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FROM LEGAL REPRESENTATION TO ADVOCACY: ATTORNEYS AND CLIENTS IN THE OTTOMAN NIZAMIYE COURTS

Abstract
Professional attorneyship emerged in the Ottoman Empire in tandem with the consolidation of the Nizamiye ("regular") court system during the late 19th century. This article analyzes the emergence of an Ottoman legal profession, emphasizing two developments. First, the Nizamiye courts advanced a formalist legal culture, exhibited, inter alia, by the expansion of legal procedure. Whereas the pre-19th century court of law was highly accessible to lay litigants, the procedural-ization of court proceedings in the 19th century limited the legibility of the judicial experience to legal experts, rendering legal counseling almost indispensible in civil and criminal litigation. Second, the reformers made efforts to render state-granted legal license a sign of professional competence, presenting a formal distinction between the old "agents" (*vekil*s), who lacked formal legal training, and the professional "trial attorneys" (*dava vekil*s). In practice, however, lawyers of both categories had to adapt to the Nizamiye formalist culture.

From the foundation of the Ottoman state in the 13th century until the judicial reforms of the 19th century, the Şeriat courts, administered by qadis, served as the key judicial forum throughout the imperial domains. Their supremacy came to an end with the introduction of a new court system, which was modeled after French Napoleonic law with some variations.[1] According to the new division of labor, the Nizamiye courts addressed civil, commercial, and criminal cases, whereas the Şeriat courts were competent in matters of personal status and pious endowments (*vakıf*). The Nizamiye law was a typical case of legal borrowing in that it formed a unique fusion of local judicial practices and rules with borrowed law. This legal hybridity was apparent in the three-tiered administrative structure of the new courts (courts of first instance, courts of second instance, and the Court of Cassation), which by and large followed the French model though was not a carbon copy of it. The Nizamiye *corpus juris* consisted of various codes that were legislated throughout the 19th century. Some of these laws, such as the Land Law of 1858 and the Civil Code (Mecelle-i Ahkam-ı Adliye, legislated between 1869

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and 1876), were codified formulations of Şerʿi-Ottoman law, while others, such as the Criminal Code (1858) and the procedural codes of 1879, were local adaptations of French statutes.

The Nizamiye courts are conventionally described in the scholarship as "Westernized" and "secular," often in contrast with the so-called "traditional" Şeriat courts.[2] This depiction fails to acknowledge the syncretic nature of the Nizamiye courts, whose legal sources contained a great deal of Islamic law, or of its personnel, which included individuals of both Şerʿi and non-Şerʿi educational backgrounds. In addition, this dichotomous depiction fails to convey the dynamic changes that were evident in the reformed Şeriat courts.[3]

An unprecedented emphasis on procedural law was a distinctive feature of the Nizamiye proceedings. The courts were expected to adhere to hundreds of clauses regulating every aspect of the criminal and the civil judicial process, from the initial presentation of claims through the execution of court decisions. This "proceduralization" of the Ottoman judicial sphere and the associated ideology of legal formalism formed the context in which professional legal counseling emerged in the 1870s. In the present article, I hope to show the extent to which this process of proceduralization affected the Ottoman legal profession in its formative phase and the impact it had on the everyday experiences of court users. More specifically, the emergence of a formalist legal culture in the late 19th century rendered expert mediation between the formalist Nizamiye court and its lay users imperative. The increasingly technical discourse typical of the Nizamiye legal culture limited the legibility of court proceedings to professional lawyers, thus alienating lay court users and rendering legal advocacy indispensable. Committed to a modernist vision and to state centralization, Ottoman reformers made an effort to equate the professional competence of lawyers with licensing by the state.

Before proceeding to the discussion, a comment on the available historical evidence and the state of the research is in order. In recent years, our understanding of Ottoman legal reform in the 19th century has benefited from a series of studies, mostly in Turkish, dealing with administrative and technical aspects of the Nizamiye courts in various stages of their evolution.[4] However, questions that concern "law in action"—such as the actual performance of the Nizamiye courts, litigation, and other sociolegal aspects of this important addition to the Ottoman judicial sphere—remain neglected in the study of the late Ottoman period.[5] This lacuna may be largely explained by the fact that actual protocols of Nizamiye court proceedings are by and large inaccessible to historians.[6] Until and unless such records come to light, the best available source for exploring sociolegal interactions in the courts is the *Ceride-i Mehakim* (Journal of the Courts). The Ministry of Justice established this weekly (later biweekly) in 1873 with the objective of assisting Nizamiye personnel in their daily work. Each issue contains around fifteen pages of case reports (eight pages during the initial period) originating from courts of first instance and appellate courts throughout the empire and the follow-on rulings issued by the Court of Cassation in Istanbul. In addition, the volumes of the journal contain circulars and notifications from the Ministry of Justice to Nizamiye personnel. Although the journal is an edited text, it does provide a rare glimpse into court realities precisely because it was used as a working tool for the benefit of officials, with no apparent attempt at idealizing the image of the courts. It thus contains many

reports on irregularities and related warnings addressed to court personnel. The journal has been hardly used for historical research.

THE EMERGENCE OF OTTOMAN RULE FORMALISM

In the late 19th century, legal formalism came to be the dominant judicial paradigm around the globe, providing the conceptual foundation for "the rule of law." Brian Tamanaha identifies two components of legal formalism: conceptual formalism and rule formalism. *Conceptual formalism* rests on the belief that the law is a coherent and integrated body of rules and concepts. In the common law system, the judge was expected to discover and formulate these principles as they emerged from court cases and to apply them systematically. In the continental legal system, the task facing the judge was simpler, as the legal principles were already handily available in the form of comprehensive legal codes. *Rule formalism*, according to Tamanaha, is the notion that the "correct" judicial answer to every case addressed by a court is contingent on a mechanical application of the law, understood as the consistent body of legal principles.[7]

Rule formalism in the Ottoman Empire crystallized in the 1880s as part of the final consolidation of the Nizamiye court system, which had been introduced two decades earlier. The years from 1864 to 1879 may be identified as the "test-run" phase of the Nizamiye system, while the reforms of 1879 signified the final phase of its evolution. These reforms regularized the division of labor between the various courts, specified their respective duties, defined the judicio-administrative hierarchy, and ushered in the new functions of public prosecution and judicial inspectorate.[8] The reformers' embrace of rule formalism was evident with the introduction of the procedural codes in the same year. The Code of Civil Procedure and the Code of Criminal Procedure prescribed hundreds of procedural motions for both the civil and criminal sections of the Nizamiye courts.[9] On the juridical level, these codes followed the French legal positivism of the time, which aspired to minimize, if not dispose of, doctrinal interpretation, custom, and judicial discretion in favor of the codified statute.[10] The emergence of rule formalism does not in any way suggest that the preceding legal order conformed to the Weberian notion of an arbitrary "qadi-justice." As shown by Haim Gerber and others, the premodern Şeriat court records (*sicils*) manifest a good deal of predictability and consistency, and the standardized, formulaic style of these records is noticeable across the board.[11] Nevertheless, codification signified a qualitative change, a different *kind of* formalism, and certainly a quantitative expansion of legal procedure. Ali Şehbaz Efendi, law school professor and member of the Ottoman Court of Cassation in the 1880s and the 1890s, expressed in Ottoman-Islamic terms the change introduced with codification. In a textbook on procedural law, he argued that while in the past it was the practice of *ictihad* (Muslim jurists' original interpretation of religiolegal texts) that dictated judicial discretion, in the new judicial order the legal clause (*madde*) became the exclusive source of adjudication. He then advised judges to adhere to the codified clause and avoid *ictihad*.[12]

Şehbaz Efendi's advice exhibited the formalist ideology that was typical of the Nizamiye legal culture. During the last two decades of the 19th century, the Ministry of Justice made an effort to subject judicial work to standard formulas through codification, regulation, and routine enforcement as well as through inspection and disciplinary measures. This endeavor was evident in both judicial and everyday administrative practices. A series

of detailed procedural clauses was meant to ensure that every judicio-administrative action would leave a documentary trace. Reformers aimed to create unity of practice across the imperial domains through the distribution of sample forms to all the judicial units for every new practice and by establishing pedantic routines of registration and report.[13]

In the field of adjudication, the Court of Cassation (Mahkeme-i Temyiz), which topped the three-tiered judicial hierarchy, played the most important and active role in enforcing the observance of the large new body of procedure. Its foundation in 1879, to replace the Divan-ı Ahkam-ı Adliye, completed the transition of the Nizamiye court system to a full-fledged mode of legal formalism and signified an important phase in the proceduralization of judicial praxis. This was evident, among other ways, in the foundation of the Petition Department (*istida dairesi*) in 1887. The judges in this department were responsible for reviewing the procedural aspects of appellate petitions and for rejecting petitions that did not meet the procedural requirements of the cassation phase. The department was also authorized to issue rulings on petitions that challenged lower-court decisions on the basis of procedural aspects such as jurisdiction and prescriptive periods (*mürur-i zaman*). Once its procedural validity was approved, a petition was sent to either the civil or the criminal section of the Court of Cassation.[14] Similar to the French *Cour de cassation*, the duty of the Ottoman Court of Cassation was restricted to ruling on the legality of the judicial decision under review, in reply to appellate petitions. It could quash judicial decisions on both substantive and procedural grounds, but it did not revise the actual decisions of the lower courts.[15] The Ottoman Court of Cassation preserved the French *Cour de cassation*'s primary task of ensuring the proper and consistent application of the law.[16] When the Court of Cassation had to choose between procedural and substantive considerations in addressing appellate petitions, it usually favored the procedural ones.[17]

The emergence of rule formalism had a dual affect on the everyday interactions of court users with the courts. On the one hand, it considerably expanded the field of judicial tactics available to litigants, who could contest court decisions on procedural grounds, since any deviation from standard procedures was labeled by the appellate courts as "unlawful" and thus subject to annulment. On the other hand, the highly technical discourse in the courts rendered the judicial scene illegible to individuals who did not possess specialized knowledge of substantive and procedural law. This state of affairs was in contrast with the typical Şeriat court, which has been noted by scholars for its tendency to arbitrate and engage the parties in the judicial process, rather than merely determining which party was better able to substantiate its claim, a feature it preserved even after undergoing administrative reforms during the 19th century. The contemporary Şeriat court offered a generally user-friendly approach compared to the Nizamiye court, which emphasized procedural correctness.[18] This is the context in which professional attorneyship consolidated.

FROM "TRICKSTERS" TO "LAWYERS": THE FOUNDATION OF THE LEGAL PROFESSION

In an essay published in 1886, judge and law school professor Ali Şehbaz Efendi attributed the growing need for legal representation to the elaborate body of legal procedure in the Nizamiye courts. He argued that given the simple procedure in the Şeriat

courts, there was no need for legal representation in these courts and that this helped explain why the old-style judicial agents (*vekil*) "are even named with offensive words, such as 'tricksters' [*müzevvir*] and 'pettifogging scribes' [*kağıt kavafi*]."[19] He explained that the modern profession of the attorney was created in order to facilitate the good conduct of the Nizamiye courts and to ensure that "litigants would not be sacrificed to the deceits and tricks of people of unknown origin." [20] Judge Şehbaz reminded his Nizamiye colleagues that Ottoman professional attorneyship took inspiration from Europe, where "the duty of the professional court attorney is of the highest virtue."

Professional attorneyship was introduced into the Ottoman judicial sphere during the 1870s in parallel with the consolidation of rule formalism. The concept of legal representation had existed in prereform Ottoman law, but it was quite different from the modern conception of the legal professional. The main differences were that the premodern judicial agent (*vekil*) could be any individual empowered by the litigant through a special contract, with no need for a license, and that the *vekil*'s duty was to *represent* rather than *advocate* the interests of his client. In other words, while manipulating information and employing rhetorical maneuvers to serve the client's legal interest are considered appropriate practices in modern legal advocacy, the *vekil* was expected to simply provide the necessary information in order for the judge to get to the truth of the matter.[21] At the same time, and not unlike modern lawyers, representation by the *vekil* was not limited to court proceedings or litigation; rather, it implied a broad range of out-of-court interactions that involved transfers of rights—including the right to make decisions—from individuals or groups to their proxies. The latter were often members of the local elite.[22] In some respects, the Ottoman *vekil* is reminiscent of the Russian legal practitioner, the *striapchie*, prior to the Russian judicial reforms of 1864. The latter too could be anyone who wished to serve as a legal representative in the court.[23] Besides the western European model, another role that could be regarded as a "predecessor" of the Ottoman modern professional attorney was the *arzuhalci*, the writer of petitions. Benefitting from their command of Ottoman Turkish, the official language of the bureaucracy, *arzuhalci*s were hired by laymen to write down requests and complaints to be submitted to the authorities and also to serve as legal representatives in courts. The *arzuhalci*s have some resemblance to the modern certified attorneys in that they were required to obtain an official permit, which was already the case before the 19th century.[24]

Before examining the link between licensing, rule formalism, and professionalization, a comment should be made on the modern concept of *profession* in the context of legal formalism. Legal formalism is discussed in Max Weber's sociological theory of Western law. For students of the Middle East, Weber's work has posed serious problems, at both the normative and the empirical level. Weber's basic hypothesis is that the most fundamental characteristic that distinguished the West from the rest of the world was, respectively, rationality and a lack thereof, allegedly evident in a wide array of social and cultural phenomena. Weber's concept of rationality stands for different things—rule-bound operation, calculability, disenchantment, and impersonal execution of laws, to mention but a few—all of which were perceived as preconditions for the emergence of modern industrial capitalism. Reviewing the criticism of Weber's concept of rationality is beyond the scope of the present discussion; it will suffice to point out that the empirical weaknesses of his insights on Islamic societies have been discussed extensively and

that his cultural essentialism has been widely acknowledged.[25] Nevertheless, and in spite of its empirical faults and normative biases, Weber's sociology of law remains valuable for several reasons. First, categories such as *professionalization* and *formal legal rationality* are still effective descriptive categories when not hitched to essentialist statements about "the East" or "the West." Second, Weber's work has a historical value as it is one of the best illustrations of the zeitgeist, namely, the confidence of intellectual elites in the power of reason and science to restructure and improve nature and society, prior to the challenges that undermined this conviction in the second half of the 20th century.

For Weber, legal rationality meant the application of the law in accordance with abstract, general rules. To be regarded as "rational," legal systems had to apply the rules consistently to all judicial cases.[26] Weber perceived the French legal system of his time as more rational than the English one because of the former's elaborate project of codification. For Weber, the development of rational law was above all contingent on legal training.[27] Whereas English lawyers were trained through apprenticeship in the guilds, lawyers on the continent gained their legal knowledge in universities, where law was conceived as a science, separate from legal practice.[28] Weber's notion of legal rationality may be simplified as follows: legal formalism was the exclusive manifestation of legal rationality; only legal professionals specializing in the formal law were in a position to apply rational law; and to be regarded as fully rational, the professional lawyer had to acquire his knowledge in special schools, where legal theory was taught rationally and systematically.[29]

What was the meaning of professionalization in the context of the Ottoman legal reforms? Professional attorneyship was effectively launched in 1875 with the Law of Trial Attorneyship in the Nizamiye Courts, though legal representation is mentioned in laws written earlier in the century.[30] Facilitation of state control was the most salient feature of the 1875 law, in line with the fundamental logic of the Tanzimat, the grand project of Ottoman administrative reform. Consisting of forty clauses, the attorneyship law advanced professionalization by restricting legal representation to holders of licenses issued by the Ministry of Justice (then termed Divan-ı Ahkam-ı Adliye), which had to be renewed every year. To be eligible for the license, attorneys were required to be law school graduates (a requirement that had to wait until the foundation of a Nizamiye law school before it could be fulfilled), no younger than twenty years old, and of clean record. They could not be state employees, and if they were merchants or bankers, then they had to be free of bankruptcy warnings. The law also introduced and regulated matters such as power of attorney (*vekaletname*), retainer, and the bar association (*dava vekilleri cemiyeti*).[31]

The standard institutions providing legal education at the time the Law of Trial Attorneyship in the Nizamiye Courts was enacted were the Law School for Şer'i Judges (established in 1855) and various *medrese*s (schools for teaching Islamic law and religion). An experimental version of a modern law school had been established in 1870 at the Ministry of Justice under the name of Dershane (classroom) of Laws, offering a one-year legal training in the fields of civil law (*Mecelle*), land law, criminal codes, maritime commerce, procedural law, and various regulations related to ranks and duties in the Nizamiye courts. This institution was short-lived, as was the law "faculty" (Hukuk Mektebi, established in 1874) that was part of the Ottoman Lycée at Galatasaray.[32] In

1878, the Imperial Law School (Mekteb-i Hukuk-ı Şahane) was established in Istanbul, its curriculum designed to provide legal training pertinent to the Nizamiye courts. The standard course of study lasted three to four years, during which the students attended school five days a week, taking classes in various legal fields, including Islamic law. Formalist legal culture was promoted in the law school through its emphasis on procedural law. In addition to the study of legal procedure, students had to take classes in practical aspects of judicial work, defined as "the application of civil, commercial and criminal procedure in the courts and preparation of court decisions." Familiarity with the highly technical legal language was acquired through the course "Turkish Eloquence, Writing and Rhetoric" in the second year. The importance and prestige attributed to the law school was evident in its faculty, which included senior statesmen, among them Cevdet Paşa, the renowned minister of justice; Münif Paşa, former minister of education; and Said Bey, former secretary of foreign affairs, in addition to experienced jurists.[33]

The objective of limiting attorneyship to law school graduates turned out to be unrealistic given the rapid expansion of the Nizamiye court system throughout the empire and the fact that there were only two law schools, Şerʿi and Nizami, both in the capital. In that sense, it is quite obvious that this provision in the Trial Attorneyship Law was the statement of a goal rather than a requirement that could be strictly applied. Adhering to the professionalization aim, the Ministry of Justice introduced qualifying examination procedures in 1879, allowing individuals who were not law school graduates to enter the legal profession. Administered by law school professors (since 1884), the exam was held twice a year in the capital and in the provincial administrative centers. Applicants who wished to take the exam had to be at least twenty-five years old. Each applicant was required to submit to the Ministry of Justice his curriculum vita, which included information about past occupations and education. The two-hour exam was conducted in Ottoman Turkish and was therefore restricted to those who could read and converse in the language. The exam covered themes that were studied in the Imperial Law School and consisted of three parts: specific questions, explanation of a case study, and interpretation of several legal clauses.[34] Those who failed the exam were allowed to take it again only once. Applicants were required to pay the ministry a fee of ten liras, half of which would be refunded in case of failure. Residents of the provinces could take the exam in either the capital or one of the provincial centers. In the latter case, the exams were administered by committees consisting of the judicial inspectors (a function that was abolished in later years), presidents of the courts of first and second instances, and the local public prosecutors or their assistants.[35]

A mere seven years after establishing the examination procedures, the Ministry of Justice revoked its requirement that attorneys in civil cases be licensed, thus putting its professionalization scheme on hold and officially allowing anyone who wished to plead in the Nizamiye courts to do so.[36] The stated reason was that restriction of attorneyship in the civil courts to licensed advocates was incompatible with a provision of the *Mecelle*. At the same time, this move seemed like a pragmatic response of the central administration to a growing demand for legal representation in the courts. Apparently, this demand could not be met by the relatively small community of law school graduates and license holders.[37] The demand for legal counseling was most evident in the civil domain, in which proceedings tended to be more complicated than in the criminal one.

It is clear, then, that subjugating legal advocacy to state control was a key aspect of the overall process of professionalization. While the abolition of the licensing requirement was a setback in the attempt of reformers to turn advocacy into a profession through licensing, it did not imply any change in the overall dominance of rule formalism in the legal culture of the Nizamiye courts or in litigants' growing need for legal advocacy. The law school in Istanbul, which became part of the Darülfünün University in 1908, continued to produce graduates every year. Additional law schools were opened in the provinces, and although they did not outlive the Ottoman Empire, they did manage to produce a good number of graduates.[38] In addition, attorneys kept taking exams; hence, the overall number of certified attorneys steadily grew year by year.

FORMAL AND INFORMAL PROFESSIONALIZATION

As the previous sections have shown, the Ottoman concept of legal representation was transformed during the last quarter of the 19th century, gradually shifting from legal "representation" to legal "advocacy." Nevertheless, both certified attorneys and noncertified *vekil*s practiced litigation in the courts. Once the institution and concept of professional attorneyship was officially introduced, the judicial community formally distinguished between certified attorneys, defined as "trial agents" (*dava vekilleri*), and nonprofessional judicial "agents," termed *vekil*s, in an attempt to advance professionalization. During the years that followed the enactment of the Law of Trial Attorneyship in the Nizamiye Courts, the Ministry of Justice had to deal with an apparent gap between its ideal of professional legal advocacy, which was inspired by the French model, and the realities in the field, namely, the fact that the services of the noncertified judicial agents could not be dispensed with. In the process, the ministry explicitly advanced a negative image of the judicial agents in contrast with the licensed trial attorneys. An official circular in December 1880, which extended the requirement for licensing to the provinces, stated that judicial representatives who were not licensed "harm the people, disturb the courts, and keep them busy."[39] Similarly and unsurprisingly, the abrogation of the licensing requirement in the civil courts generated criticism from licensed attorneys.[40]

The sources do not establish in any way that the *vekil*s were less able or knowledgeable than the licensed attorneys. The proceduralization of the proceedings resulted in a process of "natural selection," through which attorneys who were not equipped with the relevant knowledge simply could not navigate effectively in the Nizamiye sphere regardless of whether they were certified or defined as "trial attorneys" or "judicial agents" (simply *vekil*s). An example was a prominent Jewish attorney from Jerusalem, Malkiel Mani, who had not acquired formal legal education and therefore belonged to the *vekil* category. At the turn of the century, Mani was considered a leading attorney in Palestine, recognized especially for his knowledge of land law. After serving as a judge in Hebron, he moved to Jerusalem, where he advocated for the Jewish community. His legal authority was acknowledged by the British authorities, who appointed him as judge in the Jerusalem court of appeal, immediately after the British occupation of Palestine.[41]

In spite of the formal division of labor between the Şeriat and Nizamiye courts, the Ottoman judicial sphere offered certain spaces of legal pluralism. The Şeriat court continued to address civil cases that theoretically belonged under the Nizamiye jurisdiction,

such as debts, ownership, and trespassing, thus allowing litigants to practice "forum shopping"; that is, users took to the Şeriat courts civil cases that officially belonged to the Nizamiye courts.[42] In her study of the Şeriat courts of Haifa and Jaffa, Iris Agmon suggests that the employment of trial attorneys was increasing in these courts as well, but the practice was most typical of upper-class families, who could afford it. The rest continued to bring their claims to court in person.[43] If there was a difference between the certified *dava vekil*s and the noncertified *vekil*s, it seemed to be most apparent in the style of their advocacy. In the Şeriat courts of Haifa and Jaffa, according to Agmon, certified attorneys were more inclined to play the procedural card, thus prolonging the proceedings.[44] She succinctly describes the professional self-confidence of these attorneys and the impact of their style of advocacy on the courtroom experiences:

> In court, the [certified] attorneys used their legal skills intensively to serve their clients' best interests: they raised procedural claims to gain more time or to change the course of the trial for their clients' benefit; they argued with their rival colleagues; they advised the judge how he should pursue the case; and they raised new claims every so often in the course of the trial. The outcome was that cases in which they took part were longer and legally more complicated and the verdicts less predictable.[45]

This difference between the certified attorneys and the noncertified judicial agents was perhaps more apparent in the Şeriat courts examined by Agmon than in the Nizamiye courts that are the focus of this article, because the former allowed greater space for arbitration over adjudication. In the Nizamiye domain, however, noncertified judicial agents were as capable as certified lawyers when it came to playing by its formalist rules.

The following case, reported in the *Ceride-i Mehakim*, illustrates this point. In April 1893, the court of first instance in the Albanian city of Draç issued a decision against a merchant named Papa Anastaş. Anastaş had been sued by the local branch of the Customs Bureau (Rüsumat Emanet-i Celilesi) for custom fees that were due. The court ordered Anastaş to pay the customs and to refund the retainer of the plaintiff's attorney, being a considerable sum of 4,010 *kuruş*, along with the court expenses. Anastaş appealed to the Court of Cassation, which ratified the decision regarding the substantive matter but quashed the part of the decision that referred to the retainer, on the ground that it was not supported by the relevant legal clause. The case was sent back to the lower court for revision. After investigating the matter, the Draç court did not change its initial decision but instead specified the supporting legal source, namely, article 29 in the Law of Trial Attorneyship in the Nizamiye Courts. Anastaş was determined enough to appeal again to the Court of Cassation. This time, his judicial representative (*vekil*) argued that according to the legal article to which the Draç court had resorted, an attorney may demand from his client the retainer agreed upon by a written contract. However, he argued, the contract in this case failed to mention the person against which the court decision was issued, who actually formed a third party. Hence, the judicial representative concluded, the court decision was unlawful and had to be quashed. The court obtained the opinion of the Chief Public Prosecutor, which corroborated Anastaş' argument. For the second time, the Court of Cassation accepted the petition and quashed the decision.[46] The case report mentions that the Customs Bureau was represented in the appellate proceedings by a certified attorney (*dava vekilli*), Nizameddin Bey, whereas

Papa Anastaş was represented by a noncertified judicial agent (*vekil*), Yanku Mamumplu Efendi. Yanku Efendi lacked the formal legal education that Nizameddin Bey could be proud of, and his formal status was lower than Nizameddin Bey, as indicated by their titles.[47] Nevertheless, Yanku Efendi demonstrated an impressive command of the legal maze while offering a subtle interpretation of the legal clause in question, which ultimately convinced the Court of Cassation. Hence, it was not formal training that made the difference in judicial encounters, but rather each lawyer's ability to play the cards of Nizamiye legal formalism.

To summarize this point, the expansion of legal procedure meant a rationalization of the judicial sphere, in the Weberian sense. In other words, the project of codification in both the substantive and the procedural fields of Ottoman Nizamiye law allowed a higher degree of calculability than the preceding legal order, which does not mean that the latter was irrational. Although systematic Nizami legal training was limited at this formative phase and professionalization-through-licensing could not be fully realized, the emerging discourse of rule formalism in the Nizamiye courts rendered expertise in the complex procedural law almost a sine qua non of legal advocacy.

INDISPENSABLE, COSTLY ADVOCATES

The proceduralization of the judicial process in the Nizamiye courts provided a considerable advantage to litigants who could afford the services of attorneys versed in the procedural laws. The fees of certified attorneys were regulated by an official tariff, though the sources do not indicate to what extent they complied with it. Similarly, it is difficult to determine exactly how the official tariff affected the fees charged by noncertified judicial agents. Nevertheless, there is no reason to assume that lawyers charged less than the official tariff, which therefore may serve as a reasonable indication of the minimum actual costs associated with legal advocacy, which turn out to be rather considerable. The tariff set a fee of fifty *kuruş* for a general opinion (*reyname*) concerning any judicial matter. Clients had to pay their attorneys thirty *kuruş* for the first 150 words of written petitions and statements in the court of first instance and an additional five *kuruş* for every 100 words thereafter. Since judicial proceedings tended to get complicated, the preparation of official records required by the court cost an extra twenty *kuruş*. If the client wished to employ the widely used legal mechanism defined as "protest on the ruling" (*itiraz ale'l-hüküm*), which allowed litigants to challenge court decisions without resorting to appellate proceedings, he had to pay an additional twenty-five *kuruş*. Employing the fundamental right of litigants to apply to the court of appeal required a further payment of fifty *kuruş* for each session of the court.[48] This is only a partial list of the costs of advocacy. To this, one should add a good number of official fees charged by the courts for various judicial actions. The total expenditure was a substantial financial burden that raises questions about the accessibility of the Nizamiye courts in civil matters and about social equality in criminal matters. By way of illustration, in the late 19th century, a craftsman in Istanbul earned from seven to thirteen *kuruş* a day, which was 20 percent higher than his peers' wages in the provinces. The income of civil servants was significantly higher, amounting to a monthly average of 540 *kuruş*, which was considered sufficient to support a small family.[49]

The Ottoman legislature was not oblivious to the disadvantage caused to litigants who could not meet the expenses of legal representation. In civil matters, the civil code (*Mecelle*) instructed the judge to appoint an ad hoc attorney (*musahhar*) to defendants who were not present in court at the day of the trial.[50] In theory, therefore, litigants who were unable to afford legal representation could have the court assign an attorney to them simply by not coming to the court session. Such a move was all the more worthwhile after 1886, when the Ministry of Justice clarified that the cancellation of the licensing requirement did not apply to *musahhar* attorneys. In other words, a *musahhar* representative must be appointed exclusively from among the licensed attorneys (*ruhsatnameli dava vekilleri*).[51] This instruction is indicative of the reformers' attempts to relieve social inequality in the courts. The courts followed this instruction on the whole, but it seems that attorneys who served as *musahhar* representatives merely replaced the absent litigant rather than advocated for him, keeping the full benefit of their legal knowledge for clients who paid, while doing the minimum required for those who could not.[52]

Any argument concerning the limited access of financially underprivileged litigants to the civil sections of the Nizamiye courts should be qualified by the fact that, generally speaking, the poor did not possess significant properties and capital that were worthy of costly civil judicial action. The issue of access to Nizamiye justice was a concern, however, for the middle classes. Artisans, owners of small houses or modest portions of houses or land plots, and creditors or debtors of moderate sums could take the risk of appealing lower court decisions, which many of them did. But the financial risk was high, and it may plausibly have prevented many others from taking advantage of the judicial course of action offered by the new appellate procedures. Some remedy to this situation was provided by the option of taking civil cases to the Şeriat courts even though theoretically they belonged under the Nizamiye jurisdiction.[53] When litigants chose this judicial forum over the Nizamiye court, they counted on the fact that the Şeriat court retained its relative ease of access.

Official sensitivity to the poor's accessibility to justice was also evident in the criminal domain. The Code of Criminal Procedure instructed the criminal courts to appoint an advocate to defendants who had not chosen one themselves. In a circular addressed to public prosecutors in 1880, the Ministry of Justice wrote that it had been informed that some certified attorneys had charged retainers from criminal defendants. The circular noted the decision of the Istanbul bar to assign unpaid (*fahri*) advocates to criminal defendants in need and ordered that this measure be extended to the provinces as well.[54] An illustration of the implementation of this instruction is provided by the following case. On 30 May 1889, an Armenian porter named Toros was assaulted with a knife in front of a tavern in Istanbul, the alleged result of which was his death one year later. On the night of the event, the police arrested a certain seller of slippers called İbrahim, who was later accused by the public prosecutor as the man liable for the porter's death. A bill of indictment was prepared in accordance with the Nizamiye criminal procedure, and İbrahim was brought from prison to the criminal Nizamiye court on 26 July 1890. The court appointed a certified attorney, Refik Bey, to represent the accused İbrahim. Already in the first hearing, Refik Bey demanded to defer the trial. Resorting to a procedural clause that allowed the defendant to apply for annulment of the charge (clause 251 of the Code of Criminal Procedure) before the beginning of the actual deliberations,

the attorney managed to defer the trial. The trial resumed on 30 July 1890, but since the attorney Refik Bey was absent, the court appointed in his stead another certified attorney, Kaspar Efendi. After the bill of indictment was read aloud, İbrahim pleaded not guilty, arguing—through his attorney—that he had been enjoying a drink at the tavern when Toros initiated a quarrel with him by cursing his faith. The owner of the tavern ordered both men to leave the premises, assuming they were drunk. As they left the tavern, İbrahim noticed a group of Armenians who were also on their way out. Once outside, the Armenians seized İbrahim and beat him harshly. İbrahim stated in court that the policemen who had come across the fight slandered him by accusing him of injuring Toros. The next court session took place five months later. The police report that recorded Toros' statement prior to his death was read to the court, and the two gendarmes who had been on the scene were questioned. They stated that when coming across the tavern, they saw a bunch of Armenian porters seizing İbrahim. The Armenians told the gendarmes that İbrahim was trying to escape after stabbing Toros, so they seized him right away. The gendarmes also stated that they found a bloody knife in İbrahim's pocket and that he was taken to the police station for interrogation. They identified a deep, bleeding wound in Toros' body. The court heard several eyewitnesses produced by the prosecution. One of them confirmed that some Armenians attacked İbrahim, who, at a certain point, attacked Toros with a knife.

During the final statements of the trial, İbrahim's attorney, Kaspar Efendi, repeated his client's version of the story, adding that in the course of the fight outside the tavern, a bloody knife was placed in İbrahim's pocket in order to incriminate him. Hence, he argued, his client was not involved in the killing and therefore had to be released. Kaspar Efendi further argued that Toros died a year after the event because he did not treat himself medically; thus, İbrahim could not be held accountable. Eventually, the court found İbrahim guilty of the charges of assault, injury, and murder, and sentenced him to five years in prison in addition to the year and a half that he had already spent in custody.[55] Even though the court did not accept İbrahim's version of the incident, it seems that his attorney did his duty in a reasonably professional manner.

Yet, this new type of legal representation was not always available to litigants. In such cases, defendants' ability to defend themselves in court was rather limited, and they had to make do on their own or even resort to illegal means. Such was the case of a certain Astarati, who belonged to the Ottoman Greek community in the Aegean island of İmroz (today Gökçeada) across the Dardanelles.[56] Astarati, age twenty-four, was prosecuted in September 1888 for seducing a young woman named Kali by promising marriage. Kali got pregnant, but Astarati refused to marry her. Both Kali and Astarati played with the idea of aborting the fetus with a drug, but this thought was never executed, probably due to the intervention of the headman of the village (*muhtar*). A bill of indictment was prepared following the police investigation, and a trial took place. Astarati had to deal with a criminal prosecution as well as with Kali's civil lawsuit. She claimed a compensation of 100 liras. The criminal charges resorted to clause 200 of the Criminal Code, which stipulated that a man who seduced a virgin by promising her marriage, as a result of which she lost her virginity, would be sentenced to a prison term of one week to six months and payment of indemnities. Astarati's line of defense was simple; he tried to depict Kali as a promiscuous woman whose ways with men were public knowledge, such that it was impossible to prove that he was responsible for the act of

defloration or that the child was his. To support this argument, he produced seven defense witnesses. All of them gave brief, identical statements, such as "[Kali] did not belong to the people of honor" (*ehl-i ırz ve iffetten olmadığını*). The consequences of not resorting to legal advocacy in this case were apparent. Had Astarati employed an attorney, he would probably have been advised not to coordinate the defense testimonies before the trial and certainly not in such an unsophisticated fashion. The special attention, typical of Nizamiye legal culture, to verbatim recording of oral statements both in the pretrial investigation and in the trial itself made such coordination counterproductive. In their ruling, the judges pointed to the suspicious uniformity of the defense testimonies as well as to the fact that the information provided by these witnesses emerged only after the pretrial investigation had been completed. Hence, the judges concluded that the defense witnesses were unreliable, collapsing Astarati's strategy altogether.[57] The court sentenced Astarati to two months in prison and to payment of indemnities and child support.

CONCLUSION

The emergence of professional attorneyship in the Ottoman Empire of the late 19th century ought to be understood against two interrelated backgrounds: the French-inspired judicial reforms and the movement of the Ottoman judicial sphere toward a formalist legal culture. It is important to keep in mind that both developments—reforms embedded in legal borrowing and the emergence of a formalist legal culture—occurred in other parts of the globe roughly at the same time. Nevertheless, they should not be framed in the conventional and rather parochial "first the West, then the rest" narrative, which often misses the intricate implications of legal reforms in non-Western societies.[58] The nuances of legal change are better explained when situated in a global context of concurrent legal experimentations, which surely reached a high point during the 19th century, though they were apparent during the preceding centuries, and which exhibited a great deal of global interconnectedness.[59] Throughout the "long 19th century," jurists in Europe, the Americas, and Asia developed new legal concepts by engaging with other legal systems and doctrines. Anglo-American legal scholars debated German "legal science," Latin American and Asian reformers introduced new legal systems through a process of selective borrowing from the Napoleonic codes, and thinkers such as Weber and Marx used a reified image of "the East" to develop their own sociolegal concepts. Eventually, legal formalism emerged as the dominant legal perspective, as was evident in the Ottoman reforms.[60]

Embedded in large-scale codification of substantive and procedural law, Ottoman rule formalism was a distinctive feature of the Nizamiye courts. The notion of "lawfulness" came to be associated with adherence to codified procedural clauses. The expansion of legal procedure and its accentuation in everyday court proceedings provided a new array of possibilities in the field of litigation. Yet, from the perspective of the litigants, making the most of these possibilities was contingent on a sort of specialized knowledge that was not available to lay court users. In the pre-19th century Ottoman Şeriat courts, lay litigants possessed a certain level of legal knowledge that allowed them to make claims in courts without resorting to legal counseling.[61] This was no longer the case after the

emergence of rule formalism and the interconnected growth of positive procedural law, which limited the legibility of court proceedings to judicial experts.

Describing the emergence of legal rationality in Europe, Weber captured the circular process at the base of professionalization: on the one hand, rational law resulted from the work of trained specialists; on the other hand, the legal profession developed in response to the need for specialization, which was an outcome of the rationalization of the law.[62] The introduction of rule formalism (phrased by Weber as formal legal rationality) into Ottoman law in the late 19th century created the need for specialized, professional legal advocacy. At that formative stage, when specialized training for the Nizamiye courts was limited, the government tried to associate professionalization with licensing, a practice that also served to further state centralization. The compromise in the licensing requirement, resulting from practical needs, did not bring the overall process of professionalization to a standstill; court users' need for experts who would translate their interests into legal strategies continued to grow.

The establishment of the Nizamiye courts is often described in the scholarship as a representative example of modernization, typified by the so-called secularization of the law and the adoption of "Western" laws and structures. Recent studies call for a more nuanced characterization of Ottoman sociolegal change and for questioning the value of both *secularization* as a descriptive category and the related, overly simplistic convention of *Westernization*.[63] There were other elements in Ottoman sociolegal change that qualified the new judicial order as *modern*. The emergence of professional legal advocacy in the context of an emerging rule-formalist legal culture was one expression of the passage of Ottoman law to modernity. The rising cost of justice caused by the new indispensability of advocacy was also a typical signifier of modern litigation, bringing the problem of law and social inequality to the fore.[64]

NOTES

[1]For the emergence of the Nizamiye courts and their institutional structure, see Sedat Bingöl, *Tanzimat Devrinde Osmanlı'da Yargı Reformu: Nizâmiye Mahkemelerinin Kuruluşu ve İşleyisi 1840–1876* (Eskişehir, Turkey: Anadolu Üniversitesi, 2004); Ekrem Buğra Ekinci, *Osmanlı Mahkemeleri: Tanzimat ve Sonrası* (Istanbul: Arı Sanat, 2004); and Fatmagül Demirel, *Adliye Nezareti: Kuruluşu ve Faaliyetleri, 1876–1914* (Istanbul: Boğaziçi Üniversitesi, 2007). For a sociolegal history of the Nizamiye courts, see Avi Rubin, *Ottoman* Nizamiye *Courts: Law and Modernity* (New York: Palgrave Macmillan, 2011).

[2]See, for instance, J. N. D. Anderson and Joel Coulson, "Islamic Law in Contemporary Cultural Change," *Saeculum* 18 (1967): 2; and June Starr, *Law as a Metaphor: From Islamic Courts to the Palace of Justice* (Albany, N.Y.: State University of New York Press, 1992).

[3]Avi Rubin, "Ottoman Judicial Change in the Age of Modernity: A Reappraisal," *History Compass* 7 (2008): 119–40. On the Nizamiye courts as a case of legal borrowing, see idem, "Legal Borrowing and Its Impact on Ottoman Legal Culture in the Late Nineteenth Century," *Continuity and Change* 22 (2007): 279–303. For the reforms in the *Şeriat* court system during the 19th century, see Jun Akiba, "From Kadı to *Naib*: Reorganization of the Ottoman Sharia Judiciary in the Tanzimat Period," in *Frontiers of Ottoman Studies: State, Province, and the West*, ed. Colin Imber and Keiko Kiyotaki (London: I. B. Tauris, 2005), 43–60; and Hamiyet Sezer Feyzioğlu, *Tanzimat Döneminde Kadılık Kurumu ve Şer'i Mahkemelerde Düzenlemeler* (Istanbul: Kitabevi, 2010).

[4]Bingöl, *Tanzimat Devrinde Osmanlı'da Yargı Reformu*; Ekinci, *Osmanlı Mahkemeleri*; Demirel, *Adliye Nezareti*.

[5]The standard source for evaluations of the performance of the Nizamiye courts was Adolf Heidborn, *Manuel de droit public et administratif de l'Empire ottoman* (Vienne-Leipzig, Austria: C. W Stern, 1908).

Though informative with regard to the administration of the courts, it offers little on sociolegal aspects, and it exhibits the standard European cultural conventions on Ottoman administration.

[6]A rare exception is a register of some sixty cases that were addressed in 1887 at the criminal Nizamiye court of first instance in Jaffa. Haim Gerber, *Ottoman Rule in Jerusalem, 1890–1914* (Berlin: Klaus Schwarz, 1985), 143–59.

[7]Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory* (New York: Cambridge University Press, 2004), 77–78. This conceptualization of the judicial process has been subject to a vast body of scholarly criticism for many decades, mainly from the perspective of legal realism and critical legal studies. In a nutshell, critical legal scholars present legal formalism as a myth that conceals the fact that adjudication is always a highly interpretive act; all judicial processes are imbued with conflicting interests and reflect dynamic power fields and power relations. For summaries of the debate between the two conceptualizations, see Brian Leiter, "Legal Realism and Legal Positivism Reconsidered," *Ethics* 111 (2001): 278–301; Roy L. Brooks, *Structures of Decision Making: From Legal Formalism to Critical Theory* (Durham, N.C.: Carolina Academic Press, 2005); and John P. McCormick, "Three Ways of Thinking 'Critically' about the Law," *American Political Science Review* 93 (1999): 413–28.

[8]*Düstur*, 1st ed., vol. 4, 245–60.

[9]"Code of Criminal Procedure," *Düstur*, 1st ed., vol. 4, 136–231. "Code of Civil Procedure," *Düstur*, 1st ed., vol. 4, 261–332.

[10]R. C. van Caengem, *An Historical Introduction to Private Law* (New York: Cambridge University Press, 1992), 8–9.

[11]Haim Gerber, *State, Society and Law in Islam: Ottoman Law in Comparative Perspective* (Albany, N.Y.: State University of New York, 1994); Boğaç E. Ergene, *Local Court, Provincial Society and Justice in the Ottoman Empire: Legal Practice and Dispute Resolution in Çankırı and Kastamonu, 1652–1744* (Leiden: E. J. Brill, 2003).

[12]Ali Şehbaz Efendi, "Usul-i Muhakeme-i Hukukiye," book manuscript (1897), Atatürk Library, K 448, p. 28. It appears that this work was never published (unlike several textbooks published by the same distinguished author). Nevertheless, it is highly authoritative, given the fact that the author taught procedural law at the Nizamiye law school, and this text must have been used for his lecture notes. Ali Şehbaz Efendi, who studied law in Europe, served as a judge in the Court of Cassation. See Mehmed Tahir, *Osmanlı Müelifleri*, vol. 2 (Istanbul: Matbaa-yı Amire, 1914), 333.

[13]Rubin, *Ottoman* Nizamiye *Courts*, 87–96.

[14]*Düstur,* 1st ed., vol. 5, 853–54; *Hukuk* 44 (1895): 713–14.

[15]"Code of Civil Procedure," articles 231–50.

[16]Sofie M. F. Geeroms, "Comparative Law and Legal Translation: Why the Terms Cassation, Revision and Appeal Should Not Be Translated," *American Journal of Comparative Law* 50 (2002): 204–208; Walter Cairns and Robert McKeon, *Introduction to French Law* (London: Cavendish, 1995), 37–39.

[17]Rubin, "Legal Borrowing," 291–92.

[18]On the emphasis of arbitration in the Şeriat courts, see Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley and Los Angeles, Calif.: University of California Press, 2003); Ergene, *Local Court*, 199; and Iris Agmon, *Family and Court: Legal Culture and Modernity in Late Ottoman Palestine* (Syracuse, N.Y.: Syracuse University Press, 2006).

[19]*Ceride-i Mehakim*, no. 362 (1886): 3715.

[20]Ibid.

[21]Ronald C. Jennings, "The Office of Vekil (Wakil) in 17th-Century Ottoman Sharia Courts," *Studia Islamica* 42 (1975): 147–69.

[22]Hülya Canbakal, *Society and Politics in an Ottoman Town: Ayntab in the 17th Century* (Leiden and Boston: E. J. Brill, 2007), 150–78.

[23]William E. Pomeranz, "Justice from Underground: The History of the Underground Advokatura," *Russian Review* 52 (1993): 321.

[24]Nevin Ünal Özkorkut, "Savcılık, Avukatlık ve Noterlik Kurumlarının Osmanlı Devleti'ne Girişi," *Ankara Üniversitesi Hukuk Fakültesi Dergisi* 52 (2003): 150. For a *ferman* dated 1764 that reinforced the ban against the *arzuhalci*s who did not hold an official permit, see Ahmed Refik, *Hicrî onikinci Asrda İstanbul Hayatı, 1100–1200* (Istanbul: Enderun Kitabevi, 1988), 207.

[25]See, for example, Bryan S. Turner, *Weber and Islam: A Critical Study* (London and Boston: Routledge and Kegan Paul, 1998); Leon Shaskolsky Sheleff, *Sociological Cohesion and Legal Coercion: A Critique*

of Weber, Durkheim, and Marx (Amsterdam and Atlanta, Ga.: Rodopi, 1997), 35–81; and Patricia Crone, "Weber, Islamic Law, and the Rise of Capitalism," in *Max Weber and Islam*, ed. Toby E. Huff and Wolfgang Schluchter (New Brunswick, N.J.: Transaction, 1999), 247–72.

[26]Max Weber, *Economy and Society* (Totowa, N.J.: Bedminster, 1968); Anthony T. Kronman, *Max Weber* (Stanford, Calif.: Stanford University Press, 1983), 73–75.

[27]Weber, *Economy and Society*, 776.

[28]Joyce S. Sterling and Wilbert E. Moore, "Weber's Analysis of Legal Rationalization: A Critique and Constructive Modification," *Sociological Forum* 2 (1987): 76–77.

[29]Weber, *Economy and Society*, 784–85.

[30]*Düstur*, 1st ed., vol. 3, 198. For earlier references to legal representation, yet with no requirement for licensing, see, for example, "Şurayı Devlet Dahili Nizamnamesi," *Düstur*, 1st ed., vol. 1, 707; and "Divan-ı Ahkam-ı Adliye Nizamnamesi," *Düstur*, 1st ed., vol. 1, 328.

[31]On the development of the bar association, see Aylin Özman, "The Portrait of the Ottoman Attorney and Bar Associations: State, Secularization and Institutionalization of Professional Interests," *Der Islam* 77 (2000): 319–37.

[32]Bingöl, *Tanzimat Devrinde Osmanlı'da Yargı Reformu*. For changes in the training of the *naib*s, who served as court presidents in the civil sections of the Nizamiye courts, see Jun Akiba, "A New School for Qadis: Education of Sharia Judges in the Late Ottoman Empire," *Turcica* 35 (2003): 125–63.

[33]*Ceride-i Mehakim*, no. 261 (1884): 2105. On the establishment and operation of the Imperial Law School, see Ali Adem Yörük, "Mekteb-i Hukuku'un Kuruluşu ve Faaliyetleri (1878–1900)" (master's thesis, Marmara University, Istanbul, Turkey, 2008).

[34]The exam included eight questions on the *Mecelle*, three questions on the land commercial law, four questions on the Code of Commerce, three questions on the Criminal Code, and eight to ten general questions on the Law of Maritime Commerce and the procedural codes. *Ceride-i Mehakim*, no. 76 (1881): 601.

[35]"Dava Vekillerinin İmtihanına Dair Nizamname," *Düstur*, 1st ed., 4th supplement, 35; *Ceride-i Mehakim*, no. 3 (1879): 20–21; no. 76 (1881): 601.

[36]*Ceride-i Mehakim*, no. 362 (1886): 3711.

[37]According to Yörük, many of the law school graduates preferred the career paths of judges and public prosecutors, while only a minority chose to work as advocates. Yörük, "Mekteb-i Hukuk'un Kuruluşu," 166, 168.

[38]Law schools operated in Baghdad, Beirut, Selanik, and Konya. See Donald M. Reid, *Lawyers and Politics in the Arab World, 1880–1960* (Minneapolis, Minn., and Chicago: Bibliotheca Islamica, 1981), 78–79; and Osman Ergin, *Türkiye Maarif Tarihi*, 2nd ed. (Istanbul: Eser Matbaası, 1977).

[39]*Ceride-i Mehakim*, no. 76 (1881): 601.

[40]Yörük, "Mekteb-i Hukuk'un Kuruluşu," 177–78.

[41]Nathan Brun, *Shoftim ve Mishpetanim be Eretz Israel: Beyn Kushta le Yerushalayim, 1900–1930* (Jerusalem: Magnes Press, 2008), 66–67.

[42]Rubin, *Ottoman* Nizamiye *Courts*, 63–68; Agmon, *Family and Court*, 74.

[43]Agmon, *Family and Court*, 194. To the best of my knowledge, this is currently the only study that systematically analyzes litigation in the reformed Şeriat courts.

[44]Ibid., 123.

[45]Ibid., 175.

[46]*Ceride-i Mehakim*, no. 773 (1894): 11488–489.

[47]In this period, *efendi* was a general title of respect, a gentleman, whereas *bey* was assigned to dignitaries of various sorts.

[48]"Mehakim-i nizamiye dava vekilleri hakkında nizamname," *Düstur*, 1st ed., vol. 3, 198–209.

[49]Alan Duben and Cem Behar, *Istanbul Households: Marriage, Family and Fertility 1880–1940* (Cambridge: Cambridge University Press, 1991), 36–38.

[50]*Mecelle*, article 1, 791.

[51]*Ceride-i Mehakim*, no. 370 (1886): 3839.

[52]Agmon, *Family and Court*, 173.

[53]Ibid., 194.

[54]*Ceride-i Mehakim*, no. 52 (1880): 411.

[55]*Ceride-i Mehakim*, no. 615 (1891): 8967–969; no. 616 (1891): 8975–978.

[56]For the complete protocol of the case, see *Ceride-i Mehakim*, no. 466 (1888): 5278–286; no. 467 (1888): 5295–301.

[57]Ibid., 5300–5301.

[58]For a critical discussion of the omnipresent convention of *Westernization*, see Rubin, "Ottoman Judicial Change."

[59]Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (New York: Cambridge University Press, 2002).

[60]On the impact of German legal thought on modern legal doctrines, for instance, see Mathias Reimann, "Nineteenth Century German Legal Science," *Boston College Law Review* 31 (1990): 837–97.

[61]Jennings, "The Office of Vekil."

[62]Weber, *Economy and Society*.

[63]In addition to the revisionist studies mentioned previously, see Ruth A. Miller, *Legislating Authority: Sin and Crime in the Ottoman Empire and Turkey* (New York: Routledge, 2005).

[64]For an overview of the literature that explores connections between social status and access to justice, see Carrol Seron and Frank Munger, "Law and Inequality: Race, Gender . . . and, of course, Class," *Annual Review of Sociology* 22 (1996): 187–212.