried to guarantee the opportunity to obtain an annulment if their

[422] Meriwether, *The Kin Who Count,* 124-125.

[423] Kenneth Cuno, "A Tale of Two Villages: Family, Property, and Economic Activity in Rural Egypt in the 1840s," in *Agriculture in Egypt: From Pharaonic to Modern Times,* eds., Alan K Bowman and Eugene L Rogan (Oxford: Published for the British Academy by Oxford University Press, 1999), 321-323.

[424] However, there is considerable evidence of women's negative attitude toward polygamy and concubinage from the late nineteenth and early twentieth centuries. Scott Rank, "Polygamy and Religious Polemics in the Late Ottoman Empire: Fatma Aliye and Mahmud Es 'ad's Ta 'addüd-i Zevcât'a Zeyl," *Cihannüma Tarih ve Coğrafya Araştırmaları Dergisi* 1, no. 2 (2015): 61-79; Nihan Altınbaş, "Marriage and Divorce in the Late Ottoman Empire: Social Upheaval, Women's Rights, and the Need for New Family Law." *Journal of Family History* 39, no. 2 (2014): 114-125.

[425] Abdal-Rehim, "The Family and Gender Laws in Egypt," 99-103.

[426] Meriwether, *The Kin Who Count,* 127.

husbands took a second wife. In 1667, an interesting case was brought to the Bab court by Ümmühani, which reveals an example of conditional divorce relating to polygyny. In the court, Ümmühani declared that she had married İbrahim Ağa through her proxy, with an advance dowry of one thousand and five hundred *akçe*s, and a delayed dowry amounting to fifty-five thousand *akçe*s, which, as demonstrated above, was much above the average range of dowry around that period. According to her statement, after contracting the marriage, Ümmühani had found out that İbrahim Ağa already had another wife, as well as an "odalisque" (*odalık*), due to which she avoided any intimacy with him (*kable'l-halve ictinâb ettiğimde*). Nevertheless, to convince her to end her aloofness, İbrahim Ağa had taken a vow and said that "if I have another wife or concubine other than Ümmühani, she has the power to do whatever she desires." Upon his vow, Ümmühani possibly believed that their marriage had effectively been annulled, since she made the claim about İbrahim Ağa's already existing wife, whereby she appealed in court to demand that he pay half of her dowry.[427] İbrahim Ağa, however, rejected her claim in court. Thereupon, as a standard procedure, Ümmühani was asked to present evidence as to his existing wife and concubine, which she was unable to do. When it was İbrahim Ağa's turn to verify his statement by taking an oath, he did not hesitate to do so, and consequently the deputy judge of the Bab court, as expected, forbade Ümmühani from causing any dispute on the issue.[428]

One of the several questions that Ümmühani's case raises is the possibility of a woman finding herself in a polygynous marriage without formerly being informed about it. Assuming that her statement was true, we understand from the record of her court case that she learned about the existing wife of İbrahim Ağa after she was already married to him. The fact that it was

[427] Islamic law allowed women to receive half of the promised dowry if the marriage was not consummated. Esposito and DeLong-Bas, *Women in Muslim Family Law*, 23.

[428] İBMŞS, 3 Numaralı Sicil, 410 [65a-5].

her proxy who arranged her nuptial agreement with İbrahim Ağa, one might assume that the proxy either concealed the prior marriage from Ümmühani or that he had not heard anything about another wife. The record also implies that the parties had not added a stipulation to the marriage contract with regard to not already having a wife or taking an additional one in the course of the marriage. Ümmühani did not rely on any pre-nuptial condition or vow; her sole basis was the vow İbrahim Ağa took after her avoidance of him. Nevertheless, had İbrahim Ağa not taken the vow, Ümmühani would have had no legal ground to avoid her lawful husband, not to mention to annul her marriage. Still, she seems to have exercised an agency of some kind by remaining aloof from İbrahim Ağa and eventually by making him utter the formulation for the conditional divorce, which could have paved the way for obtaining an annulment and receiving half of her dowry, only if she could have supported her plea.

Another puzzling point in Ümmühani's case is the fact that she put forth the existence of another wife, as well as an "odalisque," when explaining her reasons for avoiding İbrahim Ağa. It is puzzling because she seems to have refused not only a Muslim's man's legal right to have multiple wives but also his right to have female slaves and engage in sexual intercourse with them. The widespread wording used for female slaves in the Sharia court registers is *cariye*, not *odalık*, which might have been particularly selected to emphasize that the concubine at issue was İbrahim Ağa's favorite among several other female slaves. The reason that Ümmühani mentioned an "odalisque" together with another wife might be related to her unwillingness to enter into a marriage in which she would have to deal with not one but two "rivals." While there are many examples of men having female slaves and having offspring by them, Ümmühani's

stance once again reminds us of how repellent that might have been for the wife, not to mention the slave herself.[429]

Of course, since Ümmühani lost the case, we also need to consider the possibility that she was not telling the truth from the very beginning. One might question how she found out about the wife and the "odalisque" whom she was unaware of before the marriage and whose existence she was later unable to prove in court. Her statement could also sound suspicious in the sense that İbrahim Ağa seems to have voluntarily taken the vow about not having another wife or "odalisque." Even if he took the oath under the pressure of Ümmühani and her kin, he would not have been in a favorable position in the event that she found witnesses who could testify against his denial. If Ümmühani indeed made a false statement, her primary motivation might have been to receive half of her delayed dowry, which was still an enormous amount, and to get away from, possibly, an undesired marriage, although initially she seems to have given her consent to this marital arrangement. If we accept that she went after the dowry and attempted to frame that scenario, one would expect her to take into account the fact that she was going to be asked for evidence when İbrahim Ağa disputed her claims and that she would be prepared accordingly. On the other hand, as İbrahim Ağa was able to agree on a massive amount of dowry, it is not inconceivable that he attempted to have a polygynous marriage since he was obviously able to afford it.

Regardless of whether or not Ümmühani's statement was accurate, her case might be helpful to reveal some possible trajectories for a woman who was married into a polygynous marital arrangement. First of all, it is worth considering the likelihood of a woman finding herself in a polygynous marriage without being aware of it, as in the example of the above-

[429] For a useful discussion on female slaves' relation to their male owners, see Madeline C. Zilfi, *Women and Slavery in the Late Ottoman Empire* (New York : Cambridge University Press, 2010), 108-117.

mentioned Hatice, who had been unlawfully married off by her proxy to someone whom she did not consent to marry. In marriages arranged by proxies, it is not unreasonable to assume that some women were not well informed about the prospective husband or the conditions of the conjugal arrangement they were about to enter into. Ümmühani's case points out another possibility that some women might have delayed or completely rejected the consummation of the marriage when the conditions were unfavorable for them. In fact, there are several cases in the Bab court registers, some of which have already been discussed here, in which men appealed to the deputy judge to demand that he admonish their wives to have sexual intercourse with them (*ezvac muamelesi*). Coercion might have also been used in some of such cases, yet female refusal of sex could also render some men helpless such that they sought a formal legal solution. Nevertheless, court registers do not provide enough data to understand how women avoided a polygynous marriage, what kind of disputes arose between co-wives, or why some women accepted being in a polygynous arrangement while others tried to prevent it.

What appears as *kebin* in the Patriarchal court registers are found in the divorce cases of Greek Orthodox couples, one of whom had entered into a second marriage. Based on the travelogues of Europeans, *kebin* is usually defined as a temporary marriage contracted in front of a Muslim judge.[430] Those travelers who visited Ottoman lands between the sixteenth and the eighteenth centuries reported that European merchants in the Ottoman Empire married local

[430] Pantazopoulos, *Church and Law*, 93-102; Ioannis Zelepos, "Multi-denominational Interactions in the Ottoman Balkans from a Legal Point of View: The Institution of Kiambin Marriages," in *Common Culture and Particular Identities: Christians, Jews and Muslims in the Ottoman Balkans*, eds., Eliezer Papo and Nenad Makuljević (Beer-Sheva: Moshe David Gaon Center For Ladino Culture, Ben-Gurion University of the Negev, 2013), 44; Betül Başaran, "17. Ve 18. Yüzyıllarda *Kebin* Evlilikleri Üzerine Bazı Değerlendirmeler," *Tarih ve Toplum* 18 Güz (2021): 57-58; Kolovos, "A Town for Besiegers," 113-114; Laiou, "Christian Women in an Ottoman World," 246; Colin Imber, "Guillaume Postel on Temporary Marriage," in *Festschrift Hans Georg Majer: Frauen, Bilder Und Gelehrte: Studien Zu Gesellschaft Und Künsten Im Osmanischen Reich*, ed. Sabine Prätor (Istanbul: Simurg Kitabevi, 2002), 179-183.

Christian women in the course of their stays, only to divorce them before returning home. These marriages, which the travelers defined as *kebin,* took place in the Sharia court after the parties predetermined a certain amount of dowry and a specific time period for the end of their marriage. During their marital life, the husband maintained both the wife and any child conceived within the marriage. When the marriage dissolved, just as in a regular marriage, the woman received her delayed dowry.[431] It has been suggested that the time limit of the *kebin* marriage was usually settled orally, which explains the absence of any such nuptial contracts in the Sharia court registers. Without any note on the temporary aspect of the marriage, the contract would look just the same as a standard Muslim marriage.[432]

Although the *kebin* marriage is well-documented in the travelogues, as noted by Laiou, it would be misleading to identify every marriage record or marital dispute in the Sharia court registers between a European (*a frenk* or *a müste'men*) and a local Christian woman as a *kebin*/temporary marriage.[433] As Eldem points out, many European traders and artisans aspired to establish stable and possibly permanent connections in Ottoman lands through marrying a local woman whose family had a strong network in the area. Indeed, he observed that in the eighteenth-century parish records of the Catholic church of Saints Peter and Paul, quite a few family names appear for over a century, which demonstrates some Europeans' tendency to reside permanently in the Levant.[434] In addition, divorce was a widespread phenomenon in the pre-modern Ottoman world and, therefore, a marital bond was far from being lifelong. In that

[431] Başaran, "*Kebin* Evlilikleri," 57.

[432] Laiou, "Christian Women in an Ottoman World," 247.

[433] Ibid., 247.

[434] Eldem, "The French *Nation* of Constantinople," 146-153.

respect, it is probable that not every marriage between a European man and local woman would end only due to a predetermined end date; many other reasons might have played a role in the dissolution of their marriage. While we have no way of knowing whether a marriage was arranged to be temporary or not, the motivation of the woman for accepting such an arrangement could stem from necessity. Being maintained by a husband, even for a specified period of time, and receiving a dowry at the end of her contract could help a woman of modest means to form a financial basis for herself.[435] If it was a Greek Orthodox woman, however, we should also acknowledge that she probably ran the risk of being condemned by the church and faced the threat of excommunication.

According to Pantazopoulos, the *kebin* marriage was adopted based on the Muslim tradition of temporary marriage, *mut'a*. However, the author does not discuss the fact that temporary marriage was not permitted for Sunni Ottomans; it is, however, legal in Shi'i Islam and was practiced, and is still practiced, in Shi'i Iran. According to the Shi'i customs of temporary marriage, the marriage is set up for a specific period with certain financial arrangements, which can last for an hour or years. In addition, a temporary wife is not counted as one of the four permanent wives, and a man can have as many temporary wives as he pleases.[436] It should also be noted that in the absence of court registers, the historian would need to rely on

[435] Laiou, "Christian Women in an Ottoman World," 247-248.

[436] Momen Moojan, *An Introduction to Shi'i Islam: The History and Doctrines of Twelver Shi'ism* (New Haven: Yale University Press, 1985), 182-183; Shahla Haeri, *Law of Desire: Temporary Marriage in Shi'i Iran* (Syracuse, N.Y. :Syracuse University Press, 2014), 1-2; İbrahim Kâfi Dönmez, "Müt'a," *TDV İslam Ansiklopedisi*, https://islamansiklopedisi.org.tr/muta, accessed December 6, 2021; Liyakat Takim, "Law: Other Schools of Family Law-Overview" in *Encyclopedia of Women & Islamic Cultures*, Vol. II, eds., Suad Joseph and Afsaneh Najmabadi (Leiden: Brill, 2005), 447; Mehrangiz Kar, "Law: Modern Family Law, 1800-Present- Iran," in *Encyclopedia of Women & Islamic Cultures*, Vol. II, eds., Suad Joseph and Afsaneh Najmabadi (Leiden: Brill, 2005), 466-468.

the accounts of European travelers to find about *mut'a* marriage in the Shi'i Safavid Empire.[437] Pantazopoulos, however, does not discuss the extent to which temporary marriage was practiced among Sunni Muslims in the Ottoman Empire, notwithstanding that Schacht also notes that despite being forbidden, a Sunni Muslim could unofficially enter into a temporary agreement.[438] It is also believed that the word *kebin* comes from a Persian word that is used for dowry.[439] On the other hand, to my knowledge, contemporary sources, including court registers, fatwa literature, and chronicles, are silent about the practice in Ottoman society, which might be related to its unlawful nature, as well as its rarity.

In contrast to the references in European travelogues, what is described as *kebin* in the Patriarchal court registers does not indicate that it carries a connotation of temporary marriage. Rather, while defining *kebin*, we should differentiate marriages of two Orthodox Christian community members and those between a European man and a local Christian woman. I approach even more cautiously the *kebin* marriage between two Muslims since our information on Muslim *kebin* marriage is much more limited. A broader definition of *kebin*, from the Greek Orthodox ecclesiastical point of view, would be illegal marriage, clandestine marriage,[440] or marriage contracted in the "external" court, i.e., the Sharia court.[441] According to the seventeenth-century *nomokanon* Nomokritirion, a lawful marriage is one between two Greeks

[437] See, for example, Sir John Chardin, *The Travels of Sir John Chardin into Persia and the East-Indies the First Volume, Containing the Author's Voyage from Paris to Ispahan: To Which is Added, The Coronation of this Present King of Persia, Solyman the Third* (Henry E. Huntington Library and Art Gallery, 1686), 261; Adam Olearius, *The Voyages and Travels of the Ambassadors Sent by Frederick, Duke of Holstein, to the Great Duke of Muscovy and the King of Persia* (London: Printed for John Starkey and Thomas Basset, 1669), 325-330.

[438] Schacht, *An Introduction to Islamic Law*, 163; Kolovos, "A Town for Besiegers," 113.

[439] Arabatzoglou, Vol. II, 34-35; Başaran, "*Kebin* Evlilikleri," 57.

[440] Doxiadis, "Women in the Communal Courts of Late Ottoman Greece," 75.

[441] Pantazopoulos, *Church and Law*, 93-94.

(*Ρωμαῖοι*), in which the bridegroom must be at least fifteen years old and the bride thirteen.[442] In the most general sense, marriages within the seventh degree of kinship, a subsequent fourth marriage, and polygamy are not allowed. In the Patriarchal court registers, however, it is only polygamy that is described as *kebin*. Among nine *kebin* cases in the registers, in four of them it was the wife who "committed" it; in three cases it was the husband, whereas, in one other, both spouses had entered into *kebin* arrangements.

In one of the available *kebin* cases from the Patriarchal court, Anna, whose husband Kanakis was bedridden and paralyzed, appeared before the synod in 1671 to divorce Kanakis and receive permission to remarry. She had been found to have committed adultery, having taken another man through *kebin*, and lived with him illegally (*ἐφάνη περιπεσοῦσα ἀνακεκαλυμμένη μοιχείᾳ ἄνδρα γὰρ ἔχουσα Κανάκην ὀνόματι πρὸ τοῦ ἐκσπασθῆναι αὐτοῦ, κλινήρους καὶ παραλύτου τυγχάνοντος ἔλαβε διὰ καπινίου ἕτερον, παρανόμως αὐτῷ συνοικοῦσα…*). When Kanakis was brought to the court, his "half-dead" condition was observed by the synod as well. After Kanakis agreed to dissolve his marriage with Anna, the synod approved their divorce and gave Anna permission to remarry another Christian man.[443] For some reason, Anna does not seem to have taken the option of obtaining a divorce from her bedridden husband previously and marrying another man legally. She might have thought that she did not have legitimate grounds to demand a divorce, or she did not want to run the risk of not being able to obtain the synod's consent for remarriage.[444] What is recorded as "she took another man through *kebin*" is not very helpful for illuminating the nature of her relation to the "second man." It might refer to a

[442] *Nomokritirion*, 67.

[443] Arabatzoglou, Vol. II, 126-127.

[444] Divorce and remarriage in the Patriarchal court will be discussed in detail in Chapter 5.

marriage, but also to an extra-marital cohabitation, neither of which was legal. In addition, in the record, there is no indication that the marriage between Anna and the "second man" was registered in the Sharia court, nor anything that suggests that the two had entered into a temporary marriage. What we understand, at best, is that *kebin* was used for Anna's illegal marriage to or cohabitation with another man. As mentioned above, the arrangement that we see here is quite different from the Muslim polygyny in the sense that, at least in Anna's case, it was a woman who had entered into an additional marriage, and that unlike wives in a polygamous union, Kanakis and the "second man" cannot be considered co-spouses.

Although there are a couple of examples in which the person who entered into *kebin* was excommunicated by the synod, Anna, for instance, not only was not punished but also was granted permission to remarry legally. Remarriage up to three times was allowed by the church, but, as will be discussed in the following chapter, ecclesiastical consent was required for it. Polygamy, on the other hand, or a fourth marriage was considered fornication, the punishment for which was excommunication. The reason that the synod did not impose any penalty on Anna must have been related to the Patriarch's tendency not to administer severe punishment, as well as the unfavorable situation that Anna was placed in when her husband's bedridden condition was taken into account. It seems as though the synod considered that Anna had grounds for not wanting to cohabit with someone who might not have been able to fulfill his husbandly responsibilities or because of his constant needs as a paralyzed man. Her marriage to Kanakis may thus have been considered unbearable. It is most probable that the synod was also concerned to prevent an illegal cohabitation of a community member, and therefore gave her the opportunity to return to the "right path."

Anna's case was quite similar to those of other women in the Patriarchal registers who entered into *kebin,* in their attempt to legitimize their illegal activities, along with the synod's approach to those situations. In 1672, for instance, Maria stated in court that her husband Drakon was unable to consummate the marriage. Due to his problem she had taken another man through *kebi,* and become pregnant by him (*προφάσει έλαβεν άλλον άνδρα διά κεπηνίου, μεθ'ου έγκυμονει*). After Drakos admitted his impotence, their marriage was dissolved by the synod and, again, Maria was given ecclesiastical permission to remarry.[445] Her husband's inability to consummate the marriage presented valid grounds for having an affair with another man, yet only after the synod was convinced through Drakos' admission. Other women in the registers, on the other hand, tried to justify their *kebin* arrangements by asserting that their husbands were not financially taking care of them.

The *kebin* arrangement of a Greek Orthodox man came to light when his wife, Sultana, appealed to the Patriarchal court to obtain an ecclesiastical divorce and permission to remarry. According to her statement, her husband, Spantonis, was not supporting her financially and was wasting her belongings (possibly including her dowry, of which he was not allowed to dispose). He had also divorced her "externally," i.e., in the Sharia court and thereafter taken another woman through *kebin.*[446] What is interesting here is that although they were divorced by the Muslim judge and received a *hüccet* (official document) to that effect, Spantonis' affair with another woman was still considered *kebin* (*ἐχωρίσθη ταύτης ἐξωτερικῶς διὰ χοτζετίου, εἰτα λαβὼν ἑτέραν γυναῖκα διὰ κεπινίου συνοικεῖν ἐκείνη*). Most probably, because it was not an ecclesiastical divorce, the synod regarded the two as still married, and his relationship with

[445] Arabatzoglou, Vol. II, 129.

[446] Arabatzoglou, Vol. II, 131-132.

another woman, therefore, was considered illegal. One can, of course, question the point of applying to the Sharia court to obtain a divorce *hüccet* if it did not suffice for the church. The purpose might have been to guarantee their children's legitimacy so that in the future, the children could be considered legal heirs after the couple's death.[447] When Spantonis was summoned to the Patriarchal court, he refused to go and give a statement, as a result of which he received excommunication. It is evident that he was not on good terms with the church as he had openly committed illegal acts. His appeal to the Sharia court could also be discussed within this context: his failed and problematic relationship with the church might have led him to the Sharia court.

4.5. Deserted women

Long wars, trade in different locations, or pilgrimage caused many men to leave their homes, abandoning their wives. In a pre-modern context, where means of transportation and communication were very basic, distances could be vast, separations long, and hearing from each other could become quite difficult. A woman whose husband had to abandon her – or voluntarily did so to escape an unwanted marriage or overdue debts that he could avoid only by disappearing – found herself in a situation in which she had to take care of herself and sometimes her children as well. The story of deserted Muslim women in different contexts has been told based on both court registers and the fatwa literature.[448] However, the issue of being deserted was by no means

[447] There are many examples in the Sharia court registers of non-Muslims whose estates were confiscated by the Ottoman state treasury in the absence of a legitimate heir.

[448] Yahya Araz, "Kadınlar, Toplum ve Hukuk: 16. ve 17. Yüzyıl Osmanlı Toplumunda Eşleri Tarafından Terk Edilen Kadınlar," *Tarih ve Toplum Yeni Yaklaşımlar* 6, no. 246 (2007): 61-82; Selma Zečević, "Missing Husbands, Waiting Wives, Bosnian Muftis: Fatwa Texts and the Interpretation of Gendered Presences and Absences in Late Ottoman Bosnia," in *Women in the Ottoman Balkans: Gender, Culture and History,* eds., Amila Buturovic and Irvin

a problem solely experienced by Muslim women. Obviously, many non-Muslim women were also abandoned by their husbands, and they probably went through similar unpleasant experiences, as in a way, married yet "single" women. Their experiences and concerns might have been similar, yet the options or solutions that Muslim and Orthodox Christian women had before them were different. As will be discussed in detail below, although the approach of canon law and Islamic law to the issue of abandoned women was not quite disparate, in practice, the Sharia courts and the Patriarchal court offered two diverse legal options. In the latter, Greek Orthodox women were allowed to obtain a divorce in the event that they convincingly presented the desperate situation that they were placed in after being left, whereas, in the former, unless it was proved that their husbands had divorced them irrevocably or had died while away, women were not allowed to divorce, as prescribed by Hanafi law.

In Islam, different schools of law developed different opinions on the matter of whether desertion was a valid grounds for a woman to get a legal annulment (*fesih*). In the Sunni context, Malikis, Hanbalis and Shafi'is are somewhat flexible in granting women annulment after four years of a legal waiting period.[449] The basis for this approach is connected to the fact that providing maintenance (*nafaqa*) is one of the indispensable obligations of men to their wives according to the Islamic marriage contract. Not fulfilling this obligation means violating the contract and gives women the right to annul the marriage. On the other hand, the adopted school of the Ottoman state, the Hanafi school, held that a deserted woman has to wait for at least 90

Cemil Schick (New York: IB Tauris, 2007); Başak Tuğ, "Ottoman Women as Legal and Marital Subjects," in *The Ottoman World*, ed. Christine Woodhead (New York: Routledge, 2012); Emile Tyan, "La Condition Juridique de l'Absent" (Mafḳūd) en Droit Musulman, Particulièrement dans le Maḏhab Ḥanafite," *Studia Islamica* (1970): 249-256.

[449] Zečević, "Missing Husbands," 345; Tucker, *In the House of the Law*, 83-84.

years so as to make sure that her husband is indeed not returning or is dead.[450] Only after that impossibly long period is she granted an annulment, which practically prevents her from obtaining release from her marriage in her lifetime. Nevertheless, if the woman can provide truthful witnesses who can testify that her husband divorced her irrevocably or had died, she is allowed to obtain a divorce. The divorce can also be conveyed to her through a letter from her husband.[451] Even if she proved the divorce or death of her husband, she was required to wait for her waiting period (*idda'*) of three months. These options, of course, show what is prescribed in theory, and I will discuss below the extent to which women were given room to develop strategies for circumventing this provision.

As for ecclesiastical law, on the issue of abandoned women, there is observable continuity between the Greek Orthodox legal texts from the late Byzantine (14th century) and the Ottoman periods (16th and 17th centuries). On this matter, they all refer to "the 31st canon of St. Basil the Great" from the fourth century. Therefore, the same codes reappear in every text studied here, producing a consistent account of the issue. The extent to which the Ottoman period texts were copied from the Byzantine texts can be understood from the fact that the later texts preserved the discussion of men who abandoned their wives because they had joined a military campaign. However, non-Muslims were generally excluded from the Ottoman army, at least until the nineteenth century, so this discussion does not correspond to a possible practice in Ottoman times.

[450] *The Hedaya,* 215-216.

[451] In one of his fatwas, Çatalcalı Ali Efendi states that divorce through a letter is acceptable. (*Zeyd âhar diyara gittikten sonra, zevcesi Hind'e muanven ve mersum mektub yazub mektubda 'benden boş ol' deyü tahrir ve mektubu Hind'e irsâl eylese Hind boş olur mu? El-cevap: Olur*.), Çatalcalı Ali Efendi, 114.

The general approach of canon law does not appear to be distinctly different from Hanafi law. The legal texts emphasize that a deserted woman should wait for her husband's return for good. If she can prove her husband's death through reliable witnesses, only then, and after a mourning period of one year, is she allowed to remarry.[452] If she marries another man without any proof of her husband's death she is considered an adulteress.[453] There is a little room for forgiveness; if she does not wait for her husband's return and marries another man but leaves him upon her first husband's return, then she might be pardoned. However, if she does not leave the second husband and wishes to remain with him, she is again considered an adulteress.[454] The wife of a soldier whose husband left for a military campaign also deserves pardoning because there is a real possibility that he died in battle.[455]On the other hand, contrary to what was prescribed in canon law, a couple of synodical orders in the Ottoman period sought relaxation of the norms. The Church granted Greek Orthodox women the right to repudiate their husbands after being abandoned for five years in 1554 and later in 1661 for three years.[456]

It may not be surprising that Islamic and canon laws have a similar approach to the issue of deserted women as fundamentally patriarchal religions. Although divorce is relatively easy to obtain in Islam, at least by men, neither religion actually favors divorce. Both traditions attempt to maintain the integrity of marriage and preserve the husband's rights over his marriage.

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[452] Blastares, 101; *The Hexabiblos*, 241; *Nomokritirion*, 69.

[453] Malaxos, 208; *Nomokritirion*, 69; Blastares, 100.

[454] Similarly, Çatalcalı Ali Efendi held that an absent man could take his wife back who married to another man while he was away. (*Dâr-ı harbde esir olan Zeyd'in zevcesi Hind, nefsini Amr'a tezvic eylese Zeyd, esirlikten halâs olub geldiğinde Hind'i Amr'dan tefrik itdirmeğe kâdir olur mu? El-cevap: Olur*), Çatalcalı Ali Efendi, 45.

[455] Blastares, 100.

[456] Demetrios S. Gkines, "Οί Λόγοι Διαζυγίου επί Τουρκοκρατίας" [The Grounds for Divorce in Tourkokratia], *Μνημόσυνον Π. Βιζουκίδου* (Thessaloniki: 1960-1963), 246; Laiou, "Christian Women in an Ottoman World," 246; Ivanova, "Judicial Treatment of the Matrimonial Problems," 155.

Possible adverse conditions experienced by the wife are at best secondary concerns, at least according to the religious rules. Another common concern might be to not discourage men from leaving their homes to fight in a war by ensuring that their wives would wait for them chastely back home.[457] On the other hand, as will be further discussed in the next chapter, the Church became more flexible in the Ottoman period, possibly to prevent Greek Orthodox women from turning to prostitution, marrying a Muslim or a Jew, or converting, all of which eventualities may have been particularly concerning in the difficult seventeenth century,

It is important to remember here that, the extent to which religious prescriptions were followed in practice is a different matter. I have not found a case in the Bab court registers in which a Hanafi judge granted an annulment to a deserted woman who could not present any evidence as to her husband's death or his having divorced her. Nevertheless, there were a few options for women to get away from the restrictions of Islamic law. At least in the Arab provinces, for example in Damascus, Jerusalem, and Nablus, where Shafi'i or Hanbali deputy judges were available, the Hanafi judge could accept a woman's appeal to these deputy judges. As mentioned above, non-Hanafi judges were more flexible in granting women legal annulment when their husbands abandoned them, and as several fatwas indicate, the Hanafi judge was supposed to respect their decisions.[458] In a fatwa issued by İbn Kemal (d. 1534), for instance, it is

[457] The relationship between women and war in the late Ottoman period has been extensively studied. The state's attempt to compensate the absence of the breadwinner; the increase of prostitution during wartime; attempts to keep soldiers' morale high and prevent them from deserting have been documented within the context of the Balkan Wars (1912-1913) and the First World War (1914-1918). The Adultery Bill of 1916, which attempted to punish the unfaithful wives of the soldiers, although never enacted, seems to have been drafted with similar concerns about easing soldiers' minds about leaving their homes and family. Çiğdem Oğuz, "The Struggle Within: "Moral Crisis" on the Ottoman Homefront During the First World War" (PhD diss., Boğaziçi University and Leiden University, 2018), 207-211. See also Van Os and Nicole A. N. M., "Taking Care of Soldiers' Families: The Ottoman State and the Muinsiz Aile Maaşı," in *Arming the State: Military Conscription in the Middle East and Central Asia, 1775-1925*, ed. Erik Jan Zürcher (London, New York: I.B. Tauris, 1999).

[458] Tucker, *In the House of the Law*, 83-84.

held that the annulment granted by a Shafi'i judge was valid: "Question: After a man's wife obtained an annulment from a Shafi'i judge while her husband was absent, if the husband returns before she is married to someone else, what would be the ruling of the Sharia? Answer: Renewal of their marriage is required."[459] In other words, the divorce was effective. Moreover, in another fatwa, İbn Kemal states that a deserted woman whose husband abandoned her six years before could marry another man if she changes to the Shafi'i madhhab (legal school), although only if she was impoverished and needed maintenance.[460] On the other hand, it is not easy to determine whether or not this option was available across the Empire. In Bosnia, for example, there were no judges available other than those who belonged to the Hanafi school, which renders a possible application of this practice inoperable unless women could afford to travel outside the region.[461] Moreover, in 1537 an imperial order (*ferman*), which was sent to the judges of Istanbul, Edirne, Üsküp, Siroz, and Salonica, forbade the practice of appealing to Shafi'i judges, specifically with regard to obtaining a divorce in the event of a husband's prolonged absence.[462] Admittedly, it is hard to know whether or not the opportunity that women in some Arab provinces enjoyed was available to women in other parts of the Empire because the jurists' fatwas and this imperial order seem to be in contradiction.

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[459] İbn Kemal, 65. "Mes'ele: *Hind'in zevci gaibteyken Şafi kadısı hükmüyle tefrik olunduktan sonra zevc-i ahara tezvic etmeden Zeyd çıkagelse, şer'an nice olur? El-cevab: Nikâh-ı cedid lazım olur*."

[460] Ibid., 74. "*Mes'ele: Zeyd, avratını altı yıl nafakasız ve kisvesiz koyup gitse, bâ'dehû Hind "teşeffü edip" zevc-i ahara varmak şer'an caiz midir? El-cevab: Caizdir, zaruret olucak nafakaya.*"

[461] Zečević, "Missing Husbands," 348.

[462] Ahmet Akgündüz, *Osmanlı Kanunnameleri ve Hukuki Tahlilleri*, Vol. 6 (Istanbul: FEY Vakfı, 1990), 368-369; Araz, "Kadınlar, Toplum ve Hukuk," 69. In addition, according to Ebussuud, while it was acceptable for an abandoned woman to resort to a Shafi'i judge and divorce her husband, in a later answer in the same fatwa, he reminds that "there is a sultanic order which forbids appealing to a Shafi'i judge." Ebussuud, 44. "*Mes'ele: Zevci nâbedîd olan Hind, nafakaya aczi olucak teşeffu' edip, zevc-i ahara varsa, bâ'dehû Zeyd gelse zevcesin geri alabilir mi? El-cevab: Alamaz. Cevab-ı âhar: "Teşeffu' hususu Diyâr-ı Rumda câri olmaya" deyu men'i sultânî vâki' olmuştur.*"

Some women adopted prudent measures and added stipulations to their marriage contracts in case of their husbands' possible desertion in the future since being abandoned was a real possibility in perilous time. A condition of this sort would specify that if the husband leaves the wife, their contract becomes void, which gives the woman the opportunity to obtain an annulment, whereby she receives the full amount of her delayed dowry, and can remarry. Those women who did not have the opportunity to attach such a stipulation to their nuptial contracts at the outset could enter into a conditional divorce later during their marriage. In such a case, as explained above, the husband utters certain words, such as, in this context, "If I leave you, you shall be divorced," or "If I leave you and do not come back for a certain period of time you shall be divorced."[463] It was probably the wife who demanded the husband make such a statement so that she could secure her right to obtain an annulment in his absence. According to Islamic law, this method of divorce is valid as long as the woman can prove it with witness testimony in case her husband denies he made such a vow, which was not an uncommon occurrence. Peirce also gives examples from sixteenth-century Aintab of some couples who registered their prearranged divorces in court before their husbands embarked on a military campaign.[464]

According to Yahya Araz, another strategy that some women developed in order to be able to divorce their absent husbands and remarry was to employ false witnesses to testify to their husbands' death or to the husbands' having divorced their wives. Araz assumes that the

[463] Çatalcalı Ali Efendi issued a fatwa on this matter: "If when a man was about to leave town his wife says to him 'divorce me,' and the man says 'if I do not return by the end of one year you shall have the power to do whatever you wish [i.e., annul the marriage],' and if he does not come back by that time, can the wife divorce herself from him? The answer: Yes, she can." (*Zeyd âhar diyara gitmek üzere iken zevcesi Hind: 'beni tatlik eyle' dedikte Zeyd: 'Bir sene tamâmına değin gelmezsem irâdetin elinde olsun' deyüb gittikten sonra bir seneye denk Zeyd gelmezse, Hind bir sene tamam olduğu mecliste nefsini tatlik idicek mübâne olur mu? El-cevap: Olur*). Çatalcalı Ali Efendi, 126.

[464] Peirce, *Morality Tales*, 81-82.

false witnesses could either be hired by the wife or found in the immediate circle of the man with whom she was planning to enter into her second marriage. This kind of fraud could only come to light if the husband returned home at some point, found his wife married to some other man, and sued her.[465] In one such example from the Bab court in 1671, Hüseyin Bey ibn Ömer asserted that he had gone to another town three years before, and when he came back, he found that his wife Ümmühani bint Abdullah had married Ahmed bin Mehmed while he was away. Hüseyin Bey demanded that his lawful wife Ümmühani return to him and that the deputy judge admonish her in this direction. Upon Hüseyin Bey's statement, in their joint defense (though it was Ahmed who made the statement), Ahmed and Ümmühani asserted that Hüseyin Bey had divorced Ümmühani in the presence of witnesses and had even sent a letter which notified her of the divorce (*ahar diyarda iken mezbur Hüseyin mezbure Ümmühani'yi şuhud mahzarında talak-ı bayin ile tatlik ve hatta tatliği müş'ir mektub dahi gönderip…*). Therefore, according to Ümmühani and Ahmed, there was nothing illegal about their marriage. Hüseyin Bey, however, disavowed their claims, as well as the divorce, which put Ümmühani and Ahmed under the obligation of verifying their claim. When they were unable to present either the witnesses or the letter they had mentioned, the deputy judge decided that Ümmühani should return to Hüseyin Bey.[466]

Unfortunately, the record of their case does not include how, if Ümmühani had not had any evidence relating to the divorce, she could have illegally entered into a nuptial agreement with someone else. Başak Tuğ's study of the Ankara court registers demonstrates that neighborhood pressure in such instances could be used to prevent a deserted woman's marriage

[465] Araz, "Kadınlar, Toplum ve Hukuk," 76-79.

[466] İBMŞS, 12 Numaralı Sicil, Varak [145-a].

to another man on account of a lack of information or evidence about the divorce or the husband's death. Jurists emphasized, however, that, in the existence of evidence, nobody has the right to intervene against the remarriage of the woman.[467] There is no way of knowing whether or not Ümmühani's neighbors made such an intervention, or if she and her new spouse were known to neighbors. After all, deceiving the neighbors or kin about the false divorce must have been more crucial than deceiving the judge, since neither her divorce from Hüseyin Bey nor her marriage to Ahmed had to be registered in court. All these arrangements could have been made orally; Ümmühani might have spread the word about Hüseyin Bey's divorce, convinced people around her, and after some time contracted a marriage with Ahmed in the presence of two witnesses, without any opposition. She would have lived happily ever after with Ahmed, had Hüseyin Bey not returned. One of the several other possibilities is that Ümmühani and Ahmed's claims were right: Hüseyin Bey had indeed divorced her while he was away, yet she was unable to present evidence after three years.

Indeed, a namesake of Ümmühani faced a similar issue, again in 1671, when her husband Mahmud bin Ahmed went to Egypt, left her on her own, and returned to town after some time. Similar to Hüseyin Bey in the above-mentioned case, Mahmud sued Ümmühani and demanded that the deputy judge admonish her to have a conjugal relationship with him as she had been refusing him. This Ümmühani, however, had not married someone else; the reason she was refusing Mahmud was simply that they had had a *hul* divorce a year before. When she mentioned

[467] Tuğ, "Ottoman Women as Legal and Marital Subjects," 369-271. Ebussuud holds in a fatwa that "If at the time of contracting the marriage, the woman tells the man 'If you leave me, shall I be divorced' and he answers 'yes' and after that, if the man abandons her for four years during which she marries to another man, would the neighbors have the power to intervene after eight years and tell the second husband 'you did not prove that she was a divorced woman while you married her'? The answer: They would not if the conditional divorce of the man is indisputable." (*Zeyd Hind'e nikâh ederken, Hind Zeyd'e 'sen beni koyup gidersen boş olayım mı' deyu şart eylese ba'd-en-nikâh Zeyd, Hind'i dört yıl koyup gitse, badehu Hind Amr'a varıp sekiz yıldan sonra ehl-i mahalle Amr'a 'sen Hind'i aldığın zaman Zeyd'den boş idiğün isbat etmedin deyu dahle şer'an kadir olurlar mı? El-cevab: Zeyd'in şart-ı mezburu muhakkak ise olmazlar*). Ebussuud, 40.

the divorce, Mahmud denied it. Nevertheless, through witness testimony, Ümmühani was able to verify her claim, whereby the deputy judge forbade Mahmud from causing further dispute on the issue.[468] If she had been unable to find witnesses, however, the deputy judge would have had to admonish Ümmühani to return to her marriage with Mahmud. We might assume that after the divorce, Mahmud regretted his decision when he came back, but what is more interesting is that he did not consider it a problem to go to court and assert a false claim despite knowing the truth about their divorce, and probably the existence of witnesses as well. Mahmud also seems to have been fine with having a marital life with someone who had divorced him previously at the expense of forfeiting her financial nuptial rights, i.e., dowry and maintenance, and who was clearly unwilling to get back together.

The above-mentioned strategies of adding stipulations to the marriage contract, entering into a conditional divorce, or employing false witnesses, all indicate some Muslim women's strong desire to divorce and later remarry. On the other hand, consistent with the prescriptions of Islamic law, we cannot see a case of a Muslim woman who could obtain an annulment or enter into a second marriage without presenting evidence of the husband's death or his divorcing her. The only option for a woman who had not worked out any of those strategies was to claim the right to use her husband's assets that he had left behind or to borrow a daily stipend in his name, to be paid by him upon his return. The amount of money that a woman was allowed to receive was a substitute for the maintenance that the husband was supposed to provide his wife in the course of their marriage. The daily stipend each woman could borrow varied according to one's social stratum, although it is unclear who decided the amount. A fatwa by Çatalcalı Ali Efendi suggests that the stipend that the husband would pay could not exceed an average amount

[468] İBMŞS, 12 Numaralı Sicil, Varak [71-a].

designated according to his financial capacity (*kadr-i ma'rûf*). Accordingly, in the event that the daily stipend the Muslim judge assigned to the wife was beyond what the husband could pay, he could refuse to pay the excess amount upon his return.[469]

In the late seventeenth century Bab court registers, the data on twenty-five women who were granted the right to take out a loan in their husbands' names show that the average amount of the wives' daily stipend was eight *akçe*s,[470] with the amounts ranging between four *akçe*s to thirty *akçe*s. In general, women tended to resort to court to be granted the right to receive a stipend in less than a year after their husbands' departure. The shortest period a woman waited was forty days, whereas the longest was five years. The waiting period before a woman went to court was probably prolonged in the event that the husband left some money or basic provisions that the woman could subsist on. For example, in 1661, Safiye's husband had left her three thousand *akçe*s, some vegetable oil, rice, soap, and lentils. Safiye went to court after waiting for two years, after she had probably used up everything left by her husband.[471] If we make an estimate according to the average amount of stipends of the time, Safiye's husband had provided her with maintenance that would cover her only for approximately one year, maybe because he was planning to return by that time but could not make it back.

In the Patriarchal court registers, out of ninety-seven divorce-related records, twenty-three of them belong to women abandoned by their husbands. As noted above, the Orthodox Christian legal texts forbid divorcing an absent husband unless a wife can prove, through reliable

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[469] Çatalcalı Ali Efendi, 190. (*Zeyd, zevcesi Hind'i bilâ-nafaka bırağub âhar diyara gittikde Hind, hâkime varub, Zeyd üzerine kendüye kadr-i ma'rûfdan ziyâde yevmi şu kadar akçe nafaka takdir itdirse Zeyd, geldikte ziyâdeyi vermemeğe kâdir olur mu? El-cevap: Olur*).

[470] To give an idea about the worth of eight *akçe*s around the mid-seventeenth century, one could buy sixteen eggs with that amount. Mübahat S. Kütükoğlu, *Osmanlılarda Narh Müessesesi ve 1640 Tarihli Narh Defteri* (Istanbul: Enderun Kitabevi, 1983), 95-96.

[471] İBMŞS, 11 Numralı Sicil, Varak 308 [67b-2].

witnesses, that her husband had died. Ecclesiastical law also lays down that even after a husband's death is established and the woman is granted the right to obtain a divorce, she has to wait for a mourning period of one year before legally and ecclesiastically entering into a second marriage. Although divorcing an absent husband was allowed after waiting three years in the synodical orders, when Greek Orthodox women went to court, they emphasized that they had been deserted without any financial support, having no idea of the whereabouts of their husbands and being in absolute poverty and misery. The section which describes the women's neediness in the registers is recorded in a formulaic manner, and it reappears in almost every entry on desertion. The example below nicely illustrates the procedure followed in the Patriarchal court:

> *Since Kasandra, daughter of Sabba Kazantzi, from the parish of Chrisopigi in Galata, being present before the synod, told us that her husband Ioannis Boutzas wasted her belongings, ran away, disappeared, and has not returned to her for three years. Neither did he take care of her small expenses nor send a letter about himself as to where he lives. He left her lonely, poor, and deprived of all the basic needs, and now her soul and body are in danger. Upon the synod's demand for witnesses, she presented Father Konstantino and Panayoti, the peddler, who testified that she told the truth. Therefore, having seen the young age of the woman and her poverty and having provided for the salvation of her soul so that she would not fall into moral lapse, we divorced her from Ioanni and granted her permission to take another man who can look after her. She can marry him ecclesiastically without any impediments* (1678)*."*[472] [Translation belongs to the author]

In the case above, what is emphasized is not Ioannis' life or death but the fact that he abandoned Kasandra alone, without financial support, and that the deprivation she is found in might imperil her spiritual well-being. Although it is not very clearly stated, the note on preventing her from "falling into moral lapse" (*προνοησαμένοι τῆς ψυχικῆς αὐτῆς σωτηρίας ὅπως μὴ παρεμπέση εἰς ὄλισθον*) might correspond to a concern about the possibility of Kasandra

[472] Arabatzoglou, Vol. II, 149.

having an illicit affair or turning to prostitution in order to survive. In those respects, the stress on her destitution also becomes more meaningful. Another possibility is, of course, marrying someone non-Orthodox in the event that the synod did not divorce her or grant the consent for her remarriage to another Christian man. As seen in the example of the Cypriot Christian woman mentioned in Chapter 2, a woman who was married to a Muslim man, although she had not converted to Islam, could be punished by not being allowed in church and not being buried according to Orthodox rites. A woman who was not granted permission for remarriage and was alienated from her parish or community, however, might not have had an option other than resorting to a marriage with a non-Orthodox man in order to ensure her well-being. As other scholars have already pointed out, in the Ottoman period, there was a tendency towards more canonical flexibility in the Orthodox church to prevent its community members from converting or appealing to the Sharia courts.[473] In this context, allowing divorce for a deserted woman and permitting her to remarry seem to be a reasonable way to keep her within the community.

From this perspective, some Greek Orthodox women might have taken advantage of this flexibility and heavily stressed their needy position by depicting themselves as impoverished victims. It should also be noted, however, that the synod seems to have expressed considerable concern about the veracity of the women's statements. Part of the standard procedure for the case of deserted women was demanding witnesses who could affirm both the absence of the woman's husband and her financial deprivation. As seen in Kasandra's case, her young age also played a role in the synod's decision. Preventing a young woman from marrying another man, whereby she could not financially, and sexually, be satisfied, could be tantamount to leaving her for dead

[473] Gkines, "Οί Λόγοι Διαζυγίου επί Τουρκοκρατίας," 246; I. G. Michaelides, "Οι Λόλοι Διαζυγίου κατά την Νομολογία του Εκκλησιαστικού Δικαστηρίου της Κως (του 18ου αιώνα)," [The Grounds for Divorce According to Jurisprudence of the Ecclesiastical Court of Kos, in the Eighteenth-century], *EKEIED*, Vol. xxix-xxx, (1990): 22.

unless she had family support to rely on. In conjunction with that, the strong emphasis in the registers on the poor conditions of the woman can also be seen as an effort on the part of the synod to legitimize its decisions. The synod's flexibility might have been justified by registering those cases in such a way as to show that despite the lack of proof of the husband's death, granting divorce to such "wretched women" was unavoidable.

Interestingly enough, the synod does not seem to have based its decisions on the existing synodical orders which allow for granting divorce to deserted women whose husbands were absent for at least three years. First, its decisions do not refer to these synodical orders; second, it makes considerable effort to legitimize its decisions even in the cases of women who had been on their own for more than five years, and third, the synod granted divorce to a woman who waited less than three years. As demonstrated above, the average waiting period for Greek Orthodox women was six years, which might suggest that deserted women did not rely on the synodical orders and appeal to the court for divorce immediately after three years.

In every case in the Patriarchal court registers, it is recorded for how many years the petitioner woman had waited before applying to the court. According to the twenty-three available cases, the Greek Orthodox women went to the Patriarchal court after waiting six years on average.[474] The shortest period that a woman had waited was two and a half years.[475] In a couple of cases, it was recorded that the women had waited "enough years."[476] Whether it was longer or shorter than two and a half years, however, is unclear. On the other hand, Zafira from Tatavla (today's Kurtuluş), for instance, went to the Patriarchal court after waiting for fourteen

[474] According to I. G. Michaelides' study on eighteenth-century Kos, Greek Orthodox women waited between five to ten years before applying for divorce in the ecclesiastical court. I. G. Michaelides, "Οι Λόλοι Διαζυγίου," 17.

[475] Arabatzoglou, Vol. II, 144.

[476] Ibid., 137, 140, 162.

years, the longest waiting period in the registers.[477] Similar to the other cases, Zafira asserted that she was deprived of her basic needs, and hopes for her husband's return had shattered. It is interesting, of course, that she could have subsisted that long without any support provided by her husband. However, she was represented by her mother in court, which suggests that she had the support of her family. In addition, as mentioned above, the dowry that women brought to the marriage was usually considered their premortem inheritance. Although the husband had the right to control a wife's dowry, she was the absolute owner of it, and, at least in theory, he was not allowed to use it without her consent. We can assume, then, besides her family's support, that Zafira had also relied on her dowry, and possibly prenuptial gifts she had received as well, which had helped her get along for fourteen years. Although we have no way of knowing, one wonders whether or not she had previously appealed to the court for a divorce and been rejected.

The cases of the deserted women represent a significant example of how the availability of multiple courts could create diverse legal procedures, which brought about diverse social practices. A Greek Orthodox woman in late seventeenth-century Istanbul who had been abandoned by her husband had three options available to her: she could either apply to the Sharia courts to receive permission to borrow money in her husband's name, appeal to the Patriarchal court and obtain a divorce and permission to remarry, or do both. In the Sharia court, the husband's prolonged absence did not enable a woman to divorce her absent husband unless she presented evidence related to his death or of his having divorced her irrevocably. The Patriarchal court, on the other hand, provided Greek Orthodox women with the opportunity to divorce their absent husbands. Many Muslim women, as mentioned above, tried to find ways to obtain an annulment in the event of being abandoned (by adding stipulations to the marriage contract,

[477] Ibid., 152.

entering into a conditional divorce, or using false witnesses). Here, the juxtaposition of the two sides demonstrates that the Patriarchal court presented a more favorable option for Greek Orthodox women and was able to attract them. Indeed, in the Bab court registers, there are only very rare cases of non-Muslim women who applied for permission to take a loan in the absence of their husbands. Some scholars have underlined that non-Muslims were pragmatic in their shopping between the available courts as they saw fit for their interests. Although it is a valid argument, it is predominantly based on the Sharia court registers and tends to show the Sharia courts as the option that was invariably the advantageous one. When we see both sides, however, we see that the pragmatism in this example generally led Greek Orthodox women to the Patriarchal court, not to the Sharia courts.

4.6. Conclusion

The intricacies of pre-modern marriage, as well as divorce, should be understood in the context of the prevalence of the oral culture. The fact that the registration of marriage was not a requirement in Istanbul, neither for Muslims nor for Greek Orthodox subjects, created an ambiguous environment in which the line between being married or being divorced could become quite indistinct. The use of conditional divorce and contracting a marriage in the absence of the parties to be wed further complicated this picture, whereby some people had to verify via court action that their marriages were still valid. The considerable reliance on witness testimony in the absence of documentation probably influenced the outcome of some court cases. The uncertainty and obscurity in court procedures might have encouraged some people to be opportunist, such as the above-mentioned Mahmud, who sued his wife Ümmühani for avoiding

marital relations with him despite his knowing that they had previously divorced. Lack of documentation and lack of effective enforcement made violations of religious and legal rules inevitable. The aforementioned Greek Orthodox people who entered into a fourth marriage or into a polygamous one, for instance, reveal the fragility of these rules, due to which the attempt to understand the Greek Orthodox family through the regulations of canon law can be misleading. As such, the examples of deserted women who were granted divorce in the seventeenth century paint a different picture as compared to canons from the same period that forbade it. Along this line, the next chapter will demonstrate the discrepancy between canon law and the Patriarchal court registers with regard to issues of divorce and remarriage.

Differences between Muslim and Greek Orthodox women with regard to their dowry practices, options available when they were abandoned by their husbands, or preservation of their religious customs to some degree challenge the broad concept of "Ottoman women." While seeing non-Muslim women frequently in the Sharia court registers leaves us with the impression that they were to some degree assimilated into the dominant Muslim culture, it should not overshadow the diverse experiences of women from different ethnic and religious backgrounds, not to mention women from different social strata. From this perspective, this chapter has demonstrated that, besides following some similar practices, the Muslim and the Greek Orthodox populations could differ substantially with regard to family customs.

CHAPTER 5

DIVORCE AND REMARRIAGE
IN THE MUSLIM AND THE GREEK ORTHODOX POPULATIONS

5.1. Introduction

In 1678, Diamantis, the tailor, and his wife Katerinetas appeared before the holy synod of the Patriarchate of Istanbul. They made allegations against each other and demanded that the synod divorce them. According to Diamantis' statement, Katerinetas was putting on male clothes, sneaking out of the house, disappearing into the night, and had been found around Galata, where she had recently been dwelling at a Frank's (European Christian) house. Katerinetas admitted the charges that her husband brought but defended herself by asserting that Diamantis was constantly beating her such that she had to flee the house for her life. As neither party denied the accusations, the synod made its decision without calling on witness testimony and divorced the two. Far from being charged with adultery, Katerinetas was given permission to remarry ecclesiastically.[478]

In the pre-modern Ottoman Empire, just like marriage, divorce was a common and frequent practice. The case of Diamantis and Katerinetas was by no means an exceptional one; they were among many other couples who obtained a divorce in seventeenth-century Istanbul.[479]

[478] Arabatzoglou, Vol. II, 133-134.

[479] Some scholars have pointed out that suggesting a linear increase in divorce rates from the pre-modern to the modern period appears to be misleading. In light of available data, mostly from the court registers, several historians

Despite the frustration and exertions it might have caused, divorce was an integral part of social life, both for the Muslim and the Greek Orthodox populations. It is true that although divorce was never encouraged, as I will discuss below, Islam's approach to it is more flexible compared to Christianity. Especially for Sunni Muslims, who officially renounce any temporary form of nuptial arrangements, marriage is a permanent institution, as also emphasized in the Qur'an.[480] Notwithstanding that principle, multiple available options for the termination of marriage in Islamic law facilitated divorce for the sake of rescuing parties from a troubled union and preserving social harmony.[481]

At least in theory, Orthodox Christian canons are more adamant against granting divorce to coreligionists, despite some later adaptations towards flexibility. During the first centuries of Christianity, remarriage after divorce or after the death of the spouse was considered "adultery" or "polygamy" by the Church. Divorce was seen as contrary to the eternal unity of the spouses and was strongly discouraged, even punished by excommunication. After the tenth century, however, relaxation of this understanding started first within the Byzantine royal family and expanded to laypeople, with the exception of clergy. Although marrying more than three times remained a taboo, obtaining a divorce and entering into second and third marriages was accepted to be legal.[482]

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have shown that divorce was a real possibility for married couples and divorce rates both in the Ottoman and pre-Ottoman periods seem to be quite high. Yossef Rapaport, *Marriage, Money, and Divorce in Medieval Muslim Society* (Cambridge: Cambridge University Press, 2005), 2-4; Zilfi, "'We Don't Get Along'," 267; Marcus, *The Middle East on the Eve of Modernity*, 198-206.

[480] Esposito and DeLong-Bas, *Women in Muslim Family Law*, 27-28.

[481] Esposito and DeLong-Bas, *Women in Muslim Family Law*, 28; Tucker, *In the House of the Law*, 108-111. Al-Marghinani describes divorce as "a dangerous and disapproved procedure as it dissolves marriage, an institution which involves many circumstances as well of a temporal as of a spiritual nature; but on the ground of urgency of release from an unsuitable wife." *The Hedaya*, 73.

[482] Meyendorff, "Christian Marriage in Byzantium," 100-103.

Divorce in the Ottoman context has been extensively discussed, mostly based on the Sharia court registers.[483] The literature mainly concerns the Muslim population, naturally so, as Muslims constituted the majority of court clients. At the same time, a few studies have focused on non-Muslim women and their divorce experiences.[484] On the other hand, rarely do we see studies that primarily work on the registers of the non-Muslim community courts and their divorce cases.[485] This chapter, therefore, attempts to bring together these two different kinds of sources from the Istanbul Bab court and the Patriarchal court from 1660-1685, to compare the divorce and remarriage practices of Muslim and Greek Orthodox subjects. As underlined in Chapter 2, the way divorce cases were registered in the two courts varied significantly. While, more often than not, grounds for divorce were not recorded in the Sharia courts, in the Patriarchal court registers they were documented in detail, as seen in the divorce record of Diamantis and Katerinetas. By juxtaposing the divorce cases from these two courts, one of the major concerns of this chapter is to reveal various reasons that led couples to end their marriages, which otherwise might not have come to light.

[483] Svetlana Ivanova, "The Divorce Between Zubaida Hatun and Esseid Osman Ağa: Women in the Eighteenth-Century Shari'a Court of Rumelia," in *Women, the Family and Divorce Laws in Islamic History*, ed. Amira el-Azhary Sonbol (Syracuse: Syracuse University Press, 1996); Madeline C. Zilfi, "'We Don't Get Along'"; Tucker, *In the House of the Law*; Meriwether, *The Kin Who Count*; Elbirlik, "Negotiating Matrimony"; Marcus, *The Middle East on the Eve of Modernity*; Leslie Peirce, "She is Trouble and I will Divorce Her"; Peirce, *Morality Tales*; Ronald C. Jennings, "Divorce in the Ottoman Sharia Court of Cyprus, 1580-1640," in *Studies on Ottoman Social History in the Sixteenth and Seventeenth Centuries ~ Women, Zimmis and Sharia Courts in Kayseri, Cyprus and Trabzon* (Istanbul: The Isis Press, 1999); Fariba Zarinebaf-Shahr, "Women, Law, and Imperial Justice in Ottoman Istanbul in the Late Seventeenth Century," in *Women, the Family, and Divorce Laws in Islamic History*, ed. Amira El Azhary Sonbol (Syracuse: Syracuse University Press, 1996).

[484] Laiou, "Christian Women in an Ottoman World"; Ivanova, "Judicial Treatment of the Matrimonial Problems of Christian Women"; Gradeva, "Orthodox Christians in the Kadı Courts"; İbrahim Etem Çakır "Zımmi Kadınlar Kadı Mahkemesinde: Sofya XVII. Yüzyıl," *Hacettepe University Journal of Turkish Studies/HÜTAD Hacettepe Üniversitesi Türkiyat Arastirmalari Dergisi* 11, no. 21 (2014): 41-66.

[485] Gkines, "Οί Λόγοι Διαζυγίου επί Τουρκοκρατίας"; Michaelides-Nouarios, "Οι Λόγοι Διαζυγίου"; Kermeli, "The Right to Choice."

The chapter also tries to uncover diverse remarriage practices of the Muslim and Greek Orthodox populations in the capital. Unlike Muslims, who could remarry without any restraints as many times as they desired, it appears that receiving permission to remarry from the synod was of serious concern to Greek Orthodox community members, even when they had already obtained a divorce from the Muslim judge. Church rules and church approval mattered for community members to a great extent, at least in divorce and remarriage cases, which should lead us to reconsider our limited understanding of non-Muslims' use of the Sharia courts.

In the Ottoman context, as in their nuptials, the Greek Orthodox population, as well as other non-Muslim subjects, were given the opportunity to obtain a divorce or register their marital financial matters in the Sharia courts. Several scholars have observed that some non-Muslim subjects indeed appealed to the Muslim judge for registering their divorce-related issues. The appearance of non-Muslims in the Sharia court registers has led scholars to suggest that some non-Muslims bypassed their community courts and favored the Sharia courts since the latter were more flexible about granting divorce, especially when compared to the ecclesiastical courts, which supposedly granted divorce only in rare circumstances.

This study on the Patriarchal court registers, however, demonstrates that although the Patriarchal court investigated the grounds for each divorce case, it issued divorce decrees even on the grounds of incompatibility. Moreover, the fact that some Greek Orthodox couples appealed to the Patriarchal court to obtain a divorce while already having a divorce *hüccet* from the Muslim judge illustrates a couple of points: First, legal plurality should not only be considered as shopping between the courts or as an "either/or" situation. In the case of divorce, for instance, different functions of the courts and different agendas of some Greek Orthodox men and women led them to appeal to both courts rather than choosing just one. Second, the Greek

Orthodox community members who resorted to the Sharia court were predominantly men, suggesting that they exploited the plurality of the legal system more extensively than women.

5.2. Divorce Types

There are multiple options for terminating a marriage in Islamic law, most of which do not require religious or judicial intervention. Nonetheless, many Muslim couples registered their divorces in the Sharia courts primarily with the concern of settling and recording their post-divorce financial arrangements. According to Islamic law, Muslim men enjoy a unilateral right to divorce their wives on any grounds by uttering a simple divorce formula. In this type of divorce, which is called *talak* as a broad category, the husband pays his wife her deferred dowry, which the couple had agreed upon at the time of making their marriage contract. Muslim women, however, do not possess the right to divorce their husbands through *talak.* If they wish to initiate a divorce, they renounce part or all of their deferred dowry, sometimes with additional compensation. In this *hul/muhala* divorce, women must receive their husbands' approval for the divorce. The only type of divorce that grants the divorcing parties a legal annulment is *fesih,* which can become effective, according to the Hanafi school, only in cases of the husband's impotence or the apostasy of one of the spouses. *Fesih* is the only type of divorce that required judicial intervention by the Muslim judge.

Unlike *fesih,* in the pre-modern Ottoman period, *hul* and *talak* divorces did not have to be registered in the Sharia courts, due to which the available *hul* and *talak* divorce records in the Sharia court registers do not allow us to discern the total number of divorces in a certain period nor which type of divorce was more prevalent in society. *Fesih,* on the other hand, is mentioned

by al-Marghinani as the only type of divorce that necessitates the Muslim judge's intervention.[486] Although al-Marghinani does not discuss this legal annulment option in a separate chapter, as he does for *talak* and *hul*, he has a specific chapter on impotence, which was recognized by Hanafi scholars as one of the rare grounds that entitle a woman to obtain a legal annulment. In addition, a minor girl who was married off by someone other than her father or paternal grandfather can appeal to the Muslim judge for an annulment upon reaching puberty (*hıyâr al-buluğ*).[487] With regard to granting women legal annulments, Hanafi law appears to be the harshest compared to Malikis, Hanbalis and Shafi'is. The Sunni non-Hanafi legal schools tend to accept insanity, cruelty, desertion, or failure to provide the wife with her maintenance as valid grounds to grant the wife *fesih*.[488] According to Tucker, since Muslim men already have the absolute right to divorce their wives through *talak*, legal annulment was considered first and foremost an option for women.[489]

According to al-Marghinani, women had the right to obtain a legal annulment in the event of their husbands' impotence because they "are entitled to carnal enjoyment."[490] Çatalcalı Ali Efendi states that if a woman married a man without knowing that he was impotent (*ı'nnîn*), the couple should appeal to the Muslim judge who allows them probation of one year, during which the husband's incapacity might become definite. Unless his situation recuperated, the wife

[486] *The Hedaya,* 126-128.

[487] If the minor girl decides to end an unwanted marriage upon coming of age, she must take legal action as soon as she reaches puberty. Bilmen, *Hukukı İslamiyye,* Vol. II, 50-51; Tucker, *In the House of the Law*, 47.

[488] M. Âkif Aydn, "Osmanlı Hukukunda Kazâî Boşanma 'Tefrik'," *Osmanlı Araştırmaları* 5, no. 05 (1986): 1-4.

[489] Judith Tucker, *In the House of the Law*, 87.

[490] *The Hedaya,* 126.

would be able to obtain an annulment.[491] In addition, İbn Kemal specifies that if the husband was able to have sexual intercourse with his wife even only once, the woman cannot petition for *fesih*.[492] Such annulment records are rarely seen in the Sharia court registers; the Bab court registers from the late seventeenth century contain no case of impotence. This absence might be related to the tendency of handling this issue out-of-court, within the family. In that way, the impotent man could avoid public embarrassment and did not miss the opportunity for remarriage.

Hanafi law also stipulates that a woman is entitled to obtain a legal annulment if her husband is not her "equal" (*kafaah*). Women can only be married to men who are either of the same or higher status than themselves with regard to family, religion, profession, freedom, good character, or financial means.[493] The suitability rules apply only to women's choices, not to men's, as men are "not degraded by cohabitation with women who are their inferiors."[494] Çatalcalı Ali Efendi issued various fatwas on the matter and established how suitability rules should work in various contexts. In one of his fatwas, for instance, he states that a woman whose father is a religious scholar (*ulema*) cannot be "equal" to an ignorant grocer.[495]

In one of the rare cases of suitability in the Sharia court registers, Havva bint Ahmed from Kasımpaşa (a neighborhood on the Golden Horn in Istanbul) appealed to the Istanbul court in 1676 to settle a dowry dispute between her and her former husband, İbrahim bin Ahmed.

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[491] Çatalcalı Ali Efendi, 161. *Hind Zeyd'in ı'nnîn idiğün bilmeden nefsini Zeyd'e tezevvc idüb ba'dehû ı'nnîn olduğu zahîr olmağla Hind Zeyd'i hâkime bir sene te'cîl itdirdikten sonra bir sene mürûr idüb Zeyd, Hind'e vâsıl olmasa Hind kenduyi hâkime tefrik ettirmeğe kâdire olur mu? El-Cevab: Olur*.

[492] İbn Kemal, 73.

[493] *The Hedaya*, 39-42; Esposito and DeLong-Bas, *Women in Muslim Family Law*, 21. For equality/suitability regulations of different schools of law, see Kecia Ali, "Marriage in Classical Islamic Jurisprudence," 15-17.

[494] *The Hedaya*, 40.

[495] Çatalcalı Ali Efendi, 73. *Ulemadan olan Zeyd'in kızı Hind'e bakkal tâifesinden Amr-ı câhil küfv olur mu? El-cavab: Olmaz*.

According to Havva's statement, some time before, the marriage between the two had been annulled by the deputy judge of the Bab court on the grounds that İbrahim was not "equal" (*küfv*) to Havva. After their marriage had been contracted and consummated, Havva had found out that İbrahim was a Kıbtî, a Gypsy, who could be Muslim or non-Muslim.[496] However, his name and the way it was registered suggests that İbrahim was a Muslim. Both his and his father's names are Muslim names, and instead of *veled-i*, for "son of," which was used for non-Muslims, *bin* here denotes his religion as Islam. In all likelihood, therefore, although he was a Muslim, his ethnic origin as a Gypsy was found degrading for Havva, and the deputy judge accepted her marriage to İbrahim as a mésalliance. Although Havva was supposed to receive upon the annulment her deferred dowry, which amounted to two thousand *akçe*s, her reason for resorting to the Istanbul court was to sue İbrahim, who, as she stated in court, had not paid it. İbrahim, however, through witness testimony, proved that Havva had previously agreed to "acquit and absolve" (*ibra ve iskat*) his dowry debt.[497]

Islamic marriage can also be annulled if one of the spouses renounces Islam, whereby he/she becomes an apostate. A husband can become an infidel if he commits blasphemy (*küfr*) against Islam; his marriage to a Muslim woman thereby becomes void. In Islam, whereas Muslim men are allowed to marry non-Muslim women, the opposite is not possible: Muslim women are not permitted to marry non-Muslim men. As much as this provision is related to Islam's emphasis on patriarchal lineage, it is also connected to the above-mentioned suitability rules. Due to a non-Muslim's religiously lower status, being married to a non-Muslim man

[496] According to TDV İslam Ansiklopedisi, a Kıbtî is a Coptic Christian. Dia, "Kıptîler", TDV İslâm Ansiklopedisi, https://islamansiklopedisi.org.tr/kiptiler, accessed August 30, 2021. Nevertheless, it commonly refers to Gypsies who came from the Balkans.

[497] İstanbul Mahkemesi, 18 Numaralı Sicil, 446 [126a-1].

would be degrading for a Muslim woman. The couple is effectively divorced upon the husband's renunciation of Islam and could continue their spousal relationship only if he converts to Islam and renews his marriage to his wife with a new nuptial contract. If, however, the woman does not agree to the renewal of their marriage, she cannot be forced.[498] She is also allowed to marry another Muslim man if she desires to do so. The wife could be forced to remarry her former husband only if she was the blasphemer and, therefore, the spouse at fault. According to Ebussuud, even if the wife simply threatens her husband with becoming an apostate to end their marriage, the same regulation applies.[499] Obviously, the possibility of women "misusing" this regulation to annul their marriage and receive their delayed dowry was a matter of concern for Ebussuud.

Although not frequently, one can find in the Sharia court registers echoes of obtaining legal annulment due to becoming an apostate. To give but a few examples, in 1624, Mehmed bin Hüseyin from Yedikule district (within the walled city), went to the court of the Rumeli Sadâreti (chief judge) to complain about his wife Âmine bint Mustafa who, for the previous seven days, had been refusing to have conjugal relations with him. Mehmed demanded that the deputy judge admonish Âmine on the matter. Âmine, however, had valid grounds for her avoidance of Mehmed; he had constantly been drinking alcohol and committing blasphemy. Her first reaction was to complain to her neighbors about Mehmed's behavior and ask for their mediation. When the neighbors warned him about the consequences of his behavior, Mehmed replied, "I have no

[498]Çatalcalı Ali Efendi, 150. *Zeyd'den kelime-i küfr sâdır olub zevcesi Hind mübâne olduktan sonra Zeyd tecdid-i îmân idüb ba'dehû tecdid-i nikâh murad itdikde Hind imtinâ eylese Zeyd Hind'e "Nefsini bana tezvîc eyle" deyu cebre kâdir olur mu? El-cevab: Olmaz.*

[499] Ebussuud, 46. *Mes'ele: Hind zevci Zeyd'e bi-huzur olub "bir gün senden boş düşmek için küfür söylerim" dese Hind'e ne lâzım olur? El-cevab: Küfür söylemeğe azm ettiği gibi kafîre olur, Zeyd'den bâîn olur. Amma yine cebr ile îman getirtilir, tecdid-i nikâh olunur. Bu surette: Hind nikâha râziye olmadığı takdirce ne vech ile olunur? El-cevab: Kadı meclis-i şer'e getirip iki şâhid mahzarında nikâh eder.*

regrets, I drink wine, become an infidel, become a Jew" (*iyi iderin, şarâb içerin, kâfir olurun, Yahudi olurun*). When both the neighbors and Âmine had made certain that Mehmed had effectively become an apostate, they established that he had to convert back to Islam (*tecdîd-i îmân*) and renew his marriage (*tecdîd-i nikâh*) to Âmine. After witnesses also confirmed Âmine's statement, the case was recorded by the court, without the deputy judge's verdict.[500] What is interesting here is that Âmine had not felt the need to appeal to the court for the annulment of her marriage to Mehmed, although *fesh* was supposed to be ruled by the Muslim judge. Moreover, as there is no judicial record of the annulment of their marriage, we do not know how the two handled the issue of Âmine's deferred dowry. Since Mehmed appealed to the court himself to make Âmine renew spousal relations with him, he must have been confident that their marriage had not ended. In that case, it is most probable that he had not paid Âmine her delayed dowry. It is hard to know whether in a separate court case, even in a different court, Âmine sued Mehmed on the issue of her dowry. Even though her intention was not to take advantage of this unforeseen annulment and she desired to renew her marriage to Mehmed once he became a Muslim again, she was supposed to receive her dowry from the former marriage and enter into a new contract with a new dowry agreement.

On the other hand, in another similar case from an earlier period, the annulment decision was made this time by the judge of the Galata court. In 1576, Mustafa Çelebi bin Bâli Bey, a palace functionary, and two women, Fatima bint Abdullah and Cansever bint Abdullah, filed a lawsuit against Mehmed Bey bin Abdullah who was a former regiment commander. According to their statement, Mehmed Bey had sworn at his respectable (*muhadder*) wife Aişe Hatun bint Bâli Bey (possibly the plaintiff Mustafa Çelebi's sister) in their presence while she was reciting

[500] Rumeli Sâdareti Mahkemesi, 40 Numaralı Sicil, 229 [61b-1].

the Qur'an. Mehmed Bey had said to Aişe Hatun "I shall adulterate you, I shall adulterate the Qur'an you are reading, go read it in hell" (*başına çepelleyim ve okuduğun mushafa çepelleyim ve var okuduğun Kur'ân'ı zebhânede oku*). The record of the case does not inform us as to whether or not the judge of the Galata court heard the plea of Mehmed Bey. It was only recorded that the judge divorced the two upon the allegations of the plaintiffs (*Ayşe Hatunun mezbûr Mehmed Bey'den küfrü sebebi ile iftirâkına hükm olunduğuna*).[501]

One might wonder why there are only rare cases of legal annulment in the Sharia court registers. As the case of Âmine and Mehmed suggests, mediation of neighbors, kin, or community members could have been highly instrumental and certainly indispensable due to the critical importance of witness testimony in legal processes. Did Âmine believe that there was no need for the judge's divorce decree after receiving the confirmation of her neighbors? Why was Aişe Hatun's case brought to court although there were sufficient witnesses who could testify against Mehmed Bey and who had already determined that her marriage had effectively ended upon her husband's blasphemy? Indeed, in Âmine's case, the fact that she did not resort to court to obtain an annulment does not seem to have been considered unlawful by the deputy judge. While her case once again reminds us of the significance of community intervention or pressure, it also implies that there might be some other cases of *fesih*, which were never brought to the Sharia courts. The reason why we infrequently see annulment cases in the registers can also simply be related to the fact that Hanafi law allowed it only on limited grounds. In addition, sensitive issues, such as male impotence, were handled within the family circle and not brought to court.

[501] Galata Mahkemesi, 5 Numaralı Sicil, 142 [128-3].

Unlike *fesih*, however, *talak* and *hul* cases abound in the Sharia court registers. As mentioned above, *talak* and *hul* divorces did not have to be granted by the Muslim judge, yet complicated dowry arrangements could provoke disputes and, therefore, necessitate judicial intervention. Even if a divorce was amicable, the parties could wish to register their dowry settlements to ensure that no one in the future would make fraudulent claims. *Talak* and *hul* divorces had different consequences for the wife and the husband, and followed different procedures. Talak was the husband's unilateral right to repudiate his wife, as a result of which he was obligated to pay her the deferred dowry and three months of maintenance (*nafaka-i iddet*). For men, terminating their marriage was as simple as pronouncing the divorce formula (I divorce you) thrice to the wife. The husband could either utter the formula three times consecutively or only once during each of her three successive *tuhr* periods (while she is not menstruating), both of which processes would render the divorce irrevocable. The only way for his divorce to be revocable was uttering it only once during his wife's *tuhr*, refraining from sexual intercourse for the following three months of her *iddet* period, at the end of which he declares his decision to take her back.[502] As straightforward and smooth as it seems, the irrevocable *talak* could put the husband into a somewhat disadvantageous position both financially and morally. First of all, the dowry and maintenance payments could be beyond some men's means. Secondly, after the husband repudiated his wife via irrevocable *talak*, in the event that he regretted his decision, in addition to entering into a new nuptial contract with her, another man had first to marry the former wife, consummate the marriage, and later divorce her (*hülle*) so that the ex-husband could renew his marriage to his previously divorced wife. Both of these drawbacks probably made

[502] Esposito and DeLong-Bas, *Women in Muslim Family Law*, 29-31. The revocable divorce is regarded as "*talak* proper" because it prevents the husband from taking an irreversible decision and allows him to reconsider it.

some men reconsider their intention to divorce their wives through *talak* although many others were not held back, as seen in many examples in the Sharia court registers.

According to Islamic law, *hul* is the only option to end a marriage for a Muslim woman who does not have grounds for a legal annulment. Through *hul* divorce, women could terminate their marriage irrevocably, whereby they usually forfeit their legal right to receive a delayed dowry in case of a divorce. In some cases, as also seen in the Sharia court registers, some women either offered additional compensation to the husband or nullified his debt to her. The wife, however, still has to receive her husband's consent to the *hul* divorce. Hence, despite the compensation that women give, the *hul* cannot be regarded as women's unilateral repudiation of men. As Al-Marghinani puts it: "offering such a compensation may induce him to liberate her."[503] The offer of separation through *hul* could either come from the husband or the wife, and the other party's approval was sought in both cases. The *hul* divorce, therefore, is also understood as a mutual divorce.

As I discussed in the previous chapter, the delayed portion of women's dowry became highly instrumental when women desired to escape from an unwanted marriage as it provided a sort of "bargaining leverage."[504] Why, then, did some women donate all or part of their deferred dowry to their husbands in the course of their marriage, considering that the delayed portion was their sole insurance when their husbands died or when they wished to get away from their marriage? A good number of dowry donation (*hibe*)[505] records in the Sharia court registers are

[503] *The Hedaya*, 112.

[504] Zilfi, "'We Don't Get Along'," 273.

[505] According to Islamic law, Muslims were allowed to gift (*hibe*) their possessions without receiving anything in return, to anyone they desired. There were also no limitations on the amount they could gift unless the gift was made at the point of death. At that point, the gift was accepted as a bequest and giving more than one-third of one's property was considered against the rights of his/her heirs. Together with *waqf* and fictitious sale, gifting is seen as a solution for the constraints on designating heirs for one's inheritance. It is assumed that gifting was a way to

quite puzzling in that regard because they usually do not provide us with any details about the out-of-court negotiations that the couple entered into. A standard gifting entry of this sort simply records the items and/or the amount of money or debt gifted to the spouse. In one of these cases, for example, Aişe donates some of the household items in her possession to her husband (including pillows, duvet, etc.) and forgives nine hundred *akçe*s of his one thousand *akçe*s-worth dowry debt.[506] Usually, it is also recorded that the husband accepted the gift. The questions of whether or not Aişe was a woman of high status for whom other financial means were available to support her in the event of her husband's death or divorce, whether she was an older woman who was almost on her deathbed and did not have much of a chance to receive her delayed dowry, or whether her husband forced her or somehow convinced her to give away such assets remain unanswered. Indeed, as discussed in the previous chapter, for many women, at least for those who resided in Nablus in the early nineteenth century, the delayed dowry constituted only a small portion of their total estates.[507] If we are to assume that what was observed for Nablus also applied to some women in seventeenth-century Istanbul, canceling part or all of their husbands' dowry debt might not have caused a great financial loss. For other women, however, receiving the deferred dowry upon divorce mattered a great deal, as demonstrated in the examples below.

circumvent this inflexibility of the law, take away unwanted heirs, and keep the family's property. Linant de Bellefonds, Y., "Hiba," in: *Encyclopaedia of Islam, Second Edition*, eds. P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs, http://dx.doi.org.proxy-um.researchport.umd.edu/10.1163/1573-3912_islam_COM_0283, accessed June 7, 2021; David S. Powers, "The Islamic Inheritance System: A Socio-Historical Approach," in *Islamic Family Law*, eds. Chibli Mallat, and Jane Frances Connors (Leiden: Brill, 1990), 19; Boğaç Ergene, and Ali Berker, "Inheritance and Intergenerational Wealth Transmission in Eighteenth-Century Ottoman Kastamonu: An Empirical Investigation," *Journal of Family History* 34.1 (2009): 28. In the Ottoman context, treasury agents confiscated the remaining estate of a deceased person after all the heirs received their shares. If there were no heirs, the treasury (*beyt-ül mal*) seized the whole inheritance. Gifting was also a strategy to avoid such a confiscation by the state.

[506] İBMŞS, 13 Numaralı Sicil, Varak [125-a].

[507] Tucker, "Marriage and Family in Nablus," 170.

Gifting or canceling debts either by the husband or the wife can also suggest a compassionate relationship between the couple, as Elbirlik suggests.[508] Especially in marriages that lasted for many years, spouses might have wished to support each other and their children financially. On the other hand, it should also be noted that although more often than not donation entries in the registers do not include the motivations for the gifting, some entries imply that behind the "generous" act of gifting there was serious negotiation between the couple with regard to their relationship. For instance, in 1662, Asiye bint Üveys went to the Eyüp court and stated that she donated some of her household goods to her husband Abdullah Beşe bin Mehmed, the boatman, and forgave all of his dowry debt which amounted to eight hundred *akçe*s. Asiye's case could normally end with this information, but it was also added that after Abdullah confirmed that he accepted the donation, he said "I commit that after this day I will get along with my wife until the end of our lives and will not divorce her" (*ba'de'l-yevm zevcem mezbûre ile ömrümüz âhir olunca hüsn-i mu'âşeret edip mezbûreyi tatlîk etmemek üzre ta'ahhüd eyledim*).[509] Abdullah's statement indicates that while Asiye wanted to protect herself from possible divorce by her husband, she was also concerned about her well-being in the marriage. In a way, rather than securing herself financially after her husband's death or divorce, she preferred to guarantee the stability of her marriage, such that she eliminated the only element that could discourage her husband from divorcing her through *talak*. Although there is no way of knowing whether the two had problems in their marriage or what exactly "getting along" meant for them, one might assume that it refers to Abdullah's mistreatment or cruelty. Muslim men's extensive

[508] Elbirlik, "Negotiating Matrimony," 302.

[509] Eyüp Mahkemesi, 74 Numaralı Sicil, 74 [83b-3].

rights of divorce rendered marriage an unstable and unreliable institution.[510] In this context, some women like Asiye might have wanted to guarantee the fate of their married status and thus tried to persuade their husbands to stay in the marriage for a "price."

Although for Asiye eight hundred *akçe*s of deferred dowry was seemingly not too great a sacrifice, for many other men and women, the amount of the delayed dowry must have represented a considerable sum, such that they appealed to the Sharia courts for various kinds of disputes about it after the termination of their marriage. Besides simply registering the settlement of their dowry arrangements both after the *hul* and *talak* divorces to prevent future conflict, quite a few cases were brought to court, especially by women whose ex-husbands' failed to pay all or part of the promised dowry. As discussed in the previous chapter in detail, just like marriage, divorce was primarily an oral act; it did not require judicial intervention. Nor were couples obligated to register it in court. In the case of *hul* divorce, the parties could have agreed on the divorce orally, maybe in the presence of witnesses, just as the husband announced his divorce decision to his wife orally. As demonstrated in the previous chapter, the heavy dependence on orality created an ambiguous socio-legal environment, whereby some couples disagreed as to whether or not their marriage had ended and took the issue to the Sharia courts to let the Muslim judge decide.

Even when the spouses agreed that they had been divorced, they could have a dispute about whether their marriage had been terminated through *hul* or through *talak*. Given that the divorce had not been registered in court, even for its financial issues, it would not be hard to bring a false claim against the other party. It would actually be appealing for a simple reason: *talak* and *hul* lead to different consequences in terms of dowry arrangements. While it is the wife

[510] Imber, "Women, Marriage and Property," 81.

who attains a financially favorable position in the former, it is the husband in the latter since his dowry debt is waived in the *hul* divorce. I observe that both men and women attempted to take advantage of this prevailing ambiguous and obscure atmosphere and tried to change the situation in his/her favor. In one such case, in 1686, Rahime bint el-hac Murad filed a lawsuit against her husband, Hüseyin Çelebi ibn Abdullah. According to her statement, ten days before her appearance in the Bab court, Hüseyin had divorced her through *talak*; yet he had neither paid her ten thousand *akçe*s-worth delayed dowry nor her *iddet* maintenance. When the deputy judge asked Hüseyin about his debt, he denied Rahime's accusations and stated that ten days before, they had actually divorced through *hul*, not *talak*, and therefore Rahime had forfeited her right to receive her deferred dowry. Although the burden of proof lies with the plaintiff according to Islamic law, the deputy judge of the Bab court somewhat surprisingly asked Hüseyin to provide evidence relating to the *hul* divorce. Hüseyin was able to present several witnesses, including the neighborhood imam, all of whom confirmed his statement, whereupon the deputy judge forbade Rahime from causing further dispute about the issue.[511] It is curious that the deputy judge did not ask for evidence from Rahime, as expected, and instead asked it from Hüseyin. There is no way of knowing whether Rahime would have provided witnesses on her side had the deputy judge asked her to bring proof. Given that they had indeed divorced through *hul*, we assume that Rahime regretted her *hul* decision and sought to receive the delayed portion of her dowry. Just as with *talak*, *hul* is also an irrevocable divorce and even if Hüseyin fooled Rahime into it or somehow forced her to agree to it, that would not change the result.

In another even more complicated case, Güher bint Mehmed went to the Bab court in July 1671 and made a somewhat bizarre statement: her former husband Ahmed Bey ibn

[511] İBMŞS, 45 Numaralı Sicil, Varak [98-b].

Abdullah and she had agreed to end their marriage through *hul* divorce, around December 1670. Yet, she continued, Ahmed Bey had already divorced her through irrevocable *talak* three days prior to the *hul* divorce. Based on that *talak*, she appeared in the Bab court to have the deputy judge make Ahmed Bey pay her delayed dowry. Unfortunately, it is not registered whether Güher had provided a satisfactory explanation in court as to why they had gone through the *hul* divorce when they had already been divorced through *talak*. Indeed, when asked, Ahmed Bey confirmed the *hul* divorce but denied that he had previously divorced her through *talak*. Upon his denial, Güher was asked to provide evidence concerning the *talak* divorce. She was unable to do so, whereupon the deputy judge forbade her from causing dispute on the issue.[512] What is interesting here is that it was Güher herself who testified that they had agreed to the *hul* divorce. If her statement was wholly accurate, why had they gone through the *hul* divorce after already having been divorced? Did Ahmed Bey continue to have a spousal relationship with her after the *talak* such that she had to offer a *hul* divorce to persuade him to finally end their marriage for a "price"? If so, during the seven months between their divorce and Güher's appearance in the Bab court, someone might have urged her to demand her deferred dowry on account of the fact that the *hul* would be void if the couple were already divorced. Indeed, a fatwa of Çatalcalı Ali Efendi indicates that for that reason, if a woman is able to show evidence of the previous *talak* divorce, she is entitled to receive her delayed dowry despite the later *hul* divorce.[513] On the other hand, if she had made a false statement, which is more plausible in the case of Güher since she could not support her claim, we might assume instead that she was trying to take advantage of

[512] İBMŞS, 12 Numaralı Sicil, Varak [101-b].

[513] Çatalcalı Ali Efendi, 158. *Hind Zevci Zeyd ile mehri üzerine hul olduktan sonra Hind: "Zeyd, beni bâyinen tatlik etmişdi!" deyu dâvâ ve müddeâsına ikâmet-i beyyine idicek mehr-i mezbûri Zeyd'den almağa kâdire olur mu? El-Cevâb: Olur.*

the uncertainty that the oral arrangements between two people had created. If she had succeeded in her plan, instead of losing the delayed portion of her four thousand *akçe*s dowry, she would have left the marriage with that sum, as well as receiving payment for her *iddet* maintenance.

The availability of multiple divorce options through *fesih*, *talak* and *hul* turned divorce into a complicated matter in the pre-modern period. Chapter 4 has analyzed complicated cases in which spouses argued on whether their marriage had dissolved or not, putting their marital status into an ambiguous situation. Along these lines, the cases examined above indicate that even when spouses agreed on divorce, the availability of different types of divorce and their oral structure created another kind of obscurity. The cases here demonstrate that both men and women attempted to take advantage of the oral nature of *talak* and *hul* divorces and tried to manipulate the consequences of the divorce in their favor. For Greek Orthodox community members, as discussed below, there was a different kind of intricacy: the multiplicity of court options.

5.3. Legal Plurality and Divorce

Although there are not multiple types of divorce in Orthodox Christianity as in Islam, the legal plurality that prevailed in Ottoman Istanbul offered Greek Orthodox subjects at least two options: obtaining a divorce either in the ecclesiastical or the Sharia courts. As explained in Chapters 1 and 2, the Ottoman state granted the Greek Orthodox patriarch the right to try marriage and divorce cases of coreligionists according to canon law. In addition, just as with other non-Muslim subjects, Greek Orthodox community members enjoyed the right to resort to the Sharia courts for all kinds of judicial matters, including those which fell under family law. In

such cases, at first glance, it seems that a Greek Orthodox couple who wished to obtain a divorce could choose between those two types of courts and terminate their marriage. Yet, things were more complicated than they looked. Through various ecclesiastical orders, Greek Orthodox community members were urged to bring their marital issues to the church authorities, not to the Muslim judges, and were threatened with excommunication should they appeal to the latter.[514] Gradeva provides us with one such order issued by a bishop from Ioannina in a later period, from 1788:

> Christians who are not satisfied with the decision of the church court and turn to an "alien" court should never have their cases resolved by the church courts. They should be rejected and hated…, and punished by the Church. They have severed themselves from the community of Christians, showing no respect for the church of Christ and choosing dishonor. Those, according to Apostle Paul, have committed a great sin.[515]

According to Gradeva, the possibility of Christians converting to Islam was of grave concern for the Church, which necessitated taking measures through such orders.[516] Moreover, the existence of an alternative legal arena that community members could turn to when they were dissatisfied with the decisions of the ecclesiastical courts meant that the Church's authority could easily be undermined or overlooked. Regardless of whether or not the Church was successful, it made serious attempts to attract coreligionist to the ecclesiastical courts, particularly with regard to issues of marriage and divorce, over which it had its strongest authority. Indeed, several

[514] Pantazapoulos, *Church and Law*, 54.

[515] Gradeva, "Orthodox Christians in the Kadı Courts," 44. Her original source is *Nomikon. Piithen ke Sintahthen is Aplin Frasin ipo Panierotatu Elogimotatu Episkopu Kampanias Kiriu Theofilu tu ex Ioaninon* (1788) (Nomikon. Prepared and Compiled in the Vernacualr Language by the most Holy and most Wise Bishop of Kampania Sir Sir Theophil of Yoanina, 1788). Kritiki Ekdosis meta Isagogis ke Evretiou Pinakon ipo Dimitriu S. Gini (Thessaloniki: 1960), Part II, Civil Law, LG', 72.

[516] Gradeva, "Orthodox Christians in the Kadı Courts," 44-46.

Ottoman sultans recognized the power of the patriarch to punish community members who appealed to a different authority for marriage or divorce. The *berat*s of 1483 (by Bayezid II)[517] and 1525 (by Süleyman the Magnificent),[518] for instance, both emphasize the patriarch's authority not to accept in the church those who flout this rule. Various imperial orders from later periods as well warned the Muslim judges of Istanbul against intervening in the marital matters of Greek Orthodox community members. In 1806, an order of this sort was sent to the Istanbul judges upon the Patriarch of Istanbul's submission of a petition (*arzuhal*) to the imperial council (*Divan-ı Hümayun*). Similar to the content of the much earlier *berat*s, the order states that the marriages and divorces of Greek Orthodox subjects should only be handled by the patriarch and the deputies appointed by him. Even if they appealed to imams or the Sharia courts for these matters, their application should be turned down.[519]

The *berat*s and the imperial orders that were repeatedly issued between the fifteenth and nineteenth centuries clearly indicate that the Patriarchate was dealing with a real and insoluble issue. Although there might be exceptional cases, it seems as though the use of the Sharia courts by Greek Orthodox subjects, the concern of the church about this issue, and the sultans'

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[517] Elizabeth Zachariodou, *Δέκα Τουρκικά Έγγραφα για την Μεγάλη Εκκλησία* (1483-1567) [Ten Turkish Documents Concerning the Great Church (1483-1567)] (Athens: Ethniko Idryma Ereunon, Institouto Byzantinon Ereunon, 1996), 157-162. "*…ve bir avret erinden kaçsa ve bir kâfir avretini boşamalu olsa veya bir kâfir bir avret almalu olsa adetlerince olan tüzükleri adetlerince kâfirler mirasına batriyahtan gayrı kimesne aralarına girmeye ve bundan gayrı kâfirlerden gayrı kimesne ayinleri üzere nikâh ettirmiye ve boşamıya ve kiliseye koymıya…*"

[518] Zachariodou, *Δέκα Τουρκικά Έγγραφα*, 174-178. *"…ve kâfirlerden bir kimesne ayinleri üzere avretine nikâh ettirmese veyahûd bî-günah boşasa kiliseye koymıyalar…*"

[519] İstanbul Mahkemesi 97 Numaralı Sicil, 221 [50b-1]. *"…Buyurdum ki: Hükm-i şerîfim vardıkda bu bâbda sâdır olan emrim üzere amel edip dahi Patrik-i mersûmun beratı şurûtu vech-i meşrûh üzere olduğu Hazîne-i âmirem defterlerinde mukayyed olmağla siz ki Kādıasker-i müşâr ve mevâlî-i ızâmım mûmâ-ileyhimsiz, şurût-ı muharrere-i mezkûre ve Patrik-i mersûmun inhâsı mûcebince Rum tâifesinin nikâhları akd ü feshine dâir husûsâta Patrik-i mesfûr ve tarafından ta'yîn olunan vekîllerinden gayri kimesne müdâhale eylemeyip ve âyinlerine mugāyir ve şurût-ı mezkûre ve emr-i âlî-şânıma muhâlif o makūleler icrâ-yı merâm için mahkemelere ve mahalle imâmlarına vardıklarında iltifât olunmayıp reddile cevâb verilmesini iktizâ edenlere tenbîh ve te'kîde mübâderet eyleyesiz*." Elbirlik finds the same imperial order, also dating 1806, in the Istanbul Davud Paşa court registers. Elbirlik, "Negotiating Matrimony," 112-113.

cooperation with the Patriarchate regarding that aspect of the church's authority more or less persisted until the nineteenth century. Furthermore, besides the attempts that we see in the ecclesiastical orders and the *berat*s, the marriage and divorce cases of Greek Orthodox subjects as found in the Sharia court registers provide another strong indication of a real "transgression." How frequently Greek Orthodox subjects utilized the Sharia courts, however, is a different issue. As discussed in the previous chapter, the number of non-Muslim marriage records in the Sharia court registers could actually be relatively low compared to their population in a certain town. Regardless of their numbers, however, evidently some non-Muslims found it more convenient to register their marriages in the Sharia courts. And their number was enough to arouse the fears of the Church. On the other hand, studies rarely provide the number of non-Muslims who went to the Sharia courts for their divorce-related matters. Similar to the estimation of marriage registrations, several problems arise when trying to calculate the number of non-Muslims' divorce cases.[520] First of all, neither for Muslims nor for non-Muslims was the registration of divorce a requirement in the Sharia courts. As mentioned above, except for legal annulment (*fesih*), it was not the Muslim judge who granted divorce; it was rather an oral act between spouses. Even for Muslims, divorce entries were mainly dowry settlements or dowry disputes, not divorce petitions. It is quite possible that a couple who ended their marriage orally, without any financial dispute over the dowry, did not feel the necessity to register their divorce or dowry settlement in court. Therefore, the number of divorce entries in the Sharia courts by no means reflects the total number of divorces in a given town.

Secondly, in a city with multiple courts such as Istanbul, it is very difficult to come up with all the registered divorce entries. As discussed in Chapter 2, there were approximately

[520] For a general discussion on the drawbacks of carrying out a quantitative analysis based on the Sharia court registers, see Ze'evi, "The Use of Ottoman Shari'a Court Records," 39-45.

twenty-seven Sharia courts in Istanbul, and the study of one or even several of these courts cannot allow us to make a complete observation about the capital. Since the religious composition of each neighborhood in Istanbul could differ a great deal, studying only certain neighborhood courts might not be fairly representing all the courts of Istanbul, especially with regard to issues related to non-Muslims. Last but not least, as for the divorces of non-Muslim couples, the fact that we are not certain about the availability of the Greek Orthodox, Armenian, or Jewish community courts makes it even harder to estimate the number of their divorces in most parts of the Empire.

Despite these pitfalls, with regard to the capital, where we know that there was an effectively functioning ecclesiastical court, the Bab court records might give us an opinion, although an impressionistic one, on the use of the Sharia courts by Greek Orthodox couples for their divorce cases.[521] Between September 1670 and August 1672, 236 Muslims registered divorce-related issues (172 *hul* divorces and 64 *talak*) in the Bab court, whereas this number is only eight for non-Muslims (2 *hul* and 6 *talak*).[522] Based on the petitioners' names, all these eight divorce-related entries seem to belong to Greek Orthodox subjects.[523] The absence of Jewish and Armenian divorcing couples is highly interesting. Yet, without looking at the registers of other available courts, at least the ones within the walled city, not to mention not knowing the

[521] According to Ivanova, the number of matrimonial cases brought by Christians to the Sharia courts in Rumeli decreased in the eighteenth century. She suggests that the decrease might be related to the Patriarchate's consolidation of power and the increasing authority of the Church in this period. Ivanova, "Judicial Treatment of Matrimonial Problems," 165-166.

[522] According to Laiou, who also studied the number of divorce cases in the Sharia court of Veria, in the Balkans, each of two different ledgers included only one divorce entry belonging to non-Muslims. Laiou, "Christian Women in an Ottoman World," 250.

[523] There is one entry about an Armenian man, Mikail, who registered the cancellation of his engagement to another Armenian, Melike. İBMŞS, 12 Numaralı Sicil, Varak [63-b].

availability of their own community courts, it is hard to make sense of their absence. The questions of whether their absence reflects their low population around the Istanbul Bab court or their tendency to divorce less also remain unanswered.

Nonetheless, the appeal of eight Greek Orthodox couples to the Bab court in approximately two years while the Patriarchal court was situated in the court's vicinity, begs for an explanation. Scholars have speculated that some non-Muslims might have preferred to apply to the Sharia courts to obtain a divorce because the Muslim judge did not require them to state the grounds for their divorce. By the same token, if the couple wished to end their marriage for reasons other than those accepted by the church as legal, turning to the Sharia courts could be much more favorable and convenient.[524] For some places, however, the lack of evidence relating to effectively operating community courts has led some scholars to suggest that the Sharia courts were the only available option for non-Muslim subjects.[525] It has also been observed that the Sharia courts attracted non-Muslim subjects who sought to guarantee that their financial settlements would be protected by an authority with stronger enforcement power.[526] Below, in light of the available divorce entries from the Patriarchal court registers, I will address these assumptions and examine their relevance to the particular case of Istanbul.

In accordance with the rights granted through various *berat*s over centuries, the Patriarchal synod in Istanbul issued divorce decrees to coreligionists. Between 1660 and 1685, at least ninety-seven Greek Orthodox couples applied to the synod to obtain an ecclesiastical divorce and permission for remarriage. The records of these divorces, which Arabatzoglou

[524] Laiou, "Christian Women in an Ottoman World," 250; Ivanova, "Judicial Treatment of Matrimonial Problems,"165; Kermeli, "The Right to Choice," 190-191; Gkines, "Οί Λόγοι Διαζυγίου επί Τουρκοκρατίας," 224.

[525] Al-Qattan, "Dhimmīs in the Muslim Court," 439.

[526] Ivanova, "Judicial Treatment of Matrimonial Problems,"165.

published, may or may not be the total of divorce petitions submitted to the synod between these years. As in other available divorce decrees from the ecclesiastical courts of different towns, the Arabatzoglou compilation does not contain any rejected divorce petitions.[527] However, the existence of a few examples from other sources of Greek Orthodox community members whose application for divorce had been turned down suggests that the Patriarchal court only recorded those to which it granted divorce. Out of the ninety-seven divorces, sixty-seven had been initiated by women and seventeen by men, with thirteen of the cases considered mutual divorce filed by both spouses. Although grounds for divorce as appearing in these entries will be discussed in detail below, suffice it to say here that there were almost sixteen different categories. While some of them corresponded to the regulations of canon law, some did not. What is relevant here regarding the forum shopping practices of Greek Orthodox community members is the existence of twenty-two cases that reveal the fact that twenty-two couples came before the Patriarchal synod after they had already received a divorce document (*hüccet*) from the Muslim judge.[528]

The records of those twenty-two couples do not mention the motivations of the petitioners for applying first to the Sharia courts. Indeed, usually one of the spouses who came before the synod and accused the other one of "dragging him/her to the 'external court'" (*εἵλκυσεν εἰς τὸ ἐξωτερικὸν κριτήριον*). By taking them to the Sharia courts, petitioners claimed that their spouses deeply humiliated and dishonored them, based on which the petitioners

[527] Gkines, "Οί Λόγοι Διαζυγίου επί Τουρκοκρατίας," 253.

[528] In the Bab court registers there are no references to the Patriarchal court in the divorce cases of Greek Orthodox subjects. On the other hand, according to Ivanova and Gradeva, some non-Muslims resorted to the Sharia courts after having been divorced in the ecclesiastical courts. Ivanova, "Judicial Treatment of Matrimonial Problems," 165; Gradeva, "Orthodox Christians in the Kadı Courts," 63. Their appeal to the Sharia courts might be related to securing their post-divorce financial arrangements.

requested that the synod grant them an ecclesiastical divorce. In Balasa and Konstas' divorce in the Patriarchal court, for instance, Balasa accused her husband of disdainfully taking her to the Sharia court and divorcing her there. The synod seems to have acknowledged Balasa to be right about being humiliated and dishonored in the "external court," such that it was accepted as a valid ground for granting her an ecclesiastical divorce (κελευόντων γυναῖκα καταφρονουμένην ὑπὸ τοῦ ἀνδρός αὐτῆς…ἐπὶ ἀτιμίᾳ διασπᾶσθαι τούτου…).[529]

In the registers, the accusation about bringing disgrace upon one of the spouses was written in a somewhat formulaic manner almost in every such divorce entry. Whether the petitioners genuinely believed that they were humiliated by having been taken to the Sharia court, however, is hard to know. After all, we know that Greek Orthodox subjects applied to the Sharia courts for various other reasons, such as property sales, inheritance apportioning, guild matters, debts, etc. While they were clearly integrated into the imperial legal system, why would appealing to the Muslim judge for obtaining or registering a divorce be such a point of honor? Was it because divorce was a strictly religious matter over which the Church was the sole authority? In that regard, we might also question whether it was the court scribe, rather than the petitioner, who formulated the divorces in the Patriarchal court in such a manner so as to legitimize the synod's divorce decision. As seen in the *berat*s and ecclesiastical orders above, the church strongly disapproved of coreligionists' appeals to the Sharia courts for matrimonial matters. Thus, it is most probable that accepting in the Patriarchal court those who "unlawfully" appealed to the Sharia courts necessitated a justification. That is why whether it was the wife or the husband who came before the synod, more often than not, he/she was depicted as a "victim" who was almost forcefully dragged to the Sharia court. As also seen in the case of deserted

[529] Arabatzoglou, Vol. II, 125.

women in the previous chapter, here as well the synod emphasized the needy position of the female petitioners and underlined that the women had to obtain an ecclesiastical divorce and permission to remarry so that they could be taken care of by another man. When Nikolaos and his wife Evfrosini from Galata both appealed to the Patriarchal court in 1677 to obtain an ecclesiastical divorce after their divorce in the Sharia court, the synod granted the remarriage permission to Evfrosini on account of her young age and her poverty (*ἔχη ἄδειαν ἡ Εὐφροσύνη λαβεῖν ἕτερον ἄνδρα καὶ στεφανωθῆναι ἐκεῖνον ἐκκλησιαστικῶς, εἰς ἐπίσκεψιν τῶν πρός ζωάρκειαν ἀναγκαίων, διὰ τὸ νεάζον αὐτῆς, και παρακεκινδυνευμένον ἀναντιρρήτως…*).[530] One year later, when Evgenia, whose husband had divorced her in the Sharia court, requested that the synod grant her an ecclesiastical divorce and permission to remarry, the synod again based its decision on her young age and feeling pity for her (*ἡ μετριότης ἡμῶν σπλαγχνισθεῖσα αὐτῇ καὶ τὸ νέον τῆς ἡλικίας…*).[531]

As in other divorce cases in the Patriarchal court registers, all Greek Orthodox community members who had previously resorted to the Sharia courts were granted an ecclesiastical divorce by the synod. However, we do not know whether or not the synod rejected some divorce applications which remained unregistered. Therefore, at first glance, it seems as though the synod granted divorce to every single petitioner who brought a divorce *hüccet* from the Sharia courts. From this standpoint, one might also think that a *hüccet* from a Muslim judge, as being from a higher authority, would strengthen the applicant's hand when demanding an ecclesiastical divorce and that the synod was not inclined to turn down someone who had already

[530] Arabatzoglou, Vol. II, 148.

[531] Ibid., 150.

divorced in the Sharia court.[532] While these are strong presumptions, we also need to note that the synod closely examined the couple's grounds for divorce in some of the divorce cases. What is interesting here is that since most of the time it was one of the spouses who appealed to the synod, he/she presents the divorce grounds from his/her side when asked in court. However, as mentioned above, it is usually the other spouse who initiated the divorce in the Sharia court. For example, when the synod questioned Evfosini about the reasons for her divorce, she stated that being indebted, her husband was not able to feed her, and because of his fear of the moneylenders, he was not able to leave the house. She had also acknowledged, however, that it was her husband Veltsos who had taken her to the Sharia court. If, indeed, Veltsos initiated the divorce in the Sharia court, then we might assume that he had his own reasons which the synod was not interested in knowing or registering. In some cases, even though the petitioner brought a divorce *hüccet*, the synod questioned whether or not the grounds for divorce were canonically legal as well. Furthermore, the synod sometimes demanded that the petitioner present witnesses to testify to the validity of his/her statement and the authenticity of the *hüccet*.[533]

In other cases, however, the synod neither questioned the grounds for divorce nor demanded witness testimony. It is hard to understand why the synod followed a somewhat inconsistent procedure in such cases. As a matter of fact, in those cases, it rather seems that the divorce *hüccet* from the Sharia courts sufficed to grant an ecclesiastical divorce. At this juncture, we should ask if a *hüccet* was that effective in guaranteeing an ecclesiastical divorce, why did only twenty-two of the divorcing couples out of ninety-seven in the Patriarchal court registers first appeal to the Sharia courts? One explanation for this might be related to the fact that those

[532] Laiou, "Christian Women in an Ottoman World," 250.

[533] For examples, see Arabatzoglou, Vol. II, 125, 128.

twenty-two couples might have believed that they did not have a canonically legal reason for divorce. Understandably, the Sharia courts must have been much more convenient for them. Kermeli provides one such example from Trikkes, from 1704: A woman named Eirine had resorted to the metropolitan and asked to be divorced from her husband who was constantly beating her and forcing her to be an adulteress. The Church, however, was unwilling to divorce the couple and instead, the husband was reprimanded in the hope of saving their marriage. As the situation was unbearable for Eirine, she came up with the solution of resorting to the Muslim judge and eventually divorced her husband in the Sharia court. When she returned to the Church and explained her desperate situation to justify her appeal to the Muslim judge, she was able to obtain an ecclesiastical divorce, which, initially, had not been granted to her.[534] On the other hand, there are also examples of couples who presented similar reasons for their divorce. One of them had formerly utilized the Sharia court, and the other directly appealed to the Patriarchal court.[535] If we are to assume that with or without a *hüccet* one could obtain an ecclesiastical divorce on account of some similar grounds, then we need to reconsider other alternative motivations as well for some Greek Orthodox community members. We should take into consideration, for example, the possibility that some of them, having a problematic relationship with the Church or having been excommunicated for some reason, had to resort to the Sharia courts since it remained as the only available option for them. As discussed in Chapter 2, excommunication could be inflicted on wrongdoers, which could entail their exclusion from the

[534] Kermeli, "The Right to Choice," 190-191.

[535] Both Vitoria and Malamatou complained about their husbands' drunkenness and that they were not able to take care of their wives. While the former possessed a *hüccet*, the latter did not. Arabatzoglou, Vol. II, 158, 162.

Church and denial of burial in Christian cemeteries. In that case, applying to the Sharia courts might have presented itself as an exigency rather than a choice.[536]

It is important to discuss what a divorce *hüccet* from the Sharia court entailed. If what Greek Orthodox community members possessed and presented to the synod in the way of claims and evidence looked like what we see in the Sharia court registers, then it might be a record of financial arrangements after divorce, rather than a simple divorce decree. As mentioned above, a divorcing couple with complicated financial issues might have preferred resolution by a more substantial authority with stronger enforcement power. We do not know, however, if Greek Orthodox subjects requested a different kind of document from the Sharia court, something simpler in terms of its content, just proving that their divorce came through.

Nor is it included in the Patriarchal court registers whether the couple's divorce in the Sharia court was *talak*, *hul*, or *fesih*. The *hüccet* that was presented to the synod possibly contained that information, but as long as the divorce came through, the synod was not interested in knowing which type of divorce it was. However, the fact that the plaintiff who took the case to the "external court" was recorded, might hint at the divorce method. Only in two out of the total twenty-two divorce cases in which the couple had first appealed to the Sharia court was it the wife who initiated the divorce in the "external court"; these may well have been *hul* divorce. In fifteen cases it was the husband, while the remaining divorce applications were brought to the Sharia courts jointly. Some scholars have suggested that non-Muslim women substantially benefited from the option of the *hul* divorce in the Sharia courts since it was not available to

[536] Although there is no direct evidence in the Patriarchal court registers about whether or not those who used the Sharia courts had been formerly excommunicated, the previously mentioned imperial order from 1806 uncovers a relevant clue. The order states that some Greek Orthodox community members had moved to Istanbul from other provinces with the hope of relieving themselves from their tax obligations. Those wrongdoers were applying to Muslim judges or neighborhood imams to take "unlawful wives." Although here the emphasis is on marriage, the statement suggests that those who had already disobeyed the laws and possibly been excluded from their community tended towards the Sharia courts. İstanbul Mahkemesi, 97 Numaralı Sicil, 221 [50b-1].

them in their own religious laws.[537] However, as seen from the available registers, not only did Greek Orthodox women less frequently take their divorce cases to the Sharia courts but they also, overall, applied to the Patriarchal court in greater numbers compared to men. As noted above, sixty-seven Greek Orthodox women applied to the synod for divorce, whereas only seventeen men did so. These numbers, altogether, although not fully representative, imply that Greek Orthodox men took advantage of the prevailing legal plurality more widely than did Greek Orthodox women.[538]

The acceptance by the Patriarchal court of those who divorced in the Sharia courts, asking to view the *hüccet,* ensuring its validity, and recording its existence suggest that, at least to some extent, the Church recognized divorces obtained in the Sharia courts. An example from 1679 indicates the extent to which the Church could be "welcoming" or "forgiving." Dimitrios and Smaragdas went to the Patriarchal court together and stated that they had obtained a divorce in the Sharia court. They also acknowledged that both of them "took another man/woman through *kebin*." For an unmentioned reason, they needed an ecclesiastical divorce as well, which the synod granted without further investigation regarding their grounds for divorce.[539] Although it was clearly stated in the ecclesiastical orders, *berats*, or imperial orders that Greek Orthodox community members had to bring their marriage and divorce cases to the ecclesiastical courts, and that they would not be accepted in the church should they disobey this rule, in practice,

[537] Al-Qattan, "Dhimmīs in the Muslim Court," 435; Laiou, "Christian Women in an Ottoman World," 250.

[538] Although data from the Sharia courts are quite limited, it is worth remembering that out of eight Greek Orthodox divorce entries in the Bab court between September 1670 and August 1672, six had been brought by men, whereas only two Greek Orthodox women took their divorce-related cases to the same court. While I do not intend to present these data as conclusive evidence, it is interesting that in the Sharia court registers, at least in the Bab court, *hul* divorces of Greek Orthodox couples also did not outnumber *talak* divorces. In line with the Patriarchal court registers, Sharia court registers suggest that Greek Orthodox men appealed to the Sharia courts for their divorces more frequently than women.

[539] Arabatzoglou, Vol. II, 155.

things seem to have worked differently. In the case of Dimitrios and Smaragdas, there seem to have been enough reasons for them to be excluded from the church. They had not only divorced "unlawfully" but also married "illegally," possibly via a Muslim authority, although this is not clearly stated in their record. If Dimitrios and Smaragdas were "detached" enough to apply to the Muslim judge or imam to obtain a divorce and then to remarry, what made them return "home" to request an ecclesiastical divorce? Did they feel community pressure and fear of being excluded? Was it a prerequisite for their other legal issues related to the Church? Regardless of what motivated them to apply to the Patriarchal court, it seems that community members and the Church had a co-dependent relationship in which each party accommodated the other's needs.

The cases of Greek Orthodox men and women who applied to the Patriarchal court after already having been divorced before the Muslim judge suggest that legal plurality in Istanbul did not mean that Greek Orthodox subjects opted for one court to the exclusion of the other. Rather, some of them seized the opportunity to benefit from both available legal frameworks. Both the Sharia courts and the Patriarchal court seem to have acceded to this legally plural environment, along with the gray areas or complexities it brought about. As much as the Church represented itself as uncompromising towards those who visited the Sharia courts for their matrimonial matters, the Church could not venture to lose a coreligionist, and community members did not seek to alienate themselves from their community entirely.

5.4. Grounds for Divorce

The divorce registers from the Sharia and the Patriarchal courts that were taken from the same period reveal a major difference: while the former does not note grounds for divorce, the latter

does, sometimes in considerable detail. Although divorce cases from the Sharia court registers have been extensively discussed from many perspectives, our knowledge of the possible reasons for divorce has remained quite limited. As explained above, Islamic law does not limit grounds for divorce except in the case of legal annulment. A Muslim couple could legally divorce on any grounds and did not have to declare them to the Muslim judge. After all, divorce was an oral agreement between spouses and was not granted by the Muslim judge per se. In addition, unlike the regulations of canon law, Islamic law is not concerned with determining the party at fault in the dissolution of the marriage as ordinarily it would have no effect on the dowry or child custody arrangements in the aftermath of divorce.

The most we can find in the divorce cases from the Sharia court registers as grounds for divorce is the formulated expressions of "*beynimizde hüsn-i zindegânimiz olmamağla*," "*hüsn-i muâşeretimiz olmamağla*," "*beynimizde şikâk-ı külli vâkı'a olmağın*," "*birbirimizden nüşuz ve a'raz vâki olmağın*" or their different combinations. In general terms, these formulations refer to a troubled relationship; spouses who do not enjoy living a life together; are in contention, or feel repugnancy towards each other. Details of the reasons for divorce, however, are almost never revealed. The use of these repetitive formulations leads us to assume that in whichever way the divorcing couple expressed their reasons for divorce to the Muslim judge, the court scribe put their statement in one of the above-mentioned forms. Indeed, we do not know whether the Muslim judge demanded that the couple state on which grounds they terminated their marriage. Nor can we know whether the divorcing couple told their problems in detail, had a dispute before the judge, or indeed if their court session included some yelling or weeping.[540]

[540] Zilfi, "Thoughts on Women and Slavery," 136.

As Zilfi observed, the eighteenth-century registers of the Bab court frequently use the above-mentioned templates, especially in the records of *hul* divorces.[541] The same pattern does not apply, however, to the late seventeenth-century registers of the same court. Divorce records of the Bab court, those between 1660-1685, start to attach one of those expressions only around 1685. Interestingly enough, before this date, all the divorce records were drafted without any note on grounds for divorce, even a formulated one. Even the Bab court ledger of 1684-1686 uses those expressions sporadically; while some of the *hul* records mention the "absence of compatibility," others lack any such note. At least in the case of the Bab court registers, we might assume that the practice of attaching expressions on the grounds for divorce was introduced at a later time, around 1685, and became a norm only in the eighteenth century.[542]

Why a tendency of this sort was revealed at some point and systematized in the eighteenth-century registers needs explanation, especially when considering that the note on the "absence of compatibility" was far from providing a clear and satisfactory explanation of a couple's actual grounds for divorce. Although it is hardly possible to determine the actual reasons, we might speculate that the use of formulated statements, especially in the *hul* divorces (those initiated by women), reflects the concern to justify the high number of *hul* divorces. As Zilfi has pointed out, the "increasingly visible" rate of *hul* divorces in the eighteenth century created uneasiness in terms of the moral sensitivities of the public, which, for instance, found echoes in the eighteenth-century chronicler Şemdanizâde's account.[543] Such social anxiety might

[541] Zilfi, "'We Don't Get Along'," 276-277.

[542] As a matter of fact, the formulated expressions of "*beynimizde hüsn-i zindegânimiz olmamağla*," "*hüsn-i muâşeretimiz olmamağla*," "*beynimizde şikâk-ı külli vâkı'a olmağın*," "*birbirimizden nüşuz ve a'raz vâki olmağın*" were not completely unknown for the period before 1685. The registers of other courts of Istanbul occasionally and rarely use them both in *hul* and *talak* records, mostly after 1650s. Peirce also notes that the use of these expressions was limited in the Aintab court registers for the sixteenth century. Peirce, *Morality Tales*, 419.

[543] Zilfi, "'We Don't Get Along'," 295-96.

have reinforced a tendency to offer an explanation for the divorces initiated by women, which in a way maintained that the woman had valid reasons to end her marriage. As we have also seen in the Patriarchal court registers, women's actions, in general, seem to have prompted the court to require stronger justification efforts, especially with regard to women's desire for divorce or remarriage. While women's needy or desperate situations were more strongly emphasized when granting them permission to remarry, we see no such conscious attempt in the case of men.

Apart from the reasons that the Hanafi school granted legal annulments, such as the husband's failure to consummate the marriage or apostasy of one of the spouses, broadly speaking, no specific reason for divorce was mentioned in the Sharia court registers. According to Zilfi, although not reflected in the registers, childlessness and possible infertility of the wife could be one of the underlying reasons for divorce. She also adds, however, that in most of the *hul* cases from the eighteenth century, the couple usually had minor children. In their cases, what seems to have triggered the divorce was the newness of the marriage, which might have led the couple to have "early course adjustment" problems.[544] We might also assume that the grounds for divorce the non-Hanafi legal schools granted to women, such as cruelty, failure to provide the wife with her maintenance, and insanity also caused couples to end their union, even though not through legal annulment. Hosainy, for instance, presents an example from 1661 of a woman who initiated a *hul* divorce on the grounds of not having been maintained for the previous three years.[545] Another example from 1670 indirectly reveals that Fatima had sued her husband Ramazan for beating her. Sometime after the beating, Ramazan divorced her through *talak*, and

[544] Zilfi, "'We Don't Get Along'," 292.

[545] M. Hadi Hosainy, "Women's Property Rights in Seventeenth-Century Istanbul" (PhD diss., University of Texas at Austin, 2017), 100-101.

their court case was about Fatima's withdrawing the lawsuit, as well as forgiving part of the delayed dowry which was due from him upon his *talak* divorce. Although, as expected, the reason for their divorce was not stated, it is not unreasonable to think that his cruelty and Fatima's taking legal action against him encouraged their divorce.[546]

In this context, the Patriarchal court registers substantially contribute to our limited knowledge of the possible grounds for divorce in the pre-modern period. As mentioned above, Orthodox canon law stipulates that marriage could only be dissolved on account of some limited causes. It was thus absolutely critical for the synod to determine whether a couple who petitioned to obtain an ecclesiastical divorce indeed had valid canonical grounds. As a matter of fact, as explained in Chapter 2, in some divorce cases, the synod not only demanded witness testimony that could confirm the statement of the divorcing parties but also investigated the reliability of those witnesses. In the Patriarchal court registers, grounds for divorce were recorded almost without exception, even in the cases of those who had previously received a divorce *hüccet* from the Muslim judge.

Before examining the divorce records from the Patriarchal court, we shall first look at on what grounds canon law granted permission for the dissolution of marriage. The fourteenth-century Byzantine legal code by Blastares classified the lawful grounds for divorce in two groups, as those on account of the husband's failure and those of the wife. According to these two categories, when the wife is the one at fault, the husband retains the right to receive the dowry, while the wife would keep it if the husband's failure caused the divorce.[547] The wife's

[546] İBMŞS, 12 Numaralı Sicil, Varak [48-a].

[547] Patrick Viscuso, "Late Byzantine Canonical Views on the Dissolution of Marriage," *Greek Orthodox Theological Review* 44, no. 1-4 (1999): 274.

failures included: 1) conspiring against the [Byzantine] Empire; 2) plotting against her husband's life; 3) adultery; 4) being with strange men despite her husband's prohibition; 5) being outside the home with people other than kin; 6) going to public places without the husband's knowledge. On the other hand, the wife would have the right to repudiate her husband if he did the following: 1) conspired against the Empire; 2) plotted against the wife's life; 3) delivered his wife to other men; 4) falsely accused his wife of adultery; 5) had carnal relations with another woman, despite his wife's protests. Some other grounds for divorce, however, did not cause one of the spouses to be penalized, such as the impotence of the husband for more than three years, one of the spouses entering into monastic life, or disappearing for at least five years after having been taken captive.[548]

Another fourteenth-century legal textbook compiled by Hermenopoulos, which was widely used during the Ottoman period, acknowledged the same legal grounds that Blastares listed and added new ones, such as innate insanity of one of the spouses, nonvirginity of the wife, and the woman's deliberate abortion without the father's consent.[549] The Ottoman period canonical legal texts also tended to further broaden the scope of the legal grounds that the Church recognized. The account by Malaxos (1561) on canon law, for instance, incorporates the substance of both Blastares' and Hermenopoulos' texts while also adding having leprosy, taking part in a robbery, or marrying a heretic (non-Orthodox).[550] Here at the theoretical level, what we see is a continuation of the Church's tendency towards leniency in granting an ecclesiastical

[548] Blastares, 115-117.

[549] *The Hexabiblos*, 271-72. Although Gkines asserts that nonvirginity and insanity as legal grounds for divorce were introduced later in the sixteenth century, Hermenopoulos' account *the Hexabiblos* had actually included them a couple of centuries before Malaxos. Gkines, "Οί Λόγοι Διαζυγίου επί Τουρκοκρατίας," 247.

[550] Malaxos, 204-207.

divorce.[551] Some scholars have suggested that competition between the Church and the Sharia courts for attracting Greek Orthodox community members led to the relaxation of the limited canonical grounds for divorce in the Ottoman period.[552] As much as this is a reasonable explanation for the sixteenth-century additions that we observe in Malaxos, suggesting a clean rupture between the Byzantine and the Ottoman periods might be misleading.

In addition to contributing to our understanding of the kind of causes that triggered divorce in the pre-modern period, the Patriarchal court registers help us examine the extent to which the Orthodox canons on divorce were applied in practice. As seen in the table below, the divorce cases that came before the Patriarchal synod between 1660-1685 involved most of the aforementioned legal grounds, with some additions. Obviously, divorces due to having previously resorted to the "external court" and entering into a *kebin* marriage were innovations that the synod had to adjust to in the Ottoman period. Nevertheless, other reasons such as disobeying the husband's authority, not being able to "feed" the wife, or mutual divorce indicate that the synod extended its scope for situations that were not caused by the complexity of legal plurality. It should also be noted that we also observe a certain degree of consistency between canon law and the court registers. For instance, cruelty of the husband neither appears to be a legal ground in the legal texts nor seems to have made the synod grant an ecclesiastical divorce.[553] In addition, in the available twelve adultery cases, the crime was committed by the wife. As explained above, the Orthodox canons only recognize wifely adultery as a legal ground

[551] Mitchell, *Family Life in the Middle Ages*, 54.

[552] Gkines, "Οί Λόγοι Διαζυγίου επί Τουρκοκρατίας," 246; Michaelides, "Οι Λόλοι Διαζυγίου," 22.

[553] Although a couple of Greek Orthodox women mentioned the husband's cruelty, it was not presented as the sole reason for their request for an ecclesiastical divorce.

for the dissolution of marriage; men's affairs with other women were not defined as adultery unless they represented continuous carnal relations despite the wife's protests.

A broad classification of the available grounds for divorce in the ecclesiastical registers would include: adultery, dishonoring the spouse by dragging him/her to the "external court," *kebin* marriage, abandonment by the husband, the husband's unwarranted disposal of the wife's property, impotence, marriage more than three times, mutual divorce, mental illness, overaged wife, not being able to maintain the wife, venereal diseases, nonvirginity of the wife, not respecting the husband's authority, and bigamy. Strict categorization of this sort, however, may not do justice to some divorce cases since they either do not fall neatly into one of these groups or should be placed in multiple ones. For instance, Maria and Drakon, who were also mentioned in the previous chapter, had filed a divorce petition both on the grounds of Drakon's impotence and Maria's *kebin* marriage.[554] Therefore, the total number of divorce cases exceeds the available ninety-seven entries in Arabatzoglou's compilation.

[554] Arabatzoglou, Vol. II, 129.

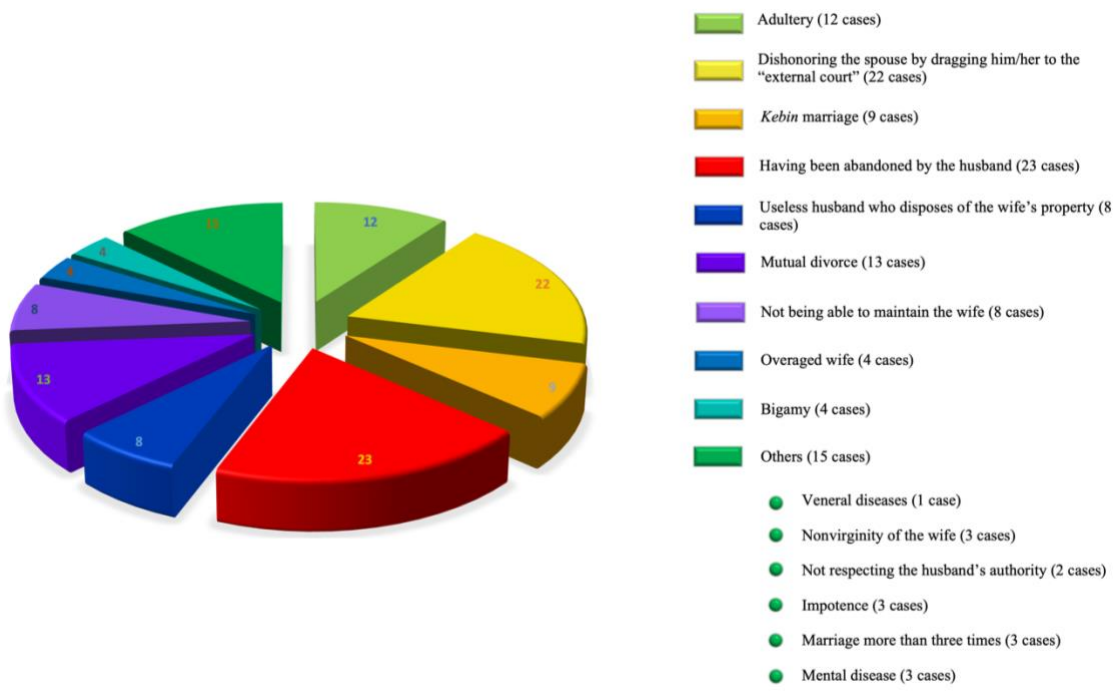

Figure 5.1: Pie chart showing the distribution of grounds for divorce as found in the Patriarchal court registers, 1660-1685

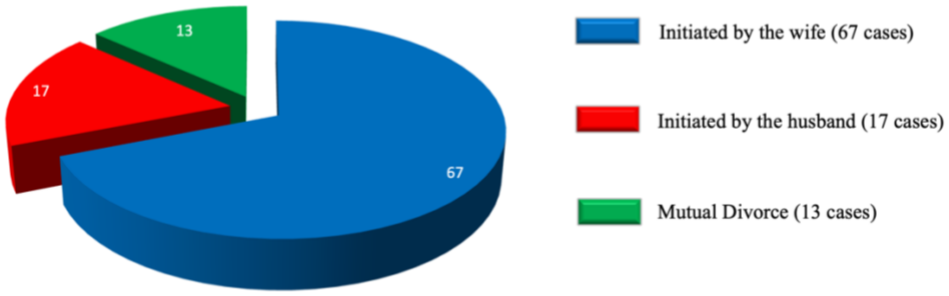

Figure 5.2: Pie chart showing the gender distribution of the divorce cases in the Patriarchal court registers, 1660-1685

A crucial question to be addressed here is whether or not the reasons for divorce that appear in the Patriarchal court registers could be generalized for Muslim couples as well, if we assume that the stated reasons in the registers were the actual reasons. Evidently, some reasons are specific to Greek Orthodox couples, such as *kebin* marriage, divorce via the external court, bigamy, or entry into a fourth marriage. Some other reasons, however, might as well have caused Muslim couples to end their marriage, either through *talak* or *hul*. The wife's nonvirginity, committing adultery, not respecting the husband's authority, mental illness, or being overaged might have encouraged some men to repudiate their wives, or a husband's "uselessness," not providing her with maintenance, or his mental or venereal disease might have led some women to initiate a divorce.

5.4.1. Cases related to extramarital relationships

In the Patriarchal court registers, out of ninety-seven divorce entries, twenty-five concern an extramarital affair in three different ways: adultery, bigamy, and *kebin*. As will be seen below, although adultery cases are more distinct and usually defined as *μοιχεία*, the difference between *kebin* and bigamy could be more ambiguous. As discussed in the previous chapter in detail, *kebin* cases in the Patriarchal court registers refer to illegal marriage, which may or may not have been contracted before a Muslim judge. None of the cases noted that the *kebin* marriage had taken place in the Sharia court. However, some of the couples had appealed to the Muslim judge for their divorce before one of them "took another woman/man" through *kebin*. On the other hand, four bigamy cases can also be defined as illegal marriage. In those cases, at some point in the marriage, it is revealed that the husband was either already married or his first wife learned that

he had been living a married life with another woman. These four cases were labelled as bigamy since, unlike others, they were not described as *kebin* in the records. It should also be noted that neither in *kebin* nor in bigamy cases were the out-of-wedlock affairs of the husband labeled as *μοιχεία* (adultery).

As noted above, in all twelve adultery cases, it was the wife who was the offender. One common point in these cases is the synod's attempt to prove the adultery either through witness testimony, confession, or oath-taking. As in Islam, false accusation of adultery was also a serious crime in the Orthodox canons and would entitle the wife to repudiate her husband should he not establish facts about his allegation.[555] According to Malaxos, imperial laws require five witnesses who could give eyewitness testimony to the crime.[556] Although there are no examples showing five witnesses in the Patriarchal court registers, in Panayiotis' case from 1681, he presented four male witnesses who all confirmed that his wife Merso had been caught while openly committing adultery.[557] More predominantly, however, women confessed their guilt. When Ioannis, for example, without presenting witnesses, accused his wife Lambrini of walking around with different men without his knowledge, Lambrini admitted that she had fallen into the crime of adultery.[558]

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[555] Malaxos, 201.

[556] He does not specify whether witnesses had to be male or female, which implies that, unlike Islamic law, women witnesses could be accepted according to imperial law. Malaxos, 201. The reason that he refers here to imperial law and not to canon law is that during the late Byzantine period divorce cases were usually handled according to civil legislation. Viscuso, "Late Byzantine Canonical Views on the Dissolution of Marriage," 277. This might explain the absence of divorce cases in the fourteenth-century Patriarchal court registers. As a matter of fact, there is only one divorce case found in the late fourteenth-century registers of the Patriarchal court. Kartal, "Crime and Punishment," 169. In that respect, the existence of the available divorce entries in the late seventeenth-century registers might be related to the absence of a Greek Orthodox civil court in the Ottoman period.

[557] Arabatzoglou, Vol. II, 156-157.

[558] Ibid., 141.

The synod granted a divorce without witness testimony or confession only in one case, which could also be considered a mutual divorce. Unlike other cases of adultery, this time it was the wife, Despinou, who had petitioned for a divorce. She accused her husband Rali of having bad habits and being careless to the extent of him depriving her of her basic needs. Rali, on the other hand, did not deny these allegations and brought a charge against Despinou relating to her affairs with strange men. According to Rali, Despinou had "a roving eye." Since both parties accused each other of wrongdoing and agreed to end their marriage, the synod, without further investigation, granted the divorce on account of their irreconcilable (*ἀσυμβίβαστα*) situation.[559]

The issue of adultery is handled very differently according to Islamic law. The term for adultery, *zina*, also had connotations of other kinds of "illicit sex," such as fornication or rape.[560] In all these senses, *zina* is considered an offense against God (*hadd* crime) and is to be punished according to the marital status of the parties. For instance, if the adulterous party was married, he/she would be sentenced to death by stoning. If not married, however, the offender would receive discretionary punishment: 100 lashes for a free person and 50 for a slave.[561] Scholars have already pointed out that in the Ottoman period administering such harsh punishments was deliberately discouraged, with punishments usually monetized according to civil law.[562] As a

[559] Ibid., 161.

[560] For some studies on *zina*, in a broader sense, or on its different meanings, see Colin Imber, "*Zina* in Ottoman Law," in *Studies in Ottoman History and Law* (Istanbul: Isis Press, 1996), 175-206; David Marc Baer, "Death in the Hippodrome: Sexual Politics and Legal Culture in the Reign of Mehmed IV," *Past and Present* 210, no. 1 (2011): 61-91; Başak Tuğ, *Politics of Honor in Ottoman Anatolia: Sexual Violence and Socio-Legal Surveillance in the Eighteenth Century* (Leiden: Brill, 2017); Peirce, *Morality Tales*; Elyse Semerdjian, *"Off the Straight Path": Illicit Sex, Law, and Community in Ottoman Aleppo* (Syracuse, N.Y.: Syracuse University Press, 2008).

[561] Imber, "Zina in Ottoman Law," 176.

[562] Indeed, according to the Ottoman Criminal Code, both adultery and its false accusation were punishable by fine according to the offender's status. Heyd, *Old Ottoman Criminal Law*, 96.

result, only a few *zina* cases were brought to the Sharia courts.[563] Similar to Orthodox canons, Islamic law required four male eyewitnesses to the offense or the confession of the adulterer, without which the plaintiff would be charged with false accusation of *zina* (*kadhf*).

The primary distinction between ecclesiastical and Islamic law is that the Muslim husband did not need to take legal action against his adulteress wife to repudiate her. The option of *talak* already allows him to divorce her on any kind of grounds.[564] The Greek Orthodox husband, however, could only divorce his wife after bringing his case to court and proving his accusation. In the case of women, the situation is more complicated both for Muslim and Greek Orthodox wives. As explained above, the latter were not entitled to divorce their husbands on the grounds of adultery unless the relationship was an ongoing or bigamous affair. As for Muslim wives, their only resort was again *hul* divorce, only with their husband's consent, since Islamic law does not grant legal annulment by reason of adultery. Normative law stipulates that married Muslim adulteresses were to be punished by death, whereas, at least in theory, Greek Orthodox women were to be repudiated by their husbands, and lose their dowry and custody of their children.[565] Unfortunately, since dowry or custody issues were not registered in the divorce records found in the Patriarchal registers, we do not know how these issues were handled after adultery cases. Only in one case was it noted that after Kitzos had proved, through three male witnesses, that his wife Mari was guilty of adultery, the synod granted him the right to keep everything he gifted to her, before and after marrying her, as well as her remaining property

[563] Zina offenses were usually handled in out-of-court settlements. At the neighborhood level, the offenders could be banished through legal action. Nevertheless, there are still rare cases of adulterers being stoned to death. For an example of stoning, see Baer, "Death in the Hippodrome."

[564] Leslie Peirce gives an example of a *hul* record in which the husband divorced his wife so long as she waived her right to her delayed dowry. Peirce, *Morality Tales*, 232.

[565] Malaxos, 111-112.

(most possibly her portion of the dowry), since she had spited her husband and not respected his honor (*…ό Κίτζος αὐτὸς λαβὼν πάντα τὰ πράγματα ὅσα τῇ γυναικὶ αὐτοῦ ἐδωρήσατο, τά τε πρὸ τοῦ γάμου καὶ τὰ μετὰ τὸν γάμον, καὶ τὰ λοιπὰ πάντα αὐτῆς, ὡς καταφρονησάσης αὐτοῦ τοῦ ἀνδρὸς αὐτῆς, καὶ μὴ φυλαξάσης τὴν τιμὴν αὐτοῦ…*).[566]

5.4.2. Cases on not fulfilling husbandly or wifely responsibilities

Although custom, community, religion, or families might have had different perceptions pertaining to what kind of duties spouses owed to each other, two primary spousal responsibilities are revealed in the Patriarchal court registers: the husband should maintain the wife, and the wife should show obedience to the husband.[567] Especially the former must have been a serious offense since several women in the registers put forward this issue as the sole reason for their demand for divorce. Notwithstanding the fact that canon law does not specifically recognize the husband's failure to provide for his wife as legal grounds for divorce, it must have been accepted as the husband's uncodified liability. In fact, it seems as though women considered being maintained almost a raison d'être for marriage because when a divorced woman was unable to subsist on her own, the synod granted her permission to remarry so that a man could "take care of her."

In one of the standard cases stemming from the husband's failure to maintain his wife, in 1677, Chapka filed a divorce petition against her husband Iovannou and accused him of being

[566] Arabatzoglou, Vol. II, 131.

[567] For a more detailed discussion on husbandly and wifely responsibilities in normative legal texts and advice literature, see Chapter 3.

useless and worthless, as well as of not observing her basic needs (*...ἐκίνησεν ἀγωγὴν αὕτη ἐγκαλοῦσα αὐτῶ ἀχρειότητα καὶ ἀναξιότητα, καὶ λέγουσα μὴ φροντίζειν ἐπισκέπτεσθαι ταύτην, μήτε πρὸς ζωάρκειαν ἀναγκαίων αὐτῆς...*).[568] Interestingly enough, the synod did not demand witness testimony from Chapka nor interrogate Iovannou on the issue. The synod's decision was based on the judgment that Iovannou was "incorrigible" (*ἀδιόρθωτος*) and Chapka was spiritually in danger. In another case from 1679, Archontou, represented by her mother, blamed her husband Yorgos for not maintaining her. This time, however, the mother presented a letter to the synod, written by the "elders of her region" (*ἐν ταῖς χερσὶν αὐτῆς γράμμα τῶν Γερόντων τῆς χώρας*), which confirmed the accusations. Yorgos had been described as bodily and mentally weak, being drunk, and not capable of living a married life. Moreover, he was roaming around the streets naked and sleeping outside in a miserable way. When asked by the synod, he confessed that he was not able to satisfy his wife. It was also noted in the record that the synod showed pity on Yorgos (*ἐλεεινότητος αῦτοῦ*) and tried to find treatment for him, but they could not find any (*καὶ πολλαχῶς ἐξετάσαντες τὰ κατ'αὐτόν, οὐχ'εὕρομεν θεραπείαν τινὰ*). Nevertheless, taking into consideration that Archontou was deprived of basic provisions and that Yorgos was unworthy of marriage (*ὡς ἀνάξιος συζυγίας*), the synod granted her the divorce.[569]

It is hard to understand whether it is due to the way in which the cases were recorded that we see two different approaches to the same kind of cases. In the second example, not only did the woman bring evidence relating to her accusations but also the synod tried to find ways to reconcile the couple. One of the differences between the two cases, however, is that the first case was brought from Galata, while the second came from outside of Istanbul, from the Metropolis

[568] Arabatzoglou, Vol. II, 144-145.

[569] Ibid., 153-154.

of Mithymna (in Lesvos). Although Yorgos already accepted the allegations, not being sure that he would do, Archontou might have wanted to come to court prepared. It is still unclear, though, whether Archontou's concern to bring evidence was related to being unknown to the church authorities, while Chapka's assurance was about being an "insider." Regardless of the issue of presenting evidence, both women, as in other examples, were granted divorce on account of their husbands' failure to carry out their husbandly duties.

Greek Orthodox women accused their husbands in various ways, depicting different kinds of problems that spouses would have in their marriage. Kassandra, for instance, put forward her husband's debts, due to which he ended up in prison. The woman had paid 200 *guruş* so that he could be released from prison, yet now that she was in severe poverty, she demanded that the synod divorce them.[570] Florou complained about her husband's incompetence in governing his assets, leaving her and her children destitute,[571] whereas Sultana was accusing her spouse of disposing of her property.[572] In some other cases, such complaints of women accompanied other accusations, such as having been taken to the "external court" or entering into a *kebin* marriage. Husbands' "uselessness" and their wives suffering from poverty were the most frequently made charges by women. As seen in the previous chapter, it was also the strongest basis for women whose husbands had abandoned them. The synod's flexibility in granting divorce in such cases must have encouraged Greek Orthodox women to appeal to the Patriarchal court to obtain divorce, to the degree that they depicted themselves as "victims" and

[570] Arabatzoglou, Vol. II, 142.

[571] Ibid., 163.

[572] Ibid., 142-143.

overemphasized their deprivation.[573] This flexibility also made Greek Orthodox women the primary users of the Patriarchal court in comparison to men.

Islamic law considers maintenance (*nafaka*) as the husband's primary obligation, and it is supposed to cover the food, lodging, and clothing needs of the wife. Contrary to other legal schools, Hanafi law does not grant a legal annulment to the wife should her husband fail to provide maintenance.[574] The only option available for those women would be suing their husbands, which seems to have rarely happened, according to the Sharia court registers. As demonstrated in the previous chapter, however, some deserted Muslim women appealed to the Muslim judge, noting the absence of their husbands, whereby they demanded the right to use their husbands' assets or borrow money in the husband's name, to be repaid by him upon his return. It was the recognition of the husband's obligation to provide the wife with maintenance which allowed the deserted wife to take a loan on her husband's behalf. On the other hand, Tucker shows that in Jerusalem, Hanafi judges accepted the decisions of Shafi'i judges who would grant a legal annulment to women whose husbands did not fulfill the provision of maintenance.[575]

Both in Islamic and Christian understanding, a husband's obligation to maintain his wife was to be compensated by her obedience to him. Rarely in the Sharia court registers, although more frequently in fatwa compilations, do we see examples showing on what kind of issues the

[573] In a way, this tendency reminds Kandiyoti's concept of "patriarchal bargains," according to which women used various strategies in order to secure themselves and optimize their life options with respect to men's right and prerogatives. In that regard, Greek Orthodox women might have manipulated the synod to be able to obtain an ecclesiastical divorce by showing themselves as "victims." Deniz Kandiyoti, "Bargaining with Patriarchy," *Gender & Society* 2, no. 3 (1988): 274-290.

[574] Esposito and DeLong-Bas, *Women in Muslim Family Law*, 25-26.

[575] Tucker, *In the House of the Law*, 78-79.

wife was expected to obey her husband. For instance, he has the right to limit his wife's visits to her family's house or her parents' visit to her.[576] In addition, if she goes to a bathhouse without his permission, beating her could be justified because of her noncompliance.[577] Somewhat unexpectedly, Peirce gives a few *talak* examples, in which the husbands' grounds for divorce were recorded as "she does not obey me."[578] In the majority of cases, however, what triggered men to repudiate their wives is not acknowledged.

Two Greek Orthodox men in the Patriarchal court registers complained about their wives' disobedience. In the case of Yorgos, from 1672, his wife Vasiliki was accused of being capricious, incompatible, undisciplined, and stubborn. Many times, she had behaved arrogantly and criticized him to the point that she alienated him entirely and caused him to leave the house four years before. Although their content is not mentioned, it is recorded that Yorgos had presented different *hüccet*s taken from the Sharia court about Vasiliki's behavior. Since these were not divorce *hüccet*s, it is most probable that Yorgos had previously appealed to the Muslim judge about his wife's behavior and demanded that the judge admonish her to obey him. We have no way of knowing whether the *hüccet*s he presented helped him obtain the divorce in the Patriarchal court, but he did not have to provide additional evidence to support his accusations.[579] Unlike Yorgos, however, in the same year, Theodorakis had been asked to provide witness testimony related to his allegations about his wife Sultana's disobedience. Similarly, Sultana had been accused of despising Theodorakis, refusing to obey him, and rejecting cohabitation. She

[576] Çatalcalı Ali Efendi, 99-100.

[577] Ebussuud, 54.

[578] Peirce, *Morality Tales*, 104.

[579] Arabatzoglou, Vol. II, 128-129.

had also dragged him to the "external court," divorced him there, and was going around as she desired since then. The three witnesses, including the parish priest, all confirmed his statement, upon which the synod granted him the divorce.[580]

5.4.3. Cases concerning physical and mental issues

Both men and women filed divorce petitions on various physical and mental issues regarding their spouses. Men complained about their wives' old age or nonvirginity, whereas women brought several lawsuits against their husbands' impotence. Both sides made charges on mental illness, and there is one case on venereal disease brought by a woman about her husband's "filthy body." As indicated above, except for the wife's agedness, all other reasons are recognized as legal grounds for divorce in Malaxos' *nomokanon* from the sixteenth century.

Among three of the cases concerning the nonvirginity of the bride, one of them could be considered a false accusation dispute. In 1678, Pashalis was found to be treating his wife, Kristallenia, poorly, forcing her without reason to change her residence to a foreign place and stealing her belongings. On top of those reasons, after many years and having children together, he had falsely accused Kristallenia of not being a virgin (*ως ούχ εύρεν αύτην παρθένον*), bringing shame on her. It was her demand to be divorced from Pashalis on the grounds of his unacceptable actions. The synod divorced the couple upon her petition without investigating the accuracy of his accusations.[581] Another case, which Panayiotis brought, also involves suspicions concerning his wife Kallitza's virginity. According to the record, after Panayiotis found out that

[580] Ibid., 135-136.

[581] Ibid., 149-150.

Kallitza was "deflowered," he left home and started to spread this news (*οὐχ εὑρέθη παρθένος, καὶ καταλιπὼν εκείνην ανεχώρησε, διαφημισθείσης τῆς ἀτιμίας*). Because of this defamation, her family demanded that he take an evangelical oath that he was not lying and not placing a false accusation against Kallitza. When he took the oath, the synod decided that the suspicions had been dispelled, and she was still under accusation, whereby his divorce petition was granted.[582] Uncertainties as to the wife's nonvirginity had been removed by "close examination" (*μετὰ πολλὴν ἐξέτασιν*) in another case filed by Chourmouzis in 1676. He had realized that his wife Angelou was not a virgin after three days of their marriage. Although it is unclear what "close examination" refers to, it sufficiently supported Chourmouzis' accusations.[583]

As long as a Greek Orthodox man proved the accuracy of his accusations about the bride's nonvirginity, he could repudiate his wife, as he was entitled by canon law. In addition, the wife, in that case, could not be charged with adultery since the intercourse had taken place before the marriage.[584] On the other hand, Islamic law does not give men the right to annul their marriage due to the wife's nonvirginity. After all, legal annulment was basically a "privilege" enjoyed by women. There might be some *talak* divorces triggered by this issue, which, in any case, are not reflected in the Sharia court registers. A prominent jurist of the seventeenth century, Khayr al-Din, from Ramla in Palestine, commented that the bride's virginity is irrelevant both to the nuptial contract and to the consummation of the marriage. Making a claim on the return of the dowry or sending the bride back her family's home could not be justified on the grounds of her nonvirginity. The woman's statement would have precedence over the husband's judgment

[582] Ibid., 146.

[583] Ibid., 143-144.

[584] Malaxos, 202-203.

because a woman's virginity could also have been damaged due to an illness or an accident.[585] According to al-Marghinani, virginity could be lost because of "leaping, or any other exertion, or by a wound, or by frequent repetition of menses" yet she would be still considered a virgin.[586] In the case of deciding the husband's impotence, however, al-Marghinani recognizes the possibility that females could examine the wife to see whether she was still a virgin or not.[587]

The husband's impotence was the only lawful reason that both Islamic law and canon law granted legal annulment for women. As explained above, Islamic law allowed women to repudiate their husbands after their appeal to the Muslim judge and one year of probation. Ecclesiastical law, on the other hand, requires this period to be three years. Indeed, in all three available impotence cases from the Patriarchal registers, the couples had been married for more than three years. One woman had waited for three years, the other for five, whereas another one had delayed her appeal to the court for thirteen years. In one of those cases, which Maria brought in 1672, the husband, Drakon, had been accused of "not having the manly power to perform" (*τὰ τῶν ἀνδρῶν μὴ δυνάμενον ἐκτελεῖν*). Maria had supported herself by bringing forth Drakon's former wife who was married to him for seven years and had divorced him because of his "natural fault" (*διὰ τό αὐτὸ ἐλάττωμα τῆς φύσεως*). After Drakon also confessed his condition, Maria was granted an ecclesiastical divorce.[588]

Confession was included in two other impotence cases as well. In Dimos' case, for instance, it was he himself who filed the lawsuit and stated his wife's demand for divorce. In

[585] Tucker, *In the House of the Law*, 67.

[586] *The Hedaya,* 35.

[587] Ibid., 127.

[588] Arabatzoglou, Vol. II, 129.

court, he asserted that they had been married for five years, and he had been away from his wife for three years of this marriage. He had admitted that "he had left her virgin" (*παρθένον καταλιπὼν*) and he could not be in a lawful husband and wife order (*οὐχ οἱός τ'ἐγένετο συνευρεθῆναι ταύτη νόμῳ κατὰ τὴν τάξιν τῶν ἀνδρογύνων*).[589]In Sosana's husband Nikolao's case, however, although he had confessed his impotence, Sosana was examined by a midwife, whereby her virginity was then confirmed.[590]

There are three cases concerning the mental illness of one of the spouses. In two of them, it was the husband who had the problem of unsound mind, while one case was about the wife's disease. Harmenopoulos acknowledges that the illness should be inborn, which is reflected in one of the cases. When Manolis complained about his wife Balasa's problems, he explained the situation as: "she lives in a displacement of mind (*διάγει ἐν ἐκστάσει φρενῶν*), hoping for her salvation (*επ'ελπίδι σωτηρίας αύτης*), he had been patient thus far (*προσκαρτερήσαντος τούτου μέχρι τοῦ νῦν*), yet living with her is unbearable" (*οὐκ ἔτι δύναται συμβιοῦν τούτη βίον ἀβίωτον*). Not only to confirm the accuracy of his statement but also to establish that her illness was innate, the synod summoned Balasa's mother to court and questioned her about her daughter's problem. The mother confessed that she had the "illness of mania" before the marriage, since her first age, and it grew worse over time. It is curious whether or not the synod wanted to ensure that her problem arose after the marriage or was even caused by her husband. Regardless, the synod granted the divorce given that living together was no longer possible for them.[591]

[589] Ibid., 163-164.

[590] Ibid., 151.

[591] Arabatzoglou, Vol. II, 145.

Similar to Manolis, Fersai had emphasized that she had found out about her husband's mental illness after their marriage and, despite many prayers and cures for healing, his situation had not ameliorated.[592] In another case in which the husband was reported to be "moonstruck" (*σεληνιάζεται*), the wife emphasized that living with him was intolerable. It was recorded that the couple was advised to have patience, but since they were not persuaded, their marriage had been dissolved.[593] Interestingly enough, while the husband's allegation required evidence, when two women complained about their husbands' illness, they did not have to support their claims. The synod justified its decision on the grounds that the women were in poverty or their souls were in danger. As discussed above, the synod was quite considerate towards women in desperate conditions. After all, even without those women's complaints about their husbands' illness, the synod could have granted them the divorce based on their deprivation.

Unlike other Islamic legal schools, Hanafi law does not grant a legal annulment to women whose husbands had a mental affliction. Nevertheless, according to Çatalcalı Ali Efendi, the marriage contract that a mentally unsound person entered into would not be valid.[594] Similarly, although venereal diseases or leprosy are not among the legal grounds that would entitle women to annulment, İbn Kemal states that a woman whose husband has mange can repudiate her husband.[595] In one available case on venereal diseases from the Patriarchal registers, Kokona complained about her husband's "impure/filthy body" from venereal disease (*ἔχοντος αὐτοῦ σωματικὴν ἀκαθαρσίαν ἐξ ἀφροδισίας νόσου*). According to her statement, he had

[592] Ibid., 158-159.

[593] Ibid., 137.

[594] Çatalcalı Ali Efendi, 62-63.

[595] İbn Kemal, 73.

also passed that onto her, due to which she was now concerned about her life.[596] Although the only available case on the issue was brought by a woman, Orthodox canons infer that men could also repudiate their wives on the same ground.

One of the most interesting grounds for divorce in the Patriarchal court registers was brought by four men who wanted their marriages to be dissolved because of their wives' old age. The husbands usually described the situation as unbearable, unfitting, or inappropriate. Unfortunately, in none of the cases do we see the age differences between the spouses, how long they had been married, or how old the woman was at the time of the court appeal. Diamantis, for instance, had stated that he was young when they married, yet it is not explained why, in the first place, their marriage had been arranged. He claimed that their union was "against ecclesiastical ordinances" (*παρὰ τοὺς ἐκκλησιαστικοὺς θεσμοὺς καὶ κανόνας*) and he was not able to live with her. The synod granted him the divorce on the grounds that he was "spiritually in danger."[597]In another case, the husband was concerned to convince the synod that his overaged wife had "embraced the conditions of solitude and accepted being alone" (*διὰ τὸ εἶναι ἐκείνην ὑπερήλικα, καὶ ἀνάρμοστον συζυγίας ἀνδρὸς καὶ ἀσπασθῆναι τὴν μοναδικὴν πολιτείαν τοῦ δεχθῆναι τὸ σχῆμα τὸ μοναδικόν*).[598] In addition, when Yorgos filed a divorce petition on the grounds of his wife's old age, he had also added that his wife Roxani had a disabled hand, whereby she could not serve his needs (*χειρὸς αὐτῆς βεβλαμμένης ὑπαρχούσης, ὑπηρετεῖν οὐ δύναται ταῖς χρείαις αὐτοῦ*).[599]

[596] Arabatzoglou, Vol. II, 139.

[597] Ibid., 151.

[598] Ibid., 138.

[599] Ibid., 160-161. Although it is not explicitly stated, the wife might have decided to go into a monastery due to the troubles in her marriage and her old age. For a brief discussion on Christian women and monasteries, see Chapter 3.

Apparently in some cases women growing older, becoming less desirable and less useful, gave men a legitimate excuse to repudiate their wives.

The Greek Orthodox men's complaints about their wives' age may mean that their marriages had been arranged by others, such that they were unaware of the bride's age. It is also possible that it was not the first marriage of those wives, given that girls tended to enter into marriage at a very young age, mostly during their teenage period.[600] The synod's point of view, on the other hand, implies that after ensuring the well-being of the wife in the aftermath of the divorce, it tended to relieve the complainant husbands of their undesired unions.

Divorce on the grounds of women's age remind us of the suitability rules of Islamic law. Muslim women are granted legal annulment if their husbands are not their "equal" in terms of family, religion, profession, freedom, good character, or financial means. Although the age difference is not among the points that would cause mésalliance between the spouses, it should be noted that, in any case, there are not many cases on suitability in the Sharia court registers. Unlike what we find in the Patriarchal court registers, the suitability rules according to Islamic law are especially formed in terms of women's entitlement to marital annulment.

5.4.4. Cases of mutual divorce

Orthodox canons on the legality of mutual divorce were enacted and repealed multiple times since the early Byzantine period. Divorce was permitted until 449 CE; after its prohibition, it was tolerated again in 556. In the eighth century, however, it was outlawed again up until the

[600] Talbot, "Women," 121.

Ottoman period.[601] It has been argued that only in 1717 did mutual divorce become legal again with a patriarchal order.[602] Indeed, among 191 divorce cases between 1688 and 1796 from Kos, there are eighteen divorce cases via mutual consent, most between 1726 and 1788.[603] On the other hand, the data set from the Patriarchal court registers from 1660 to 1685 has thirteen divorce cases via mutual consent, suggesting that the practice had been tolerated before the order was issued in 1717.

All the divorce petitions in the Patriarchal court registers were filed either by the wife or the husband, except for thirteen of them, in which the spouses appealed to the court together. In some of these cases, the couple had already divorced in the Sharia court and applied to the Patriarchal court to obtain an ecclesiastical divorce, too. In some others, however, spouses made mutual accusations against each other. In one example, in their joint appeal to the court, the wife accused her husband of not taking care of her, while the husband accused her of adultery.[604] In another example, the wife complained about financial difficulties and the husband her old age.[605] In these cases, it was noted that both spouses wanted to divorce due to their incompatibility (*ἐζήτησαν διαχωρισθῆναι ἀλλήλων διὰ τὸ ἀσυμβίβατον αὐτῶν*). In one example, Frantzesko stated that because he was a slave, he could not move to the town where his wife Aikaterini resided. Although Frantzesko conveyed messages to her and asked her to come and live with him, she declined to move or to reconcile in any other way. He also added that Aikaterini gave him

[601] Michaelides-Nouarios, "Οι Λόγοι Διαζυγίου," 11-12.

[602] Laiou, "Christian Women in an Ottoman World," 246; Michaelides-Nouarios, "Οι Λόγοι Διαζυγίου," 12-13.

[603] Michaelides-Nouarios, "Οι Λόγοι Διαζυγίου," 13.

[604] Arabatzoglou, Vol. II, 161.

[605] Ibid., 158.

permission to take another woman, and he presented two witnesses who confirmed that they heard about the permission from her mouth. Seeing the impossibility of managing the difficulties, the synod granted the couple divorce.[606]

In the Islamic context, *hul* divorce is generally considered mutual divorce. Indeed, it is the only kind of divorce that necessitates the consent of both parties. Unlike the *talak* repudiation, which is men's unilateral divorce, in *hul*, women were obliged to receive the consent of their husbands. The conditions of mutual divorce, however, were not the same in Islamic and Greek Orthodox legal frameworks in the sense that Greek Orthodox women did not have to renounce their dowries, as long as they were not the party at fault. In a way, mutual divorce rules applied equally to Greek Orthodox men and women. Because the available divorce data from the Patriarchal court registers go back only to the 1660s, it is somewhat obscure whether the synod tolerated mutual divorce prior to this date as well. In any case, the above-mentioned cases demonstrate that the synod granted divorce to couples who had jointly stated the incompatibility of their union. Indeed, it is probable that the 1717 patriarchal order was issued to legitimize what had already been a de facto practice.

All in all, what do we make of these data that show us various reasons which the Patriarchal synod accepted in granting ecclesiastical divorce? Most importantly, they provide us with the opportunity to assess the extent to which Orthodox canons were applied in practice. As seen above, the synod was willing to compromise to extend the canons on limited legal grounds for divorce. It has been suggested that the flexibility on granting ecclesiastical divorce in the Ottoman period was introduced primarily due to competition between the Church and the Sharia courts. In order to prevent Greek Orthodox community members from resorting to the Sharia

[606] Ibid., 163.

courts, the Church had to become more lenient.[607] However, to a certain degree, this interpretation seems to contradict the arguments in the literature on the rigidity of the Church, a rigidity that made some Greek Orthodox subjects bypass the ecclesiastical legal tribunals and appeal to the Sharia courts instead. As a matter of fact, far from strict rigidity, the above-mentioned cases indicate that the Patriarchal synod recognized various reasons for divorce, including incompatibility. Divorce was granted as long as the synod was convinced that the marriage was irreconcilable or the woman was in a desperate situation. The appeal of Greek Orthodox couples to the Sharia courts for their divorces, therefore, requires some reconsideration. First of all, the number of Greek Orthodox community members who took their divorce cases to the Sharia courts actually seems to be fairly low. Furthermore, the cases of the Greek Orthodox men and women who needed their divorce *hüccet*s to be approved by the Patriarchal synod suggest that rather than choosing between the two types of courts, some individuals were ready to take advantage of both court systems at the same time. Complicated post-divorce financial issues or the failed relationship of the divorcing parties with the Church, e.g., having been excommunicated or excluded from the Church, might have compelled some couples to handle their cases in the Sharia courts. Definitely, more research on ecclesiastical court registers would further illuminate the forum shopping practices of Greek Orthodox subjects.

[607] Gkines, "Οί Λόγοι Διαζυγίου επί Τουρκοκρατίας," 253; Michaelides-Nouarios, "Οι Λόγοι Διαζυγίου," 22.

5.5. Remarriage

As much as divorce was a widespread phenomenon in early modern Ottoman society, so was remarriage. As pointed out, the number of divorced women in society was quite low, although it has been now established that marriages had often ended due to divorce or death of one of the spouses.[608] In contrast to polygamy, men also practiced remarriage more frequently. According to Marcus' study on eighteenth-century Aleppo, for example, men remarried more frequently than did women.[609] Unlike Muslim men, only after waiting for the three months of the *iddet* period were Muslim women allowed to contract a new marriage without additional restrictions. The flexibility of Islamic law in terms of not constraining subsequent marriages might have resulted in remarriage taking place more commonly among Muslims, compared to Greek Orthodox community members. Indeed, the fact that remarriage was regulated quite differently in Islamic and ecclesiastical laws also reveals one of the major practical outcomes of Ottoman legal plurality in family law.

As also discussed in Chapter 4, the initial uncompromising attitude that canon law had adopted for remarriage gradually relaxed to the point that the church allowed for consecutive marriages up to three times for laypeople. On the other hand, there are three examples from the Patriarchal court registers in which it was revealed that one of the spouses had either married four times and desired to cancel one of the previous marriages so as to be able to remarry, or had

[608] Ronald C. Jennings, "Women in Early 17th century Ottoman Judicial Records: The Sharia Court of Anatolian Kayseri," *Journal of the Economic and Social History of the Orient/Journal de L'histoire Economique et Sociale de l'Orient* (1975): 95; Marcus, *The Middle East on the Eve of Modernity*, 198. According to Meriwether, however, remarriage among upper-class women in Aleppo was not widespread. Her data of 241 upper-class women show that only 13 had remarried. Meriwether, *The Kin who Count*, 132.

[609] Marcus, *The Middle East on the Eve of Modernity*, 198.

to terminate the last marriage, which was an illegal fourth nuptial.[610] Furthermore, even for the second marriage, a Greek Orthodox community member had to first obtain an ecclesiastical divorce and later permission for remarriage. Gaining this permission must have been a serious concern for Greek Orthodox men and women such that despite having been divorced in the Sharia court, some of them appealed to the Patriarchal court both for an ecclesiastical divorce and a remarriage permit.

The weight of ecclesiastical authorization for subsequent marriages can also be seen in an example from the sixteenth-century Balat court registers, which Yahya Araz has brought to light. According to that case registered in 1581, Marula bint Todor had recorded her marriage to a Muslim man, Mustafa bin Abdullah. It was a simple record, not even acknowledging the dowry amount, merely declaring that the marriage between the two had taken place two months before. The case hides as much as it reveals, but Marula's second appeal to the same court might hint at her motivations to register her marriage to Mustafa. Mustafa had died around a year after their marriage, and Marula intended to remarry, this time to a Greek Orthodox man, Mavroyi, in 1583. To be able to marry Mavroyi, however, Marula needed ecclesiastical permission for her second marriage. When she applied to the Patriarchal court for the synod's consent, she was told to bring a legal document, which would prove that her *iddet* period had ended. In the Balat court, with four Muslim male witnesses, she had proved her first husband Mustafa's death a year before, and requested a *temessük* (legal writ) to submit to the Patriarchate.[611]

Besides presenting an interesting example of inter-community marriages, Marula's case is also invaluable for the issues that this study deals with, mainly with regard to the registration

[610] For the analysis of these cases, see Chapter 4.

[611] Yahya Araz, "16. Yüzyıl Osmanlı Toplumunda Cemaatler Arası Evliliklere bir Katkı: Hıristiyan Marula'nın Evlilikleri," *Toplumsal Tarih* 174 (2008): 55-57.

of marriages in the Sharia courts and ecclesiastical remarriage permits. The reason why, after two months, Marula desired to register her marriage might be explained by a need to guarantee the inheritance rights that she would be entitled to receive upon her husband Mustafa's death. We might assume that Mustafa was old, sick, or even bedridden at the time of their marriage, encouraging her to produce evidence that she was Mustafa's legal heir, whereby she could support herself against his other heirs, if there were any, should there be a dispute over his estate. Moreover, marrying someone outside the Greek Orthodox community might have resulted in her expulsion from the Church, or from her family/relative circle. In that case, any financial support that she would receive from her husband's estate would be even more crucial.

Although we might speculate, it is impossible to know precisely how her community or the church reacted to her marriage to a Muslim man, or a Christian convert as his patronym "ibn Abdullah" suggests. Even if it was received badly, as far as we understand from her second appeal to the Balat court in 1583, the Patriarchate was ready to accept her back into the Church and give permission for her marriage to Mavroyi as long as she could prove her previous husband's death. Marula's application to the Balat court to receive the document that the Patriarchate required demonstrates the emphasis and importance that were attached to ecclesiastical remarriage permits. Not only did the Patriarchate turn Marula down until she submitted the writ, but also Marula abided by the requirement and appealed to the Balat court for the necessary documentation. While we see that the church was ready to accept an "unruly" community member who had broken the rules and married an "infidel," Marula's case also indicates a certain degree of integration between the two courts. The Patriarchal synod recognized the authority of the Sharia court over her divorce case and the latter was ready to provide a document required by the former to be used in an ecclesiastical court proceeding.

As mentioned above, permission for remarriage was attached to almost all available divorce cases in the Patriarchal court registers from 1660 to 1685.[612] Interestingly enough, even in divorces that ended via mutual consent, only one of the spouses received the permit. As expected, more often than not, it was the petitioner who obtained the license for a new marriage. In sixty-two cases, the permission was granted to women, while nineteen were to men. What is curious is that in three adultery cases, a remarriage permit was granted to women, while the petitioners were men and it was clearly their right to receive it.[613] In addition, as mentioned above, the wife's adultery was to be "penalized" since she was the party at fault in the dissolution of the marriage; the husband would receive her part of the dowry and keep the children, if there were any.[614] In one of those cases, in which the woman had confessed having committed adultery, since "in tears, she promised to stop adultery," the synod allowed her to remarry.[615] As has been discussed, the synod made an effort to legitimize its decisions for granting the ecclesiastical divorce and remarriage permit, especially in the case of women. Women's young age, severe poverty, and being in danger spiritually were presented as to why the synod tended to compromise. It is possible that a previously adulterous woman who remained single might continue to commit sins and even turn to prostitution. In addition, women who did not have the necessary means to maintain themselves would be thought to be better off with a husband who would control and monitor them. More importantly, however, Greek

[612] Around ten of the divorce entries in the Arabatzoglou compilation do not contain a note on the remarriage permit. It is hard to know, however, whether the synod did not grant permission or it was Arabatzoglou's editing intervention. Some of the entries only note that "remarriage permission has been granted…" without including who received it; others do not mention remarriage at all.

[613] In Kos in the eighteenth century as well, there are examples of women who received remarriage permission despite having been divorced due to committing adultery. Michaelides-Nouarios, "Οι Λόγοι Διαζυγίου," 15.

[614] Malaxos, 202; Blastares, 115.

[615] Arabatzoglou, Vol. II, 148.

Orthodox women whose right to remarry had been denied might lean towards marrying a Muslim or a Jewish man due to their destitution. Divorced men, on the other hand, would not pose such a problem for the church; they would not need a woman to support them or could not marry a Muslim woman. All these reasons might have led the synod to be more lenient towards women than men, in terms of granting divorce and permission to remarry.

5.6. Conclusion

This chapter has focused on divorce and remarriage as evidenced in the Bab court and the Patriarchal court between 1660 and 1685. Studying the cases from the two courts substantially contributes to our limited understanding of grounds for divorce in pre-modern Ottoman society. The available cases from the Patriarchal court registers that provide reasons for Greek Orthodox subjects' divorce help fill gaps in the Sharia court registers, which lack any notes on why Muslim or non-Muslim couples divorced, except for short and formulaic expressions. In addition, the available cases of the ecclesiastical divorces demonstrate that the Orthodox canons which recognize limited grounds for legal divorce cannot be regarded as a mirror image of the practical reality, at least in late seventeenth-century Istanbul. Besides the canonically narrowly defined legal grounds, the Patriarchal synod granted divorce to community members for multiple other reasons as well. Among these, incompatibility is the most indicative for revealing the flexibility of the synod in applying its canons. The synod's decisions imply that as long as women's poverty and deprivation were at stake, they were granted both ecclesiastical divorce and remarriage permission, even in some cases in which they were the party at fault. The leniency of the synod towards women could be explained by the fact that first, unlike men, it was

more difficult for women to support themselves without spouses, and second, turning to prostitution or marrying a non-Orthodox man was a real possibility for women and a serious problem for the spiritual wellbeing and integrity of the community. These factors and the general attitude of the synod possibly caused Greek Orthodox women to be the primary users of the Patriarchal court. Greek Orthodox men, on the other hand, not only resorted to the Patriarchal court less frequently but also turned to the Sharia courts more often compared to women. In that sense, despite the arguments that non-Muslim women found the Sharia courts more convenient because of the *hul* opportunity it offered, it rather seems that Greek Orthodox men took advantage of the plurality of the legal system more widely.

The available cases in the Patriarchal court registers are also crucial for revealing the social implications of legal plurality in Istanbul. Lack of studies on the community court registers of non-Muslims has resulted in somewhat misleading perceptions on both their use of the Sharia courts and marital practices. Finding cases on non-Muslims' marital matters in the Sharia court registers has led to assumptions that they had been assimilated into the dominant Muslim culture and had bypassed their own community courts since, in terms of issuing divorce decrees, the Sharia courts were more flexible than the ecclesiastical courts. This assumption, however, does not tend to discuss how frequently non-Muslims took their divorce cases to the Sharia courts. Although we can only reach a suggestive conclusion, the number of non-Muslim divorces in the Sharia court registers seems to be relatively low. Furthermore, from this small number of non-Muslims, some Greek Orthodox community members also appealed to the Patriarchal court after receiving a divorce *hüccet* from the Muslim judge. Their cases indicate that despite the seemingly uncompromising attitude of the Church as it appears in the patriarchal and synodical orders, it was actually ready to accept those coreligionists who had, despite

prohibitions, turned to the Sharia courts. The Church had actually adapted itself to the plural legal framework in order not to lose community members. On the other hand, it seems that community members also did not risk alienation from the community circle or being expelled from the Church. As far as we can infer from the ecclesiastical divorce cases, legal plurality should be reformulated in the sense that rather than choosing between the available judicial frameworks, some Greek Orthodox subjects exploited both of them according to their interests. Resolving their post-divorce financial disputes or registering those settlements might have encouraged some Greek Orthodox couples to utilize the Sharia courts, while at the same time obtaining an ecclesiastical divorce was indispensable due to their social, religious, and legal liabilities. For those who were excommunicated or had broken relationships with the Church, however, the Sharia courts offered the only legal option to serve their needs.

This chapter also points out another implication of the legal plurality in family law: besides similarities, family practices of Muslims and Greek Orthodox subjects could vary in certain aspects. For instance, while Greek Orthodox women could divorce their husbands for mental illness, inadequate maintenance, bigamy, or abandonment, Muslim women could only end their marriage through *hul*, assuming that the husband agreed to it, and by renouncing their delayed dowry. As long as they were not the party at fault, however, Greek Orthodox women were allowed to keep their dowry portion. In addition, remarriage regulations of the Sharia courts and the Patriarchal court markedly differed. Despite some exceptions, while Greek Orthodox men and women were not permitted to remarry more than three times and were required to receive ecclesiastical permission for each of them, their Muslim counterparts were allowed to enter into a new marriage, as many times as they desired, without such restrictions. This diversity in matrimonial practices reveals yet another aspect of the multireligious and multicultural

Ottoman society, which should lead us to reconsider the broad categories of "Ottoman family" or "Ottoman women."

CHAPTER 6

CONCLUSION

Ottoman Empire has been defined as "pluralist" for incorporating subjects from different religions and ethnicities. It was also pluralist with regard to the existence of multiple legal systems. This study focuses on this legal plurality and examines the registers of the Istanbul Bab court and the Patriarchal court from 1660 to 1685. By analyzing issues related to marriage, dowry, polygamy, deserted women, divorce, and remarriage as found in these two courts from Istanbul, I deal with several questions: 1) the extent to which Muslim and Greek Orthodox marriage and divorce practices differed; 2) the way two different denominational courts operated in the same location and same period; 3) how Greek Orthodox subjects made use of courts given the availability of two options. The literature addresses these questions by either focusing predominantly on the Sharia court registers or community court registers from the Aegean islands, the Balkans, or Anatolia, where the Greek Orthodox population made up the substantial majority. In this respect, this dissertation presents a rare example of a study that makes a comparative analysis of the Sharia courts and ecclesiastical courts in a location where the non-Muslim population did not predominate.

Although data from the Patriarchal court registers are more limited and less systematized than the Sharia court registers, a comparison between the two shows that the court proceedings followed in them were remarkably similar. Witnesses, both notarial and circumstantial, oath-taking, and amicable settlement were fundamental aspects of cases the Muslim judge and the

Patriarchal synod tried. Despite the fact that it is hard to establish the degree to which these judicial procedures were standardized in the ecclesiastical courts in general, available data demonstrate that the Patriarchal court in Istanbul served as an effectively operating legal venue. The major difference between the two courts was in their record-keeping practices, particularly with regard to registering divorce and remarriage cases. Grounds for divorce, for instance, were critical for the synod when deciding whether or not a couple had legal reasons to be granted an ecclesiastical divorce. Therefore, those grounds were recorded in the Patriarchal court registers, sometimes in colorful detail. However, because Islamic law does not stipulate specific legal grounds for divorce, the Sharia courts were not interested in registering, or maybe even finding out, why marriages dissolved. Thus, studying the registers of these two courts together help enhance our limited knowledge on the issue of marital breakdown.

References to *hüccet*s (official documents taken from the Sharia courts) in the Patriarchal court registers offer the opportunity to trace the relationship and the integration between the courts on the one hand and court use preferences of Greek Orthodox community members on the other. The literature which addresses these possibilities tends to assume that for their various legal matters non-Muslims appealed to the Sharia courts because they charged lower fees, offered stronger legal enforcement, or were more available than the community courts. Scholars have also suggested that the Sharia courts provided a more favorable alternative for non-Muslim women since the Muslim dowry system and *hul* divorce worked more to their advantage compared to Jewish and Christian customs. My study shows how these assumptions can be misleading and should be reconsidered in light of available data from the Patriarchal court.

First and foremost, it is crucial to establish the boundaries of the patriarch's jurisdictional authority. Based on available *berat*s, we can only determine that Ottoman sultans granted

patriarchs and bishops the privilege to try marriage and divorce cases. Defining their scope of authority broadly as "family law" might misrepresent what kind of legal issues the patriarch and the bishops could adjudicate and distort our understanding of how legal plurality worked in practice. We should also approach the issue of inheritance cautiously. Only in two *berat*s out of thirty-one do we see that the patriarch was authorized to handle inheritance matters of lay community members, which calls the issue into question. For this reason, it seems likely that for matters other than marriage and divorce, non-Muslim subjects applied to the Sharia courts because the patriarch and bishops did not have authority outside marriage and divorce issues. Although out-of-court dispute settlements possibly served the needs of non-Muslims to a certain extent, the requirement of official documentation or registration might have led them to the Sharia courts.

Therefore, we should reframe and specify the question: "Were the Sharia courts and Islamic law more advantageous in marriage and divorce matters than community courts or Christian and Jewish laws?" The presence of non-Muslim marriage contracts and divorce-related entries in the Sharia court registers has led to assumptions that women in particular found more advantage under Islamic law. As for dowry, there is a tendency to reduce Greek Orthodox practices to *trachoma* and explain it as a payment made by the bride to the bridegroom. However, the Greek Orthodox dowry system was much more complicated than that. Essentially, although the proportion of the bride's and the bridegroom's contributions might have differed, the Greek Orthodox dowry served as premortem inheritance provided by the parents of both sides. Therefore, it is somewhat problematic to offer a contrast between Muslim and Orthodox dowry systems by solely emphasizing the *trachoma* practice. In addition, I also suggest questioning how, if Muslim dowry practice was only favorable to women, non-Muslim

bridegrooms agreed to enter into an arrangement which was financially to his disadvantage, not to mention it being against their religious customs.

Concerning divorce cases of non-Muslims, the registers of the Bab court suggest that the number of such cases was relatively low. It is important to emphasize the significance of examining the number of non-Muslim marriage and divorce cases in the Sharia court registers together with non-Muslims' overall population in a given location. Moreover, the Patriarchal court registers reveal that at least some of those Greek Orthodox community members appealed to the Patriarchal court to request ecclesiastical divorce and remarriage permission after registering their divorces in the Sharia courts. Overlooking their return to the Patriarchal court leads to the assumption that non-Muslims opted for the Sharia courts to the exclusion of the ecclesiastical courts. Studying the cases of those who double registered their divorces indicates that obtaining authorization from the Church was of great concern for community members. We should, therefore, reconsider how we explain court use practices of Greek Orthodox subjects: rather than choosing between the two options as they saw fit for their interests, this study demonstrates that legal plurality, in some cases, created an exigency to use both courts as they served different functions.

Another contrast has been suggested between the flexibility of the Sharia courts and the rigidity of the Church with regard to granting a divorce. However, arguments on the latter rely on the prescription of Orthodox law, not the practice. Available divorce cases reveal that the Patriarchal synod does not appear to have been entirely rigid in following the normative regulations on divorce. The synod granted divorce to couples whose grounds were solely described as incompatibility. The divorce data from the Patriarchal court also illustrate that it was predominantly Greek Orthodox men who registered their divorces previously in the Sharia

courts before requesting an ecclesiastical divorce. At the same time, the primary users of the Patriarchal court were women. Indeed, the number of women who brought their divorce cases to the synod was almost four times that of men. What is uncovered here suggests two major points: 1) it was mostly Greek Orthodox men who took advantage of the multiplicity of legal systems, and 2) the synod demonstrated more leniency with women than men. This leniency towards women was possibly triggered by the synod's concerns about women's possible marriage to Muslim men and even conversion to Islam. Greek Orthodox women who were abandoned by their husbands or whose husbands did not take care of them also concerned the synod. They were left in a financially difficult position and granting them divorce and remarriage permits would help them to remarry to someone who could maintain and watch over them. In this way, the Church, which did not have the means to help every single woman in such a condition, found a way to help them and ensure the integrity of the community. In addition, this gender distribution of divorces taken first to the Sharia courts and those taken to the Patriarchal court argues against the advantageousness of the former for non-Muslim women, at least in the case of Greek Orthodox women.

Nevertheless, despite the gradual flexibility of the Church, marriage more than three times or to someone within prohibited degrees of kinship remained prohibited. Some scholars have suggested that these restrictions imposed by the Church might have encouraged some Greek Orthodox subjects to apply to the Sharia courts for their marriages. Although it is a reasonable assumption, we should also consider the fact that marriage and divorce, in the Muslim context, were primarily oral acts and did not require judicial intervention. The court registers from Istanbul show that even Muslims did not tend to register their marriage contracts in court. Although there was no obligation for registering marriages or divorces, some Greek Orthodox

community members might have desired to formalize the change in their marital status for future concerns about post-divorce financial arrangements or inheritance after death. Moreover, a Greek Orthodox couple's marriage that was deemed illegal according to Church laws might have necessitated official recognition from the Sharia courts so that their children would be recognized as their legal heirs. The Sharia court could also present itself as the only possible option to apply to for someone who was excommunicated by the Church. In any event, although the Church strictly forbade coreligionists from applying to the Sharia courts, it accepted its "unruly" members when they returned to the Patriarchal court. Resorting to the Sharia courts also did not mean outright rejection of their community ties and religious authorities. Official recognition of the Church was indispensable in matters of divorce and remarriage. The relationship between the Church and Greek Orthodox community members, therefore, was co-dependent in which both parties accommodated each other in various ways.

This study by no means answers every question it raises and thus only hope to stimulate further discussion. Our information on the availability of community courts and how they operated is still limited to a great extent. Thus, the findings of this dissertation should be reexamined in light of data from other ecclesiastical courts. It is important to emphasize again that the arguments of this study are restricted to the context of late seventeenth-century Istanbul. I do not mean to generalize my results to semi-autonomous islands, places predominantly populated by Greek Orthodox subjects, or other parts of Anatolia or the Arab lands where population makeup could greatly differ, or community courts did not exist. Therefore, further research on community courts will help us develop a broader picture of the complex legal world of the Ottoman Empire. In addition, the way the Patriarchal court recorded cases did not allow

me to discuss some important issues, such as post-divorce financial arrangements between Greek Orthodox couples or the fate of their children. I hope that future research will fill such gaps.

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