

Introduction

This book studies legal practice in the Ottoman Empire. Using the court records (sing. *sicil*) of the provincial town of Kastamonu, located on the Black Sea coast in Anatolia, we investigate the legal interactions of gender, religious, and socioeconomic groups during the late seventeenth and eighteenth centuries, a period of major social and economic transformation. We combine insights from the “Law and Economics” literature with methods of historical and quantitative analysis to examine the functions of the court, and the way these functions changed over time, in this highly stratified provincial setting.

In recent years, historians of the Ottoman Empire have shown renewed interest in the seventeenth and eighteenth centuries, a period traditionally described as one of decline and degeneration. Historians now recognize it instead as an era of major socioeconomic and political transformation. The Ottoman state endured intense financial pressures in this age, mainly as a consequence of long years of warfare with powerful adversaries, changes in the technologies of warfare, escalating demographic pressures, and new international economic and monetary trends. At the same time, the empire experienced major fiscal and economic developments as short- and long-term tax-farming arrangements replaced traditional forms of prebendal revenue extraction, which accompanied the emergence of a money- and market-based economy in various Ottoman domains. In the center of the empire, new oligarchic structures diluted the sultanic absolutism of the earlier periods and contributed to the materialization of a relatively pluralistic system of governance. In the provinces, local notables took advantage of the new fiscal and economic opportunities by investing in tax-farming arrangements and commercial ventures,

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integrated themselves into provincial administration, and became influential in local decision-making. Historians now agree that these changes may have caused the reshaping of socioeconomic relationships in Ottoman society.

Although academic interest in Ottoman law and legal practice has grown recently, this scholarship has lagged behind economic and political historiography in producing a comprehensive portrait of the post-classical age (ca. 1600–1800). Thus far, legal research on the period has concentrated on jurisprudential issues, such as the supposed decline of state law (*kanun*), after the sixteenth century as representative of fundamental changes in the state's legislative practices.¹ Historians have also examined shifts in judicial organization, legal procedures, and law enforcement.² However, we still know too little about the court's operations and services to identify how the legal practice and the functions of the court changed during this period. This is one of the main objectives of the present study.

At the same time, we examine the dynamics of group relationships and experiences among court clients. In this regard, one of our main concerns is to produce a research framework that can identify group interactions in court. Until now, few studies in Ottoman legal history have attempted to characterize how court clients, as representatives of socioeconomic groups, participated in legal processes. To the contrary, most studies tend to focus on the individual court clients in isolation and make little attempt to analyze their experiences as members of a group. This tendency undermines our ability to identify the role of the court in regulating and reproducing class, gender, and religious relationships.

¹ Historians have long claimed that *kanun* legislation disappeared from the seventeenth century onward due either to intensifying sharia-minded conservatism in the government (İnalçık 1978a, 1978b; Barkan 1943; Repp 1988) or to changing economic and fiscal circumstances (Tezcan 2012, 30; Abou-El-Haj 1991b). A few researchers, however, have rejected the claim that *kanuns* declined (see Gerber 1994, 61; Ze'evi 2006, 69–71; Akgündüz 1990, 64–7).

² Michael Ursinus (2004) and Rossitsa Gradeva (2006) have discussed the possible emergence of a judicial hierarchy in the provinces whereby governors and high-ranking kadis acquired appellate and supervisory responsibilities in their jurisdictions. For a critical assessment of these suggestions, see Aykan (2012). Fariba Zarinebaf, on the other hand, has argued that the Ottoman state developed an “increasing ability to discipline and punish” during the eighteenth century (2010, 111). Among other things, the state implemented surveillance tactics, such as population surveys of specific neighborhoods, as methods of social control (2010, 128–30). Also, “the aim of the penal system changed from corporal punishment to correction, isolation, and rehabilitation” (2010, 173).

The focus on the individual in the scholarship is related to the fact that court records provide limited information about the socioeconomic characteristics of court clients. While we can distinguish male clients from females and Muslims from non-Muslims, it is not easy to differentiate wealthy and socially prominent parties from the poor and underprivileged. To generalize about group experiences in court, we thus need to ascertain the socioeconomic characteristics of court clients based on indirect indicators found in the court records. This is precisely what we do in this book. We use honorific titles, religious markers, and family associations as indicators of socioeconomic prominence. This effort, justifiable based on the information available in the archival sources (see Chapter 2), provides us the tools of analysis for a group-based exploration of legal practice and the court's activities in the Ottoman context.

From a historiographical perspective, our concern with group interactions finds its roots in our desire to further shift the focal point in Ottoman legal research from the institution of the court and its legal-administrative functions to the clients of the court and their socio-legal affairs. While the body of the court and its place in the Ottoman provincial administration have received significant attention in the Ottoman scholarship, a traditionally state-centric field, it is only recently that historians have become seriously interested in provincial peoples as legal agents and have explored the court's archive to understand their legal concerns, thought processes, and activities (Rubin 2011; Agmon 2006; Peirce 2003; Ergene 2003, 2010). We contribute to this latter orientation by proposing a novel approach that allows us to consider legal practice according to the gender, religion, and class characteristics of court clients.

METHODOLOGICAL CONSIDERATIONS

This book makes two important methodological contributions to Ottoman legal studies. First, it offers a sophisticated quantitative approach for analyzing the legal information found in Ottoman court records. In this sense it represents both a continuation of and a break from earlier research based on *sicils*. Quantitative approaches to Ottoman court records have a long history, though most quantitative studies of Ottoman *sicils* have focused on the economic information found in court registers, rather than the legal information. Additionally, because such studies often lacked historically grounded understandings of the institution of the court and the legal-scribal processes that produced the court records, their conclusions were often

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simplistic, reflecting uncritical acceptance of the data contained in those records.

Since the mid-1990s, under the influence of the so-called cultural turn in the social sciences and humanities, we have witnessed the emergence of an orientation in *sicil*-based research toward the textual and rhetorical characteristics of court records (Agmon 2004b, 2006). This shift has generated a new and critical appreciation of the way institutional structures and socio-legal practices have shaped the production of the court's archival documents. It has also raised awareness of the limits of the information contained in court records as well as doubts about its reliability. As more *sicil* specialists have come to question the dependability of court records for empirically grounded research, so has the methodology used in earlier studies come under increasing criticism. Although researchers have not completely lost the temptation to use the Ottoman court records as bases of empirical information, quantifiable or not, more *sicil* specialists now doubt these documents as reliable sources for research.

The present study harks back to the earlier trend in *sicil*-based research in that it adopts an explicitly empirical, quantitative approach to glean information about legal practice. As we explain in the first chapter, we consider quantitative techniques useful because they allow us to identify patterns and tendencies that may not be visible otherwise and to test our hypotheses with statistical precision. At the same time, our study represents a methodological break with earlier quantitative research on *sicils* because we use rigorous techniques that are designed specifically for our sources' unique legal, contextual, and linguistic characteristics. In other words, the quantitative approach proposed in this book is informed by the insights of the cultural turn. In this sense, the book aims to combine the strengths of two generations of *sicil*-based scholarship while avoiding the pitfalls that each is susceptible to. The first chapter provides a comprehensive defense of our methodological choices in conversation with existing discussions on the validity of different approaches to Ottoman court records.³

A second methodological distinction of our study is its employment of analytical tools associated with the discipline of economics. More specifically, we engage the Law and Economics scholarship, as developed in Western, especially North American, legal research, in our efforts to interpret the information found in Ottoman court records. This scholarship,

³ We should also point out that quantitative studies of legal topics are exceptionally rare in Ottoman legal research. Most quantitative studies that employ court records focus on socioeconomic themes.

developed in the last century in a collaborative effort by economists, sociologists, and legal researchers, has made important contributions to the analysis of dispute resolution by treating court clients as contextually situated rational actors who choose among legal actions based on the (monetary and non-monetary) costs and benefits of available alternatives. In this study, we explore how a number of key insights developed in the Law and Economics scholarship can help us better conceptualize dispute-resolution processes in the Ottoman context.

Adopting an economic approach to Ottoman legal research is not a conventional preference, given the established tendencies in this scholarship. We have made this choice based on our knowledge regarding the analytical sophistication that the conceptual tools associated with the Law and Economics scholarship has brought to Western legal research and with the confidence that they will likewise yield fresh interpretations in our own field. This choice, however, should not be interpreted as a call to arms against more established approaches in Ottoman legal studies, or as a rejection of older methodologies. On the contrary, a successful application of economic concepts and approaches to Ottoman legal research requires a great deal of dialogue and cross-fertilization across disciplines. For this reason, we not only engage the existing literature on Ottoman legal history, but also learn from anthropological research on modern Muslim societies. We are convinced that an inclusive and multidisciplinary orientation is necessary to successfully apply the Law and Economics methodology to the Ottoman context.

A NOTE ON THE SOURCE BASE AND HISTORICAL CONTEXT

The research for this book is based on a detailed examination of the Kastamonu court's archives from three roughly ten-year periods: 1684–96, 1735–43, and 1781–90. This periodization reflects our objective to identify temporal changes in the court's functions and the ways in which different client groups utilized them. The court's archives contain ample information on judicial and administrative processes in provincial contexts. They also provide plentiful detail on the affairs and interactions of individuals from different segments of the society. While it is not clear how representative the records are in terms of reflecting major trends, tensions, and interactions among our population, a topic we return to in our discussion, the court's archive nevertheless remains one of the most important sources for research on Ottoman social, economic, and legal

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history. This is especially the case for a small, secluded, provincial location such as Kastamonu, for which we lack the narrative sources that are usually available for larger and more important urban centers. Ottoman court records are also uniquely appropriate for the type of history that we aim to write: One that focuses on common men and women and seeks to characterize inter- and intra-class, -gender, and -confessional relationships through a systematic exploration of large numbers of observations. We provide a detailed discussion of our source base and its contents in Chapter 3.

The town of Kastamonu, located in north-central Anatolia, was a modest-sized town with a majority Turkish-speaking Muslim population during the seventeenth and eighteenth centuries (see Chapter 2). Although the town was the legal and administrative center of the eponymous subprovince (*sancak*), it was relatively isolated, probably due to its distance from principal military and courier road networks (Heywood 1978, 738). As is the case for most small- to medium-sized townships in the Ottoman Empire, we do not know much the social, economic, and political characteristics of Kastamonu for our period. The court records indicate a relatively diverse spectrum of economic activities – including agriculture, animal husbandry, and wool, cotton cloth, and copperware production – though European travelers from the nineteenth century described a lethargic economic life in the town and the wider region. Despite being a small town in the interior, Kastamonu is ideal for this study and is representative of the Ottoman periphery in general, because it does not have any extraordinary characteristics that could distort the analysis and bias the results. Moreover, the town’s court records are quite complete for this period, making them an ideal source base for analysis. Finally, recent quantitative research (Ergene and Berker 2008; Ergene and Kaygun 2011, 2012; Ergene, Kaygun, and Coşgel 2013; Coşgel and Ergene 2011, 2012) on the socioeconomic groups of the town provides us with a valuable context in which to interpret our findings.

THE PLAN OF THE BOOK

The book is divided into four parts and ten chapters, excluding the introduction and conclusion. The first part opens with a methodological discussion (Chapter 1), in which we engage the existing debates on various approaches to the Ottoman court records and make a case for the quantitative methodology we adopt in this book. More specifically, we respond to criticisms directed at quantitative studies based on Ottoman court

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records and explain how a carefully designed quantitative approach can make important contributions to *sicil*-based legal research. Chapter 2 provides deeper contextual information on the town of Kastamonu, its population, and the surrounding region during the seventeenth and eighteenth centuries. Given the limited information on this location in the secondary literature, we make a special effort to utilize the town's probate estate inventories (*muhallefat* or *terekes*) in order to demonstrate how its socioeconomic circumstances changed between the late seventeenth and late eighteenth centuries. Our analysis reveals not only that economic conditions deteriorated, but also that wealth distribution became more polarized. In this chapter we also justify the socioeconomic categories that we use in subsequent sections of the book. The estate inventories play an important role in this effort as well, since we use these sources to demonstrate how different groups of court clients, identified on the basis of honorific titles, religious markers, and family affiliations, among other personal and social indicators, were stacked in terms of their wealth levels and to what extent this economic hierarchy changed over time.

In Chapter 3, which is the first chapter of Part II, we introduce the reader to the court of Kastamonu and its actors. This chapter also offers a detailed discussion of the documentation found in the court's archives and how the contents of this archive changed between the late seventeenth and eighteenth centuries. Although previous research has explored variations in the functions of courts located in different regions (cf. Ergene 2003, Chapter 3), few works (if any) have examined changes in a single court's operations over time. Chapter 3 reveals the temporal nature of the court's functional characteristics by exploring how its records reflect changing socioeconomic circumstances. Chapter 4 explores how various client groups used the court (for contractual arrangements or dispute resolution), whether their legal interactions with others followed certain patterns, and how these patterns varied across decades. Through a diachronic analysis of group behavior and interaction, this chapter demonstrates dissimilar tendencies in court use among clients with distinct gender, religious, and socioeconomic characteristics.

Part III is focused on alternative methods of dispute resolution, i.e., amicable settlements (sing. *sulh*) and litigations (sing. *dava*). In Chapter 5, we survey the legal, historical, and anthropological literature on the topic and discuss from a multidisciplinary perspective how scholars have thus far characterized dispute-resolution processes in various

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Muslim-majority settings. Since settlements represent an understudied topic in Ottoman historiography, we make a special effort in this chapter to define its legal bases and scope according to jurisprudential interpretations and archival sources. On the basis of this discussion, we offer in Chapter 6 an economic approach to trial-settlement decisions in the Ottoman context. Inspired by the approaches developed in the Law and Economics scholarship, this framework hypothesizes that the decision to settle or litigate a dispute was influenced by a number of factors, including the relative cost of litigation and settlement, divergent expectations among disputing parties from litigations, and their different stakes in trial results. Chapter 7 uses the empirical information found in Kastamonu court records to test the hypotheses presented in Chapter 6. More specifically, the chapter examines how the characteristics of court clients affected the likelihood that they litigated their dispute rather than settled it amicably and how these patterns changed across case-type and over time.

The final part of the book focuses on litigations. Chapter 8 provides an in-depth discussion of the procedures of litigation and evidentiary standards according to Ottoman jurisprudential sources, legal manuals, and court records. The chapter also offers information on specific tools of litigation, including jurisprudential opinions (sing. *fetva*) and legal representation (*vekalet*). In Chapter 9 we discuss how these rules and tools of litigation, along with the characteristics of litigants, could influence trial results. As in Chapter 7, we offer a formal framework, inspired by the Law and Economics scholarship but adapted to the Ottoman setting, to hypothesize how the trial outcome could depend on variations in the expectations and stakes of litigant groups and differentials in their ability to use evidentiary procedures and tools of litigation. In Chapter 10, we analyze the information on litigations found in the court records of Kastamonu to test the insights and expectations presented in Chapter 9. Our results indicate significant variations in trial performances across litigant groups, revealing, among other things, that the wealthy and privileged litigants, presumably more skilled in estimating the quality of their suits and informed about legal procedures, tended to perform better against their poorer and otherwise underprivileged counterparts. In a fashion generally consistent with the insights developed by the Law and Economics scholarship, the findings of Chapter 10 demonstrate that strategic choices and differential ability in court use influenced how litigant groups fared in the arena of the court.

EVOLUTION OF THE PROJECT AND PREVIOUS WORK

This book has been long in the making. Boğaç Ergene's exploration of the Kastamonu court records pertaining to many topics studied in this book goes back to the early 2000s (Ergene 2002, 2003, 2004, 2005, 2008, 2010). The two data sets that serve as the empirical foundation of the book, one based on probate estate inventories and the other on different types of legal interactions, are products of Ergene's long-held research interest in the Kastamonu *sicils*. The construction of these data sets, which took years, constituted the most labor-intensive and time-consuming phase of the process that generated this book. Ergene's earlier publications with multiple collaborators explored the probate estate inventories from different angles, including economic stratification, long-term wealth accumulation and distribution, and intergenerational mobility patterns in Kastamonu (Ergene and Berker 2008; Ergene and Kaygun 2011, 2012; Ergene, Kaygun, and Coşgel 2013; Coşgel and Ergene 2011, 2012). These studies provide the conceptual and analytical foundations of the socio-economic categorizations based on gender, honorific titles, religious markers and family associations used in this book.

Metin Coşgel is an economist and economic historian, and has a long-standing interest in Ottoman history. In earlier work in this field, he studied the Ottoman system of taxation, tax collection, and revenue allocation (Coşgel 2004, 2005, 2006; Coşgel and Miceli 2005, 2009). More recently, he has worked on the political economy of various Ottoman policies and institutions, such as the fiscal regime, political legitimacy, technology adoption, and law enforcement (Coşgel, Miceli, and Ahmed 2009; Coşgel 2011, 2015; Coşgel, Etkes, and Miceli 2011; Coşgel, Miceli, and Rubin 2012a, 2012b; Coşgel, Ergene, Etkes, and Miceli 2013). He was among the first to utilize the Law and Economics framework in the Ottoman context in studies that explored the relationships between Ottoman legal systems, fiscal institutions, and economic development. Based on the data sets used in this book and the socio-economic categorizations Ergene and his collaborators introduced in earlier publications, Coşgel and Ergene have produced three articles (2014a, 2014b, and 2014c). In the present book we build on the contributions of these articles and provide more in-depth analyses of the information found in the court records.⁴

⁴ Author names are listed alphabetically on the cover.

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Finally, we should say a few words about *how* the book was written. This book is the result of a collaboration between an Ottoman socio-legal historian with economic interests and an economist with experience in legal and historical research. The process that produced the book involved extended discussions between the two on the nature of their sources, how they should be interpreted, and the most appropriate means to explore them. Sometimes tension-filled, this process of negotiation led the researchers to continually reconsider their respective understandings of Ottoman legal processes and client interactions in the court. It also forced them to see their material from different perspectives and accommodate scholarly conventions that they did not initially identify with.

As in other humanities and social science fields, calls for multidisciplinary approaches are common in Ottoman studies. What usually remains undisclosed in such calls is how arduous such efforts can be, especially in fields that resist multidisciplinary exploration. Ottoman legal history is one such field. It is rare for researchers with different specializations to work together, in part because of the relative inaccessibility of the legal sources and also because of the time and energy required to master them. At the same time, we believe that the present study exemplifies what such efforts can accomplish. We say so not because we consider the book to be the best socio-legal exploration of Ottoman court records, but because we know from experience that it represents something more than the sum of what each of us could have accomplished on our own. Ultimately, this is why collaborative and multidisciplinary efforts, as tricky and arduous as they can be, can prove valuable. Collaboration among researchers from different disciplines has the potential to stimulate a productive, critical conversation among scholars with dissimilar skill-sets, which is rare in Ottoman history-writing. It is our hope that the type of cooperation and conversation this book represents will become more common in the future.