# KANUN AND SHARIA:
# OTTOMAN LAND LAW IN ŞEYHÜLİSLAM FATWAS
# FROM KANUNNAME OF BUDİN TO THE KANUNNAME-İ CEDİD

BÜNYAMİN PUNAR

İSTANBUL ŞEHİR UNIVERSITY
AUGUST 2015

# KANUN AND SHARIA:
# OTTOMAN LAND LAW IN ŞEYHÜLİSLAM FATWAS
# FROM KANUNNAME OF BUDİN TO THE KANUNNAME-İ CEDİD

A THESIS SUBMITTED TO
THE GRADUATE SCHOOL OF SOCIAL SCIENCES
OF
İSTANBUL ŞEHİR UNIVERSITY

BY

BUNYAMİN PUNAR

IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR
THE DEGREE OF MASTER OF ARTS
IN
HISTORY

AUGUST 2015

This is to certify that we have read this thesis and that in our opinion it is fully adequate, in scope and quality, as a thesis for the degree of Master of Arts in History.

Examining Committee Members:

Assist. Prof. Abdurrahman Atçıl

(Thesis Advisor)

Prof. Mehmet İpşirli

Assist. Prof. Yunus Uğur

This is to confirm that this thesis complies with all the standards set by the Graduate School of Social Sciences of Istanbul Şehir University:

Date

24.08.2015

Seal/Signature

T.C. İSTANBUL ŞEHİR ÜNİVERSİTESİ SOSYAL BİLİMLER ENSTİTÜSÜ MÜDÜRLÜĞÜ 1923

I hereby declare that all information in this document has been obtained and presented in accordance with academic rules and ethical conduct. I also declare that, as required by these rules and conduct, I have fully cited and referenced all material and results that are not original to this work.

First Name, Last Name:

Binyamin Puner

Signature:

# ABSTRACT

KANUN AND SHARIA: OTTOMAN LAND LAW IN ŞEYHÜLİSLAM FATWAS FROM KANUNNAME OF BUDİN TO THE KANUNNAME-İ CEDİD

PUNAR, BÜNYAMİN.
MA, Department of History.
Advisor: Assist. Prof. Abdurrahman Atçıl
August 2015, 126 Pages

This study explores the question of Islamic character of the Ottoman land law through scrutinizing the administration of proprietary claims on the land in the şeyhülislam fatwas. It also tracks the changes in the fatwas related to the proprietary claims on the land.

ʿUlamaʾ views had a central role in the Ottoman land law from the beginning. First land codes were done either on the direction of their consultancies or directly by them. Therefore, as şeyhülislams were the head of that ulema, their fatwas played significant roles on the land issues.

Basics of the Ottoman thinking on the land system was first set by Ebussuud from a sharia-centred perspective. Later şeyhülislams mainly remained loyal to Ebussuud's doctrine and built the land law upon that base. However, new circumstances forced some little but important changes on the proprietary claims on the lands. Tracking these changes, reveals some clues for the Ottoman mentality on land law.

This study finds those clues through analysing şeyhülislam fatwas between Ebussuud's first extensive explanation in the code of Buda (1542) and the most extensive early-modern Ottoman achievement on land codification: Kanunname-i Cedid (dated 1674). It tackles the kanun-şeriat discussion in the context of the land law.

There were some attempts to make changes in Ebussuud's doctrine such as the fatwas of Hocazade Esad Efendi. However effects of such fatwas lasted short and were eliminated in the text of Kanunname-i Cedid at the end. In short Ottoman land law was standartised according to Ebussuud's doctrine. This thesis argues that the Islamic legal tradition provided the overarching paradigm for Ebussuud's and other şeyhülislams' opinions on the land law.

Keywords: Ottoman Land Law, Şeyhülislam Fatwas, Sharia, Kanun, Land Ownership.

# ÖZ

KANUN VE ŞERİAT:
BUDİN KANUNNAMESİ'NDEN KANUNNAME-İ CEDİDE
ŞEYHÜLİSLAM FETVALARINDA OSMANLI TOPRAK HUKUKU

PUNAR, BÜNYAMİN.
MA, Tarih Bölümü.
Tez Danışmanı: Yrd. Doç. Dr. Abdurrahman Atçıl
Ağustos 2015, 126 Sayfa

Bu çalışma Osmanlı toprak hukukunun şerʿi karakteri sorunsalına, toprak üzerindeki mülkiyet haklarının idaresini şeyhülislamların verdiği toprak fetvaları ışığında inceleyerek muhtemel cevaplar aramaktadır. Ayrıca bu tez toprak üzerindeki mülkiyet haklarının tarihsel süreç içerisindeki seyrini de bu fetvaların gözünden takip etmektedir.

Daha ilk başından beri Osmanlı toprak hukukunda ulema merkezî bir role sahipti. İlk toprak kanunları ya onların danışmanlığında veya direkt olarak onlar tarafından hazırlanmıştı. Bu bağlamda, ulemanın başı olarak şeyhülislam ve onun fetvaları toprak meselelerindeki en önemli kaynak türüdür.

Osmanlı toprak sisteminin arkasındaki zihniyet muhtemelen bu mantık çerçevesinde ilk defa Ebussuud tarafından şeriat merkezinde ortaya konulmuştu. Daha sonraki şeyhülislamlar da Ebussuud'un bu söylemine sadık kalmış ve toprak hukukunu bu temel üzerinde inşa etmişlerdi. Ancak yeni şartlar sonraki şeyhülislam fetvalarında toprak üzerindeki mülkiyet hakları bakımından bazı ufak olmakla beraber önemli değişiklikleri zorunlu kılmıştı. İşte bu değişimleri takip etmek toprak hukuku konusundaki Osmanlı zihniyeti hakkında bazı ipuçlarını ortaya çıkarmaktadır.

Bu tezin yaptığı iş tam olarak Ebussuud'un 1542 Budin Kanunnamesindeki ilk kapsamlı açıklaması ve toprak hukuku alanında Yeniçağ Osmanlı'sının en kapsamlı başarısı olan Kanunname-i Cedid (1674) arasındaki şeyhülislam toprak fetvalarını

inceleyerek bu ipuçlarını yakalamak ve bu ipuçları üzerinden Osmanlı hukuk tarihindeki şeriat-örf tartışmasına toprak bağlamında cevaplar üretmektir.

Bahsi geçen dönem içerisinde (1542-1674), Ebussuud'un söylemlerine sadık kalma bağlamında Hocazade Esad Efendi gibi bazı fetva mecmualarında sapma eğilimleri görülmektedir. Ancak bu minvaldeki fetvaların etki süresi kısa olmuş ve sonradan Kanunname-i Cedid nezdinde yok hükmüne geçmişlerdir.

Sonuç olarak, Osmanlı toprak hukuku Ebussuud'un şerʿi söylemi çerçevesinde standartlaşmıştır. Bu tezin argümanı ise Ebussuud öncesi dönem ve sonraki sapma eğilimi de dahil olmak üzere bütün Osmanlı toprak hukukunun başından beri şeriat çerçevesinde şekillendiğidir ki bu tezin kullandığı tüm birincil kaynaklar fetvalardaki detaylar bunu destekler niteliktedir.

Anahtar Kelimeler: Osmanlı Toprak Hukuku, Şeyhülislam Fetvaları, Şeriat, Kanun, Toprak Mülkiyeti.

## ACKNOWLEDGEMENTS

I would like to express my deepest gratitude to my thesis advisor, Abdurrahman Atçıl for his invaluable patience, support and encouragement throughout the preparation process of this thesis. I would like to extend my thanks to Yunus Uğur from whom I learned a lot during my graduate years in Şehir University and whose comments for this thesis have been greatly enriching. I am also deeply grateful to Mehmet İpşirli who inspired me during my undergraduate and graduate years with his wonderful personality and great academic works. He kindly accepted to serve as my committee member and I am pleased to have his stimulating comments for this thesis. I am also thankful to Engin Deniz Akarlı for his continuous guidance and support since my first semester at İstanbul Şehir University. I also owe thanks to Mehmet Genç who inspired me with his great character and lessons without even knowing it. I am thankful to Kemal Karpat who taught to me a life lesson along with his priceless academic instructions despite his advanced age. Above all, I want to thank Şehir University History department for providing me with a chance to meet such wonderful personalities.

The financial support from the The Scientific and Technological Research Council of Turkey (TÜBİTAK), National Directorship of Supporting Program of Scientists (BİDEB) made this study possible. The library of The Center for Islamic Studies (İSAM) provided many primary and secondary sources that I used in this study. I could not have written this thesis without the facilities that the İSAM Library provided me. I would also like to express my thanks to the staff of İSAM Library, Library of Şehir University as well as the manuscript libraries of Süleymaniye and Istanbul Municipality Atatürk Library for allowing me to use their collections.

During the process of writing this thesis, many dear friends and colleagues encouraged and supported me with their priceless friendships. I am grateful to all of them and pleased to be able to express my thanks to Mehmet Yılmaz Akbulut, Murat Hatip, Mehmet Akif Berber, Cankat Kaplan, Bünyamin Cansev, Ömercan Tohti, Ahmet Tahir Nur, Gürzat Kami, Abdurrahman Nur, Yunus Babacan, and many others. My beloved fiancée Büşra Betül Öztunca deserves the warmest thanks for her

love and for being a constant source of psychological support for this thesis. It would be much harder to finish this study without her support.

Finally, I owe thanks to my family. My sisters Filiz Korkmaz and Meryem Barındık together with my elder brothers, Habil Punar, Yusuf Punar and Yunus Emre Punar, were always there with their generous support and understanding. My father Niyazi Punar showed continuous self-sacrifice, support, affection and patience that cannot be adequately expressed during this process. I thank him for his supportive stand.

In Loving Memory of Nazife Punar…

# TABLE OF CONTENTS

# CHAPTER I

## Introduction: The Ottoman Land Law and Şeyhülislam Fatwas

### 1.1. Why to study Ottoman land issues and the question of religious law system?

In the sixteenth and seventeenth centuries, Ottoman Empire was deriving the majority of its income from the soil, like most of the other pre-modern empires. War expenditures, army payments, salaries of the high ranking officials and public expenditures were all financed by the agricultural incomes and savings. For such an empire, definition of the land and the ownership relations over the land surely have a great importance in the Empire's socio-economic and military survival and development. In other words, Ottoman land usage is the most basic economic issue to be studied in explaining the long life of the Empire.

The land issue is more intricate than being a vital economic base for the empire. It has also a deep mental dimension forming an important part of the Ottoman identity. At the beginning, Ottoman Empire was found as a small frontier principality where Christian and Muslim worlds interpenetrated. In that frontier world, first Ottoman sultans had to preserve a ghazi image in order to prove their worthies as able Muslim rulers who fight for the expansion of the Islamic lands. [1] In that ghaza ideology, land acquisitions in the name of Islam were the raisons d'être of many small Turkic frontier states, like Ottomans, because it was the only way of physically showing the expansion of Islam and their contribution to it. That makes the Ottoman land conception an identity issue which was constructed in a highly religious context.

Did Ottomans really conquer these lands for the sake of Islam? Or, did they do it for their own political interests and developed an Islamic discourse later to legitimize their actions backwards? These are the questions which have been asked by the literature for understanding the Ottoman mentality on the land and on Islam itself. However, these two questions have an assumption that the real Ottoman intention behind their political actions against the Christian world and their Islamic discourse

[1] Cemal Kafadar, *Between Two Worlds: The Construction of the Ottoman State* (Los Angeles: University of California Press, 1995), 109-114.

can be different. That assumption may be true for some cases. However, that is not the right way to approach to the issue because it partially disregards a simple possibility that Ottoman politics and Islamic concerns may really be the same and that they were not such separate entities. That simple possibility is more probable than the other one because the majority of the Ottoman sources are pointing to that direction and the rest of the sources are supporting that indirectly. More importantly, and in a broader perspective, Islam and the Islamic law should be understood not only in terms of its celestial and dogmatic side but also with its mundane, dynamic and inclusive side. From that perspective, Ottoman practices can all find a place in the Islamic paradigm as long as they do not contradict with the dogmatic side of the Islam. That is a more realist approach. Therefore, the right question should not be "how Islamic Ottoman actions were?" It should be "how non-Islamic were they?" In other words the main assumption must be that the Ottoman actions were in the same direction with the Islamic concerns, just like the Ottoman sources tell.

Ottoman intentions behind the conquests reveal themselves in how and according to which reference point the Ottomans defined and utilised the lands after the conquest. Ottoman land practices are held in land registers, land codes and fatwas on land issues. These three genres are all strongly connected to each other and Ottoman ʿulamaʾ [2] played the major role in all of their preparations as the next chapter will show. Land codes and land registers generally compiled as the two parts of the same legislation project. Generally a town judge, a chief judge (*kazasker*) or a *nişancı* (Imperial Secretary) himself does the registration work. On the codification part, *nişancı* was in charge. A land code may contain samples of these three genres in a single text with a long şeyhülislam fatwa as an introduction.

Preparers of the all three land genres, including the nişancı, were members of the ʿulamaʾ as it was mentioned above. The ones prepared by the Şeyhülislam, therefore, is the most important ones because he is the one on the top of the ʿulamaʾ hierarchy

[2] The word of *alim* (singular of ʿulamaʾ), normally means "scholar" in its most general meaning. But in this study, it should be understood especially as an Ottoman *alim*, unless otherwise directed. What makes an Ottoman *alim* different than a classical *alim* is his main function as "a scholar-bureaucrat". In other words, Ottoman ʿulamaʾ's career in the bureaucracy defines them as much as their scholarly proficiency. That is why careers of Ottoman ʿulamaʾ mean a lot. For more detailed information on this definition see: Abdurrahman Atçıl, '"The Formation of the Ottoman Learned Class and Legal Scholarship, 1300-1600" (PhD diss., University of Chicago, 2010).

and he, theoretically, is the most experienced *alim* on the matter. The fatwas on land issues, in that sense, are the most important sources because they are identified with the most prominent of the preparers of the land law, Şeyhülislam. Şeyhülislams had more room of manoeuvre than the other ʿulamaʾ as a judge or a *nişancı*. For that reason, their fatwas on land issues give first-hand information about the ʿulamaʾ mentality on the issue more than *nişancı* codes or land registers do. More importantly, the most basic Ottoman land definitions were made by their fatwas.

This thesis will evaluate Ottoman land law from the perspective of those fatwas on land issues. The first extensive and regular Şeyhülislam intervention to the writing process of land codes begins with Ebussuud (b. 17 Safer 896/30 December 1490 – d. 5 Cemaziye'l-evvel 982/ 23 August 1574) [3] and become matured with the *Kanunname-i Cedid*. [4] Therefore this study aims to analyse the period between the earliest land fatwa of Ebussuud in the introduction of the land code of Buda (1542) and the promulgation of *Kanunname-i Cedid* (1674). Importance of şeyhülislam fatwas on land will be analysed during 1542-1674. In the literature, these fatwas are generally seen as law. It is not stressed enough that they were fatwas at the same time. This study will evaluate them as they were designed as fatwas in the first place and they became part of the land law later. For that reason non-legislated şeyhülislam land fatwas will be included in this study in order to track the changes in the relationship between fatwas on land issues and legislation. Islamic character of the Ottoman law is a big question of debate in the Ottoman legal historiography. Some answers will be searched for that question within the limits of land law and the place of şeyhülislam fatwas in it. The major contribution of that study will be providing a fatwa centred perspective to the question in that sense. Land ownership is a good example in answering the question. So the question of the Islamic character of the Ottoman land law will be handled through analysing the regulation of proprietary claims in the fatwas.

---

[3] Nevizade Atai, *Şakaik-i Numaniye ve Zeyilleri: Hadaikü'l-Hakaik fi Tekmileti'ş-Şakaik*, ed. Abdülkadir Özcan, (İstanbul: Çağrı Yayınları, 1989), 183-187.

[4] It is analysed in: Fatma Gül Karagöz, "The Evolution of *Kânûnnâme* Writing in the 16th and 17th Century-Ottoman Empire: A Comparison of *Kânûn-i Osmânî* of Bayezîd II and *Kânûnnâme-i Cedîd*" (MA. Thesis, Bilkent University, 2010).

### 1.2. Nature of the Fatwas

Fatwa is the legal opinion of an expert of Islamic law. It can be either spoken or written. It can be given by every eligible person who becomes expert on Islamic law and it is non-binding in its nature. However, strength of the fatwa changes according to the fatwa giver (mufti). The ideal mufti is the one who is at the level of interpreting the main sources of the Islamic law (Quran & Hadith [*naṣṣ*]). The other Islamic legal experts are called as mufti figuratively. [5] Fatwas of an ideal mufti are seen as the most reliable and the most popular ones. Therefore they become more likely to turn out to be binding by the recognition and legalisation of the sultan.

When it is compared to the judgement of the judge (*kaza*), fatwa is an intellectual legal business that can be described as a legal consultation. Every specific fatwa concerns all Muslims unlike a *kaza* (it binds only complainant and the defendant). [6] But fatwa has no worldy enforcing power unless it is used in jurisdiction and becomes *kaza*. When the questioner of the mufti is a sultan who consults for a new code, the fatwa could become a legislative business. That is the case for most of the şeyhülislam fatwas on land issues.

In the Ottoman case, fatwa business was bureaucratised through employing muftis as officials. [7] There were country muftis as semi-official legal counsellors. Sometimes town judges were serving as muftis at the same time, depending on their competency in jurisprudence. In the Ottoman Empire, top of the fatwa hierarchy was being held by the highest *alim* in rank who was called şeyhülislam. [8] There was an established understanding that each mufti must give fatwas according to their own Islamic legal school (*mezheb*). [9] For that sake, Ottoman şeyhülislams were all the members of *Hanefi* law school. They respect the other three Sunni *mezheb*s and occasionally used

[5] Fahrettin Atar, "Fetva," TDV İslam Ansiklopedisi, vol. 12: 491.

[6] Ibid. 487-488; Mustafa Demiray, "Eksik Borç Kavramının İslâm Hukuku Açısından İncelenmesi" (PhD diss., Marmara Üniversitesi, 2008): 166-170.

[7] For detailed information on the Ottoman fatwa system, see: Uriel Heyd, "Some Aspects of the Ottoman Fetva" *Bulletin of the School of Oriental and African Studies* 32 (1969): 36-56.

[8] For the development of the Ottoman office of şeyhülislam, see: Richard C. Repp, *The Müfti of Istanbul* (London: Ithaca Press, 1986).

[9] Ibid. 491-492.

some of their views for backing their characteristically *Hanefi* fatwas. But in *kaza* part of the story, they were forbidding making judgements according to other *mezheb*s in a *Hanefi* province. [10]

In the land law, şeyhülislam fatwas were somewhat more integrated to the state affairs. Şeyhülislams defined the lands of newly conquered provinces as state or private property in their fatwas. They used the four main sources of the Islamic law (Quran, hadith, *icmāʿ* and *ḳıyās*) as the theoretical source of their definitions for these lands. As the practical source, they were using the Sultan's decree to which Islamic law gives a certain autonomy.

In the land part of the Islamic law, Ottoman practice was increasing the sultan's autonomy by defining the majority of lands as imperial property. In that sense, sultan's decree became one of the main sources of the şeyhülislam land fatwas and the Ottoman land law as long as they do not directly contradict with the four sources of the Islamic law. Therefore, there was a de-facto concordance between şeyhülislam land fatwas and the sultan's decrees. In that respect, majority of the şeyhülislam land fatwas were taken exactly as they were and legislated until the ends of seventeenth century. Yet more, some land fatwas even give the impression that they were asked to be legislated in the first place.

However, the freedom of the Ottoman şeyhülislam is subjected to the question. They were appointed and dismissed with the order of the sultan just like the other high ranking bureaucrats with only a few privileges to the Ottoman ʿulamaʾ class. Nevertheless, the sultan's enthronement and dethronement was bound by the Islamic law which was under the responsibility of the şeyhülislam. [11] Therefore it was not exactly about the freedom of the fatwa office. It was rather a perfect circular control

[10] The most famous Ottoman şeyhülislam Ebussuud states that in his fatwa: "Mesele: İnhilal-i yeminde Şafiî'ye müracaat edip, fesh-i yemine hükm eylese nafiẕ olur mu? El-Cevab: Bu diyarda Şafiî olmaz. Memnudur. Hakim Şafii'nin hükmü ile ref-i hilaf edemez." Ebussuud, *Maruzat*, İstanbul Munincipality Atatürk Library (Hereafter: Bld.), K.000660/1, ff. 4b.-5a; a different version of the same fatwa was published in: Mehmet Ertuğrul Düzdağ, *Şeyhülislâm Ebussuud Efendi Fetvaları Işığında 16. Asır Türk Hayatı* (İstanbul: Enderun Kitabevi, 1972), 138; critical edition of this fatwa is published in: Ebussuud, *Maruzat*, ed. Pehlül Düzenli (Klasik Yayınları: İstanbul, 2013), 78-79.

[11] Abdülhamîd İsmâil el-Ensârî, "Ehlü'l-Halʾ ve'l-Akd," TDV İslam Ansiklopedisi, vol. 10: 539-541; Mehmet Âkif Aydın, 'Halʾ', TDV İslam Ansiklopedisi, vol. 15: 218-221.

mechanism between sultan, Islamic law and the chief mufti in theory. Nonetheless, in its practical reflections, that control mechanism was bound by the balance of power between the sultan, şeyhülislam and other high ranking bureaucrats. Sometimes the sultan was dominating the fatwa office, sometimes the fatwa office was dominating the throne and when the balance was set, the mechanism was working in its ideal position.

In the land law, that conflict was showing itself during the process of legislation. The final decision was always in the authority of the sultan but the land law was being prepared by either *Nişancı* or Şeyhülislam. As an *alim, nişancı* was inferior of the Şeyhülislam but he was the member of the imperial council while şeyhülislam was not. Depending on his power and personal relationship with the sultan and other high ranking bureaucrats, şeyhülislam could take control of the *nişancı*. There are important such examples throughout the history like Zekeriyazade Yahya Efendi. Sometimes land fatwas were produced directly to be legislated like the introductory fatwa of Ebussuud in the land code of Buda. However, that is not the whole picture. Imperial edicts were used as a source in şeyhülislam land fatwas. That shows the inseparable character of imperial edicts and land fatwas. Therefore the relationship between fatwas and imperial edicts was a cooperation rather than a conflict in the land issues.

### 1.3. Conceptual Framework

Some concepts are needed to be understood in order to permeate the land law in general and land fatwas in particular, to be able to question their Islamic character. *Örf* is the most basic and complicated concept among them. It means custom in its most general state. However, in the Ottoman and Islamic law it has very important nuances that do not allow it to be described simply as custom. It contains public opinion, morals, usage, and tradition meanings in addition to its custom meaning. Moreover, *örf* contains a norm meaning, designating what is socially normal.

Such a broad social concept surely has a strong relationship with the law. However, *örf* has a heteronomous character. In order to be alive, an *örf* must have been continuously in force for a time and the society must think that things should be that way in the present. In other words it requires a perpetual social consensus to be in use. But that is not the case for the law. It can exist without a social consensus in

theory. Additionally, *örf* indicates a fuzzy ideal while law indicates an apodictic one. The relationship between *örf* and law can be better understood by knowing these nuanced differences. [12]

An *örf* norm can turn into a law principle or a law principle can turn into a norm of *örf* in time. But that is not a relationship of essentiality. In other words, every *örf* does not become a law principle. Therefore, the general *örf* and *örf* as a source of Islamic law should be differentiated. There are several secondary sources other than the four core sources of the Islamic law. *Örf*, characteristically, is not among these secondary sources as a separate article. Size, versatility and comprehensiveness of the concept does not allow it to be so. However, it basically serves as a ground under all the sources of the Islamic law. That is why Muslim jurists defined it as a secondary nature of the human beings. [13]

Linguistically *örf* constructs a common sense and a common language making it an indispensable tool for both Islamic legislation and jurisdiction. In courts the relationship between the complainant, defender and judge is made by the language it constructs. In a world there was no standard unit of measurement, what the parties mean by one *ṣāʿ* (a kind of grain measurement unit, like bushel), for instance, was known by only the *örf* of the specific geography because it was changing according to the geography.

The same is the case for the legislation process. *Örf* of the time and geography of the prophet has a key role in understanding the *naṣṣ* (the core sources of the Islamic law). What does one word of a verse of the Quran or a word of a Hadith mean, sometimes could not be known without knowing the *örf* in the time of the prophet. Moreover, especially in *Hanefi* sources, the method of *ḳıyās* (implementing an Islamic rule for an unprecedented case by considering the rules for similar cases in the *naṣṣ*) could be left for the sake of prophetic *örf* above. Furthermore, on *istiṣlāḥ* (implementing an Islamic rule for an unprecedented case on which *ḳıyās* method

[12] İbrahim Kâfi Dönmez, "Örf", TDV İslam Ansiklopedisi, vol. 34: 87-93.

[13] Ibid.

does not work) *örf* of the jurist plays a decisive role by being one of the major constructors of his understanding of law.

Despite its deep effect in the Islamic law, classical Muslim jurists tend not to include *örf* among the sources of Islamic law. They restricted it to be a ground under the sources because considering it as one of the sources may easily bring it to the same level with the *naṣṣ*. That would damage the law's relation with the ideal religious dogma. For that reason they kept *örf* as an adaptor between humans and Allah's rules. Nevertheless they allowed some *örf*s to be legalised and be an Islamic rule in certain conditions. In order to become a direct source of a rule in the Islamic law, an *örf* (1) must not contradict with the Islamic law itself, (2) it must not be sprung out after the relevant Islamic case emerged, and (3) there must not be an agreement between the conventional sides on the contrary of the *örf* in question. [14]

Ottomans generally recognized the aforementioned meanings and position of the *örf* concept in their law understanding. However, the concept of *örf* gained several more meanings in the course of Ottoman history of law. Ottoman *örf* was encapsulating the autocephalous Turco-Mongol law tradition when the state emerged first. Strong central-Asian law traditions were already in the process of Islamization from the midst of eight century onwards. However, in the beginning of the thirteenth century, they were preserving their distinctive identity for the most part. But thanks to the inclusive structure of the Islamic law, there were no major contradiction between the traditional Turco-Mongol law and Islamic law with only a few exceptions like fratricide and hard *taẕir* (reprimand) punishments.

*Örf*'s that denotation of Turco-Mongol traditional law was providing the Ottoman law with an arbitrary side for the sultan. Basically, there was always a certain piece of arbitrariness for the leader within the classical Islamic law. However that arbitrariness were never to excess Islamic principles of law. Ottoman practice therefore was adding a new meaning to the *örf*.

Now it was denoting execution in its all meanings. The representatives of the executive power was named as "*ehl-i örf*" (people of *örf*) in the earliest Ottoman law

[14] Ibid.

documents. [15] The punishments executed by the people of *örf* was called *siyaset* (administration) in the Ottoman law. That word was used as somewhat synonym of the *örf* in the post-Mongol Islamic discourse. It produced the concept and the genre of *siyaset-i şeriyye* (Islamic *siyaset*) which represents the legislative and executive power of the sultan on the cases non-addressed by the Islamic law or his autonomy in hardening the existing Islamic punishment for the sake of preventing unrest. [16] Therefore, the aforementioned Ottoman exceptions may well be Islamic under the classical concept of *siyaset-i şeriyye* which was well-embraced by Ottomans. Fatwa secretary of the most famous Ottoman şeyhülislam Ebussuud, Aşık Çelebi, translated *es-Siyāsetü'ş-şerʿiyye fî ıslahi'r-raʿi ve'r-raʿiyye* of İbn Teymiyye to Ottoman Turkish. [17] Around the same years, Ottoman alim Dede Cöngi Efendi wrote a book under the same title with Ibn Teymiyye's. That shows the traces how Ottomans were perceiving the concept of *örf* in the paradigm of Islamic law.

### 1.4. Literature Review

Ottoman law has been studied by many great historians. Land issues was one of the most basic subjects of the Ottoman law, in general. So the discussions on the Islamic character of the Ottoman law has been reflected to the subject of Ottoman land law in a great extent. Ottoman law was being fed from the sources of Islamic law. However, there was a considerable space left for innovation. The tradition was formed by those innovations. The discussions have been made on the character of those innovations and how much they affect the Islamic outlook of the Ottoman law. A considerable number of historians claim that the promulgation and application of the Ottoman law characteristically was not Islamic and it was not dependent on Islamic law that much. A second group argues that the Ottoman independency was within the limits of Islamic law. And several academics deny labelling the Ottoman law as Islamic or not.

---

[15] See, for example: "Kitâb-ı Kavânîn-i Örfiye-i Osmanî," in *Osmanlı Kanunnameleri ve Hukukî Tahlilleri*, ed. Ahmed Akgündüz, vol. 2 (İstanbul: Fey Vakfı, 1990), 44.

[16] Yunus Apaydın, "Siyâset-i Şerʿiyye," TDV İslam Ansiklopedisi, vol. 37: 299-304.

[17] Aşık Çelebi, *Miracü'l-Eyale ve Minhacü'l-Adale*, Süleymâniye Manuscript Library, Reisülküttâb, nr. 1006.

Turkish historians of the early twentieth century generally supported the idea of Turkic character of the Ottoman law in the face of orientalists who argued that the Ottomans was not able to form a law on their own. Depending on the heavily secular political atmosphere of that time's Turkish Republic, Turkic and Islamic characters could not necessarily go together. So they claimed that the Ottoman law was characteristically Turkic and independent from Islamic law. Fuad Köprülü was the most prominent defender of that idea. [18] He argued that the Turkic states did not leave their traditions even after they converted to Islam. [19] Furthermore, there were deviations from Islamic law even in Umayyad and Abbasid laws in his ideas. [20] In fact, according to his emphasis, Islam was not a legal system. It was a moral system that also shapes the law. [21]

Ömer Lütfi Barkan is the first historian who introduced that discussion by taking Ottoman land law into the centre. He shares the emphasis of Köprülü on the Islam as a moral system more than a legal system on its own and goes further by questioning the existence of Islamic law as a distinctive law system. [22] According to him, Islamic law was a dogma and the Ottoman law was saved from being stuck in that dogma by the interventions of traditional Turkic laws and the *örf* law of newly conquered districts. [23] Essence of the Ottoman law was practical concerns and experience rather than Islamic dogma in the beginning. The Islamic law was adapted to the *örf* in those years. But in later centuries the situation changed in the advantage of Islamic law. From then on the *örf* was being adapted to the Islamic law. [24] Most of the Ottoman

[18] Mehmed Fuad Köprülü "İslam Amme Hukuku'ndan Ayrı Bir Türk Amme Hukuku Yok Mudur?" *Belleten* v. II: 5-6 (1938): 39-72.

[19] Ibid. 59.

[20] Ibid. 54.

[21] Ibid.

[22] Ömer Lütfi Barkan, *XV ve XVI'ıncı Asırlarda Osmanlı İmparatorluğunda Ziraî Ekonominin Hukuki ve Mali Esasları: Kanunlar* (İstanbul: Bürhaneddin Matbaası, 1943), X-XV.

[23] Ibid. XVI-XVII.

[24] Ibid. XVIII-XIX.

*kanunname*s were not actual codes because they were not completely executed. [25] Inclusion of şeyhülislam fatwas into those *kanunname*s were showing how haphazardly they were compiled for the practical needs. [26] Even the majority of the copies compiled for the sultan in the palace were not official in their character, because the compilers were not allowed use imperial archives while they were compiling new *kanunname*s. [27] The fatwas in the *kanunname*s were not a source of *kanun*s. They were put there in order to explain *kanun*s to the judges. [28] Fatwas of Ebussuud were based on the edicts of Suleiman the Lawgiver. Similarly later fatwas were put in *kanunname*s in that way. [29]

Halil İnalcık is another historian who emphasises the distinctive character of Ottoman law in the Islamic law paradigm. According to him Ottoman abundance of innovations and extensive use of *örf* were differentiating Ottoman law from Islamic law. [30] Most probably under the impact of Persian traditions, Ottoman sultans could promulgate codes without referencing to the Islamic law. [31] Use of that alternative line and local pre-Ottoman laws were allowing the Ottomans to establish their own legal understanding outside the Islamic paradigm. That understanding was "Islamized" later by Ebussuud. [32]

---

[25] Ibid. XXII.

[26] Ibid. XXVII.

[27] Ibid. XXIX-XXX.

[28] Ibid. XXXIV-XXXV.

[29] Ibid. XXXIX.

[30] Halil İnalcık, "Osmanlı Hukukuna Giriş: Örfi-Sultani Hukuk ve Fatih'in Kanunları," *Osmanlı İmparatorluğu: Toplum ve Ekonomi Üzerinde Arşiv Çalışmaları, İncelemeler,* ed. Halil İnalcık (İstanbul: Eren Yayınevi, 1996), 319.

[31] Halil İnalcık, "Şeriat ve Kanun, Din ve Devlet," *Osmanlı'da Devlet, Hukuk, Adalet*, ed. Halil İnalcık (İstanbul, Eren Yayınları, 2000), 40-41.

[32] Halil İnalcık "Islamization of Ottoman Laws on Land and Land Tax," *Essays in Ottoman History,* ed. Halil İnalcık (İstanbul: Eren Yayınları, 1998), 164, 166-167.

Colin Imber takes a close stance with İnalcık and Barkan on the Islamic character of the Ottoman law. According to him a dual law system was in force in the Empire. Half of it was Islamic and the other half of it was secular. [33] He accepts the Islamic origins of the Islamic side of the law, unlike the classical orientalists and sees the practical needs as the source of the "*örf*" (he evaluates the *örf* as the secular law). Similar to İnalcık and Barkan, he sees "*örf*" and Islamic law as totally separate entities but he gives the superiority to Islamic law. [34] Sultan's legislative authority was "modest" in the face of law expert ʿulamaʾ. [35] But that was the case only after Ebussuud's harmonisation of the "*örf*" with Islamic law. [36]

Ahmed Akgündüz holds a totally different position than Barkan, İnalcık and Imber on the issue. According to him Ottoman law system was not a dual system. The principles of Islamic law was the essential and what was called the *örf* law was subjected to it. It was there because the Islamic law allowed it. [37] The political powers' authority was not legislative. It was to regulate the Islamic law. [38]

Ali Bardakoğlu stands close the Akgündüz on the issue with only a difference. He approaches to the question with a more solid theory. According to him Islamic law is not just about a dogma there is a mundane side of it. Therefore it covers every field of law. [39] The thing that must be checked is not its compatibility with Islam in deciding how Islamic a law is. It must be its incompatibility. Islam always represents

---

[33] Colin Imber, *Ebu's-Su'ud: The Islamic Legal Tradition* (Edinburgh: Edinburgh University Press,1997), 25.

[34] Ibid. 50.

[35] Ibid. 94-95.

[36] Ibid. 116.

[37] Ahmed Akgündüz, "Osmanlı Kanunnâmelerinin Şerʾî Sınırları," *Osmanlı*, vol. 6 (Ankara: Yeni Türkiye Yayınları), 401.

[38] Ibid. 403.

[39] Ali Bardakoğlu, "Osmanlı Hukukunun Şerʾîliği Üzerine," *Osmanlı*, vol. 6, (Ankara Yeni Türkiye Yayınları, 1999), 415-416.

an ideal and not only human achievements of that ideal but also humanly legislative efforts on the way to that ideal constitutes the Islamic law. [40]

Mehmet Akif Aydın accepts the *örf* law and Islamic law as separate entities. However, he evaluates them as cooperative rather than contradictory. That is why Ottoman sultans considered the Islamic law principles when they were taking legislative decisions. [41] However, there were exceptions like *taʿz̲īr* punishments for instance. [42]

The difference in the literature seems to be originated from the different Islamic law conceptions rather than different conceptions of Ottoman law. The knowledge on the Ottoman law and most of the primary interpretations of that knowledge do not differ much between the academics. It is some part of the primary interpretations and secondary interpretations create the difference in the literature. The ones who see the Ottoman law outside the Islamic law system, namely Barkan, İnalcık and partially Imber, generally see Islamic law through its dogmatic exclusive side. And the second group which is represented by Akgündüz see the Ottoman law totally inside the Islamic law system because they see the Islamic law with its inclusive side. There is also a mundane side in the Islamic law which is not emphasised so much by Akgündüz. The ones who evaluate the Islamic law with the human factor in it were represented by Bardakoğlu. They see the Ottoman law as a part of Islamic law with accepting the exceptions in it. This thesis, therefore, will take the approach of Bardakoğlu in evaluating the Ottoman land law in terms of its Islamic character.

### 1.5. Sources

Major source of this research is the şeyhülislam fatwas on the land issues, taken from Istanbul Municipality Atatürk Library and Süleymaniye Manuscript Library. These fatwas are compiled usually right after the relevant şeyhülislam's death by his fatwa

[40] Ibid. 414.

[41] Mehmet Akif Aydın, *Türk Hukuk Tarihi* (İstanbul: Hars Yayıncılık, 2005), 78.

[42] Ibid. 81; There are many more academics, like Abdullah Demir, Martha Mundy, and Snjezana Buzov, have been writing on the issue but since their views are reflected in the aforementioned academic works, they are not included in that literature review.

secretary in a single volume. [43] Within the 132 years of period this thesis covers, there are many şeyhülislam fatwa compilations, some were arranged as a monologue of a single şeyhülislam or other contain fatwas of several şeyhülislams. This thesis will make use of them selectively rather than considering every copy of every compilation. For each compilation one extensive example will be considered as the representative.

One copy of the compilation of Ebussuud's fatwas was published by Mehmet Ertuğrul Düzdağ. [44] And there are many land fatwas in the secondary sources like the books of Abdullah Demir and Colin Imber. [45] Fatwas in such studies will be used as a supportive source for this thesis. For the *Kanunname-i Cedid* one copy from Istanbul Municipality Atatürk Library is used. The only unpublished primary source that will be used for the land codes is that manuscript. Most of the land codes from the period under study were published by Barkan and Akgündüz. [46] These published sources will be used in showing the relationship between land fatwas and land codes.

### 1.6. Outline of the Chapters

The aim of this thesis is to explore the question of Islamic character of the Ottoman land law through scrutinizing the administration of proprietary claims on the land in şeyhülislam land fatwas. Land ownership and taxation stays as the main theme throughout all the chapters of the thesis. This thesis will also track the changes in the fatwa's approach to the proprietary claims on the land. It will consist of five chapters.

The introductory chapter contains objectives of research, methodology, theoretical framework, literature review and introduction of the sources. First, it assesses the place of Ottoman ʿulamaʾ and şeyhülislam as the highest *alim* in rank in the Ottoman

[43] For a detailed literature review on the primary sources in the subject of Ottoman fatwa compilations, see: Şükrü Özen, "Osmanlı Döneminde Fetva Literatürü" *Türkiye Araştırmaları Literatür Dergisi* 3/5 (2005): 249-378.

[44] Ertuğrul Düzdağ, *Şeyhülislâm Ebussuud Efendi Fetvaları Işığında 16. Asır Türk Hayatı*.

[45] Abdullah Demir, *Şeyhülislam Ebussuud Efendi: Devlet-i Aliyye'nin Büyük Hukukçusu* (Istanbul: Ötüken, 2006); Colin Imber, *Ebu's-Su'ud: The Islamic Legal Tradition*.

[46] Ömer Lütfi Barkan, *Kanunlar*; Ahmed Akgündüz, *Osmanlı Kanunnâmeleri*.

land law. Methodology part explains how fatwas will be used in this research. Theoretical framework expounds the concept of *örf* and its sub-concepts in both Islamic and Ottoman contexts with its relationship with Islamic law as the feeding ground of fatwas. Literature review summarise and evaluates the literature critically. Lastly the sources part presents the major and secondary sources of the thesis and describes how they will be used.

Chapter two is on the land fatwas of Ebussuud and the critical assessment of the change he made. Therefore it begins with stating the importance of Ebussuud for Ottoman land law and brief religious and political context of the time. In the Islamic law Ottomans were *Hanefi* so it continues with explaining the *Hanefi* origins of the Ottoman law. This side of Ottoman law represents a continuation of the Islamic legal tradition. Then it enters to the debate of the Islamic character of the Ottoman law in the land part through evaluating Ebussuud's land fatwas within the ambit of proprietary claims. Land ownership was the key to the definition of lands. So it investigates Ebussuud's opinions on the ownership claims of treasury, farmer and the *timar* holder on the lands. Taxation of the lands was another important factor in defining the lands. So it is held separately although it was an ownership claim too.

Chapter three tracks the change and continuity in the thirty eight year of period after Ebussuud. Aim of this chapter is searching for the şeyhülislam responses to the rapidly changing social, political, military and economic contexts in their land fatwas. The main question of this chapter is whether they changed their attitude towards the issue or not and if they changed it, what does that mean for the Islamic character of Ottoman land law?

Chapter four includes the developments in the period between 1612 and 1674. It aims to examine the maturation of Ottoman conception of land law until it takes its final form as *Kanunname-i Cedid* and the role of şeyhülislams in that. The specific purpose of this chapter is to find out the essence of şeyhülislam intervention in the process, and what does that mean in the course of history, in terms of the Islamic character of Ottoman land law. Among these şeyhülislams Zekeriyazade Yahya Efendi becomes prominent on the elements which would build *Kanunname-i Cedid* later. For that reason, this chapter is designed around him and his networks. Lastly, concluding chapter summarises the findings of the previous chapters.

# CHAPTER II

## Ebussuud and Ottoman Land System

### 2.1. The Context

Ebussuud is the most celebrated Ottoman şeyhülislam or expert on land law throughout the history. His formulations constitutes the basics of later Ottoman law compilations on land law. He is so famous on the field of land law and other basic issues, such as cash waqfs, that sometimes a tendency of taking him as an isolated figure from his time and space, emerges within the literature. But it should be reminded that he was the product of his time, as much as any other historical figures.

When he began to be influential in the administration of the empire by being appointed to the office of *kazasker* (chief judge) of Rumelia in Rabiü'l-Evvel 944/August 1537, [47] the empire was experiencing a transition process. Twenty years ago, Egypt and most of the Arab lands had fallen under the control of the empire. With this change, balance of the Ottoman population had severely shifted in the favour of Muslim population. [48] However, there was a beginning of a more symbolic and more effective game changer process which would change the appearance of the empire in the minds forever. With the conquest of Egypt, Selim I took the title of "*Hadimü'l-Harameyn eş-şerifeyn*" (servitor of the two protected holy realms [Macca and Madina]). This was not a direct transfer of the chaliphate to the Ottomans (because the last Abbasid caliph Mütevekkil used the title of "caliph" until his death

[47] Atai, *Hadaikü'l-Hakaik*, 183-187.

[48] According to the land registers in the early years of Suleiman's reign, total Ottoman population was 11.357.365, excluding Egypt and whole North Africa. 4.600.000 of it were non-Muslim and the rest were Muslim. If we apply the rate of Egypt and North African population to the general Ottoman population, which is 5 to 21 million towards the ends of the sixteenth century according to Braudel's Mediterranean, population of whole North Africa becomes around 2.704.000 and total Ottoman population (including North Africa) becomes around 14.196.000. If we generalize the Muslim & mon-Muslim rate in the province of Arab (today's Syria, Palestine and Jordan), at least two third of population which was conquered by Selim I, was Muslim. So, eastern campaigns of Selim I must add the 3,5 million to the empire's total population (Arab province is included) and at least 2,4 million of them were Muslims which makes around % 19 of total population. These are not the exact numbers but the real numbers of 1520s must be somewhat close to those. This calculation is based on the numbers given in; Ömer Lütfi Barkan, ""Tarihi Demografi" Araştırmaları ve Osmanlı Tarihi," *Türkiyat Mecmuası,* Vol. X (1951-53), 1-26. Especially see the charts at p. 11 and 13.

in Egypt in 1537) but, retrospectivey, it was the beggining of it. Transference process of the caliphate to the Ottoman Empire ended in between when Ebussuud was the chief judge of Rumelia and when he was şeyhülislam. [49] In other words, Ebussuud was holding the most influential scholarly and bureaucratic positions while the religious appearance of the empire was severely changing. Ottomans were one of the major players in the Islamic world at the beginning of the process, but towards the final years of Ebussuud they seriously held a claim of being "the major" player in the world of Islam.

That symbolic transformation had some parallels in political reality. Ottoman power was already reaching beyond its borders even before the conquest of Egypt. Bayezıd II's privateers was putting pressure on Spanish shores to relieve the Muslims of Andalusia, and his second fleet was acting against the Portuguese in the Mamelukean Red Sea in order to protect the two holy cities (Mecca and Medina). These actions had a considerable amount of success in the times of Bayezıd II, Selim I and even in the first years of Suleiman (the Magnificent). But Ottoman military power began to be geographically overstretched in the later years of Suleiman I. For instance, Ottoman army, when it left from Istanbul, had to go more than 1500 kilometres, on foot, just to reach to the battlefield around Vienna, while Austrians were going just 100 kilometres to do the same. The same difficulty was in force on the eastern borders of the empire too. This meant a serious problem of logistics. On the face of this problem, Suleiman I focused his energy more on building-up his empire inside, than conquering new lands, in the later years of his reign. This does not necessarily mean that he did not go on campaigns. On the contrary, he campaigned a lot. However, these campaigns ended up with re-establishing the order or strengthening it, more than adding new lands to the empire. When Buda was annexed in 948 / 1541, for example, it had already been a vassal state of Ottomans for years.

Suleiman I, as the part of his building movement, implemented many massive royal building projects such as Süleymaniye and Şehzadebaşı complexes. But more importantly, he built the empire in minds, by involving in producing the most basic and general codes which will form the foundations of later codifications. This would

[49] Ş. Tufan Buzpınar, "Osmanlı Hilafeti Meselesi: Bir Literatür Değerlendirmesi," *Türkiye Araştırmaları Literatür Dergisi (TALİD)*, Vol. II, Isue 1 (2004), 113-131.

give him the title of "*Kanuni*" (lawgiver) in Ottoman Turkish. That law making project of Suleiman created the two most prominent figures of şerʿi and *örfi* laws. In *örfî* law, Nişancı (Imperial Secretary) Celalzade Mustafa involved in the creation of Suleiman the Lawgiver's codes and his name is recorded to the history as Koca Nişancı (Illustrious Chancellor). [50] On the *şerʿi* law, Ebussuud directly affected the theory behind almost all of the codifications of Suleiman and became the most known Ottoman şeyhülislam in the history. But I will deal with Ebussuud especially as a land legist to avoid going off the topic.

He served as a land registrar, along with his other official duties, of Buda in 1541/948 [51] and later on, as registrar of Skopje and Salonika under the title of *il yazıcısı* (province registrar). [52] Ebussuud's fatwas regarding the lands were mostly codified and used as a reference work for the land law of the other provinces or for the later fatwa compilations in that context.

Serving as a land registrar was not something special to Ebussuud. His predecessor in the office of şeyhülislam and one of his teachers, Kemalpaşazade had served as province registrar of Karaman before he was appointed to the office of şeyhülislam. [53] As a matter of fact, there are undeniable evidence showing that at least the majority of early-Ottoman land registrars, if not all, were from the ʿulamaʾ class in which office of şeyhülislam was at the top. For instance, Mevlana Vildan Efendi who was the registrar of Karaman during the reign of Mehmed the Conqueror was a madrasa originated *alim* who reached to the office of kazasker at the height of his career. [54] Even *nişancı*s who were considered as the consultant of *örfî* law in the *Divan-ı Hümayun* (Imperial Council), and who were held responsible for the writing

[50] Atai, *Hadaikü'l-Hakaik,* 113-14; Mehmet Şakir Yılmaz, "Koca Nişancı of Kanuni: Celalzade Mustafa Çelebi, Bureaucracy and Kanun in the Reign of Süleyman the Magnificent (1520–1566)" (PhD diss., Bilkent University, 2006).

[51] Mehmed b. Mehmed İmadi, *Kanunname-i Cedid*, Bld. MC. Yz. K0133, f. 3b.

[52] Ömer Lütfi Barkan, 'Türk Toprak Hukuku Tarihinde Tanzimat ve ; 1274 (1858) Tarihli Arazi Kanunnamesi', in *Tanzimat 1*, eds. Commitee, (İstanbul: Milli Eğitim Bakanlığı, 1999), 321-421, 329.

[53] Barkan, *Kanunlar*, 39.

[54] Barkan, *Kanunlar*, 39.

of codification process, were mostly coming from ʿulamaʾ background in during the time of Ebussuud. As a matter of fact, code of Mehmed II puts it as an obligation that *nişancı*s had to be chosen amongst the *dāhil* and *sahn müderris*es which were very prestigious offices in an Ottoman *alim*'s career. [55] When the office of *nişancı* became proffessionalised and formed its own educational structure towards the ends of the sixteenth century, [56] it came under the dominance of the office of şeyhülislam as it will be seen in the example of Zekeriyazade Yahya Efendi in chapter four. What makes the registers of Ebussuud special, is their fortunate temporal coincidences with the emergence of an imperial need for a basic explanation on general land law. In addition, Ebussuud was at the top of ʿulamaʾ hierarchy when that imperial need showed itself, otherwise there were still ordinary judges acting as country registrars. [57] That imperial need was a result of the deceleration of the empire's expansion speed as it was mentioned above. The empire had to clearly explain what it had in its hands for a more effective taxation system and for a peaceful rural population. [58] Because now, land gains were continuously becoming more sporadic and less abundant, especially comparing those with the huge land acquisitions of Selim I, in the relatively close past. More importantly, the empire was, now, in a position of digesting the massive change, happened during the reign of Selim I. Ebussuud issued his fatwas in that general context.

In this chapter, I am going to analyse the fatwa compilation of Ebussuud and compilation of his predecessor, Kemalpaşazade in detail. I used two copies of the compilation of the fatwas of Ebussuud housed in Istanbul Munincipality Atatürk

[55] "Ve nişancılık dahil ve sahn müderrislerinin yoludur." Mehmed Arif, 'Kanunname-i Al-i Osman', *Tarih-i Osmani Encümeni Mecmuası* (from here on: *TOEM*), (Istanbul: 1912): 14; The same point was stressed by Cornell H. Fleischer, *Bureaucrat and Intellectual in the Ottoman Empire: The Historian Mutafa Âli (1541-1600)* (Princeton University Press: Princeton, 1986), 93-95, 217-218.

[56] Fleischer, *The Historian Mutafa Âli*, 220-223.

[57] There is one example in the fatwa compilation of Ebussuud: "Emr-i pâdişâhî ile vilâyet kâtibi olan Zeyd-i kâdî..." quoted in Ertuğrul Düzdağ, *Ebussuud Efendi Fetvaları*, 97.

[58] Consider the "circle of justice/equity": Kınalızade Ali, *Ahlâk-ı Alâî*, prepared by Mustafa Koç (İstanbul: Türkiye Yazma Eserler Kurumu Başkanlığı, 2014), 1090.

Library. [59] Both compilations are written around the death date of Ebussuud. And one of them was compiled by the *fetva emini* (secretary) of Ebussuud himself, Veli Yegan. [60] I will use a copy from the same library for the compilation of Kemalpaşazade. [61] The idea of land ownership, and lands' taxation will be the main focuses of this chapter. First I will discuss the hanafite background of these two compilations, the effect of that background decides the land's status which determines the proprietary rights on the land. Then I will discuss the taxation and its role in the land ownership. At some points, I will go back and forth in order to search for the change and continuity between the roots and compilations themselves. Finally, I will reach some conclusions on "what Ebussuud did & did not" in the light of some basic concepts in the compilations ("*harac*", "*öşr*", "*örf*", "*sharia*). Throughout this chapter, sharia-*örf* dichotomy, however, will be a hidden target to be revealed in the concluding chapter of the thesis.

### 2.2. Hanafite Origins

Great majority of Ottoman land legists, in the sixteenth century had ʿulamaʾ origins, as it is mentioned above. And Ottoman ʿulamaʾ were the members of Hanafite School (madhhab) in fiqh, while theoretically confirming legitimacies of the other three Sunni *mezhep*s: Şafi, Hanbeli and Maliki. So it is important to understand Hanafism in order to comprehend the religious reflexes of the Ottoman ʿulamaʾ in the land law.

The *mezhep* is named after the founder: Ebu Hanife (b. A.H. 80/699 A.D. – d. A.H. 150/767 A.D.). [62] Ebu Hanife began to form a case law and a doctrine in his life. [63] His student Ebu Yusuf (b. A.H. 113/731 A.D. – d. A.H. 182/798 A.D.) carried his

[59] Ebussuud, *Fetava*, comp. by Veli bin Yusuf, Bld. K. 0125 (981 / 1573); Ebussuud, *Fetava-yı Ebussuud*, comp. Sefer ibn al Hacc Hüseyn, Bld. B. 0017, Vol. 1 (985 / 1577).

[60] Atai, *Hadaiku'l-Hakaik*, 313-14.

[61] Kemalpaşazade, *Fetava-yı Kemalpaşazade*, Bld., MC. Yz. O0044.

[62] Mustafa Uzunpostalcı, "Ebû Hanîfe," *TDV İslam Ansiklopedisi* (Hereafter: *DİA*), v. 10: 131-138.

[63] Eyüp Said Kaya, "Mezheblerin Teşekkülünden Sonra Fıkhî İstidlâl" (PhD. diss., Marmara Üniversitesi, 2001): 100-114.

studies forward. [64] And in 170/786 he came to the office of *qāḍī al quḍāt* (judge of judges) which was a newly founded office by the fifth Abbasid caliph Hārūn al-Reşīd (ruled between A.H. 169/786 A.D.-A.H. 193/809 A.D.). That event brought Hanafite School in a special place because Ebu Yusuf appointed hanafite judges in the every appointment decision he made and almost all the students of Ebu Hanife became judges with very few exceptions. However, that did not necessarily mean that hanafism became exactly the official madhhab of the Abbasids, in theory. Ebu Yusuf's choice was due to the practical reasons, to achieve a judicial unity. Otherwise there was still an ongoing judicial pluralism in which madhhab of the province was taken in to consideration when sending there a new judge. Nevertheless, later hanafite *qāḍī al quḍāt*s' appointments played a decisive role on the madhhabs of the newly conquered provinces. Therefore, in the long term, hanafism was closest madhhab to be an official one for the Abbasid provinces.

Hanafism could not became active on Syrian and Egyptian provinces until the the rise of Mamluks in thethirteenth century. Mamluks implemented an exactly pluralistic Sunni judicial system and appointed four *qāḍī al quḍāt*s from four Sunni madhhabs at the same time. [65] Nevertheless, in the fifteenth century, Mamluk Cairo was the scholarly centre of Hanafism to the point that the first, and the most famous Ottoman ʿulamaʾ including: Molla Fenari[66], Şeyh Bedreddin[67], Molla Gürani[68], Ahmedi[69] and many others went there for education. However, in the Northeast side of the Islamic world, Seljukids almost exclusively held on to the hanafism as the sole madhhab over the other three Sunni madhhabs. [70] That Seljukid attitude towards the

[64] Salim Öğüt, "Ebû Yûsuf," *DİA*, v. 10: 260-265.

[65] Ali Bardakoğlu, "Hanefî Mezhebi," *DİA*, v. 16: 1-21.

[66] Mecdi, *Hadaikü'ş-Şakaik*, 47.

[67] Ibid. 71-72.

[68] Ibid. 102.

[69] Ibid. 70

[70] Bardakoğlu, "Hanefî Mezhebi,".

madhhabs continued in the Ottoman Empire until the mids of sixteenth century. There was no choice between the four Sunni madhhabs in Ottoman courts but occasionally other madhhabs' views were used in some cases. Ottoman Hanafism was not a sole imperial enforcement until the beginning of the sixteenth century. It was rather the empire's acceptance of simply what was there. Until beginning of the sixteenth century, Sunni peoples under Ottoman rule were mostly Hanafi. In other words, it was not an ideologic but a very practical thing to appoint Hanafi judges.

Conquests of Selim I changed that appearance by shifting the ground under Ottoman Hanafism. In Egypt and North Africa, Hannafism was, considerable but still, a minority. The North Africa was generally Maliki and Egypt was a mosaic of four Sunni madhabs. Mamluks solved that problem by appointing four *qāḍī al quḍāt*s from the four Sunni madhabs. When Selim I entered Egypt, he appointed his senior judge of Rumelia (Kemalpaşazade) as the judge and registrar of Egypt; and he appointed the four Mamluk *qāḍī al quḍāt*s as delegated judges under Kemalpaşazade. [71] Kemalpaşazade called back to the centre after some time, but the Ottoman practice of a Hanafi judge on the top of the four delegated judges remained in force. [72] Similar practices were implemented for the other non-Hanafi provinces. Additionally, in some occasions, for very large Hanafi territories, one delegated judge was appointed from a needed madhab. In fifteenth century Bursa, for instance, there was one Şafi delegated judge who was visited by complaitants from all over the western Anatolia. [73] That was generally the Ottoman attitude towards Sunni madhabs in the law system. The same hanafite attitude was in force on the Ottoman land law too.

[71] Evliya Çelebi, *Seyahatname*, ed. Seyit Ali Kahraman et al., vol. 10 (Istanbul: Yapı Kredi, 2007), 3, 67, 72, 83.

[72] Seyyid Muhammed es-Seyyid Mahmud, *XVI. Asırda Mısır Eyâleti*, (İstanbul: Edebiyat Fakültesi, 1990), 70-71.

[73] Halil Sahillioğlu, "Bursa Kadı Sicillerinde iç ve Dış Ödemeler Aracı Olarak "Kitabu'l-Kadı" ve "Süfteceler"", in *Türkiye İktisat Tarihi Semineri*, (Ankara: Hacettepe Üniversitesi Yayınları, 1975), 123.

### 2.3. The Relationship between Land's Status and Ownership

Ebussuud evaluates Ottoman lands in three categories: *Öşrī*, *Haracī*, and *Miri*/*Memleke* lands. He does not take the ownership of a land as a whole but sees it in pieces as most of the pre-modern thinkers. According to that understanding of ownership, the *rakabe* (literally "the neck", but conceptually "the essence") and the usurfruct of a land are seperate entities which could be owned or hired by separate individuals and corporate bodies. These two (the essence and the usurfruct) were the two most basic claims on a land in the time of Ebussuud but there were more claims than that. In other words, there was a layered ownership understanding in which the properietary rights fragmented throughout each layer, in the conception of Ebussuud.

In order to emphasize its difference, a very coarse analogy (or contrast) can be set between that Ottoman understanding of land ownership and feudal European conception of land ownership. Late medieval European thinkers were taking dominium and imperium of a land separately; and claiming that the merging of the imperium into the dominium of feudal lords created feudality. [74] It was almost the opposite in Ottoman case. While the medieval European concept of dominium denotes an absolute and a wholistic ownership right, Ottoman concept of *rakabe* excludes some proprietary claims. Some proprietary claims of the *rakabe* owner is restricted as it will be mentioned in the next pages. More importantly, the imperium is out of the question. It belonged to the imperial centre as a whole. Only tiny bits of the imperium was lended to a timar (Ottoman military fief) holder. A timar holder collects the taxes[75]; listens some disagreements between farmers and reach a verdict. [76] However, he does not listen a disagreement as a judge, rather he does that as a

[74] Martha Mundy, "Ownership or Office? A Debate in Islamic Hanafite Jurisprudence over the Nature of the Military 'Fief', from the Mamluks to the Ottomans", in *Law, Anthropology, and the Constitution of the Social: Making Persons and Things*, ed. Alain Pottage and Martha Mundy, (New York: Cambridge University Press, 2004), 142.

[75] Two of many examples: "Kadimden her ne alınageldi ise sipahinin hakkıdır." Ebussuud, *Fetava*, Bld. B. 0017, Vol. 1, f. 24a. And; "Verilen behre harac-ı mukasemedir. Sipahinin hakk-ı şerʿisidir." Ibid. f. 22a.

[76] "Mesele: Zeyd tahsil-i ilmde iken bazı kimesnelere tasarrufunu ısmarlayıp, gittiği miri yer üzerine Amr bina eylese, Zeyd hazır oldukta evi kal' ettirmeye kadir olur mu? El-Cevap: Sipahi rayi ile olur zararı sabit ise." and; "Mesele: Zikrolan yeri Amr benimdir diye dava eylese, Amr dahi benimdir diye dava eylese, hangisinin beyyinesi evladır. El-Cevap: Haric beyinesi evladır amma sipahi huzurunda dava olunur." Ibid. f. 25b.

conciliator or as a qasi-notary officer who is responsible of the wellbeing of his office. Moreover, he collects some taxes on his own account but he does that in the name of the state and he needs to provide security for the villages under his responsibility and provide military service for the Empire, in return. Additionally a timar holder does not own these rights. Rather, they were lended to him until his death. If he does not fulfill his responsibilities or treat villagers unjustly, his timar can be taken away from him. He cannot sell, rent, transfer, or bequeath his rights although he uses his rights until his death. Upon death of his father, son of a timar holder takes his father's timar in practice, but that only happens through a renewal of the timar contract. Otherwise a timar cannot be bequeathed in theory. [77]

That Ottoman practice was the form of the administration of *miri* lands. The term of *miri* is actually broken version of Arabic word "*emir*" (leader) and it literally refers to the sultan as a legal entity. Thus, that denotation, indirectly, defines the land as it belongs to the treasury. Ebussuud directly explains that indirect definition in his fatwas:

> Currently *Öşrī* and *Haracī* lands in the hands of the (Ottoman) subjects of Rumelia are being sold, given as security, consigned, loaned and granted. After they (the lands) are sold, practice of pre-emption, through exchange, became a custom of people. Verdicts has been made and the judges has been recording those (verdicts) to their registers. How (true) are the deeds of judges before sharia? Are they (judges' deeds) concurrent with the honourable sharia? And are they compatible with the *Kanun*?
> The Answer: The land in question is neither *öşrī* nor *haracī*. It is *memleke*. In the time of conquest, it was (the land) neither distributed to booty collectors and made *öşrī*, nor it was left to the indigenous people and made *haracī*. Maybe the *rakabe* of the land was withheld for the treasury and it (the land) was given to the possessors in a way of renting. (Possessors) use it (the land) and do agriculture, preserve (it), give fixed and proportional *harac*. The recorded verdicts of consignment and rental are not concurrent with sharia. Sales and purchases (of the land) amongst people are like the sales of resident ones, through renting, in waqf shops. All transactions (on these lands) are void without the permission of timar holder. The money he (the seller) takes is the lump fee of the land. Conceiving the givings and buyings of the subjects as mere sale and

[77] Halil İnalcık, 'Timar', *DİA*, v. 41: 168-173.

puchase and issuing a document is never compatible with the honourable sharia. Even writing it, is void. [78]

Question of the fatwa indicates that there was a suspicion about the status of, and practices on, the lands. The question and the answer together shows that there was a misunderstanding amongst land possessors and judges on the issue. The most striking point in that fatwa is the traces of Ebussuud's mindset while he is explaining the status of the land. He elucidates the issue according to the status of the land in the time of conquest, just like any other pre-Ottoman Hanafi imams. Additionally, according to his idea, if the land was not made *öşrī* or *haracī* during the conquest. It was made *memleke*/*miri*. So *miri* is the default class. In other words, if it is not specifically stated, the land is deemed as *miri*. The essence (*rakabe*) of the land belong to the treasury and the usurfruct (*tasarruf*) was rented out to the farmers. Roots of that practice goes back to very early years of Islam.

The Prophet Muhammad was taking one fifth of the war booty after the conquest as per 41th verse of Al-Anfal chapter of Quran. [79] He did not take that share of booty for himself but for the treasury. That was how the first caliph Abū Bekr restrained the inheritors of the Prophet from inheriting these lands. [80] That was the interpretation of classical Hanafi imams on the deed of the Prophet. [81] When Iraq was conquered by

[78] "Fi zamanına Rum ilinde olan reayanın ellerinde olan arazi-yi öşriyyelerin ve haraciyyelerin bey'i ve rehni ve vediat ve hibesi ve iaresi ve bey' olunduktan sonra şüf'a cari olunması ve istibdal üzere teammül-i nas olup, mukarrer olup, kudat dahi sicillerine kayd ede-gelmişlerdir. I'nde'ş-şerʿ kudat(ın) ettikleri nicedir? Şer-i şerife muvafik mıdır? Ve kanuna harrif midir? El-Cevab: Arz-ı merkum ne öşriyye ve ne haraciyyedir. Arz-ı memlükidir. Hin-i fethde ne reayaya? kısmet olunup öşri kılınmıştır ne ashabına temlik olunup haraciyye sarf kılınmıştır. Belki rakabe-i arz beytü'l-male ihraz olunup, mutasarrıf olanlara icare tariki ile verilmiştir. Ziraat ve hiraset edip, harac-ı muvazzafını ve harac-ı mukasemesini verip, tassarruf eder. Tahrir olunan ahkamın vediası ve ariyeti şerʿi değildir. Nas içinde cari olunan bey' ve şira ve vakf dükkanlara icare ile sakin olanlar(ın) bey' ettikleri gibidir. Ve sipahi izinsiz muamelat külliyen batıladır. Aldığı akçe arzın ücret-i muaccelesidir. Kadı muhassan reayanın verip almasına bey' ve şira itlak edip hüccet vermek asla şerʿ-i şerife muvafik değildir. İnşası dahi batıldır. *Miracü'l-Eyale*, ff. 141b.-142a.

[79] "And know that anything you obtain of war booty - then indeed, for Allah is one fifth of it and for the Messenger and for [his] near relatives and the orphans, the needy, and the [stranded] traveler, if you have believed in Allah and in that which We sent down to Our Servant on the day of criterion - the day when the two armies met. And Allah , over all things, is competent." *Quran*, Al-Anfal, 8/41.

[80] Halil Cin, *Osmanlı Toprak Düzeni ve bu Düzenin Bozulması* (Konya: Selçuk Üniversitesi Yayınları, 1992), 53.

[81] Ebu Yusuf, *Kitabü'l-Harac*, trns. Müderriszade Mehmed Ataullah, ed. İsmail Karakaya, (Ankara: Akçağ Yayınları, 1982), 105.

the second caliph ʿUmar, he did not divide the lands among conquerors for practical reasons. The land was so big that if ʿUmar distribute it among the soldiers, there would be no one left to fight for the army. Moreover, if the lands were given to the soldiers, nothing would be left for next generations. Additionally the landless inhabitants would leave the territory in search for a better life and that would leave the land uncultivated. So ʿUmar returned the lands to their inhabitants. The essence of the land was withheld for the treasury and only the usurfruct was given to the inhabitants. [82] This is the Hanafi interpretation of what caliph ʿUmar did. *Şafi* imams, for example, states that the essence of those lands were in the hands of the treasury just because the soldiers waived their share in the favour of the treasury. [83] According to Hanafi imams, the final decision belongs to the leader. According to that view, ʿUmar interpreted the 6th to 9th verses of chapter Hashr[84] through the concept of *maslahat* (common good of Muslims) and set the status of the lands of Iraq as *miri*. Ebussuud uses that interpretation to explain the nature of Ottoman *miri* lands:

> There is another category that is neither *öşrī* nor *haracī*, as explained. It is called *memleket* (*miri*) land. It is originally *haracī*. But its essence is retained for the treasury because, if it was granted as private property to its possessors, it would be divided among their heirs, and since a small part would devolve on each one, it would be extremely difficult, perhaps impossible, to determine the share of *harac* tax to be paid by each in

[82] Ibid. 109-117; Ahmed b. Yahyâ el-Belâzurî, *Fütûhu'l-Büldân*, trans. Mustafa Fayda (Siyer Yayınları: İstanbul, 2013), 511-512; Mustafa Fayda, *Hulefâ-yı Râşidîn Devri* (Kubbealtı Neşriyat: İstanbul, 2014), 313-314. Ahmed Akgündüz, *Osmanlı Kanunnâmeleri*, vol. 1, 138.

[83] Cengiz Kallek, *İslam İktisat Düşüncesi Tarihi: Harâc ve Emvâl Kitapları*, (Istanbul: Klasik, 2004), 31.

[84] "And what Allah restored [of property] to His Messenger from them - you did not spur for it [in an expedition] any horses or camels, but Allah gives His messengers power over whom He wills, and Allah is over all things competent. And what Allah restored to His Messenger from the people of the towns - it is for Allah and for the Messenger and for [his] near relatives and orphans and the [stranded] traveler - so that it will not be a perpetual distribution among the rich from among you. And whatever the Messenger has given you - take; and what he has forbidden you - refrain from. And fear Allah ; indeed, Allah is severe in penalty. For the poor emigrants who were expelled from their homes and their properties, seeking bounty from Allah and [His] approval and supporting Allah and His Messenger, [there is also a share]. Those are the truthful. And [also for] those who were settled in al-Madinah and [adopted] the faith before them. They love those who emigrated to them and find not any want in their breasts of what the emigrants were given but give [them] preference over themselves, even though they are in privation. And whoever is protected from the stinginess of his soul - it is those who will be the successful."

proportion to the land in his possession. (...) According to opinions of some imams, lands of Sawad of Iraq are in that category. [85]

He explains the application of *öşrī*, *haracī*, and *miri* as following:

> Question: What is *öşrī* and *haracī* lands in the account of honourable sharia? It may be explained in detail and (therefore) good deeds may be acquired.
>
> The Answer: If a leader conquers a country and distribute its lands to the soldiers, or if the indigenous people converted to Islam en masse and the leader leave the land in their hands, that land is *Öşrī*. Because the tax imposed on a Muslim must be in the kind of a prayer. *Harac* is only the obligatory rent. It is not possible to impose *harac* tax on Muslims in the beginning (of the Muslim rule on the conquered land). Immediately *Öşr* is imposed on (Muslims). If the leader conquers that country; neither kills (its people) nor enslaves (them); but places them on their own places; gives the lands (already) in their hands to them (as their property) like their sheep; imposes poll tax (jizya) on them; and imposes tax on their lands, that tax is *harac*. There is no possibility for it to be *öşr*. Because there is a meaning of prayer in *öşr*. An infidel is incompetent for it. Of course *harac* is imposed on. There are two kinds of *harac*. One is fixed (*muvażżaf*) *harac* which is collected in cash once a year. And (the other) one is proportional (*muḳāseme*) *harac* which is imposed on yielded crop in proportion of one tenth or one eighth with regard to the capacity of the land. To the rate of half is lawful if the land is immensely good. These two kinds of lands, which are explained, are both properties of their possessors. Public lands of that country of abundance signs, are are not like those two. They are neither *öşrī* nor *haracī*. But it is *memleket* (*miri*). Its essence belongs to the treasury. Its usurfruct was rented to people by an entitlement document. They (the people) use it and give fixed and proportional *harac* to the timar holder. They are not entitled to selling or owning the land. If they die and their sons are left, they (the sons) use the land like themselves (the fathers). If that is not the case, the timar holder gives the land to another with its *tapu* (entitlement document). That kind of lands become the property of nobody unless the Sultan of Islam grants its ownership. [86]

---

[85] "bir kısmı dahi vardır ki ne öşriyyedir ve ne vech-i meşrûh üzre haraciyyedir, ana arz-ı memleket dirler, aslı haraciyedir, lakin sahiblerine temlik olunduğu takdirce fevt olub verese-i kesire mabeynlerinde taksim olunub her birine bir cüz' kat' döküb (bade't-taksim veresenin her birinin hissesine göre haracları tevzi' ve tayin olunmakda kemal-i su'ubet ve eşkal olub belki adeten mahal olmağın rakabe-i arz beytü'l-mâl-i Müslimin içün alıkonulur. (...) Sevad-ı Irak'ın arazisi bazı eimme-i din mezheblerinde bu kabildendir." *Kanunname-i Cedīd*, Bld., f. 10a.

[86] "Mesele: Bi hasbi'ş-Şer-i'ş-Şerîf arz-ı harâciye ve arz-ı öşriye nedir tafsîlen beyân buyurulub sevâb kazana. El-cevab: İmam bir memleketi feth idüb arazisini gânimine kısmet eylese yahud kable'l-feth ahali umûmen İslam'a gelüb imam arazisini ellerinde ibkâ eylese ol arazi 'öşriyedir, zira Müslim üzerine vaz' olunan vazife ibâdet makûlesinden olmak lâzımdır, harâc ise müennet-i lâzıme-i mahzadır, ibtidâen Müslimîn üzerine harâc vaz' olunmak mümkün değildir, heman 'öşr vaz' olunur. Eğer imâm ol memleketi feth idüb kırmayub ve esir itmeyüb belki yine yerlerinde mukarrer kılub ve (ellerinde olan yerlerini kendülere) sa'îr davarları (ve evleri) gibi temlîk idüb kendülere cizye vaz' idüb yerlerine vazife ta'yin iderse ol vazife elbette harâcdır. 'öşr olmak ihtimali yokdur, zira 'öşrde ibâdet manası vardır, kâfir ana ehil değildir, elbet harâc vaz' olunur, ol dahi (iki nevdir, biri harâc-ı

That fatwa explains a lot, so it was directly taken into the *Kanunname-i Cedid* (new law) which took its last form in 1084/1674. Hanafi discourse is dominant all around the fatwa. During the designation of the land's status upon the conquest, the conqueror Muslim leader's decision is the most crucial factor, just like Ebu Yusuf had interpreted the action of caliph ʿUmar. Suleiman (like other Ottoman Sultans) was not accepted as a *müctehid* (Muslim legal expert who is eligible to express his legal opinion in the face of unprecedented cases) unlike caliph ʿUmar. Therefore Suleiman designated the status of the Ottoman lands through the guidance of imperial legal expert, Ebussuud. According to Hanafi School the leader had three options upon the conquest; (1) distributing the land as any other moveable war booties, (2) returning the land back to its possessors with its essence, and (3) holding the essence for treasury and keeping the possessors as tenants on their former lands. According to Ebussuud Ottoman Sultans opted for the third option for most of the provinces except for Hijaz and Syrian provinces. Another exception was granting the essence of the land by the Sultan as mentioned in the fatwa. Without these exceptional cicumstances, essence of all Ottoman lands belonged to treasury. Sultan, as a legal entity, was holding the essence on behalf of treasury. He was doing that under the role of a trustee of his current and future subjects. The essence did not always lead to an absolute ownerhip right. Even if a person has the essence, there may be still some restrictions on the other ownership claims as it will be seen in the next pages.

There are two theories on the change Ebussuud made in defining Ottoman lands. (1) Martha Mundy argues that the private ownership was at the centre of Kemalpaşazade's mindset, like early hanafite imams. While doing that she does not deny the dominant implementation of *miri* land regime but emphasises the centrality

---

muvazzafdır ki yılda bir mikdar akçe alınur) ve biri harac-ı mukasemedir ki hâsıl olan gallenin 'öşrü müdür semeni midir arzın tahammülüne göre ta'yîn olunur, nısfına değin ta'yîn olunmak meşrû'dur, arz gayet eyu olıcak bu iki nev' arz ki zikr olundu, ikisi bile sâhiblerinin mülkleridir, bu diyar-ı bereket asarın âmme arazisi bunların gibi değildir ne 'öşriyedir ne harâciyedir, belki (arz-ı) memleketdir ki rakabesi beytü"l-mâlindir. Tasarrufu re'âyâya icare tarikiyle tapuya virilmiştir, tasarruf idüb harâc-ı muvazzafını ve harâc-ı mukasemesini sipâhiye virirler, bey' ve temlîke kâdir olmazlar, fevt olub oğulları kalursa kendüleri gibi tasarruf iderler, ve illa sipâhi ahara tapuya virir, bu makûle yerler padişah-ı İslam tarafından temlîk olunmayınca kimesnenin mülkü olmaz." Ibid. f. 4a-b; and also see: Mehmed Fuad Köprülü, 'Osmanlı Kanunnameleri', *Milli Tetebbular Mecmuası*, vol 1, 50-51.

of private ownership as default mode of property in Kemalpaşazade's mentality. According to her depiction of Kemalpaşazade, only in the cases when the owners die out or in the cases when the status of the land during the conquest is unknown, the land comes into the possession of the treasury. Ebussuud changed that by taking the idea of treasury ownership from the beginning, into the centre of his mindset. [87] (2) According to Colin Imber, Ottoman *miri* regime was originated from Byzantine and Seljukid practices therefore it had no connection with the hanafite understanding. In his depiction, Ebussuud harmonised the "two apparently irreconcilable systems" which are namely Ottoman practice and Hanafi doctrine on land. [88]

These two theories reflect some pieces of reality. However, the complete truth appears to be different from both of these theories. Mundy derives her theory from a fatwa of Kemalpaşazade:

> "Memleke lands are the lands which no one knows how they were seized and how they were granted or the owners and statuses of which are not known because the owners had died out. For that reason, they were taken by the treasury. Agents of the Sultan registered these lands and made them *ikta*. They were given to cavalry and non-cavalry in the form of timar. That category is called *miri* land in this realm." [89]

That fatwa of Kemalpaşazade was taken into the Kanunname-i Cedid along with the fatwas of Ebussuud those saw that the status of the lands had been defined as *miri* in the beggining. [90] According to Mundy the basis of the two fatwas of the two successive şeyhülislams should have contradicted with each other, because one takes the private ownership as the origin and the other takes the ownership of the treasury from the beginning as the core. If Mundy is right on the contradiction between the ideas behind both fatwas, it should be admissible to put two such different fatwas in one pre-modern code. However, there is an alternative explanation that solves the

---

[87] Martha Mundy & Richard Saumarez Smith, *Governing Property, Making the Modern State: Law, Administration and Production in Ottoman Syria* (London: I.B. Tauris, 2007), 15.

[88] Imber, *Ebu's-su'ud*, 116.

[89] "Ve arz-ı hân-ı memleket oldur ki hini fethde ne vechle alındığı ve ne vechle virildiği malûm olmayub yahud mâlikleri munkarız olub mechûlü'l-hal ve mechûlü'l-mâlik olmağla beytü'l mâl zabt olunub vukelâ-i sultâni vilâyet yazdıkda iktâ„ eyleyüb bazı sipâhiye ve gayr-ı sipâhiye idrâr-ı tımar -üzre virile. Bu diyarda arz-ı mîrî bu kısma denilür." *Kanunname-i Cedīd*, Bld., f. 7b.

[90] Ibid. f. 9b.-10a.

problem without playing on the imperfection of pre-modern laws. The status of the land was never clearly explained until the sixteenth century because the empire had not felt a strong need for a clear explanation. Kemalpaşazade experienced the difficulty of defining the land for the first time. Therefore he intentionlly left some of his explanation ambiguous. That ambiguity is open to interpretations. And Mundy's interpretation is nothing less than a reasonable one. Nevertheless, the texts before and after Kemalpaşazade weakens the ground under her interpretation. The main texts after Kemalpaşazade are the compilations which were prepared in the same line as Ebussuud's doctrine. Ebussuud's own compilation is being discussed in this chapter and the other compilations are going to be analysed in the next chapter. The only genre on the issue, before Kemalpaşazade, is the province and state registers. There are no mention on the origins of the status of lands in these registers. As a matter of fact, there is no word of "*miri*" in most of these texts. But interestingly the practice of *miri* is applied even its name was not present. The land was called "*öşrī*" but it is treated as "*miri*" in most of the codes, including the code of Hüdavendigar province. [91] Most probably the reason behind that misnaming was the imposition of *miri harac* in the proportion of one tenth (the literal meaning of *öşr*) as Ebussuud would point out decades later. [92]

Most of these codes were regulating *miri* lands. Only in exceptional cases they were touching upon the private property. That might be related to the nature of the registers. Timars were one of the most profitable economic sources for treasury therefore the emphasis was put on *miri* lands more than individually owned *öşrī* and *haracī* lands. Nevertheless, *miri* lands constituted the majority of lands in the empire. The first and only general Ottoman budget (933/1527), that includes the timars, shows that only 12 percent of the lands were waqf and individually owned lands. The

[91] Barkan, *Kanunlar*, p. 3 article 15.

[92] "Ekser arazinin haracları onda bir olmağın avam öşr-i şerʿî sanub, ziyade alınanı zulmen alınur sanup vermemek ile âsi olmazız sanurlar. Hata-yı fahiş-i meşhurdur." *Miracü'l-Eyale*, f. 143a. The same fatwa appears in; Ebussuud, *Risale fi'l-Öşr*, Süleymâniye Manuscript Library, Reşid Efendi, nr. 1036, p. 33b. Quoted in; Abdullah Demir, *Şeyhülislam Ebussuud Efendi: Devlet-i Aliyye'nin Büyük Hukukçusu* (Istanbul: Ötüken, 2006), p. 102 ft. 116.

rest was accepted as the property of treasury (*miri*). [93] Therefore the fatwas of Ebussuud and Kemalpaşazade must be the two pieces of one explanation in the code of 1674. In other words, some of *miri* lands were defined so, because of the extrinsic reasons Kemalpaşazade mentions, and some other were intrinsically defined in that way, as Ebussuud points out. Besides, it is not known for sure whether Kemalpaşazade refers to a specific geography or to the whole empire when he says "That category is called *miri* land in this realm." [94] Surely there are developments and changes within time but the main line should have stayed mostly the same. The change Ebussuud made is more likely to be just in a discursive or explanatory level. If there was a change in the mindset regarding the origins of the treasury ownership as Mundy implied, it must have taken place much before Ebussuud and Kemalpaşazade, due to the aforementioned clues. There is no direct source to back up this theory. Codes written before Kemalpaşazade and Ebussuud does not directly specify the origins of the lands' status. But the existing texts are enough to create an undeniably strong chain of reasoning that leads to this theory. Besides, by considering the aforementioned leads, continuity is more probable than the change, especially when there is no source suggesting the otherwise.

This chain of reasoning indirectly confutes the theory of Imber too. *Miri* land regime was unequivocally implemented from very early years of Ottoman Empire. Imber seeks the roots of Ottoman *miri* in the Byzantine and Seljukid practices. That is a reasonable search. The empire was founded on the legacies of these two empires and some similar practices on land could be found between those empires to some degree. However, repudiating the impact of hanafi doctrine in the origins of the Ottoman *miri* regime is not that convincing. First of all there are no evidence suggesting that Seljukids developed their *miri* system without a connection with the hanafi doctrine. Moreover, hanafite impact on Seljukid canonical law is clear even there is no mention of its effect on the land regime. [95] But still such a dominant

[93] Ömer Lütfi Barkan, "H. 933-934 (M. 1527-1528) Malî Yılına Ait Bir Bütçe Örneği," *İstanbul Üniversitesi İktisat Fakültesi Mecmuası*, Vol. 15, 1-4 (1953-1954), 277.

[94] "Bu diyarda arz-ı mîrî bu kısma denilür" See, footnote 81.

[95] Ali Bardakoğlu, "Hanefî Mezhebi," *DİA*, v. 16: 6-7.

hanafism must have some influence on Seljukid *miri* system. On the Byzantine side of the claim, the quality of Byzantine effect to the formation of Ottoman *miri* system is not that certain. It may be just on a discursive or a linguistic level. It might had no practical role even some words were chosen from Byzantine Greek when defining the Ottoman *miri*. Even that is not the case, that Byzantine impact could be limited to one or a couple of geographies. Mundy's general paradigm, after all, seems more likely to be true under the lights of these information. So as Mundy interprets, this thesis argues that, on the land issues, Ottoman paradigm was always Islamic in its core. The changes were taking within that paradigm. In that sense, Imber's claim seems incorrect because it indirectly says that the Ottoman *miri*, was a non-Islamic practice and Ebussuud "Islamized" it.

## 2.4. Proprietary Rights

### 2.4.1. Farmer

According to Ebussuud, the essence and usurfruct of *öşrī* and *haracī* lands belong to individuals. [96] Lands in Mecca are the *öşrī* [97] and the lands of Damascus and Aleppo are *haracī.* [98] There are no other *öşrī* or *haracī* lands in the scale of a province in the time of Ebussuud. However the essence of private building plots in cities and towns belong to their possessors. [99] Additionally, up to the half decare of land around these plots (*tetimme-i sükna*) was counted as private property. There are no restrictions on ownership rights of individuals on these lands:

> In Rumelia; sale, the act of giving the *miri* land as security, consignation, loan, preemption and exchange of the *öşrī* lands in the hands of the (Ottoman) subjects became a custom of people. And judges are issuing documents (for them). Is that compatible with sharia?

[96] "İkisi bile sâhiblerinin mülkleridir." See: footnote 78.

[97] "Arz-ı öşriyye nevahi-yi kabe-yi muazzamadır." Ebussuud, *Fetava*, Bld., B. 0017, Vol. 1, f. 22a.

[98] "Mesele: Diyar-ı Şam'ın ve Haleb'in arazisi öşriye midir yoksa haraciyye midir? El-Cevap: Haraciyyedir. Hazret-i Ömer zıllullahi teala ı'nde vaz' buyurmuşlardır. Eğerki Kudüs-ü şerif ve sair bilad-i Şamiyyeyi kendileri sulh ile feth etmişlerdir. Ama arazisi sonra emirleri ile Ebu Ubeyde bin Cerrah ve Halid bin Velid ve Şurahbil bin Hasene ve Yezd bin Süfyan radıyallahü teala anhüm eliyle anveten ve kahren iftah olunmuştur. Harac vaz' olunmuştur." Bld., B 0017, f. 26a.

[99] "Şehirler içinde olan yerler mülktür. Sahibi bey'e ve hibeye ve vakfa kadirdir. Fevt olucak cem'î vereseye intikâl eder." Quoted in: Ertuğrul Düzdağ, *Ebussuud Efendi Fetvaları*, 167.

> The Answer: *Öşrī* and *haracī* lands become the property of their possessors. Aforementioned transactions, (plus) inheritance, endowment and bequest prevail. (But) lands of Rumelia are *memleke* lands. They are neither *öşrī* nor *haracī*… [100]

Moreover, in cases when sultan grants the essence of a land to an individual, the land becomes the property of their possessors. [101] *Mevat* (waste) lands could become the property of individuals with the condition of recovering and, again, with sultan's permission. Whether *öşrī-haracī* or *malikane-divani* it is not exactly clear what kind of propety it becomes after their essence was granted in the fatwas of Ebussuud. *Malikane-divani* is an Ottoman practice of a particular type of ownership of the land. The word *malikane* represents the proprietary rights of individuals while *divani* references to the ownership rights of the treasury. [102] In that practice, the individual or individuals as joint partners, hold the essence but its usurfruct was in the hands of treasury:

> Question: Is the intention by "*malikane* of a village" the usurfruct of that land or *öşr* of the crop?
> The answer: None of those. It is the essence of the land. The land is the property of the possessor. *Divani* is the proportional *harac* taken from the land in the proportion of one tenth or one eighth. And the collected thing, in the name of *çift akçesi* (farm tax) is the fixed *harac*. Subjects who harness the land are tenants. One tenth or one eighth is the rent they pay the party of *divani*. [103]

Normally farmers were doing two kinds of payments in that kind of lands. But the fatwa above shows only the payments of taxes and *divani* which is a mixture of tax and rent collected by a timar holder under the authorization of treasury. However, farmers pay the essence owner too:

---

[100] *Miracü'l-Eyale*, f. 142a.

[101] "bu makûle yerler padişah-ı İslam tarafından temlîk olunmayınca kimesnenin mülkü olmaz" See: footnote 78; For a similar fatwa see: Ertuğrul Düzdağ, *Ebussuud Efendi Fetvaları*, 167.

[102] For detailed information on *Malikane-dīvanī* see: Mehmet Genç, "Mâlikâne-Divanî," *DİA*, v. 27: 518-19.

[103] "Mesele: Bir karyenin malikanesinden murad o yerin tasarrufu mudur yoksa öşr-ü hasılı mıdır? El-Cevab: Hiç biri değildir. Yerin rakabesidir. Sahibinin yer mülküdür. Divani ol yerden alınan onda bir yahud sekizde bir harac-ı mukasemedir. Ve çift akçesi diye alınan harac-ı muvazzaftır. Yeri tasarruf eden reaya müste'cirlerdir. Divani canibine onda bir midir sekizde bir midir verdikleri yer ücretidir." Ebussuud, *Fetava*, Bld., B. 0017, Vol. 1, f. 23a.

> Question: In the aforementioned case, if Zeyd the timar holder takes one tenth of the crop of the village as *divani* payment and Amr takes (another) one tenth as *malikane* payment, which one becomes the *öşr-i şerʿi*?
>
> The Answer: If it is the real property of the possessor, if there is all of the provisions of property such as inheritance, sale, grant and so on, it is not possible for another to collect *öşr* of the property. Immediately, *öşr* must be given to the *öşr* collector and no other must intervene. Collection of *malikane öşr* and *divani öşr* proves that the land is originally *haracī*, not the real property of its *malikane* possessors. (Land's *malikane* possessors) imposed a second *öşr* on the farmer subjects. It is given (to the farmers) through the way of defective rental (*icare-i faside*) and said "give one tenth of proportional *harac* to the timar holder". Clime of Rum which is the Amasya and its surroundings is on that way. Allah knows best. [104]

The farmer on the land was in the position of a tenant as it is mentioned in the fatwa. The rental is "defective" because there was no time limit set in the contract, as in the rental of *miri* lands. [105] But that defectiveness was not causing an annulment as long as the farmer delays it by paying the essence owner (*malikane*) his/her periodical rent. Therefore the rental becomes valid until the next period. So, in that way, the defective rental goes by limping and consistently at the same time. *Malikane-divani* practice was most probably a heritage of pre-Ottoman Anatolian Muslim principalities. Otherwise the classical Ottoman attitude was in the favour of increasing the lands owned by treasury. Occasionally the documents of the *malikane* owners were inspected and cancelled in the case of a problem for that reason. [106] In that sense, it is highly probable that the lands granted to the individuals by the Sultan were not in that status.

---

[104] "Mesele: Suret-i mezburede vilayet-i mezkureden bir karyenin mahsülünün Zeyd-i sipahi on danede bir dane divaniyyesin ve Amr dahi on danede bir dane malikanesin alsa, öşrü şerʿi hangisinin aldığı olur. El-Cevap: Eğer sahibinin mülk-ü sahihi olup, mirasdan, bey'den ve hibeden vesair ahkam-ı mülkten cümlesi mevcud ise ahar kimesne öşr-ü malikane almak mümkün olmaz. Heman aşire öşr-ü şerʿi verilip, asla ahar kimesne taarruz etmemek lazım olur. Öşr-ü malikane ve öşr-ü divani almak, delalet eder ki arzın aslı, haraciyye olup, malikane ashabının mülk-ü sahihi olmayıp, mutasarrıf olan reayaya öşrde misl-i ücret tayin edip, icare-i faside tarikiyle verilip, "onda bir harac-ı mukasemesini sipahiye eda edin" diye kavl etmiş olalar. Diyar-ı Rum ki Amasya nevahisidir onun hali bu üslup üzerinedir. Vallahü a'lem." Ibid. f. 26a.

[105] "Zaman-ı tasarrufları tayin olunmamağla icare-i fasîdedir." Mehmed b. Mehmed İmadī, *Kanunname-i Cedīd*, Bld. MC. Yz. K0133, f. 6a.

[106] Genç, "Mâlikâne-Divanî", *DİA*.

The same rental method was implemented on *miri* lands too. But in that lands, farmers pays the rent to the timar holder who represents the treasury's essence ownership on his timar lands. The rent was taken under the name of *harac* which mainly contains a tax meaning. Therefore it is almost impossible to decide which part of the *harac* was rent which part of it was tax. Concepts of tax and rent are so intertwined in the term *harac* that it becomes one of the strongest claims on the land. That will be discussed in the next pages under a separate sub-title.

The farmer pays a one-time entrance fee other than his/her annual payments to the timar holder. That fee is called tapu resmi (tax of title deed). The farmer does not own the land but use it as a rented property. But the initial payment is called in that way. The reason of that obvious misnaming is that it provides some ownership claims to the farmer. In some cases, generally right after the Muslim conquest, that initial payment was not collected in order to assure that farmers stay on their lands and the agricultural income flows to the treasury as stably as possible. That exemption covers only the initial fees which were to be collected right after the conquest. Lands of Buda after the Ottoman annexation, were re-distributed in that way. [107] If the farmer leaves the land in favour of someone else, the new farmer has to pay the initial fee (tapu resmi) to the timar holder. As long as the farmer pays the annual *harac*s, and does not leave the land uncultivated for more than three years without a valid excuse, no one can take the land from the farmer. [108] When the farmer dies, his male inheritors take the land without paying the entrance fee. If the farmer does not have a male inheritor, then the timar holder gives the land to someone else with the entrance fee. The new farmer uses the land with the same claims of the former one, as long as he fulfils the conditions of *miri*. [109]

[107] "...ariyet tarikiyle reayanın tasarruflarında olup..." "... the subjects use it by the way of loan..." Mehmed b. Mehmed İmadī, *Kanunname-i Cedīd*, Bld. MC. Yz. K0133, f. 3b.

[108] "madâm ki araziyi mu'attıl itmeyüb kemâyenbagi zirâ'at ve hırâset ve ta'mîr idüb bî kusur hukukın edâ ideler kimesne dahl ve ta'arruz eylemeye." Ibid. f. 3b.-4a.

[109] "fevt olduklarında oğulları kendiler makamlarına kâim olub tafsîl-i mezkûr üzre tasarruf eyleyeler, oğulları kalmaz ise sâir memâlik-i mahrûse gibi arazileri üslub-ı sâbık üzre hâricden ta'mire kadir kimesnelere ücret-i mu'accele alınub tapuya virile anlar dahi tafsîl-i sâbık üzre tasarruf ideler" Ibid. f. 4a.

As it is seen in Ebussuud's explanation, farmers have some usufructuary rights on the *miri* land, although they do not own it. These rights can be used for a lifetime and can be bequeathed to male inheritors, not to female inheritors. That is not the Islamic law of inheritance. Normally a female inheritor has a share of inheritance in the Islamic law. There is no chance that Ebussuud is unaware of that. As a matter of fact, he applies that rule on the inheritance of moveable properties. However, expecting the application of Islamic law of inheritance, which regulates the inheritance of real properties, on *miri* lands is not a correct approach. That would be a wrong question asked to the right source. Because the legator, here, is neither the owner of the *miri* land nor the owner of the usufructuary rights on the land as a property. The land is not a private property because it was not defined in that way from the beggining. The usufructuary rights is not a private property because it was bound to some conditions (taxes and the obligation of cultivating the land without leaving more than three years of interval) and if the farmer does not meet these conditions, his usufructuary rights could be taken away from him.

A farmer cannot rent out his rights on the *miri* land to someone else. But he can lend or, indirectly, sell his rights on the land to another farmer. [110] Timar holder's consent is prerequisite in either case. [111] The sale of the *miri* land was not permitted. [112] However, in practice, farmers could sell their rights on the land in an indirect way. Ebussuud did not object that transaction because farmers were not selling the *miri* land itself. They were selling their usufructuary rights on the land. The process works as follows: A farmer makes an agreement with a buyer. He leaves his rights on the *miri* land in favour of the buyer (*ferağ*). The buyer pays an amount to the farmer, in return. Additionally the buyer has to pay the entrance fee (tapu resmi) to the timar holder. [113] Ebussuud sees that transaction legitimate because it does not contradict with the principle of treasury's ownership of essence, as long as it happens within the

[110] "Ve vediat ve ariyyet ber hükm icab eylemez. Reaya ona kadirlerdir." *Miracü'l-Eyale,* f. 142b.

[111] "sipahi izinsiz muamelat külliyen batıladır" Ibid. f. 142a.

[112] "Ama bey' ve rehn ve istibdal meşru değildir." Ibid. f. 142b.

[113] "Reaya hakk-ı kararın(ı) alıp, tasarrufundan ferağ eylese dahi sipahisi tapu ile verir." Ibid.

consent of timar holder. In other words, timar holder's consent makes the transaction legitimate in the eyes of Ebussuud, not the mutual agreement between the farmers. It is like the farmer left the land and the timar holder gives it to another with the entrance fee.

Another ownership claim in the lowest layer of the Ottoman *miri* land ownership is the priority right on the purchase of the land. Ebussuud, deliberately avoided calling that right *şüfa* (pre-emption). Maybe because that concept was firmly attached to private ownership, in Islamic terminology, he stressed that pre-emption was not in force on *miri* lands. [114] However, in his fatwas, he recognized some of pre-emptive rights:

> Question: When Zeyd the deceased has no male child left, and the timar holder wants to give the *miri* land he used to others, can his daughter take it by paying the fee of settling (hakk-ı karar)?
> The Answer: His daughter takes it by paying (the amount) others pay. [115]

Here, it should be beared in mind that, on *miri* lands, female inheritors do not have a share from the usurfruct to be inherited, as it was mentioned above. Otherwise, they should had taken the land without doing a payment. Therefore, it is clearly a pre-emptive transfer. The pre-emptive rights on *miri* does not only encapsulate some direct inheritors but also neighboors:

> Question: When the timar holder wants to give it (the land) to another, can sons of the deceased Zeyd's sister take the land by paying what the others pay?
>
> The Answer: If the protected domain (around the land in question) is in the use of sons of his sister (already), the land is given to them in return of the amount which others pay. [116]

---

[114] "Şüf'a dahi cari olmaz." Ibid. For similar fatwas see; Ebussuud, *Fetava*, Bld., B. 0017, Vol. 1, f. 24a. and f. 24b.

[115] "Mesele: Zeyd-i müteveffanın evlad-ı zükuru kalmayıp, mutasarrıf olduğu arz-ı miriyi sipahi ahara vermek diledikte, kızı hakk-ı kararını verip almaya kadir olur mu? El-Cevap: El verdiği ile kızı alır." Ebussuud, *Fetava*, Bld., B. 0017, Vol. 1, f. 25b.

[116] "Mesele: Sipahi ahara tapuya vermek istedikte Zeyd-i müteveffanın kızkarındaşı oğulları el verdiğin verip almaya kadir olur mu? El-Cevap: Harem kızkarındaşı oğulların tasarrufunda ise el verdiği tapu ile onlara verilir." Ibid. f. 25a.

Here, the indirect heirship and neighbourliness are two different pre-emptive rights. When the rights unite in one person, as in that case, his/her pre-emption is prioritised over other pre-emptors'. So why Ebussuud recognized pre-emptive rights but rejected the pre-emption istself? One possible reason is the aforementioned tight connection between private ownership and pre-emption in the Islamic terminology. Another possible reason is that Ebussuud wanted to see the existence of the pre-emptive rights on *miri* lands as the result of a gesture of the sultan. He did not view it as the outcome of self-originated individual rights. Most probably it was for that reason Ebussuud used the expression "If she is commanded in that way." for a farmer:

> Question: Can daughter of Zeyd the deceased, prevent her father's arable field from being given to others, and forcefully take it by paying the tapu fee that others pay?
>
> The Answer: She can, if she is commanded in that way. [117]

From that point of view a farmer's pre-emptive claim on the *miri* land becomes a grace of sultanic authority. If Ebussuud confirmed the concept of pre-emption as an individual's right, then he would limit the authority of treasury on the transfer of *miri* lands. That incomplete pre-emptive practice on the *miri* became a *miri* alternative of pre-emption (*şüfa*) on private lands and it was conceptualised as *rüchan hakkı* (priority right) in time.

Another ownership claim of the farmers was about their private properties on the *miri* land. Ottomans were evaluating the ownership of the land and the ownership what is on the land separately, just like they were separating the ownership of the essence and the usufruct. Farmers could never own the essence of a *miri* land, unless the sultan grants it which is a very exceptional case. However, they could own buildings, trees, and mobile things on *miri* lands: "Buildings and trees in their vineyards and orchards are their freehold properties, they can make use of them however they wish." [118] The farmer could leave the *miri* land, in his use, to someone

[117] "Mesele: Zeyd-i müteveffanın mezrasın kızı ahara tapuya verdirmeyip, el verdiği tapuyu verip cebren almaya kadir olur mu? El-Cevap: Olur. Öyle memur ise." Ibid.

[118] "bağlarının ve bağçelerinin imaretleri kendülerinin mülkleri olub her nice dilerler ise tasarruf ideler" *Kanunname-i Cedīd*, Bld., f. 3b.

else but keep his trees and buildings on the land, or vice a versa. In that case, owner of the tree or building pays a rent (*gölge hakkı*) for the area that his properties overshadow. However, he does not pay this rent to the new farmer on the land but to the timar holder. [119] If a farmer owns trees on a *miri* land that is not in his use, he automatically takes the usufruct of the area his trees embower, because he already pays the rent of these areas. He can grow little plants in that area under his trees. If there is a gap that allows to plough the land between the trees, timar holder can give that land with the tapu fee. However, owner of the trees has a pre-emptive right, in that case:

> Question: If around a field is protected and there are fruit trees all around it, can those shadowed areas judged as property?
> The Answer: It is not possible to be property. But the tree owner uses the ground under his trees, and pays the rent. If he can plough the middle ground, it can be given with tapu. But it is better to give it to the tree owner. [120]

A farmer on a *miri* land could acquire ownership of a tree or a building in several ways. He can buy the tree from an owner. If he plants a tree on a *miri* land in his use, it stays as his property. And the third option is grafting a naturally sprung up sapling. [121] In addition, there are some cases that the farmer does not own the trees on the *miri* land in his use. In those instances, the farmer pays an additional rent for the tree if he wants to pick its fruits. Otherwise timar holder takes all of the fruits. [122] Buildings' ownership claims work a little different. The farmer owns it if he buys the building or he builds it. However, he needs to take the permission of the timar holder before building a structure on the *miri* land.

---

[119] "Mesele: Zeyd mutasarrıf olduğu arz-ı miriyede olan Amr'ın mülk meyve ağaçlarından gölge hakkı ya yer hakkı diye nesne almaya kadir olur mu? El-Cevap: Yer hakkın ya gölge hakkın (olarak meyvenin) tamam sipahiye vericek olmaz. Meyvesinden sipahinin aldığı behre gölgesi düştüğü yerin bedele ecr-i misli olucak, Zeyd'e nesne vermek lazım olmaz." Ebussuud, *Fetava*, Bld. B. 0017, Vol. 1, f. 25a.

[120] "Mesele: Bir tarlanın etrafında harim olup, ve dört etrafında meyve ağacı olsa, gölgesi düşen yeri mülke hükm olunur mu? El-Cevap: Yer mülk olmak mümkün değildir. Ama ağaçların diplerini ağaçlar sahibi tasarruf edip, kulluğun verir. Orta yerine saban vurursa onu tapuya vermek caizdir. Ağaçları sahibine vermek evladır" Ibid.

[121] Ibid.

[122] "Kadim ağaçların hasılın cemian almak mutaddır."/ It is a custom to take all the fruits of (naturally grown) old trees. Ibid. f. 27b.

### 2.4.2. Timar Holder

Timar holder is in a position between being an owner and agent of the public treasury. He acts as an intermediary between farmer who holds the usufruct and treasury which holds the essence of the land. However he has some rights that bring him closer to the ownership. From the first pages of this chapter we already know the timar holder's place in the ownership claims. He rents out the *miri* land, administers it, collects its revenues, and serves as an ombudsman and a notary on some minor agricultural issues in his timar. However, he does not do all these things directly in the name of treasury and he does not send a share from revenue to the centre. Rather, he collects the *miri* revenue for his own account. Moreover, he has an authonomy in choosing who to rent out the land, within the broad field of law. [123] Furthermore, he collects penal taxes such as bail and blood money for the crimes committed in his timar. But he has to share some of those penal taxes with his superiors unless his timar is a *serbest* (free) timar. [124] Together with the role of the timar holder as an ombudsman in timar-related cases, that was a fragment of imperium. The other rights of timar holder was about dominium. And all of these rights were given him as a life-long tenure. Timar holder holds these rights until his death. So the aforementioned rights of the timar holder can be called fragments of the absolute ownership.

Nevertheless, there are some sanctions limiting timar holder's ownership claims. In return of all the aforementioned rights given to him, he must save the treasury from military expenses on his own account. He must join the army in each campaign, must bring an apprentice with him depending on the size of his timar, and must provide his own food and equipments for him, for his horse and for his apprentice. In short, he must not be a financial burden for treasury during the campaigns. Moreover, he must maintain the order in his territory in peace time. That reciprocity principle in timar system, prevent formation of a full ownership right for timar holder. Because when he does not fulfil these imperatives, his timar is taken away from him.

Timar holder has responsibilities for the farmers too. If he over-tax or demand more labour than farmers normally must provide, farmers can initiate an investigation by

[123] "Sipahi kime dilerse verir." Ibid. f. 25a.

[124] Halil İnalcık, "Timar," *DİA*.

complaining to the local judge. If they do not satisfy with the local judgement, they could diretly send a petition to the centre. Timar holder can loose his timar at the end of this process too. In addition to all these precautions, in order to make sure that timar holder does not excessively deepen his control over his timar, it was given him in pieces across one region rather than giving it to him as a whole. [125]

### 2.4.3. Sultan

Fatwas do not directly draw limits to the Sultan on *miri* lands in theory. However, there are some limits in practice. He, nominally, owns the essence of *miri* lands. However, he is not totally free in using that essence. He cannot cultivate or administer all the *miri* lands by himself. So he has to work with farmers and timar holders on the issue. The relation between these two groups and sultan is not in a form of partnership but it is an Ottoman version of social contract. Sultan cannot tighten the strains on farmers or timar holders too much. Because if he does that, maybe the revenues rise in short term, but there is a high possibility of a farmer revolt and devastation, in long term. He has to consider the basic needs of his subjects. However, he cannot loosen his power on these two groups too much. Otherwise, timar holders gain too much power, and this time they revolt against the centre. So sultan is bound by these circumstances, even in the first step. There is a mutual need between farmers and the empire. The farmer needs justice and security those the empire provides and the empire needs revenue which the farmer provides. That antique understanding is formulated as "circle of justice" long before Ebussuud. [126] The Ottomans were well-aware of that formulation and it was re-pronounced by Ebussuud and Suleiman the Lawgiver's contemporary Kınalızade Ali. [127]

---

[125] İnalcık, "Timar," *DİA*.

[126] For detailed information see: İlker Kömbe, "*Adalet Daires*inin Teşekkülü ve Temel Kavramları" (PhD. diss., Marmara Üniversitesi, 2014).

[127] For its relationship with the economy see: Linda Darling, *Revenue-Raising and Legitimacy: Tax Collection and Finance Administration in the Ottoman Empire 1560-1660* (E.J. Brill: Leiden, 1996), 283-299; Its original version is published in: Kınalızade Ali, *Ahlâk-ı Alâî*, prepared by Mustafa Koç (İstanbul: Türkiye Yazma Eserler Kurumu Başkanlığı, 2014), 1090; For Kınalızade's biography, see: Nevizade Atai, *Şakaik-i Numaniye: Hadaik al Hakaik*, ed. Abdülkadir Özcan, (İstanbul: Çağrı Yayınları, 1989), 164-169.

Ebussuud defined the transfer of *miri* land to the farmers as a lending or as a defective rental in most cases. According to Islamic law, the Sultan, as a lender or a defective lease giver, can take back the land anytime he wishes. [128] But that does not necessarily give an unlimited power to the Sultan over *miri* lands, because there are some limitations in practice. There are some conditions specified for a farmer (not paying the rent or tax, and leaving the land empty without a valid excuse for more than three years). Sultan do not (maybe even cannot) take the land back without one of these conditions were met. Because if he does that, without setting a condition, he happens to act arbitrarily. And without a certain guarantee, farmers do not produce well enough. Ebussuud pronounced that limitation on the Sultanic power as following:

> The rent is defective rental because the usage time is not specified. But, according to Sharia, timar holder cannot take the land and give it to another without farmers suspend (farming) the land. [129]

That limitation is strongly connected with the quasi-property rights of farmers on *miri* lands in legislation. Ottoman Sultans could not take away those quasi-property rights of farmers without a rational legal basis. Even if the Sultans had enough legislative power for forcibly taking away those quasi-property rights of farmers, it would be very unlikely to find enough executive power to apply such a radical legal change. Additionally, there was no rational motive for such an effort. In short, there was no sense in making a legislation that cannot be executed. In those circumstances, simply, sanity was another factor limiting sultan's authority on *miri* lands.

Thoretically, if someone takes the role of other claim holders, he comes closer to be a full owner of the land. If a farmer becomes a timar holder, for instance, the only missing piece of the full proprietorship is the legalised possession of the essence. However, the system was based on the distinction between non-tax-payer *askerī* and tax-payer *reaya*. And a timar was never given to the tax-payer reaya. A reverse example is not possible either. A timar holder could not farm his timar by himself

[128] Imber, *Ebu's-su'ud*, 124.

[129] "Zaman-ı tasarrufları tayin olunmammağla icare-i fasîdedir. Amma yeri tâtil itmeden illerinden alub ahara virmekden sipâhi men' olunmağın almağa şerʿen kâdir değildir." *Kanunname-i Cedīd*, Bld., f. 6a.

due to the circumstances: he has to administer his scattered timar regions and he has to go on military campaigns in almost every year. However, there is one mention on actively farming timar holders in the Karaman law dated 935/1528. [130] So those instances would be very exceptional to occur but they could occur in some cases.

### 2.5. Taxation

Taxation is maybe the strongest ownership claim. But it is being evaluated under a separate title due to its importance and because separating the ownership and taxation is more convenient to our modern minds in perceiving the issue. As a matter of fact, ownership and taxation are not that separate in sixteenth century Ottoman land case. In *miri* lands, taxation includes a rent meaning and mixes with that ownership claim. More importantly, lands were named according to the kind of tax to be collected. For instance, *haracī* and *öşrī* are the names of taxes in their origin, and they were used to denote the class of the land. The close connection between ownership and taxation is best symbolised in the term "*tapu resmi*". Meaning of the *tapu* is not certain for 16th century but it means "title deed" in modern Turkish and *resm* means "tax fee". Together they mean "tax of the title deed". That term is not related with the modern title deed. It is used in *miri* lands in which no total ownership is possible. It, rather, refers to the fee of settling or the payment of the farmer for a permanent tenure. Therefore *tapu* indirectly refers to the quasi-proprietary right of the farmer and *resm* undouptedly refers to tax. In short, that case shows how intertwined the concept of ownership and tax are, indeed. Bearing in mind the inseparability of these two concepts, now we can move on to the taxation of Ottoman lands.

The most basic categorisation of the Ottoman land taxes is dividing them into two: the ones contain prayer meaning (zakah) and the ones do not. *Öşr,* sheep tax (*resm-i ganem*) and hive tax (*resm-i kovan*) are the ones contain prayer meaning (zakah). The rest of the land-related taxes do not contain that meaning. However, that does not necessarily mean that taxes do not contain prayer meaning are not Islamic. Islam is not just about prayers. It regulates daily and communal life too. That is why a Muslim state can collect taxes from its non-Muslim subjects. That prayer meaning

[130] "Resm-i Ağnam bilfiil timar tasarruf eden sipahilerden alınmaz." Barkan, *Kânunlar*, 47.

decides what kind of tax is going to be imposed on to the land after the Islamic conquest. If the inhabitants of the conquered lands are Muslim or accepted to be Muslim en masse, and if sultan grants the essence of the lands to them, *öşr* is imposed on the land. In other cases, *harac* is imposed. [131]

There is a very problematic contradiction between the discourse and the definitions of some terms related to taxation in the fatwas. *Öşr* is the most difficult term to solve. It literally means "one tenth". This word is conceptualised from the Islamic version of tithe or alms which contains a purely religious responsibility meaning. [132] *Öşr*, in that meaning, is given to the Muslims who are in need. It is given in kind and in the proportion of one tenth. Above all, it is religiously compulsory for a non-poor Muslim farmer to perform that *öşr*. It cannot be given to a non-Muslim and a rich Muslim. In the Ottoman case, *aşir* (*öşr* collector) collects that original *öşr* as a direct agent of the treasury. [133] That *öşr* with the other religiously compulsory taxes (sheep tax and hive tax) are spent on the good of Muslim community. In most cases that "good" is military and some public expenses. That treasury spending is done in accordance with Quran:

> Zakah expenditures are only for the poor and for the needy and for those employed to collect [zakah] and for bringing hearts together [for Islam] and for freeing captives [or slaves] and for those in debt and for the cause of Allah and for the [stranded] traveler - an obligation [imposed] by Allah. And Allah is Knowing and Wise. [134]

There is no direct reference to that verse in fatwa compilation of Ebussuud. However, his discourse is parallel to that: "Collected *öşr* from there is given to the poor." [135] "*Öşr* must be given to the poor since it is produced in an *öşrī* land." [136] "If

---

[131] See: The fatwa in footnote 78.

[132] "Öşrde ibadet manası vardır." Footnote 78.

[133] "Heman aşire öşr-ü şerʿi verilip, asla ahar kimesne taarruz etmemek lazım olur." See: Footnote 96.

[134] *Quran*, Chapter Tawbah (9), Verse 60.

[135] "Ondan alınan öşr fukaraya verilir." Ebussuud, *Fetava*, Bld., B 0017, f. 21a.

[136] "Arz-ı öşriyyede hasıl olacak öşrün fukaraya vermek lazımdır." Ibid. f. 21b.

the reference is for *öşr-i şerʿi* which is the expenditure for the poor..." [137] He does not explain the exact way in which that original *öşr* is spent for the "poor" but preserves the original meaning of the concept by specifying for whom exactly it must be spent.

Ebussuud names hive/bee tax as *öşr* and sheep tax as zakah. He specifies that a timar holder can collect those prayer meaning containing taxes if he is poor:

> Question: Timar holder collects; one eighth of the crop produced in *miri* lands, money under the name of *resm-i çift* (farm tax), resm-i bennak, resm-i mücerred, resm-i ğanem (sheep tax), resm-i nahl (hive tax) and resm-i tapu (tax of title deed). Are those halal for timar holders?
> The Answer: *Resm-i ğanem* is the zakah of sheep. It is not haram for those (timar holders) who do not have 200 aspers. If he means the *öşr* of honey by *resm-i nahl* (bee tax), it is not haram for the poor (timar holder) either. Other than the tax taken from a non-tax-payer (*müsellem*) who does not have a land, is not haram for even rich (timar holders). [138]

Being poor was the only condition in which a timar holder can collect the original *öşr*. Otherwise, it was not halal for timar holders to collect taxes in prayer meaning. [139] The land around a house up to a half decare (*tetimme-i sükna*) is defined as *öşrī*, as it was mentioned before. Therefore the *öşr* of these lands is the *öşr* in the prayer meaning. That was the reason a timar holder cannot collect the *öşr* of these lands. [140]

In most cases, the word "*öşr*" is used in lieu of proportional *harac* (*harac-ı mukaseme*):

> Does Zeyd, after planting and harvesting wheat on the *miri* land in his possession, and after giving *öşr* to his rich timar holder, Amr, has to give an amount out of the remaining wheat for the poor too?

---

[137] "Öşr dediğinden muradı masraf-ı fukara olan öşr-ü şer-i olup" Ibid. f. 22b.

[138] "Mesele: Sipahinin arz-ı miriyede olan mahsülden aldıkları sümün ve resm-i çift diye aldıkları akçe ve resm-i bennak ve resm-i mücerred ve resm-i ganem ve resm-i nahl ve resm-i tapu sipahilere helal olur mu? El-Cevab: Resm-i ganem, ganemin zekatıdır. İkiyüz dirheme malik olmayana haram değildir. Resm-i nahl dediği balın öşrü ise fakir olana ol dahi haram olmaz. Elinde yeri olmayan müsellemden alınandan gayrısı, gani olanına dahi haram olmaz." Ebussuud, *Fetava*, Bld., B 0017, f. 23b.

[139] "Öşrü fukara ve mesakinin asla sipahiye helal olmaz." / "(Collection of) Poor's *öşr* is not halal for a timar holder." Ebussuud, *Fetava*, Bld., B 0017, f. 24a.

[140] "Mesele: Zeyd arz-ı miri üzerinde olan evlerin fenasında havluları içinde vaki' olan eşcarın hasılından sipahi şerʿen öşre bedel öşr alabilir mi? El-Cevap: Tetimme-i süknadan ise almaz." Ibid., f. 25a.

> The Answer: He does not. *Öşr* he gave is not the "*öşr"*. To call it *öşrī* is the gross deception of the common people. *Miri* lands are all *haracī*. They can never be *öşrī*. The paid share is the proportional *harac*. It is the *şerʿi* right of the timar holder. *Öşrī* lands are the villages of the Great Kaaba. The *öşr* collected from there is given to the poor. [141]

The reason behind the confusion of "common people" was the literal "one tenth" meaning of the *öşr* according to Ebussuud. People were confused because most of the *harac* taken from the lands were in the same proportion with the *öşr*:

> *Harac* of the most of the lands are in the proportion of one tenth so commoners suppose it as *öşr-i şerʿi*. They think the extra proportion taken from them is collected unjustly and by not giving that (extra), (they think) they do not become rebellious. This is a famous gross deception. [142]

Ebussuud, therefore, carefully uses the *öşr* through clarifying its proportional *harac* meaning by saying "They pay the proportional *harac* under the name of *öşr*." [143] Ebussuud seems to be the first şeyhülislam to deal with this popular discursive misunderstanding when his fatwas compared to his predecessor Kemalpaşazade's. It seems Kemalpaşazade had not come across with the same misunderstanding problem which is unlikely be true at the first glance. But after realising that the *öşr* had a much more different meaning in the compilation of Kemalpaşazade, it makes a sense. In Kemalpaşazade's compilation *öşr* is used to denote tax in kind:

> When Zeyd the timar holder demanded the *öşr*, in accordance with the old register, from Amr who possesses a land in the timar of Zeyd the timar holder, he (Amr) does not give it and says "take money in lieu of *öşr*" without any excuse. Is he able to do that?

---

[141] "Zeyd tasarrufunda olan miri yeri üzerine buğday ekip-biçip ağniyadan olan olan sipahisi Amr'a öşrün verdikten baki kalan buğdaydan fukaraya dahi bir miktar nesne vermek lazım olur mu? El-Cevab: Olmaz. Verdiği öşr öşür değildir. Ona öşr demek amme-i nasın galat-ı fahişleridir. Miri yer cem'an haraciyyedir asla öşriyye olmak muhaldir. Verilen behre harac-ı mukasemedir. Sipahinin hakk-ı şerʿisidir. Arz-ı öşriyye nevahi-yi kabe-yi muazzamadır. Ondan alınan öşr fukaraya verilir." Ebussuud, *Fetava*, Bld., B 0017, f. 21a.

[142] "Ekser arazinin haracları onda bir olmağın avam öşr-i şerʿî sanub, ziyade alınanı zulmen alınur sanup vermemek ile âsi olmazız sanurlar. Hata-yı fahiş-i meşhurdur." *Miracü'l-Eyale*, f. 143a. The same fatwa appears in; Ebussuud, *Risale fi'l-Öşr*, Süleymâniye Manuscript Library, Reşid Efendi, nr. 1036, p. 33b. Quoted in; Abdullah Demir, *Şeyhülislam Ebussuud Efendi: Devlet-i Aliyye'nin Büyük Hukukçusu* (Istanbul: Ötüken, 2006), 102 ft. 116.

[143] "Harac-ı mukasemesini öşr adına verirler." *Miracü'l-Eyale*, f. 142b.

The answer: No. [144]

That use of *öşr* is not the invention of Kemalpaşazade. In the register of the province of Hüdavendigar, which is the oldest register of its kind, *öşr* is used in the same meaning. In the twentyfirst article of the provincial law says: "Since the *öşr* collected form orhards and vineyards became burden on the people, *harac* is imposed as a remuneration for *öşr*." [145] In that article the word *harac* is used as a complete opposite of the *öşr* which is in the meaning of "tax in kind". Kemalpaşazade maybe did not deal with the popular misunderstanding about *öşr*. Because, so called *öşr* on *miri* lands was already implemented as *harac*. fifteenth article of the Hüdavendigar law calls the land in a timar, *öşrī*. Moreover, it mentions the seizure of the land if the farmer leaves it empty without an excuse. [146] So it, obviously, was a *miri* land and was misnamed as *öşrī*. Since the taxation was working on its way despite that misnaming, Kemalpaşazade did not bother to deal with that discursive mistake. More importantly, from that perspective, the change that Ebussuud brought was just explaining how the common people misunderstood the *harāc* on *miri* lands and correcting the discourse. It was not about changing the practice itself.

One can argue that changing the discourse on law issues is not that innocent, Ebussuud raised the taxes, and he took farmers' essence ownership by changing the explanation of the lands' status. Even if we accept that this is true, the change is still inside the Islamic paradigm. Both concepts of *öşr* and *harac* are fundamentally Islamic. *Öşr* was conceptualised from hadiths and Quran directly. [147] *Harac* was derived from hadiths [148] and settled with the practice of Caliph ʿUmar. [149] So

[144] "Zeyd-i sipahi tımarı toprağında tarlası olan Amr'dan ber-muceb-i defter-i kadimden alına-gelen öşr-ü mahsül taleb ettikte, Amr vermeyip, hilafına emr varid olmadan "öşr(e) bedel akçe al" demeye kadir olur mu? El-Cevab: Olmaz." Kemalpaşazade, *Fetava*, Bld., f. 5b. For similar fatwas see: Ibid. f. 6a-b.

[145] Barkan, *Kanunlar*, p. 4.

[146] Ibid. p. 3.

[147] Mehmet Erkal, "Öşür," *DİA*, vol. 34: 97.

[148] Cengiz Kallek, "Haraç," *DİA*, vol. 16: 71.

[149] "Harac-ı arz ki Hazret-i Ömer-i Faruk onu vaz' eylemiştir" *Miracü'l-Eyale*, f. 143b.

Ebussuud's discursive turn from *öşr* to *harac* for *miri* lands was not a change from "non-Islamic Turko-Greek practices to Islamic practices". Besides, that was nothing more than a discursive turn, because the amount of tax taken from *miri* lands did not change much, in practice. When the tax collected from *miri* lands was called *öşr*, the total amount was completed to one-eight or one-fifth with the addition of *salariye* (leadership) tax. In the law of Hüdavendigar province it was one-eighth. [150] These two taxes were mostly written together in the codes and were treated as one tax package. In the law of Erzurum province dated 947/1540, (the third year of Ebussuud in the office of Chief Judgeship of Rumelia) that proportion was going up to one-fifth. And when the *öşr* was collected in the proportion of one-fifth, *salariye* tax was cancelled. [151] According to Ebussuud that was an evidence showing that the *öşr* in *miri* lands was actually *harac*. Because, it would be forbidden (haram) to collect more than ten percent, if it had been the original *öşr* from the beggining. [152] So the *salariye* and *öşr* in *miri* lands was the two parts of proportional *harac* in Ebussuud's conception.

On farmers' essence ownership, there are strong clues that it had not been in the hands of farmers before Ebussuud either. First of all, from aforementioned evidence we know that the *öşr* on *miri* lands was not treated as the original *öşr*. Similarly, what was called *öşrī* was not treated as the real *öşrī* either. According to fifteenth article of Hüdavendigar law, a farmer's "*öşrī*" land can be taken from him/her when s/he did not do the *miri* responsibilities of the land.

There is another conceptual confusion between *çift resmi* (farm tax) and fixed *harac* just like proportional *harac* is used interchangeably with so called *öşr*. [153] Normally *çift resmi* was the cash version of the compilation of taxes which farmers pay by doing labour. Muslims who have farms on *miri* lands were paying that tax. Non-

[150] "...öşr ve salarlık alınır. Cümlesi sekiz müd gallede bir müd olup..." / "...*öşr* and *salarlık* is collected. They are one in eight scales of crop in total." Barkan, *Kânunlar*, 3.

[151] "Humus verenler salariye vermezler." Ibid. 65.

[152] "Arazi-yi haraciyyede arazi-yi öşriyye yoktur. Ve illa onda bir alınan behreden gayrı çift hakkı haram-ı mahz olurdu" *Miracü'l-Eyale*, ff. 143a-b.

[153] "harac-ı muvazzafını çift akçesi adıne verip, harac-ı mukasemesini öşr adına verirler" Ibid. f. 142b.

Muslim farmers were paying that tax under a Roman originated-name: *ispençe*. [154] Ebussuud interpreted that tax with its smaller type (*bennak*) as fixed *harac*. [155] Labour version of the tax was not left outside of his interpretation either. [156] The relationship between the concepts of *öşr* and proportional *harac* becomes different from the connection between concepts of *çift resmi* and fixed *harac* on the ownership claims. Proportional *harac* (under the name of *öşr*) contains a "deferred" rental (*ecr-i müeccele*) meaning. That meaning of the proportional *harac* emerges in the explanation of the taxes on *malikane-dīvanī* lands. [157] Nevertheless, fixed *harac* does not contain the "instant" rental meaning (*ecr-i muʿaccel*). *Ecr-i müeccele* and *muʿaccele* are the two kinds of rentals in the Islamic law. Ebussuud interprets another term as the instant rental: "*Tapu resmi* is (…) given in exchange with the benefit of the waqf land. It is the instant rental." [158]

*Resm-i asiyab* (mill tax) is defined separately from the rents of other buildings on the *miri* lands. Most probably this is because mills require special tools and location to fully enjoy the power of water or wind. If the mill on a *miri* land is registered to the timar register, its tax is collected by the timar holder. If it is not registered, *mevkufat emini* (salaried tax collector on *miri* and waqf lands) collects its tax. Ebussuud explains that special condition of mill's tax as following:

> Taxes of non-registered mills assigned to *mevkuf* and they are not given to the timar holder who holds the land of the mill. Because what is

[154] Halil İnalcık, "Raiyyet Rüsumu," *Belleten*, vol. XXII, (1959): 575-610.

[155] "Mesele: Resm-i çift ve resm-i bennak diye alınan akçe helal olur mu? El-Cevab: Resm-i çift ve ekinli bennak resmi helaldir. Meşrudur. Arzın harac-ı muvazzafıdır." Ebussuud, *Fetava*, Bld., B 0017, f. 23b. For a similar fatwa see: Ibid. f. 24a.

[156] "Resm-i çift ve bennak adına olan harac-ı muvazzaftır. Sair reaya elinde olan arazi-yi memleket gibidir. Lakin bunların harac-ı mukasemeleri ve harac-ı muvazzafları mukabelesinde hizmet teklif olunmuştur. Ol hizmeti eda ettikten sonra yerlerinden hasıl olanı nice dilerler ise tasarruf ederler." Ibid. f. 24a.

[157] "*Dīvanī* ol yerden alınan onda bir yahud sekizde bir harac-ı mukasemedir. (...) Yeri tasarruf eden reaya müste'cirlerdir. Divani canibine onda bir midir sekizde bir midir verdikleri yer ücretidir." / "*Dīvanī* is the proportional *harac* taken from the land in the proportion of one tenth or one eighth. (…) Subjects who harness the land are tenants. One tenth or one eighth is the rent (of the land) they pay the party of *dīvanī*." Ebussuud, *Fetava*, Bld., B. 0017, Vol. 1 (985 / 1577), f. 23a.

[158] "Rüsum-u tapu, (...) arz-ı vakfın menafi'i mukabelesinde verilip, ücret-i muacceledir." Ibid., f. 24b.

> assigned to timar holder is the share from the benefit of the land that emerged in the way of plantation. Unlike the benefit of the land, benefit of the mill and (?) do not emerge in the way of plantation. It emerges through the use of means of production. Their taxes, for that reason, are not rendered as *öşr* and estimated according to their conditions. [159]

So the way in which the benefit produced is decisive on deciding who is going to collect the tax. Another reason of the timar holder's unauthorized stance in collecting the non-registered mill's tax must be about productive use of resources. Before granting a timar, its value was estimated according to the land registers. If the mill was not registered, than its tax would be pelf for the timar holder. Most probably Ebussuud conditioned the mill's registration:

> As long as it is not, inseperably included in the timar it resides and not registered as an assignment to the timar holder in the tax register, timar holder who posesses the benefit of the land cannot attain mill's tax. [160]

Ebussuud interprets *resm-i çiftbozan* (tax of farm-deserter) as compensation: "*Resm-i çiftbozan* (...) is the compensation of the loss. It depends on the amount of the loss." [161] That penal tax is collected if the farmer leaves his/her farm on the *miri* land for three years and without an excuse. It changes according to the loss. The loss is determined by the size of the deserted-farm. Timar holder had to find the deserter in order to collect that tax. Since the tax is compensation, this may be well in the borders of the Islamic law.

On taxation of the animals, it is already mentioned that there is a zakah meaning in the hive and sheep tax. However, if we compare them with the land taxes, these taxes must be collected from non-Muslims too. There is no clearer reference to this situation in Ebussuud's fatwas. Nevertheless, there is one fatwa on pig tax. Ebussuud

---

[159] "Haric ez defter-i hadis değirmenlerin rüsumu mevkufa zabt olunup, toprağında vaki olan sipahiye verilmemeye bais budur ki: tımarda hasıl kayd olunup, sipahiye tefviz olunan hukuk-u araziden nebat tarikiyle hasıl olan menafi'in behresidir. Değirmen ve ? ? ? makulesinin menafi'i menafi-i arz gibi nebat tariki ile olmayıp, alat-ı sınaatiye isti'mali ile hasıl olur. Onun için onların rüsumu öşr kılınmayıp her birinin şanına göre takdir olunmuştur." Ibid. f. 26b.

[160] "La cerem her birisi vafi olduğu tımara ilhak olunup, resmi defterde ona hasıl kayd olunmayınca menafi'-i arza malik ve müstehakk olan sipahi onların rüsumuna müstehakk olamaz." Ibid.

[161] "*Resm-i çiftbozan* (...) şer-i şerîfde zarar nemikdâr ise anı tazmîndir." *Kanunname-i Cedīd*, Bld., f. 62a.

sees that tax illegitimate. [162] But it is not exactly clear whether Ebussuud means whether it is illegitimate for timar holder to collect that or it is generally illegitimate to collect that tax. Most of the timar holders were Muslim. And timar holders were not transferring money to the centre but collecting the taxes for themselves and in return, they were serving as a soldier for free. So it is naturally illegitimate for a timar holder to collect that tax. However, the centre could collect that tax by its salaried or contracted tax collectors as in the case of wine tax.

Normally Islamic law does not accept wine as commodity for Muslims and labels it as totally illegal. Keeping, selling and purchasing it is illegal and if a wine barrel of a Muslim is destroyed, it is not compensated. However, Islamic law recognizes it as a commodity for non-Muslims, regulates it accordingly and imposes tax on it. [163] Ebussuud recognizes that too in the code of Salonica and imposes tax on wine. [164] But, it should be kept in mind that treasury collects the wine tax and a Muslim never involves the taxation process as an individual exploiter. So it is highly probable that Ebussuud evaluates the pig tax like the wine tax.

### 2.6. Conclusion

Throughout this chapter, we have seen the change Ebussuud made. That change was the result of a need. Religious appearance of the empire was changed, with the rapid and great conquests of Selim I especially. Selim I did not live long enough to digest that huge territorial expansion. That business was left to his son, Suleiman (the Lawgiver) and his high ranking bureaucrats. Suleiman's şeyhülislams played a key role in that process through functioning as chief juris-consults. Among those şeyhülislams, Ebussuud became prominent by involving the clarification of one of the most basic legal issues: land law.

The thing Ebussuud made was not the formation or codification of Ottoman land law for the first time. It was the re-definition and mostly the explanation of some very basic terms. Ottoman land laws were already codified before, but the old codes were

[162] "Hınzırdan alınan na-meşrudur." / "The tax collected from pig is illegitimate." Ebussuud, *Fetava*, Bld., B. 0017, Vol. 1 (985 / 1577), f. 23b.

[163] Mustafa Baktır, "İçki (İslam'da)," *DİA*, vol. 21: 460.

[164] Akgündüz, *Osmanlı Kanunnameleri*, vol. 6, 637.

not explaining the laws and their origins. They were not giving even a bit more than enough. Rather, they were stating what was needed to make the taxation system work and not giving the rest. Ebussuud's difference appeared exactly at this point. He took one step forward by seriously involving the explanation business.

Land ownership was explained in a layered understanding. There were fragments of ownership in each layer. Treasury, timar holder, and farmers had different shares from the land ownership. Usufruct and the essence were the most basic two subdivisions of the ownersip. The other proprietary claims were connecting the concept of ownership through these two subdivisions. The essence was held by the treasury in the most cases, except the lands of Hijaz, Iraq, some Syriac provinces, some parts of Rum province of Anatolia, and building lots in towns. Usufruct was given to the farmers in the way of life-long lease. Leasing out and taxation right of the usufruct and the essence were given to the timar holders in the way of life-long loan. Laws were limiting the proprietary rights of the farmers and timar holders. The same laws were limiting the rights of treasury due to some practical reasons.

Taxation is held separately because it was one of the strongest reasons of why the lands' statuses were in their current statuses and, at the same time, it was the greatest ownership claim by merging with other proprietary claims: rent, and land's administration. There are some problems between the discourse and the practice on taxes. But these problems never come to a degree of contradiction because these concepts did not have one standard meaning.

are explained by Ebussuud according to the context they come.

The important thing here is that Ebussuud did not invent or Islamize all those understandings by himself. There are some clues that he is a representative of the continuity more than a change. Maybe the reason why we see him in the way we do today, is that he was the first to conceptualise and explain the obvious. The fatwa compilations after him present that continuity and development.

# CHAPTER III

## Legal Continuity in the Time of Crisis

### 3.1. The Context

Fatwas of Ebussuud was the first detailed explanation on the nature of Ottoman lands. That factor alone is enough to present his work as a representative of a big change. However, as mentioned in the previous chapter, that change never reached to the scale of an entire religious mind-set shift. The land law was grown in to a tree from a sapling with help of Ebussuud's works. It was even grafted by Ebussuud. But the stock of the tree had not changed from a pine to oak, for example. It was grown into what its seed had always been. The size, shape and even the type of the tree changed in the time of Ebussuud. From the fatwas of later şeyhülislams, it seems the shape and type of the tree did not change after Ebussuud but the size of the tree continued to grow with the details provided by later şeyhülislams.

Within the century-long period after Ebussuud, territorial expansion of Ottoman Empire continued even if it was at slower rate than the previous century. Ottoman fleet was almost completely destroyed in Lepanto right after the Ottoman conquest of Cyprus. Ottomans recovered from that defeat very quickly but the undefeated image of Ottomans was already lost. Ottomans defeated the allied Habsburg army in 1596 but that did not prevent the Ottoman-Habsburg war to be prolonged until 1606. Time was changing and Ottomans were obviously losing power. Along with that, series of crisis was changing the Ottomans' own attitude towards their past. Janissaries and Sipahis were more frequently uprising, in the capital. Jalali rebellions were terrorising Anatolia and hamstring the agricultural production. Rapid population growth in the middle of the "little ice age" was worsening the situation even further.

Changing military technology was demanding a more monetary economy. Firearms were proliferated which resulted in a need for a more professionalised army. That required a more monetised economy because firearm technology cannot effectively be applied to a direct timar administrator sipahi army. It was effective only with full-time trained soldiers. That resulted in an inflation in the numbers of janissaries which was normally founded as the guardian army of the sultan and which was the only

full-time standing army in the Empire. That inflation made it more difficult to control the army in peacetime. They were growing restless without a war and it was even more difficult to feed the army. Lands from timar regime was transferred to mukataa system and given as iltizam in order to feed the growing professional army in one hand. [165] On the other hand, the treasury was showing a hesitation in transforming timar lands into mukataas because profit margin was decreasing with the involvement of the mültezim as a third party between land and soldiers' payment. For now the centre had to leave an extra security force in the mukataa lands. In timar regime, sipahis were administrating the land and keeping peace and order in timar lands for free. In mukataa lands, a civil contractor (mültezim) was administering the lands and sharing his profit with the treasury. And treasury was paying the central army with that somewhat shared profit. And the police-work in the mukataa lands was becoming an extra expenditure.

Between the economic advantage of timar system and practical need for mukataa regime, treasury was not always able to establish a perfect balance. That dilemma was creating a tension and distrust between janissaries and the treasury. Sometimes, janissary payments could not be done in time, and months of delays were happening in the janissary payments. And sometimes, when the janissaries were paid after months of postponements, they might not get the full amount. Unpaid janissaries were becoming indebted to tradesmen of Istanbul. As long as the janissary payments were postponed, the economic crisis was spreading-down to the tradesmen. When the situation finally became unbearable, janissaries rebelled with the tradesmen's support behind. That factor alone was one of the major causes behind janissary rebellions towards the turn of the seventeenth century.

Within all those crisis, Ottoman statesmen and thinkers tried to define the problem and solve it. Every new crisis they encountered, they looked back to the past for a reference point where everything was working just. The first age they saw was the age of Suleiman. Retrospectively, it was the closest peak for them. In economy, budgetary deficit was minimum, excluding the one-time surplus during the reign of Selim I. Ottoman army had no match in both eastern and western borders of the

[165] Ahmet Tabakoğlu, *Türkiye İktisat Tarihi* (İstanbul: Dergah, 2012), 303-305; idem., *İktisat Tarihi* (İstanbul: Kitabevi, 2005), 209, 248.

empire. The easiest and quickest Ottoman victory over a European force was taken in Suleiman's reign (Mohàcs 1526). In seas, Ottoman navy defeated the armada of European holy league led by Venice and held an undisputable dominance in the Mediterranean throughout Suleiman's reign. The most successful architect (Sinan), poet (Baki), admiral (Hayreddin Barbarossa), imperial secretary (Celalzade) and grand vizier (Sokollu Mehmed) of the Ottoman history all lived in his reign. Outline of the state mechanism in terms of institutionalisation and bureaucratisation was already formed in his reign. In short, Suleiman's reign was seen as the ideal age from almost every aspect. [166] Şeyhülislam of such an ideal ruler became automatically the ideal şeyhülislam in the seventeenth century Ottoman mind. That does not necessarily mean Ebussuud's image as the greatest Ottoman şeyhülislam was solely originating from the idea of golden age. Ebussuud's personal qualifications and achievements were surely behind his later popularity. But the time he lived was one of the major factors behind the Ebussuud's image in the following period too.

We can develop a more realistic approach to the post- Ebussuud şeyhülislam fatwas from that perspective. Land fatwas throughout the century after Ebussuud, was seemingly imitating and elaborating his fatwas whenever it was seen necessary. Fatwa subjects were changing and becoming diversified. But the answers were all being built upon the base Ebussuud had founded. However, that appearance most probably was an illusion. As it was mentioned in the previous chapter, our knowledge on the fatwa before Ebussuud is very limited and some clues suggest that he did not make a big change in the existing mind-set on the land but explained and elaborated on it. So the continuity was a more dominant factor than the change in the Ottoman fatwas on land. In that sense, later land fatwas actually deserve more attention than they normally do in the secondary literature. Ebussuud's fatwas still hold their importance in the explanation part. But that was mostly originating from his good fortune of being the first to explain all these matters in detail. By being the first to pronounce existing Ottoman thought on the lands' definition, Ebussuud

[166] Cemal Kafadar, 'The Myth of the Golden Age: Ottoman Historical Consciousness in the Post-Suleymânic Era' *Süleymân the Second and His Time*, Halil İnalcık and Cemal Kafadar (Eds) (İstanbul: Isis Press, 1993), 37-48.

consumed the subject. For later şeyhülislams there was no need to re-pronounce these in-depth basic thoughts in their own words.

This chapter will touch upon the period between 982/1574 (death of Ebussuud), and 1021/1612 (death of Sunullah Efendi). Within the given timeframe, there are two şeyhülislam monologues and several mixed fatwa compilations. From death of Ebussuud to the time of Sunullah in the office of şeyhülislam, I used one mixed fatwa compilation from Süleymaniye manuscript library. [167] That compilation is compiled from the notes of Boyabadi Sağir Mehmed Efendi (d. 1066/1656) who had been the scribe of şeyhülislam Zekeriyazade Yahya (d. 1053/1644), then in the fatwa councils of şeyhülislam Bahai Mehmed (d. 1064/1654) and Ebu Said Mehmed (d. 1073/1662), then he had become the secretary (Fetva Emini) of Karaçelebizade Abdülaziz (d. 1068/1658) and Hüsamzade Abdurrahman (d. 1081/1670). [168] The compilation contains fatwas of these şeyhülislams and also fatwas of several other şeyhülislams. On the land issues, it contains fatwas of Molla Fenari (d. 834/1431), Kemalpaşazade (d. 940/1534), Sadi Çelebi (d. 945/1539), Ebussuud (d. 982/1574), Hamid Mahmud (d. 985/1577), Malülzade Mehmed (d. 993/1585), Çivizade Mehmed (d. 995/1587), Bostanzade Mehmed (d. 1006/1598), Bayramzade Zekeriya (d. 1001/1593), Hoca Sadeddin (d. 1008/1599), Ebulmeyamin Mustafa (d. 1015/1606), Sunullah (d. 1021/1612), Hocazade Mehmed (d. 1024/1615), Hocazade Esad (d. 1034/1625), and Ahizade Hüseyin (d. 1043/1634). I skipped the fatwas of the first three şeyhülislams in this compilation because there is a long gap between the time of the compiler and these three. That temporal gap causes a probability of unreliability. I ignored the fatwas of Ebussuud in this compilation because of the same reason and also because his fatwas are evaluated in the previous chapter from more reliable contemporary sources. Above all, I skipped the fatwas of first four

[167] Boyabadi Sağir Mehmed Efendi, *Mecmuatü'l-Fetava*, Süleymaniye Manuscript Library, Şehid Ali Paşa, nr. 1067 (18.12.1087 / 21.02.1677).

[168] Ibid. f. 1a. Last three of these şeyhülislams were dead after our compiler. But they all served as şeyhülislams before the death of our compiler which verifies the given information in the introduction of the compilation. In order to cross-check the dates, see; Şeyhi Mehmed Efendi, *Şakaik-i Numaniye ve Zeyilleri: Vekayiü'l-Fuzala*, Abdülkadir Özcan, v. 1, (İstanbul: Çağrı Yayınları, 1989), 252-254, 295-297, 370-371.

şeyhülislams on the list because they fall out of the timeframe this chapter focuses on.

Hoca Sadeddin and Sunullah Efendi are the two şeyhülislams who had enough number of fatwas to form monologue compilations. Among those, the compilation of Hoca Sadeddin does not contain fatwas on land issues with a couple of exceptions.[169] For that reason, his fatwas are not quantitatively enough to form a separate sub-title in this chapter. Sunullah Efendi, however, has enough fatwas on land in his monologue to make a sub-title in this chapter. Therefore, this chapter will evaluate the thirty eight years period by dividing it into two. First the period until Sunullah Efendi in the office of şeyhülislam is going to be handled. Then, land fatwas of Sunullah Efendi will be evaluated in the second part.

### 3.2. The Period until Sunullah Efendi in the Office of şeyhülislam

There are eight şeyhülislams between the death of Ebussuud (d. 982/1574) and the date when Sunullah Efendi became şeyhülislam for the first time (12.3.1008/2.10.1599). None of these eight şeyhülislams had enough number of fatwas to form a collection on their own, with the only exception of Hoca Sadeddin (d. 1008/1599). However, he has just a couple of fatwas on land issues in his collection. For that reason he is taken into this section. Seven of these nine şeyhülislams, including Hoca Sadeddin, have fatwas on the land law in the mixed compilation. However, Müeyyedzade Abdülkadir (d. 1002/1594) is absent in the compilation on the land issues.

Within that twenty five years of period, there was an appearance of instability in terms of şeyhülislams' length of tenure in the office. Normally, şeyhülislams were being appointed until their death. But the longest tenure in the office belongs to Çivizade Mehmed and Bostanzade Mehmed (in his second time) amongst these eight şeyhülislams and they were stayed in the office for just five years at most. Hamid Mahmud (d. 985/1577) and Kadızade Ahmed Şemseddin (d. 988/1580) left the office by their death. However, Malülzade Mehmed (d. 993/1585) resigned after his two years in the office. Müeyyedzade Abdülkadir (d. 1002/1594) was dismissed from the office upon his two years of service. His immediate successor Bostanzade Mehmed

[169] Hoca Sadeddin, *Fetava*, Süleymaniye Manuscript Library, Şehid Ali Paşa, nr. 2728, f. 1b.-112b.

(d. 1006/1598) was dismissed after his three years of service. These three examples show the conjunction of deliberate human action with the change in destabilising the office of şeyhülislam. Short tenures in the office surely meant less effective and less experienced şeyhülislams. Lesser experience in the office make it difficult for şeyhülislams to penetrate into the land law. For that reason there is no great change on the land law in the twenty five years period.

The first fifteen years of that twenty five years of period was an extension of the previous fifty years. Relatives and students of Ebussuud and Çivizade Muhyiddin Mehmed Efendi left their mark on that fifteen years. Then, new rival lines began to be formed in the last ten years of that period.

### 3.2.1. Two Lines of Şeyhülislam Fatwas

In the aforementioned mixed compilation there is only one fatwa of Hamid Mahmud Efendi who was the immediate successor of Ebussuud. And it is exactly at the same direction with Ebussuud's discourse and mentality. By stating "It (the land) should be given under the permission of the timar holder" [170] the fatwa simply repeats Ebussuud's fatwa which says "All transactions (on these lands) are void without the permission of timar holder." [171] This fatwa and the absence of more land fatwas written by Hamid Efendi in the compilation shows that his ideas on the land was very similar to, if not the same with, Ebussuud's. Shortness of his tenure (three years) as şeyhülislam would not have let him to do a considerable change in the system. Besides, most probably he did not even think about changing the system because he was a part of the system. He served as the Chief Judge of Rumelia for almost ten years, when Ebussuud was şeyhülislam. [172] He was actually son-in-law of Çivizade Muhyiddin Mehmed Efendi who was the predecessor of Ebussuud in the office of şeyhülislam. Kemalpaşazade and Ebussuud were representing a mental continuity on some debated issues such as *mesh*, cash waqfs, and the ideas on İbn Arabi. The four şeyhülislams between Kemalpaşazade and Ebussuud, however, were mostly

[170] "Sipahi izni ile vermek gerek" Boyabadi Mehmed Efendi, *Mecmuatü'l-Fetava*, Süleymaniye, Şehid Ali Paşa, nr. 1067, f. 473b.

[171] "Ve sipahi izinsiz muamelat külliyen batıladır." *Miracü'l-Eyale*, f. 142a.

[172] Atai, *Hadaiku' l-Hakaik*, 242-243.

opposing these two, on those debated matters. [173] Among these four şeyhülislams Çivizade was maybe the most vigorous criticiser of the Ebussuud line on these matters. [174] But even as such a controversial figure, he never brought up the land issues. In other words, the land issues never became a subject of a discussion even if the lines of the şeyhülislams were different. From that perspective Çivizade's son-in-law, Hamid Efendi, did not stray away from Ebussuud on the land issues. And he did not find a chance to elaborate on Ebussuud's explanations because of his short tenure as it was mentioned before.

There are three fatwas of Hamid Efendi's successor, Kadızade Ahmed Şemseddin (d. 988/1580), in the compilation. As far as from these three fatwas can be inferred Kadızade found a chance to add some tiny details to the land law unlike his predecessor. However, it should be kept in mind that the source of the difference here is directly the context, not the şeyhülislam's individual mind-set. In other words, new fatwa questions were coming to the şeyhülislam. Even if he answers those new fatwa questions with undetailed short sentences, the fatwa becomes a new detail in the history of Ottoman land fatwas. Usually, that new fatwa does not become a wholly different one when it is compared with the previous land fatwas, in its outcome. Because, generally, the question comes from within the system. So, that is one factor behind the degree of similarity in Kadızade's land fatwas with the previous şeyhülislams.

Two of these fatwas are on farmers' tax payment in cash where it is custom to pay the tax in kind. The last one is on the taxation of two timars after redrawing the timar borders. None of these subjects were unprecedented. But some details of these three cases turned them into new precedent cases for the future. On the first fatwa, farmers agrees with the tax collector of a waqf land to give the tax in cash in accordance with

[173] For the clash of ideas between these şeyhülislams on the perception of İbn 'Arabī see: Ahmed Zildzic, "Friend and Foe: The Early Ottoman Reception of Ibn 'Arabi", PhD diss., (University of California, Berkeley, 2012). Especially see: Part 2, chapter 4, pp. 119-161. For the discussion on cash waqfs see: Jon E. Mandeville, "Usurious Piety: The Cash Waqf Controversy in the Ottoman Empire," *International Journal of Middle East Studies*, 10/3 (1979): 289–308; Tahsin Özcan, *Osmanlı Para Vakıfları : Kanuni dönemi Üsküdar Örneği*, (Ankara: Türk Tarih Kurumu, 2003), 28-50.

[174] Atai, *Hadaik al Hakaik*, 446-448.

the current price of the crop. Next year, when the price raises, they want to turn back to give the tax in kind, instead of paying it according to prices of the last year. Kadızade gives his judgement in the favour of farmers with the condition that if the current year's tax has not been collected yet. [175] The principle of the impossibility of retroaction in deciding the tax amounts, and the semi-autonomous character of the waqf land, here, are not new things. The detail makes that fatwa different is the possibility of changing the way in which the tax on waqf lands is collected, if there is a mutual agreement between the tax collector and the tax payer. The fatwa reveals that, the custom is prevalent when the mutual agreement is broken by one side. The second fatwa, similarly, deals with the change that occurred in the way of taxing *miri* lands. But this time it is out of necessity:

> When Zeyd the timar holder requests the *öşr* of the crop from his subjects, and they are not able to give it, the judge decides the current price (as the tax). Aforementioned subjects did not pay the price for some time. When Zeyd demanded the price, can they say "take the crop"? It be explained.
> The Answer: They can. [176]

The decision of the judge, here, is seen as an official proposed way out for the farmers, not as a verdict which farmers had to act accordingly. When the farmers agree to give the tax in kind again, decision of the judge automatically becomes invalid. So when the necessity disappears, custom remains in force. The last fatwa of Kadızade is simply asking that if the two timar holders can collect the *öşr* of their timars after re-processioning the two timars. In that sense it is the short answer of an obvious question. [177]

Kadızade's successor, Malülzade Mehmed, has respectively more fatwas on land issues than his two predecessors in the compilation. He stayed in the intellectual

---

[175] "Zeyd-i câbî vakfın öşrünü reayadan istedikte "narh-ı ruzu üzere kıymetin verelim" deyip, câbî kabul edip, ba'de zaman kıymeti tereke adına bahaya ettikte, reaya narh-ı sabık üzere akçe vermeyip, "tereke veririz" demeye şerʿen kadir olurlar mı? Beyan buyurula. El-Cevap: Almadı ise kadir olurlar." Boyabadi Mehmed Efendi, *Mecmuatü'l-Fetava*, Süleymaniye, Şehid Ali Paşa, nr. 1067, f. 13a.

[176] "Zeyd-i sipahi reayasında olan öşr-ü gallatı talep edip, vermeye kadir olmadıklarında hakimü'ş-şerʿ narh-ı ruzu üzere kıymetin hükm edip, mezburlar kıymetin biraz zaman vermeyip, ba'de Zeyd kıymetin istedikte, mezburlar Zeyd'e "hasılın al" demeye kadir olurlar mı? Beyan buyurula. El-Cevap: Olurlar." Ibid. f. 13a.

[177] Ibid. f. 13a.

circle of Ebussuud for a long period and became his son in law at the end. [178] Most probably he mastered Ebussuud's clear understanding on land issues due to his intimacy with Ebussuud. Most generally, his fatwas can be evaluated in three classes: fatwas on pre-emptive rights, on the taxation method and on the amount of the tax. As the previous chapter showed, Ebussuud acknowledges pre-emptive rights on *miri* lands during the transfer of the land but does not say anything on the pre-emptive rights after the transfer of the land. It is Malülzade who states the pre-emptive rights cannot be used retroactively:

> When Zeyd dies without a male child, Amr the timar holder gives Zeyd's lands to Bekr the outsider with its tapu. Now, can sisters of the Zeyd say "we pay what the outsider pays" and take the lands in question according to sharia?
> The Answer: They cannot, if he (the outsider) used it (the land). [179]

In other words, once the transfer transpires and the new farmer settles onto the land, all the pre-emptive rights related to the pervious farmer expire. Another fatwa of Malülzade on granting the waqf land to the pre-emptive right holders has more interesting features:

> When Zeyd was alive, he granted the lands in his use to his daughters, Hind and Zeyneb, with the permission of trustee. Can Amr, the tax collector of the waqf (*ʿamil*), take the land from Hind and Zeyneb and give it with the tapu fee after Zeyd dies?
> The Answer: He can. [180]

The fatwa seems in a position of rejecting the pre-emptive rights in the first look. However, it never enters to the paradigm of pre-emption when it is analysed more closely. What rejected here is not the pre-emptive rights but granting the waqf land to the two daughters without paying the tapu fee to the waqf. The farmer cannot give up on what is not his right. Put that in a reverse order, he can only give up what is his right, which is the cession fee in that case. Tapu fee is the waqf's right in that waqf land. Without paying it, the transfer automatically becomes invalid.

---

[178] Atai, *Hadaiku'l-Hakaik*, 281.

[179] "Zeyd fevt olup, evlad-ı zükuru kalmadıkta, Zeyd-i mezburun yerlerini sipahisi olan Amr tapu ile haricden Bekr'e verse, imdi mezkur Zeyd'in kızkarındaşları "biz ahar verdiğini veririz" deyip, merkum yerleri almaya şerʿen kadir olurlar mı? El-Cevap: Olmazlar. Tasarruf etti ise." Boyabadi, *Mecmuatü'l-Fetava*, Süleymaniye, Şehid Ali Paşa, nr. 1067, f. 473b.

[180] "Zeyd hal-i hayatında iken, tasarrufunda olan yerlerini kızları Hind ile Zeyneb'e iştirak üzere marifet-i mütevelli ile verip teslim eylese, Zeyd fevt olduktan sonra, Amr amil-i zikrolan yerleri Hind ile Zeyneb'den alıp tapuya vermeye kadir olur mu? El-Cevap: Olur." Ibid.

Malülzade's following fatwa sheds a light on the transfer process of the land between generations both vertically and horizontally:

> Zeyd grants his piece of land to Amr and Bekr. They use the land with a *hüccet* for ten years in the time of Zeyd. Amr and Bekr use the land for some time more, after Zeyd dies. When Amr dies too, and his share becomes worth tapu, Bekr takes that share by paying its tapu (fee). When Bekr dies too and the whole lot becomes worth tapu, can his other brother, Bişr say "The land belongs to my father. His act of grant is not valid. It descends to me by lineage." and demand the land according to sharia?
> The Answer: He can. [181]

The fatwa shows how a valid granting system works on *miri* lands. The tapu fee, here, does not cause a problem because the *miri* land devolves from fathers to sons without a tapu fee. While the two brothers were jointly using the land, one brother dies and the other takes it by using his joint pre-emptive right originated from his brotherhood and partnership and by paying the tapu fee. For the *miri* land cannot be transferred between the brothers as inheritance. The most interesting part of the fatwa is the emergence and the intervention of a third brother after everything had happened. For some reason, Zeyd did not want to let his third heritor, Bişr, to take a share from the land after he died. So he granted his lands to his two sons before he died. But more interesting part is that the transfer is retroactively broken after the objection of Bişr. However, it is not exactly clear, whether Malülzade is acknowledging Bişr's words partially or completely by saying "he can". But it must be assumed as a full acknowledgement since there is no further explanation. [182] That situation provides a valuable clue on the difference of *miri* lands' transfer between generations from a normal heritage. If the land was the private property of Zeyd, there would be no problem in disinheriting a child. But in *miri* lands it is not totally up to the farmer to decide which child to inherit his proprietary rights on the *miri* land. Because, as it was mentioned in the previous chapter, these rights were seen as granted by the sultan not as something originated from individuals' own birth rights.

---

[181] "Zeyd bir kıta yerini oğulları Amr ve Bekr'e hibe edip, Amr ve Bekr Zeyd'in zamanında hüccet ile yere yere on yıl mutasarrıf olup, Zeyd fevt olup nice zaman yine Amr ve Bekr tasarruf edip, Amr fevt olup yerden hissesi tapuya müstehak olup, Bekr tapu ile alıp, (şüfa) ba'de Bekr dahi fevt olup, cümlesi tapuya müstehak olucak, Bekr'in karındaşı Bişr "yer babam yeridir, hibesi caiz değildir, ırs ile bana intikal eder" diye talep etmeye şerʿen kadir olur mu? El-Cevap: Olur." Ibid. f. 472b.

[182] That thinking is a more Ottoman way in accordance with the famous saying: "Sükut ikrardan gelir." (Silence is originated from acceptance.)

The fatwa does not end here. A further query draws the limits to the judgement: "Would the aforementioned case be still valid, without an imperial order, after fifteen years passed? The answer: It would not." [183] So the fifteen years is the limit to retroactively breaking the invalid land transfer. [184] In other words, it is the limit for prescription.

Malülzade's other fatwas are on the taxation of the lands. His following fatwa shows the difference between waqf and *miri* lands in autonomy of switching between the tax kinds:

> When Amr the tax collector demands *öşr* from the vineyards planted by Muslims on the imperial demesne (*has*) lands after the province cadastre, can people say "The vineyards in the hands of Muslims in the other province was registered as *dönüm*. We give *dönüm* fee too." and not give *öşr*?
> The answer: They cannot, if the land is *öşrī*. [185]

As the fatwa of Kadızade showed, tax can be either collected in kind or in cash if the farmer and the waqf agreed in the waqf lands. But that fatwa of Malülzade shows that there is no such an autonomy in *miri* lands. In many ways Malülzade's that fatwa reminds the mentor of his father-in-law, Kemalpaşazade and his fatwas. The only different thing Malülzade says, here, that the tax cannot be switched from in kind to in cash even if there is an alternative example in other provinces. As long as the imperial decree stays in one way in one province, the taxation of that province does not change.

However, there were some exceptional cases when the circumstances force the two parts and there is no room left for the individual's will. In these cases, the taxation could change for the time being without demanding a royal decree:

---

[183] "Suret-i mezburede onbeş yıl zaman geçtikten sonra bila-emr istima' olunur mu? El-Cevap: Olunmaz." Boyabadi, *Mecmuatü'l-Fetava*, Süleymaniye, Şehid Ali Paşa, nr. 1067, f. 472b.

[184] Haim Gerber, *State , Society and Law in Islam: Ottoman Law in Comperative Perspective* (State University of New York Press: New York, 1994), 91; Uriel Heyd, *Studies in Old Ottoman Criminal Law* (Clarendon Press: Oxford, 1973), 240.

[185] "Vilayet tahririnden sonra havass-ı hümayun toprağında müslümanlar ihdas ettiği bağlardan eminleri olan Amr öşr talep ettikte, "sair vilayet de ehl-i islam elinde olan bağlarda dönüm kayd olunmuştu. Biz de dönüm hakkı veririz." diye öşr vermemeye kadir olurlar mı? El-Cevap: Olmazlar. Arz öşriye ise." Ibid, f. 11b.

> Zeyd the *zeamet* (mid-size timar) holder goes to another province without collecting *öşr* of his timar's crops. That year prices of wheat, barley and miscellaneous grains rises. After people sold all their crops and ate the remaining, Zeyd comes back and demands the value of the *öşr* in last year's (higher) prices. The prices are lower in the current year. Can people say "We give the last year's *öşr* from this year's crops in kind and this year's *öşr* from this year's price (in cash)."?
> The Answer: They can. [186]

The taxation did not turn from in kind to in cash completely in the fatwa. A half way was found by the farmers. If that way was not proposed by the farmers, probably it will all be taken in cash. However, that compulsory circumstance was temporary and it would not last long enough to establish a pattern. For that reason, maybe it is more appropriate to call it as compensating the tax in kind with paying it in cash.

There are only two fatwas of Malülzade's successor, Çivizade Hacı Mehmed (d. 995/1587) in the compilation. And these are on tiny details. He is the son of Şeyhülislam Çivizade Muhyiddin Mehmed Efendi and stayed in the office for five years (1582-1587). During his years in the office he closely involved with political events of his time. [187] Maybe for that reason he did not produce more fatwas on the land issues. These events continued during the time of his successor, Müeyyedzade Abdülkadir (d. 1002/1594) and caused his dismissal. Most probably it was for the same reason that Müeyyedzade could not get involved with the land issues.

An interesting pattern emerges in the succession of şeyhülislams so far. Ebussuud's immediate successor Hamid Mahmud (d. 985/1577) was the son-in-law of Çivizade Muhyiddin Mehmed. Hamid Efendi's immediate successor Kadızade Ahmed Şemseddin (d. 988/1580) was a student of Ebussuud. Kadızade's immediate successor Malülzade Mehmed (d. 993/1585) was the son-in-law of Ebussuud. Malülzade's immediate successor Çivizade Hacı Mehmed (d. 995/1587) was the son of Çivizade Muhyiddin Mehmed. Çivizade's immediate successor Müeyyedzade Abdülkadir (d. 1002/1594) was a student, nephew and the son-in-law of Ebussuud.

[186] "Zeyd-i zaim tımarı mahsülünü ta'şir ettikten sonra dahi reayasından aşarın almadan ahar vilayete gittikte, evvel sene buğday ve arpa ve sair hububat ziyade kıymete çıkıp, reaya cümle mahsüllerini satıp, ve ekl ettiklerinden sonra, Zeyd gelip, evvel senede olan narh üzerinden reayadan a'şarın kıymetini talep ettikte, sonraki yılda ucuzluk olmağın reaya sonraki yılın mahsülünden "evvelki senenin a'şarını ayni ile buğday verip, halen olan narh üzerine kıymetin veririz" demeye kadir olurlar mı? El-Cevap: Olurlar." Ibid.

[187] Atai, *Hadaiku'l-Hakaik*, 292-294.

[188] All that means Çivizade and Ebussuud line occupied the office of şeyhülislam, for fifteen years, after Ebussuud. These names mean nothing for the land law in the first look but when the land fatwas were checked Ebussuud line seems stronger and to have deeper understanding in the land law between these two. But more importantly that means the land law was not an engagement area between two rival ʿulamaʾ lines.

There is no intellectual opposition between the fatwas of these two lines. Moreover, the fatwas work in a full cooperation as far as the fatwas we have are concerned. That shows the ideas of Ebussuud were not even slightly seen as suspicious in terms of their Islamic character. If there would be an opposition for the land fatwas of Ebussuud, it would certainly come from Çivizade line. But it did not.

### 3.2.2. Roots of New Lines

Müeyyedzade's successor Bostanzade Mehmed touches some details more clearly and a little bit further. Bostanzade is the first in becoming a şeyhülislam for the second time after being dismissed. He served two years in his first time (1589-1592) and five more years (1593-1598) in his second time as şeyhülislam. [189] His length of tenure must have allowed him to come across new cases and become more familiar with the land law. But he seems to focus his attention on to the proprietary rights on the *miri* and waqf lands. Because, all of his fatwas on the compilation is on the proprietary rights.

If there are privately owned trees and buildings on a *miri* land, the farmer pays a lot rent (*mukataa*) for the space his trees and buildings cover. These lands called *mukataalı miri* lands. Bostanzade, in his first fatwa in the compilation touches upon that *mukataalı miri* lands:

> Close to a town, there is a garden which is used by *mukataa* for the last forty years. Can the timar holder collect *öşr* from the vegetables produced in that garden?
> The Answer: If it is known as an *öşrī* land, he can. Otherwise it is treated with the old custom. [190]

[188] Ibid., p. 327. Abdülkadir Altınsu, *Osmanlı Şeyhülislamları* (Ankara: Ayyıldız Matbaası, 1972), 41.

[189] Ibid, 410-413.

[190] "Bir şehir kurbunda kırk yıldan beri mukataa ile tasarruf olunan bahçeden hasıl olan sebzevatdan sipahi öşr almaya kadir olur mu? El-Cevap: Arazi-yi öşriyeden idüğü malum ise alır. Ve illa vaz'-ı kadim ile amel olunur." Boyabadi, *Mecmuatü'l-Fetava*, Süleymaniye, Şehid Ali Paşa, nr. 1067, f. 13a.

In that land, the farmer already pays a kind of rent (*mukataa*) for the space his trees cover. The timar holder demands *öşr* for the farmer's vegetables he grows most probably under his trees. In a private property land, the owner would not be able to demand an extra from his tenant as long as the tenant pays the rent. But the timar holder, here, can demand an additional sum for the vegetables grown on the land that its rent was already paid. *Mukataa* surely was a kind of rent, as Ebussuud pointed out in his fatwas. However, that case reveals the difference between the rent and *mukataa* by showing that it was not exactly conceived as the rent and the farmer was not seen as a tenant. That is why it was being called under a different name rather than simple rent and for the same reason the timar holder could demand more than the rent depending on the farmer's produce.

The following fatwa of Bostanzade shows another aspect of how differently the proprietary claims work on *miri* land than private property land:

> When Zeyd died, he left his daughter Zeyneb, his sister Hind and his brother Amr. He also left a farm. Amr took the farm by tapu without letting her sisters know. Then, can Hind and Zeyneb object Amr by saying "We have rights on that farm too" and demand and take a share according to sharia?
> The Answer: If Zeyd had a property on that farm, they demand a share from it. Non-property lands are treated according to sultan's order. [191]

That fatwa is mostly the repetition of Ebussuud's fatwa which recognizes a heritage right to only sons. [192] It is different only in showing the heritage in *miri* and private property land in one fatwa. The daughter and sister could take their rightful heritage shares from properties of Zeyd but they could not take shares from the *miri* land under Zeyd's use. This was not because sharia is not in force on *miri* lands. It was because the land does not belong to Zeyd but to the treasury. The sultan's commands were in force on these lands because he was administering the land of Islam through using the autonomy sharia gives to himself as the ruler.

---

[191] "Zeyd fevt olup, kızı Zeyneb'i ve kızkarındaşı Hind'i ve karındaşı Amr'ı terk edip, mabeynlerinde Zeyd-i mezburun bir çiftliği kalsa, Hind-i mezbure ile Zeynebin haberleri yok iken Amr çiftlik-i mezburu müstakil tapulayıp-alsa, ba'de mezbure Hind ve Zeynep, Amr'a muarıza eyleyip, "bu çiftlikte bizim dahi hakkımız vardır" diye hisse talep edip, almaya şerʿen kadir olurlar mı? El-Cevap: Zeyd'in çiftlikte mülkü var ise ondan hisse talep ederler. Mülk olmayan arazide emr-i sultani nice ise öyle tasarruf olunur." Ibid, f. 472a.

[192] See: p. 37.

Sharia was recognizing certain freedoms for the land owners in administering their freehold properties. Fatwa of Bostanzade lets us to have a glimpse of that freedom:

> People of two villages agreed on non-cultivating and using the land between their villages as pasture. They prepared a document for this agreement. Then some villagers, with the permission of timar holder, wanted to cultivate a piece of land which is inside the borders of their village and far from the other village. Can people of the other village say "we have document" and prevent them (cultivating that land)?
> The Answer: They cannot. [193]

The land in that fatwa is a collective property of the village (*mezraa*) and villagers had a freedom in deciding how to use their own lands. People outside of the village cannot have a word on that land even in the case there was an officialised agreement restricting the way they use their lands.

In the last fatwa of the Bostanzade a new detail on the pre-emptive right of the daughter in waqf lands emerges:

> Zeyd died without a son and Amr the trustee delegated (*tefviz*) Zeyd's waqf pastures to Bekr. But there is a sultanic decree saying "The land should be given to daughters with the tapu fee." Now, can Zeyd's daughter Hind demand and take the pasture by paying what an outsider pays?
> The Answer: She can if she is authorized in that way and if she has not renounce (her pre-emptive right) yet. [194]

Malülzade's fatwa was showing that the pre-emptive right of the daughter could not be used retroactively especially when the new farmer begins to use the land. [195] But in that fatwa, Bostanzade recognized that the daughter could use her pre-emptive right even after the transfer of the land happened. However, no time limit was mentioned in the fatwas of Bostanzade.

---

[193] "İki karye mabeyninde vaki yerler için etrafında olan karyelerin ahalisi ziraat etmeyip, otlak olmak üzere ittifak edip, hüccet ettiklerinden sonra, bazı ehl-i karye, kendi sınırları dahilinde olup, karye-i merkumeden birisiyle baid olan yerleri izn-i sipahi ile ihya edip, ziraat etmek istediklerinde, karye-i uhra halkı kendilerinin sınırında değil iken mücerred "hüccetimiz vardır" diye men'e kadir olurlar mı? El-Cevap: Olmazlar." Boyabadi, *Fetava*, f. 472 a.

[194] "Evlad-ı zükuru olmayan Zeyd-i müteveffanın vakf meralarını Amr-ı mütevelli Bekr'e tefviz edip, lakin "hakk-ı kararı ile kızlarına verile" diye ferman-ı padişahi olucak, halen Zeyd'in kızı Hind el verdiğini verip, mezra-yı mezbureyi talep edip, almaya kadire olur mu? El-Cevap: Olur. Vech-i mezkur memur olucak. Eğer Hind ferağ etmedi ise." Ibid., f. 473b.

[195] See: p. 63.

Bostanzade's both successor and predecessor Bayramzade Zekeriya (d. 1001/1593) puts that time limit in retroactive use of pre-emptive right in his fatwa:

> Zeyd was using a land with his brother Amr as a partner. Then Zeyd sold his share to Bekr under the consent of the timar holder. Zeyd died after Bekr used that land for five years. Now, will Amr be able to demand and take the land that Zeyd gave to Bekr according to sharia?
> The Answer: He cannot. [196]

Here, there was a pre-emptive right between brothers and partners but that pre-emptive right could not be used after five years had passed upon the transfer to an outsider.

However, Zekeriya Efendi recognizes no time limit for retroactively breaking an invalid land transfer:

> There was a land in the use of Zeyd the deceased. For a long time, Amr has been using that land that, without the permission of the timar holder. Will sons of the Zeyd be able to take the land with the permission of the timar holder, according to sharia?
> The Answer: They can. [197]

Ebussuud already stated that a transfer without the permission of the timar holder is invalid. [198] Zekeriya Efendi is just presenting a case for the statement of Ebussuud in that sense, with the addition of retroactive breakability of the invalid transfer.

Rest of Zekeriya Efendi's fatwas in the compilation are on the validity of custom in tax amounts and the unbreakable character of the valid land transfers. Neither timar holders nor inheritors or a third party can break a valid land transfer and Zekeriya Efendi is just presenting details of that obvious matter. [199] On his fatwa about the custom in timar holder's right on the fruits of the naturally grown trees on a *miri* land, he seems to be contradicting Ebussuud.

---

[196] "Zeyd karındaşı Amr ile müşterek mutasarrıf olduğu tarlalardan Zeyd hissesini sipahi marifeti ile Bekr'e bey' edip, Bekr beş yıl tasarruf ettikten sonra Zeyd fevt oldukta, Amr Zeyd'in Bekr'e verdiği tarlayı Bekr'den talep edip almaya şerʿen kadir olur mu? El-Cevap: Olmaz." Boyabadi, *Fetava*, f. 472b.

[197] "Zeyd-i müteveffanın mutasarrıf olduğu yeri Amr izn-i sipahisiz fuzuli nice zaman tasarruf eylese, Zeyd'in evladı zikrolan yeri izn-i sipahi ile Amr'dan almaya şerʿen kadir olurlar mı? El-Cevap: Olurlar." Ibid., f. 471b.-472a.

[198] "All transactions (on these lands) are void without the permission of timar holder." See: The fatwa in p. 24.

[199] See the last three fatwas on: Boyabadi, *Fetava*, f. 471b.

Ebussuud recognizes a full usufructuary right on the naturally grown old trees for the timar holder as it was mentioned in the previous chapter. [200] Zekeriya Efendi, however, seems standing in a different position than Ebussuud in that matter:

> Since old times, users of the land have been harnessing and giving the *öşr* of naturally grown walnut trees in *miri* lands to the timar holder. Is timar holder able to say "I take all the produces against the old custom" for the naturally grown walnut trees in the (*miri*) land Amr uses?
> The Answer: He cannot. [201]

Both of these seemingly contradicted fatwas have a mentality in common that both of them were set according to the custom. So, the apparent contradiction, here, must not be originated from the two different views of the two different şeyhülislams on the matter. It must be originated from different customs in different provinces. Because the different things in those two fatwas were not the ways of thinking, they were the customs.

Bostanzade Mehmed's successor, the famous Hoca Sadeddin (d. 1008/1599, has only three fatwas in the compilation that this section of the chapter uses. Hoca Sadeddin was born and grown in the circles close to the palace and he became the student of Ebussuud. However his connections was strong enough to prevent him coming under the effect of Ebussuud and establish his own line in the history of Ottoman ʿulamaʾ. However, his strong line and close relations with the palace also prevented him to get interested in the land law by allowing him to get involved in much interesting businesses like political power struggles. [202]

All three fatwas of him in the compilation are on the waqf-related land fatwas. His first fatwa is the repetition Zekeriya Efendi's fatwa on the invalid land transfer with a

---

[200] The fatwa was given partially at p. 40. The full fatwa is as follows: "Mesele: Zeyd'in çayırında ve tarlasında dikmesi ve beslemesi olan ceviz ağacından hasıl olanın sipahi öşrünü mü alır? cümlesini mi alır? El-Cevap: Dikmesinin öşrünü alır. Kadim ağaçların hasılın cemian almak mutaddır. / Question: Does the timar holder takes *öşr* or all of the produces of the wallnut tree that was planted and grown by Zeyd in his (*miri*) pasture and land? The Answer: He takes *öşr* from the planted trees. (But) It is a custom to take all the fruits of (naturally grown) old trees." Ebussuud, *Fetava*, Bld., B. 0017, Vol. 1, f. 27b.

[201] "Arazi-yi miriyede hüdayi biten ceviz ağaçlarını kadimden araziye mutasarrıf olanlar tasarruf edip, öşrünü sahib-i arza eda ederler iken, Amr'ın tasarrufunda olan arz-ı miriyede biten hüdayi ceviz ağaçlarının, Zeyd-i sahib-i arz "öşründen ma-'ada cümle mahsülün hilaf-ı vaz'-ı kadim alırım" demeye şerʿen kadir olur mu? El-Cevap: Olmaz." Boyabadi, *Fetava*, f. 13a.

[202] Şerafettin Turan, "Hoca Sâdeddin Efendi," *DİA*, vol. 18: 196-198.

slight difference. Hoca Sadeddin's fatwa is on a waqf land. [203] His second fatwa is on the custom in switching between the tax in kind and tax in cash in waqf lands and just presents a precedent case. [204] His last land fatwa in the compilation, however, presents some interesting aspects of the waqf's proprietary claims on the *miri* land:

> A waqf mill on a *miri* land was completely ruined and there was no sign of the building left. After the (mill's) lot was stayed empty for forty years, the timar holder gave the lot to Zeyd. Zeyd built a new mill on the lot. He has been using the mill and giving its tax to the timar holder for (another) forty years. Now, would Amr be able to restrain the mill for the waqf by saying "there was a legitimate waqf mill on that space in old days"?
> The Answer: He cannot. [205]

That fatwa shows that waqfs could have properties on *miri* lands. That situation was nothing new. In Ebussuud's fatwas it was already accepted that the individuals can have private properties on *miri* lands and there is no restriction in the transactions on their properties, including endowment. [206] Once the immovable properties on the *miri* land was endowed, the corporate body of the waqf holds the ownership of those things just like an individual held before. Ownership of the thing was in the hand of waqf and its lot was in the hands of treasury. This idea existed long before the time of Hoca Sadeddin. However that had not been stated in a fatwa in such clarity. Another important thing that this fatwa partially shows is the prescription of a limit in the annulment of a waqf after its building was ruined. The fatwa does not show the minimum time for that matter but it states that after forty years upon the building became ruined and after an additional forty years of the waqf building's lot was used by a third party, the waqf mill became annulled.

---

[203] Boyabadi, *Fetava*, f. 473b.

[204] Ibid., f. 11b.

[205] "Arz-ı miri üzerinde olan vakıf değirmen bilkülliye harab olup, kat'a eser-i binası kalmayıp, kırk yıl miktarı hali kaldıktan sonra, arz-ı mezkuru sahib-i arz tapu ile Zeyd'e verip, Zeyd dahi arz-ı mezkurda müceddeden değirmen ihdas eyleyip, kırk yıl miktarı tasarruf edip, sahib-i arza resmini eda ederken, Amr "eyyam-ı sabıkta bu mevzide eyyamı meşrut ve vakf değirmen var idi" diye, Zeyd'in ihdas eylediği değirmeni vakf için zabta kadir olur mu? El-Cevap: Olmaz." Ibid., 471b.

[206] See: p. 32.

### 3.3. Sunullah Efendi

The following şeyhülislam, Sunullah Efendi (d. 1021/1612) [207] and Hoca Sadeddin was, in many ways, alike. He was a student of Ebussuud too and he got involved with political power struggles maybe more than Hoca Sadeddin. His father Molla Cafer Efendi was Ebussuud's cousin. [208] So, his lineage and ambition in career was providing him with enough power to stop being under the effect of a great Ebussuud image. He was appointed to the office and dismissed for four times. He played active roles in the military rebellions and politics of the Empire to the cost of getting into power struggles with the grand viziers. [209]

Sunullah Efendi's fatwa collection was compiled by his fatwa secretary and student Yaverizade Mehmed Efendi. And the copy of the compilation that this chapter uses was written in 1111/1700. [210] At the end of the compilation there is a land law issued in 1018/1609 [211] and land fatwas of some other şeyhülislams including Ebussuud and Zekeriyazade Yahya. [212] That indicates that a special care was given to the part of land law when the copy was being prepared. That makes the copy a very valuable one for this thesis. Land fatwas are collected in the two sections of the compilation: the chapter named "Kitabü'z-Zekat (book of zakat)" at the beginning and the chapter named "Kitab-ı İhyaü'l-Mevat ve'l-Arazi (book of the waste -land- and land's recovery)" towards the ends of the compilation.

#### 3.3.1. The Farmer's and the Timar Holder's Proprietary Claims

The first fatwa in the book of zakat shows the difference between the *öşr* in *miri* lands and the *öşr* in private property lands:

---

[207] For detailed information about Sunullah Efendi, see: Mehmet İpşirli, "Şeyhülislâm Sunʿullah Efendi," *Tarih Enstitüsü Dergisi* 13 (1987): 209-256.

[208] Atai, *Hadaiku'l-Hakaik*, 552-558, 136.

[209] Altınsu, *Osmanlı Şeyhülislamları*, 51-53; Atai, *Hadaik al Hakaik*, 552-558.

[210] Cafer Mustafa Sunullah Efendi, *Fetava-yı Sunullah Efendi*, comp. Yaverizade Mehmed Efendi, Süleymaniye Manuscript Library, Hasan Hüsnü Paşa nr. 502, f. 1b.

[211] Ibid., f. 78a.-78b.

[212] Ibid., f. 79a.-80a.

> Question: Will Zeyd be able to not to give *öşr* to the timar holder by saying "I have an exemption paper for the *örfî* taxes, It says that I do not give the *öşr* of the land in my use."?
> The Answer: (If) that is the Islamic *öşr* it cannot be exempted. If it is the *harac* of the land under the name of *öşr*, and if Zeyd is worthy, it can be (exempted). [213]

That fatwa was clearly built upon the basis that Ebussuud had pronounced before. However, one aspect of this fatwa takes one step further in explaining the characters of Ottoman land taxes. If it is the *öşr* in *harac* meaning, it can be exempted by the sultanic law because it was put by the sultan alone in the authority that Islam gives to him. In other words Islam gave him the freedom of choice in collecting *harac* just like a landlord collecting the rent. Landlord may not collect the rent if he wishes and Islam do not force him to collect that rent. The same reasoning operates in the *harac* in both tax and rent meaning. If it is the real *öşr* (in zakat meaning), however, it cannot be exempted because Islam puts it as an obligation for every able Muslim farmer. Each individual Muslim religiously has to pay that *öşr* even if the empire does not demand it. Even if the state wishes to exempt it against all the practical and economical necessities, it is incumbant on the individual as a religious duty.

Rest of Sunullah Efendi's fatwas in the "book of zakat" are mostly repeating older fatwas in new contexts. Majority of Sunullah Efendi's fatwas on land issues are in the chapter named "book of land." That chapter of the compilation begins with an important detail in the right of heritage: "When Zeyd the non-Muslim died, would the lands in his use be transferred to his son, Amr the Muslim? The answer: No." [214] That detail in the transfer of *miri* land from father to son was missing in the fatwas of previous şeyhülislams. The land under the use of a non-Muslim father could not be inherited by his Muslim son. The same rule was in force in the reverse situation too.

---

[213] "Mesele: Zeyd "tekalif-i örfiyeden muaf olmak üzere yedimde muafname vardır. 'Mutasarrıf olduğum tarlanın öşrünü dahi vermeye' diye muafnamede mukayyeddir" diye sahib-i arza öşr vermemeye kadir olur mu? El-Cevab: Öşr-i şerʿidir afv olunmaz. Öşr adına harac-ı arz ise Zeyd müstehak olucak tecviz olunmuştur." Ibid., f. 3b.

[214] "Zeyd-i zımmi fevt oldukta tasarrufunda olan yerleri oğlu Amr-ı müslim'e intikal eder mi? El-Cevab: Eylemez." Ibid. f. 67b.

In his some other fatwas Sunullah Efendi deals with the cases in which there are immoveable properties on a *miri* land. The following fatwa presents a tortuous case on the rights of ownership, where pre-emption and inheritance were entangled:

> Zeyd and Amr planted a vinery and fig sapling in the land that they use jointly. While they had been picking the fruits for three years, Zeyd died without a son. Is the timar holder, Bekr, able to give the land in Zeyd's share to an outsider with tapu?
> The Answer: No. The property is transferred to the inheritors. If there is no inheritor, then it is transferred to the treasury. [215]

So called "property" in that fatwa is not the land. It refers to the trees on it. The *miri* land under these trees could not be given to an outsider because immoveable private properties on a *miri* land procreate a pre-emptive right for their owners. Unlike *miri* lands, a standard Islamic law of inheritance is in force for the immoveable private properties on them. That means there is a whole a lot more inheritors for them when it is compared with the inheritance of *miri* lands which can only be inherited by the sons of male possessors. So the fatwa is referring to the standard crowded group of inheritors when it is saying "the inheritors." If no inheritor is found, then the treasury appropriates the trees and sells them to an outsider. And the new owner of the trees takes the *miri* land under these trees through using the pre-emptive right that the trees provide. So the system works properly in that way.

However, in the cases that the timar holder already has given such a *miri* land to an outsider, the land transfer is not retroactively annulled:

> Zeyd died without a son and the timar holder gave the land in Zeyd's possession to Amr the outsider. Now, inheritors of Zeyd use the fruit trees on the land. Will Amr be able to make the inheritors cut their trees by saying "trees pose harm to the land"?
> The Answer: He cannot. The inheritors pay rent for the harm (their trees pose). [216]

In that case, land's possessor cannot intervene in the rights of the tree owners even there is no space for him to cultivate in that land because he takes a rent for the trees.

---

[215] "Zeyd ve Amr iştirak üzere mutasarrıf oldukları yere bağ ve incir fidanı ğars edip, üç sene miktarı meyvesini ahz ederler iken, Zeyd fevt olsa evlad-ı zükuru olmamağla sipahisi Bekr, Zeyd'in hissesine düşen yerleri tapu ile ahara vermeye kadir olur mu? El-Cevab: Olmaz. Mülk varisine yok ise beytülmale düşer." Ibid.

[216] "Evlad-ı zükuru olmayan Zeyd-i müteveffanın tasarrufunda olan yerleri sipahi haricden Amr'a tapu ile verip yerde olan eşcar-ı müsemmereyi verese-i Zeyd tasarruf eyleseler, ba'de Amr vereseye eşcarın yere zararı vardır diye kal' ettirmeye kadir olur mu? El-Cevab: Olmaz. Verese dahi ? için akçe verirler." Ibid.

In his another fatwa Sunullah Efendi presents an exceptional case for a farmer on a *miri* land, losing his usufructuary right:

> A castle's road was damaged in the days of winter and it is no longer possible to use that road. Will Zeyd be able to stop the ones who trespass on his vineyard close by (the castle)?
> The Answer: If the land was *miri* or the lands around the vineyard was conquered forcefully, it is made road by the order of the ruler. [217]

Normally a farmer was losing his right on the *miri* land in three ways: (1) if he leaves it uncultivated for three years without a valid excuse, (2) if he does not pay the tax or (3) if he deserts the land. So, the case presented in this fatwa is exceptional way of losing the right. However, that is all the fatwa. From then on we lose the track of the story. There is no further sign of whether the farmer is compensated later or not. And if he is compensated for losing his vineyard, the way that is done is unknown in the compilation.

Sunullah Efendi takes one step forward in explaining how the pre-emptive rights were working in his following fatwa:

> Zeyd was jointly using a land with his brother Amr. When Zeyd transfers his share to Bekr with the permission of timar holder, would it be valid?
> The Answer: It would. (But) Amr takes the share if he pays what Bekr has paid. [218]

So *miri* land's transfer is automatically valid without considering the pre-emptive right on it because the transfer can be retroactively cancelled when the pre-emptive right holder wishes to take the land. That shows the understanding, introduced by Bostanzade Mehmed in the retroactive use of pre-emption, [219] preserved its validity until the time of Sunullah Efendi so that he built the fatwa above on that.

Sunullah Efendi's next fatwa sheds light on another aspect of the pre-emptive rights on *miri* lands:

---

[217] "Bir kalenin tarik-i amı eyyam-ı şitada harap olup, ubur ? olmağın, civarında Zeyd'in bağından ubur edenleri Zeyd men'e kadir olur mu? El-Cevab: Yeri miri ise yahud ol kale ve etrafı kahr ile feth olunmuş ise emr-i ulül-emr ile tarik kılınır." Ibid.

[218] "Zeyd karındaşı Amr ile müşa' ve müşterek oldukları yerlerden hisse-i şayiasını sahib-i arz marifetiyle Bekr'e tefviz eylese, tefviz-i merkum sahih olur mu? El-Cevab: Olur. Amr Bekr(in) verdiğini verirse alır." Ibid., f. 68b.

[219] See: p. 69.

> Zeyd died leaving his son Amr and his daughter Hind behind. Amr died too before Hind found a chance to take her share from the trees and the water wheel of the garden under Zeyd's use. Amr did not have a child so his share became worthy for tapu and Hind took the garden from the timar holder with its tapu. Is Bekr, the son of Zeyd's uncle, able to take the garden from Hind by paying the tapu fee she paid?
> The Answer: He is not. If Bekr is entitled to one third of the heritage, he takes in partnership of the trees and of the water wheel in that amount. [220]

Inheritance law of private properties and the inheritance rules of *miri* lands are mixed in that fatwa. When the private properties of Zeyd on the land is concerned, Bekr, along with Amr and Hind, is an inheritor as Zeyd's cousin. When the *miri* land itself is concerned, however, the only inheritor is Amr. When the pre-emptive rights on the *miri* land is concerned after the death of Zeyd, the only pre-emptive right holder was Hind as being the daughter of Zeyd. However, her pre-emptive right could not become valid because there was a male heritor, Amr. Once the land was inherited by Amr, all the pre-emptive rights originated from the kinship of Zeyd became invalid. After the death of Amr, Hind took the land through her pre-emptive right originated from her inherited private properties on the land. But that was not the thing that gave her priority over Bekr because Bekr inherited some properties on the land too. The thing that prioritised Hind against Bekr was her pre-emptive right coming from her brother Amr. That clue show a very important detail on the thinking on pre-emptive rights.

The pre-emptive right on *miri* lands was seen like the inheritance of private properties in terms of priority. In other words, if the deceased has a daughter, no pre-emptive right descends to the other inheritors. If the deceased has no children at all, his brother and if he has no brother, his sister takes the pre-emptive right and the other inheritors get nothing in that matter. However, one question still remains untouched: does the pre-emptive right's inheritance in *miri* lands extend all the way to the last inheritor? Fatwas of Sunullah Efendi do not give any further information in that matter. However, the land law of 1018/1609 attached to the end of his fatwa compilation enlightens the issue by saying that the pre-emptive right descends till to

[220] "Zeyd vefat edip oğlu Amr ve kızı Hind kaldıkta, tasarrufunda olan, bir bostanın dolap ve eşcarından Hind hissesin almadan, Amr dahi vefat edip, evladı olmamakla bostan yeri tapuya müstehak olup, Hind sipahisinden tapu ile aldıktan sonra Zeyd'in ammi oğlu Bekr, Hind'in verdiği resm-i tapuyu verip, Hind'in yedinden almaya kadir olur mu? El-Cevab: Olmaz. Bekr'e hisse-i sülüs intikal ettiyse dolap ve eşcardan yerden ol miktarda şerik olur." Sunullah Efendi, *Fetava*, f. 68b.

the mother of the deceased and the other inheritors cannot enjoy that right. [221] That statement reveals another aspect of the pre-emptive right that it cannot be shared unless the priority levels of the two inheritors are exactly the same, as we will see in the fatwas of later şeyhülislams in the next chapter.

In terms of the proprietary claims of timar holders on *miri* lands, a fatwa of Sunullah Efendi draws a new limit to the timar holder. According to that fatwa the timar holder cannot insist on not to give his permission for a land transfer without a legitimate excuse because he is "not authorized" to do so. [222] That fatwa reveals an important detail on the mind-set behind the Ottoman land system. Long before Sunullah Efendi, Ebussuud was viewing all the transactions without the timar holder's permission as null and void. [223] Because without seeking his permission, the transfer would never be brought to his attention so it would not be registered, the tapu fee would not be paid and more importantly the *miri* land would be seen as a private property. But the aforementioned fatwa of Sunullah Efendi, implies that the timar holder's permission is mostly a formality. In other words, the timar holder cannot abuse that rule regarding his permission in order to undermine the businesses of farmers. He has to permit the land transfers as long as the formal conditions were met. In short, that rule was used as a double-edged knife to limit first farmers' proprietary claims by Ebussuud then to limit timar holders' proprietary claims by Sunullah Efendi.

### 3.3.2. The Sultan's Ownership Claims on the *Miri* Lands

The following fatwa of Sunullah Efendi gives important clues on the sultan's ownership claims on the *miri* lands:

> The country registrar abolished the *öşr* of the lands in Zeyd's use and levied a fixed sum (*mukataa*) instead. Then Zeyd died and the lands are

[221] "Müteveffanın mahlül olan yeri kızına yok ise li-eb erkarındaşına yok ise ol mahalde sakine kızkarındaşına yok ise babasına yok ise validesine. Bunlardan gayrı ekaribine hakk-ı tapu yoktur." Ibid. f. 78b.

[222] "Zeyd transferred the *miri* land under his use to Amr. Would the timar holder be able to become recalcitrant and say "I do not give my permission"? The Answer: He cannot. He is not authorized (to act in that way). / Zeyd tasarrufunda olan arzı Amr'a tefviz ettikte, sahib-i arz, kaydı için inad edip, "izin vermem" demeye kadir olur mu? El-Cevab: Olmaz. Mezun değildir." Ibid., f. 68a.

[223] "Ve sipahi izinsiz muamelat külliyen batıladır." *Miracü'l-Eyale*, f. 142a.

in someone else's use now. In that case, will the timar holder be able to not to collect *mukataa* and say "I take *öşr*"?
The Answer: Without an imperial order, he cannot. [224]

As far as it is understood from that fatwa, it was a custom to collect *öşr* in that specific *miri* land. But that custom was changed by the country registrar who represents some kind of executive power. And the timar holder does not have a freedom of choice in leaving the new practice and returning to the old custom without an imperial order. That shows an important nuance of the concept of custom and its relationship with the sultan's authority on *miri* lands.

Custom, in one way, is the accumulation of the past practices. The rule made by the country registrar who is the current sultan's representative, therefore, is an intervention in the custom. When a new rule was set by the current sultan, it becomes superior to the old custom. As seen in the fatwa, the timar holder has to act according to the new sultanic rule, unless he demands a new rule from the sultan and gets it.

As it is mentioned above, the sultan never tends to leave the safe shores of the custom unless the current circumstances force him to do so. At the turn of the century, when Sunullah Efendi was being appointed and dismissed over and over again, the Empire was suffering from long wars in both eastern and western frontiers. [225] Aforementioned need for more professionalised army, emerged during these long wars, so the necessity of a more monetised economy, related to that issue. [226] These long and expensive wars forcing the sultan to take extreme measures to the price of forcing the flexibility of tradition regarding the administration of lands. For a better exploitation of resources, taxes of some *miri* lands in kind were turned to in cash.

---

[224] "Muharrir-i vilayet Zeyd'in tasarrufunda olan yerlerin öşrünü kaldırıp, mukaataa bağlasa ba'de Zeyd vefat edip, yerleri ahar tasarruf ederken sahib-i arz zikr olunan yerlerden mukaataa almayıp, "öşr alırım" demeye kadir olur mu? El-Cevab: Olmaz. Emri olmayıcak." Sunullah Efendi, *Fetava*, f. 68a.

[225] Virginia Aksan, 'War and Peace', *Cambridge History of Turkey: The Later Ottoman Empire (1603-1839)*, ed. Suraiya N. Faroqhi, Vol. 3 (Cambridge: Cambridge University Press, 2006), 90-95; For the long wars in the eastern front see: Bekir Kütükoğlu, *Osmanlı-İran Siyâsî Münâsebetleri (1578-1612)*, (İstanbul: İstanbul Fetih Cemiyeti, 1993), 276-277; Özer Küpeli, *Osmanlı-Safevî Münasebetleri (1612-1639)*, (İstanbul: Yeditepe, 2014), 52-56.

[226] Halil İnalcik, "Military and Fiscal transformation in the Ottoman Empire, 1600–1700," *Archivium Ottomanicum*, 6 (1980): 283–337.

The case above was most probably emerged according to that need of Empire for cash.

The following fatwa of Sunullah Efendi shows the change in the mind-set on the imperial priorities regarding the exploitation of *miri* lands:

> The vineyards planted on the *miri* lands were ruined. Their lands stayed uncultivated for fifteen years. When the timar holder wants to give the land to others with its tapu and wants it to get cultivated, would people of these vineyards be able to say "we do not let outsiders to use these lands"?
> The Answer: If it is *mukataalı*, and they pay it year by year, they can, otherwise they cannot. [227]

Normally the rule for *miri* lands was that a farmer loses his land if he leaves it uncultivated for three years. In *mukataalı miri* lands that period seems 15 years after the trees are ruined. But in that fatwa the farmers do not lose their lands as long as they pay their in cash taxes (*mukataa*) even if they do not cultivate the land.

That change was eliminating a serious limitation in the proprietary claims of farmers. Now there is one less factor limiting the ownership claim of the farmer at least for the *mukataalı miri* lands. Following two fatwas of Sunullah Efendi show that the farmers of *mukataalı miri* lands was not losing their lands even when they do not pay their cash taxes:

> Zeyd used a waqf land with *mukataa* for three years and did not pay the *mukataa* for these three years. Is Amr, the trustee of the waqf, able to take the land from Zeyd and rent out it to someone else?
> The Answer: If it is not the forbidden land, he can.
> What kind of land is the forbidden one?
> The Answer: It is the land that belong to the treasury and on that land, there is a sultanic decree saying "It must not be taken from those who use it with *mukataa*". [228]

---

[227] "Arazi-yi miriye üzerine mağrus olan bağlar harab olup, yerleri onbeş sene miktarı muattal kalıp, sahib-i arz tapu ile ahara verip, ziraat ettirmek istedikte, bağların ashabı, "biz ahara tasarruf ettirmeziz" demeye kadir olurlar mı? El-Cevab: Mukaataalı olup, sene be sene eda ederlerse olurlar, değil ise olmazlar." Sunullah Efendi, *Fetava*, f. 69a.

[228] "Zeyd mukataa-i malum ile mutasarrıf olduğu vakıf mezrası tamam üç yıl mutasarrıf olup, müddet-i mezburede vaki olan mukataasını canib-i vakfa eda eylemese, mütevelli-i vakf olan Amr mezra'-ı mezburu Zeyd'den alıp tapu ile ahara icar etmeye şerʿen kadir olur mu? El-Cevap: Memnu' olan araziden değil ise olur. - Memnu' olan arazi ne makule arazidir? El-Cevap: Arazi-yi beytülmalden olup, "mukataa ile mutasarrıf olanların elinden alınmaya" diye emr-i sultani varid olan arazidir." Boyabadi, *Fetava*, f. 471b.

That is a very important development for the proprietary claims of the farmer. However, it seems that as long as the sultanic decree stays in force for these *mukataalı miri* lands, the timar holder no longer has a proprietary claim on these lands and it also seems that it is totally up to the conscience of the farmer whether giving the *mukataa* or not. However, it is not exactly known whether the timar holder has another coercive power on the farmer to make them pay their land rent or not. The timar holder must have that power because without it, there would be nothing that connects him to the *mukataalı miri* lands. In that case it would be meaningless to talk about the timar holder in the fatwas on *mukataalı miri* lands.

Above all these two fatwas must be born out of the context that Jalali rebellions had created and the sultanic decree which declares the land as "forbidden" must be temporary and to be changed as soon as the context changes. Clearly the decree was issued as an incentive for the villagers not to desert their lands. In other words that was an exceptional case in which there was a necessity.

Another important contribution of the two fatwas above are their outloud statement of what had been hidden under the discourse of previous şeyhülislams' fatwa compilations. The first fatwa presents the decision of Sunullah Efendi with a condition of not being a forbidden land. In the second fatwa, the forbidden land and, indirectly, the first fatwa is explained according to a sultanic decree. These two fatwas, together, show that the imperial decrees were used as one of the main sources of the fatwas on *miri* lands. As the owner of *miri* lands and in even the cases he is not seen as the owner, sharia gave autonomy to the sultan in administrating these lands. [229]

### 3.4. Conclusion

In the thirty-eight years period after Ebussuud, there is no change in the mind-set or in the discourse of land fatwas because of several reasons. A considerable change was happened, however, in the introduction of new cases, explanation of some topics and elaboration of the older rules. A diversification was observed in the subjects of the land fatwas of that period. These new details allow us to enlighten the points left

[229] See: pp. 67-68.

in the dark in the fatwas of Kemalpaşazade and Ebussuud in one hand. On the other hand, they let us to follow the new rules which were put by the sultan.

Among the twelve şeyhülislams in the thirty-eight years period Müeyyedzade Abdülkadir (d. 1002/1594), Hocazade Mehmed (d. 1024/1615) and Ebulmeyamin Mustafa (d. 1015/1606) have no land fatwas. Rest of them were not able to specialize in the land law because the office was mostly unstable in that period. They were easily being dismissed and the political context of the time could not put up with politically neutral şeyhülislams. So they were getting busy with political affairs which was one of the major causes of their dismissals and that creates a dilemma. The later decades were not more politically stable but, at least, tenures of şeyhülislams began to be extended. So they were able to specialize in the land law more than the şeyhülislams in that thirty-eight years period.

# CHAPTER IV

## Impact of Zekeriyazade Yahya Efendi

### 4.1. The Context after the 1610s

As it was mentioned in the previous chapter, the next decades were not politically more stable than the older period. As a matter of fact, politically and socio-economically later years of the seventeenth century were even worse. The first regicide in the Ottoman history took place as a result of such janissary rebellion in 1622 and created centuries-long trauma which overshadowed other serious crises in the social memory. three şeyhülislams were killed within the century. [230] Ottoman dynastic succession system changed with the abolition of fratricide. Many ʿulamaʾ died during the incident of Fatih mosque in 1623. Throughout the century, kadızadeli ʿulamaʾ and preachers charged some sufi groups, blaming them with heresy. The movement both mentally and phsically affected Ottoman capital with fluctuations until the stable environment created under the rule of Köprülü viziers during 1670s. [231]

Tenures of the şeyhülislams were greatly fluctuating in that period. Within the 66 years between 1608 and 1774 there were 17 şeyhülislams. Four of them held the office for about 47 years in total. The other 13 şeyhülislams in the period shared the remaining 19 years among them. Longest four tenures belonged to the Hocazade Mehmed (7 years), Hocazade Esad (9 years), Zekeriyazade Yahya (19 years), and Minkarizade Yahya (12 years). Among these şeyhülislams Zekeriyazade Yahya has a special place. He was at the top positions in the ʿulamaʾ hierarchy since 1605 when he was appointed as the chief judge of Rumelia. He was the second şeyhülislam in

[230] First one is Ahīzade Hüseyin Efendi (d. 1043/1634) for his biography see: Atai, *Hadaiku'l-Hakaik*, pp. 755-757; the second one is Hocazade Mesud Efendi (d. 1066/1656) his biography: Şeyhi, *Vekayiü'l-Fuzala*, 237-239; and the third one is the Seyyid Feyzullah Efendi (1115/1703) his biography: Ibid. v. 2-3, 247-249.

[231] Madeline Zilfi, 'The Kadizadelis: Discordant Revivalism in Seventeenth-Century Istanbul', *Journal of Near Eastern Studies*, 45/4 (1986), 251-269; Madeline Zilfi, *The Politics of Piety: The Ottoman Ulema in the Postclassical Age (1600-1800)* (Minneapolis 1988), 129-181; Semiramis Çavuşoğlu, 'The Kadizâdeli Movement: An Attempt of Şeriat-Minded Reform in the Ottoman Empire', Ph.D. Diss. (Princeton University, 1990).

terms of the length of tenure after Ebussuud. His personal network was encompassing almost all the century in and he left his mark on the promulgation period of *Kanunname-i Cedid* (1084/1674) even after his death. Great majority of the fatwas in that *kanunname* belong to him. Another big group of fatwas belong to Bahai Mehmed Efendi who was in the close circles of Yahya Efendi.

Promulgation of *Kanunname-i Cedid* was not the only legal activity that took place in 1670s. Abdi Abdurrahman Paşa (d. 1103/1692) wrote a law book on protocol and organisational affairs of the Empire in 1676. [232] More importantly, Hezarfen Hüseyin Efendi (d. 1103/1691) wrote his famous Telhisü'l-Beyan around 1675 and dedicated it to his patron Vişnezade İzzeti Mehmed Efendi who was the nephew of Zekeriyazade Yahya Efendi. [233] That shows the impact of Yahya Efendi in the land legislation extend beyond his land fatwas, his lifetime and *Kanunname-i Cedid*.

As a matter of fact, Yahya Efendi's active years in seventeenth century Istanbul (1605-1644) were coincided with an age of *kanunname*s written by individuals. Defter-i Hakani Emini (Head officer of the imperial archives) Ayn-ı Ali Efendi compiled all the existing land *Kanun*s in his work called *Kavanin-i Al-i Osman der Hülasa-i Mezamin-i Defter-i Divan* in 1607 and presented it to the Grand Vizier of Ahmed I, Kuyucu Murad Paşa. [234] This work was first of its kind in terms of its scope and volume. Ali Efendi compiled a second *kanunname* two years later (1609) on the payments of janissaries and presented it to Kuyucu Murad Paşa, again. [235] Town judge Üskübi Pir Mehmed Efendi (d. 1020/1611) compiled the land fatwas of previous şeyhülislams as well as his own in his work named *Zahirü'l-Kuzat*. [236]

---

[232] Abdi Abdurrahman Paşa, "Teşrifat ve Teşkilat Kanunnamesi," *Milli Tetebbular Mecmuası*, Vol. 1, Issue 3 (1331/1913): 496-544.

[233] Hazerfan Hüseyin Efendi, *Telhîsü'l-Beyân fi Kavânîn-i Âl-i Osmân*, ed. Sevim İlgürel (Ankara: Türk Tarih Kurumu, 1998), 13-14; 37-38.

[234] Aynî Ali Efendi, *Kavanin-i Al-i Osman der Hülasa-i Mezamin-i Defter-i Divan*, published by Tayyip Gökbilgin (İstanbul: Enderun, 1979).

[235] Mehmed İpşirli, "Ayn Ali Efendi," *Türkiye Diyanet Vakfı İslam Ansiklopedisi*, vol. 4: 258-259.

[236] Üskübi Pir Mehmed Efendi, "*Zahīrü'l-Kuzat*," in *Osmanlı Kanunnâmeleri*, ed. Ahmed Akgündüz, vol. 9: 394-483.

*Kavanin-i Yeniçeriyan* was written during the reign of Ahmed I too, by an anonymous compiler. [237] *Kavanin-i Osmani ve Rabıta-i Asitane* was written, again, by an anonymous compiler. [238] Reisü'l-küttab (Head Scribe) Ömer Avni Efendi wrote a work under the name of *Kanun-ı Osmani Mefhum-ı Defter-i Hakani* on the land issues and presented it to the Murad IV. [239] Koçi Bey wrote his famous work and presented it to the Murad IV and its second edition to Sultan Ibrahim. [240]

In other words, Yahya Efendi lived in a time when *kanunname* writing became very popular. He was surely affected it and affected by it. [241] His fatwas on land issues were included to the compilation of Üskübi Pir Mehmed Efendi in a great amount. Whether Pir Mehmed Efendi included them in his lifetime or they were included in the compilation after his death, it shows Yahya Efendi's impact. Yahya Efendi's individual intellectual charisma or his wide human network had an important role in his central position in the formation of the text of *Kanunname-i Cedid*. But a more important factor behind his fame as a land legist, among the others, must be his close position to the tradition's main lines. The details of that will be dealt with in the next pages in which his land fatwas are evaluated.

This chapter will evaluate the land fatwas in the period between 1017/1608 (The second appointment of Hocazade Mehmed Efendi as the şeyhülislam) and 1084/1674 (the promulgation date of *Kanunname-i Cedid*). As it was mentioned before there are seventeen şeyhülislams in that period. Among them only four has separate fatwa compilations of their own: Hocazade Esad, Zekeriyazade Yahya, Karaçelebizade Abdülaziz, and Minkarizade Yahya. Bahai Mehmed Efendi did not have a separate

[237] Ibid, 127.

[238] Mehmet İpşirli, "Osmanlı Devlet Teşkilâtına Dair Bir Eser: Kavânîn-i Osmânî ve Râbıta-i Âsitâne," *İstanbul Üniversitesi Edebiyat Fakültesi Tarih Enstitüsü Dergisi*, 14 (1994): 9-35.

[239] İsmail Hakkı Uzunçarşılı, "Kanûn-ı Osmânî Mefhûm-ı Defter-i Hâkanî", *Belleten*, vol 15, issue 59 (1951): 381-399.

[240] Zuhuri Danışman, *Koçi Bey Risalesi* (Milli Eğitim Basımevi: İstanbul, 1972), XII.

[241] Christine Woodhead, "Ottoman İnşa and the Art of Letter-Writing: Influences Upon The Career of the Nişancı And Prose Stylist Okçuzade (d. 1630)," *The Journal of Ottoman Studies* VII-VIII (1988): 147.

collection but had many land fatwas in the text of *Kanunname-i Cedid*. The other şeyhülislams have only a couple of land fatwas in several mixed compilations and in the text of *Kanunname-i Cedid*.

Minkarizade Yahya will be excluded from this chapter although he has a fatwa compilation on his own. Because the fatwas on land issues in his compilation do not make a significant contribution to the understanding of the land law. [242] Karaçelebizade Abdülaziz, on the other hand, has many land fatwas in his compilation. [243] However, majority of the fatwas in his compilation regarding the land issues are the exact copies of the land fatwas of Kemalpaşazade. [244] That situation casts a doubt on Karaçelebizade's other fatwas on the land. In other words, originality of his land fatwas is suspicious. For that reason his fatwas are not taken into consideration, in this chapter either.

### 4.2. Esad Efendi: The Rise of Farmer's Proprietary Claims

Sunullah Efendi came to the office for four times as it was mentioned in the last chapter. Between these four dismissals, Hoca Sadeddinzade Mehmed Çelebi (d. 1024/1615) and Ebulmeyamin Mustafa (d. 1015/1606) came to the office both for two times. However, both of these şeyhülislams have no fatwa on land issues, with the exception of one single fatwa of Ebulmeyamin Mustafa in the mixed compilation evaluated in the last chapter. Nevertheless, it deals with tiny details which do not contribute to the land law.

Hoca Sadeddinzade Mehmed Çelebi's brother and the immediate successor Esad Efendi (d. 1024/1635), however, has many land fatwas in his compilation. His elder brother Mehmed Çelebi focused his energy more on to the completion of his father Hoca Sadeddin Efendi's history. [245] Most probably, for this reason, Esad Efendi had more time than his brother to get involved with the land law. For his land fatwas, I

[242] Minkarizade Yahya Efendi, *Fetava-yı Ataiyye*, comp. Ataullah Mehmed Efendi (d. 1127/1715), İstanbul Munincipality Ataturk Library, MC. Yz. B. 0023, ff. 11a.-14b.

[243] Karaçelebizade Abdülazīz, *Fetava*, Süleymaniye Manuscript Library, Şehid Ali Paşa, nr. 1048, f. 3b.-5a.

[244] Compare with; Kemalpaşazade, *Fetava*, Bld, ff. 4a.-7b., 317b.-320a.

[245] Atai, *Hadaiku'l-Hakaik*, 575-577; 690-692.

used a manuscript volume from Süleymaniye Manuscript Library. [246] Land fatwas in the compilation are classified under three subtitles: *Bābü'l-Öşr ve'l-Harac* (chapter for *öşr* and *harac*)[247], *Bābü'l- Arazī* (chapter for land), [248] and *Fi Bab-ı Vezayif-i Arazi* (chapter for the land taxes). [249] The land fatwas under these subtitles are mostly on the same topics with the fatwas of previous şeyhülislams. However, in the compilation, there are minute details on the transfer of the lands. That allows to understand the proprietary claims of the farmer and the timar holder a little bit further and track the changes within these claims.

### 4.2.1. Ownership Claims

On the proprietary claims of the timar holder, the decrease which was emerged in the fatwas of Sunullah Efendi continued to move forward in the compilation of Esad Efendi. Fatwas of Sunullah Efendi had already been announcing that the permission of the timar holder was no longer an obligation in practice. [250] In theory, his permission was an obligation but he had to recognize the land transfer as long as it did not have an obvious harm to his interests and he had to obey the current rule in the taxation method in the face of the old custom without taking his interests into consideration. Esad Efendi generalised that development in the advantage of farmers' proprietary rights on all non-private property lands.

For the waqf lands, one of many examples in the compilation is the following fatwa:

> Zeyd transferred his lands to Amr without the permission of the trustee. When the trustee heard about the transfer, would he be able to not to accept it and give the land to Bekr, according to sharia?
> The Answer: He cannot. As long as it is not obviously harmful to the waqf, he is ordered to accept (the transfer). [251]

---

[246] Esad Efendi, *Fetava-yı Müntehabe*, comp. Şaranīzade Hafız es-Seyyid İsmaīl İbn Hafız Abdülkerīm, Süleymaniye, Kasecizade, nr. 277 (1218/1803).

[247] Ibid. f. 9a.

[248] Ibid. f. 178a.

[249] Ibid. f. 183a.

[250] See: p. 78.

[251] "Zeyd tasarrufunda olan tarlanın hakk-ı tasarrufunu bila marifet-i mütevelli Amr'dan ferağ olduktan sonra mütevelli istima ettikte kabul etmeyip, ol tarlayı Bekr'e tefvize şerʿen kadir olur mu? El-Cevab: Olmaz. Vakfa zarar beyan olmayıcak mütevelli onunla memurdur." Esad Efendi, *Fetava*, f.

The trustee's permission was still a necessity in theory. But in practice, he has to recognize the transfer, as long as it fits to the formality as in the fatwa. The same rule was applied on to the permission of the timar holder on *miri* lands. Many sample cases can be found throughout the compilation in that direction too. [252]

In the compilation, timar holder's permission about planting a tree or building a structure on a *miri* land, is not considered as an obligation for the farmer either. The timar holder has to recognize the farmer's immobile properties on the land even the farmer does not get his permission before having that property on the *miri* land:

> From outside, Amr came to the *öşr* land under the administration of Zeyd the timar holder. He planted a vineyard and built a cottage without the permission of Zeyd. Will Zeyd be able to make Amr move the properties away from the land by saying "*Öşr* was coming from these lands to me. You damage my interests."?
> The Answer: If Amr has the usufruct of the land, he (Zeyd) cannot. He takes the *öşr* of the vineyard's produces if *öşr* is collected on the other vineyards around. [253]

The only condition in the fatwa is that there should be no clash of rights on the land in question. If Amr came and occupies the land which is already under another farmer' use, then the case becomes an action against the law. But if Amr has been the

---

178b; or consider: "Vakıf yer üzerinde bağların mutasarrıfı olan kimesneleri mütevelli marifetinsiz mezbur bağları ahara tefvizine men'e kadir olur mu? El-Cevab: Bila emr-i sultani olmaz." Ibid. 179a. For another similar fatwa which is more formal in terms of the terminology of law, see: "Zeyd tasarrufunda olan vakıf tarlasını izn-i mütevelli yok iken ahara tefviz eylese, tefviz-i mezbur şerʿen muteber olur mu? El-Cevab: Vakf hakkında olmaz. Adem-i rücu' hakkında olur." Esad Efendi, *Fetava*, ff. 179a.-179b.

[252] "Zeyd tasarrufunda olan bir kıta tarlayı bila izn-i sipahi Amr'dan tefviz eylese, tefviz-i mezbur muteber olur mu? El-Cevab: Olmaz. - Suret-i mezburede tefviz-i merkum muteber olmayıcak, mukabele-i tefvizde aldığı meblağı Amr'a verip, tarlayı Amr'dan almaya kadir olur mu? El-Cevab: Olmaz. Zarar beyyin olmayıcak sipahi izinle memurdur." Ibid. ff. 178b.-179a; "Zeyd tasarrufunda olan tarlayı sahib-i arz marifetinsiz Amr'a tefviz edip, sonra sahib-i arz marifetiyle Bekr'e dahi tefviz eylese, hangi tefviz muteber olur. El-Cevab: Amr'a tefvizde zarar yoksa sahib-i arz Amr'a izinle memurdur." Ibid. f. 179a; "Zeyd mutasarrıf olduğu tarlayı sipahi izinsiz hakimü'ş-şerʿ huzurunda Amr'a tefviz edip, yedine hüccet verse, izn-i sipahi olmayıcak ol hüccete amel olunup, tefviz-i mezbur muteber olur mu? El-Cevab: A'dem-i rücu' hakkında olur. Zarar-ı beyyin yok ise izin ile memurdur." Ibid. 181a; "Zeyd tasarrufunda olan tarlaları sahib-i arz izinsiz Amr'a tefviz eylese sahib-i arz "iznim yoktur" diye tarlalarını Amr'dan alıvermekle, Zeyd fesh-i tefviz edip, tarlalarını Amr'dan almaya kadir olur mu? El-Cevab: Olmaz. Tefvizinde zarar beyyin yok ise sahib-i arz izn ile memurdur." Ibid. f. 182b.

[253] "Zeyd-i sipahi kadimden öşr verilegelen arz'a Amr ahar yerden gelip, Zeyd'den izinsiz fuzulen bağ dikip, ve dam bina eylese, Zeyd Amr'a "bana bu yerden öşr aid olurdu. Bana zararın olur." diye, Amr'ın bağ ve binasını arzın üzerinden ref' ettirmeye kadir olur mu? El-Cevab: Arzda Amr'ın hakk-ı tasarrufu var ise olmaz. Mahsül-ü bağın yine öşrünü alır. Etrafında olan bağlardan öşr alınır ise." Ibid. f. 183b.

rightful user of the land from the beginning of the process, then the timar holder has to recognize the new situation and behave accordingly. So the only thing restricts the farmer to do that is another farmer's claim on the same land not the timar holder's. That new hidden right empowers the farmer in the face of enforcing power of the timar holder and widen the scope of his proprietary claims in the price of restricting the timar holder in the permission rule. In other words, that restriction was bringing the timar holder closer to being a mere tax and/or rent collector and the farmer closer to being the owner of the land.

The same permission restriction was applied to the trustee in waqf lands as it was the case in the normal land transfers:

> Nicola the non-Muslim planted a vineyard on the waqf land under his use. Then he died without a child. (Now) will the trustee be able to make the vineyard uprooted and give it (the land) with tapu?
> The Answer: There is a general sultanic permission, he cannot. [254]

The trustee cannot make the vineyard uprooted because it became the legitimate property of the Nicola, even he has planted it without the permission of the trustee. The source of the fatwa judgement is an imperial edict like sources of the most of the other fatwas.

The rationale behind the sultan's authority on *miri* lands was already mentioned before. Waqf lands, however, are the former private properties of individuals and of the members of the Ottoman dynasty. Once it is endowed the land becomes the property of the legal body of waqf under the rules set in the legitimate deed of the waqf. That legitimization directly comes from the sharia itself. The trustee administers the waqf according to that rule and the sultan's representatives inspect the waqf. However, the sultan has another role that allows him to intervene the waqf lands. He has a role of protecting the rights of his subjects from each other and he has a right to levy taxes on waqfs. Combination of all these roles of the sultan, allows him to regulate some parts of the actions on the waqf lands as long as it does not directly harm the interest of the waqf and does not directly contradict with its deed.

[254] "Nikola-yı zımmi mutasarrıf olduğu vakıf tarla üzerine izn-i mütevelli yok iken bağ ğars edip, bilaveled mürd olsa, mütevelli ol bağı kal' ettirip tarlayı tapu ile vermeye kadir olur mu? El-Cevab: Umum üzere izn-i sultani olucak olmaz." Ibid. f. 181b.

The sultan's legislative authority on both *miri* and waqf lands and its use as a fatwa source, gives an important clue for the detailed changes in the land fatwas throughout the seventeenth century. The land fatwas are, almost exclusively, on the *miri* or waqf lands, on which sultan has the aforementioned authority. Sultanic decrees were one of the sources of these land fatwas. Some şeyhülislams, including Esad Efendi, do not give direct answers to the questions on which they do not know the sultan's decree. They usually answer those kinds of questions by saying "it is treated according to the sultanic decree." Therefore, it seems that, the thing behind the changes in land fatwas throughout the seventeenth century, in most of the cases, was the change in sultanic decrees, not in the fatwa mentality.

Turning back to the timar holder's proprietary rights, power of his permission was not all gone for all kinds of the land transfers in the fatwas of Esad Efendi. Timar holders may not officially recognize the pawnings which are done without their permission:

> If Zeyd gives the lands under his use to Amr as security in return for some money. After five years, Zeyd died without a child. Can the timar holder take these lands from Amr and give it (to another) with tapu, now? The Answer: If he (Zeyd) did it (gave as security) without the permission of the timar holder, he can. [255]

Consent of the timar holder is an imperative for the official recognition of the act of giving as security in that fatwa. However, in the sense of going into the subject of the act of giving as security for *miri* lands, there is a direct contradiction with the fatwa of Ebussuud. Ebussuud does not allow it on *miri* lands, even in theory. [256] But the fatwa of Esad Efendi, above, allows it directly.

That fatwa might be interpreted differently if there was no other fatwa in the same manner. Nevertheless the same idea, is in operation in a different fatwa in the same compilation:

> With the permission of the timar holder, Zeyd gave a land of the lands under his use in return of some money. Then he died and the lands

[255] "Zeyd tasarrufunda olan tarlalarını bir miktar meblağ mukabelesinde rehn namına Amr'a verse, ve beş seneden sonra Zeyd bilaveled fevt olsa, sahib-i arz, ol tarlaları Amr'ın yedinden alıp tapu ile vermeye kadir olur mu? El-Cevab: İzn-i sahib-i arz yok iken ettiyse olur." Ibid. f. 179a.

[256] "Bey' ve rehn ve istibdal meşru değildir. / Sale, pawning, and exchande are not valid (for these *miri* lands)" *Miracü'l-Eyale*, f. 142a.

become worthy for tapu. Now, can the timar holder also take the land which is in the hands of Amr in the name of pawn with its tapu?
The Answer: He cannot. [257]

However, the act of pawning is limited with a condition in an additional fatwa:

In the aforementioned case, will Amr be able to not to take the mentioned (indebted) sum and take the land with its tapu from the hands of the Zeyd's inheritors (instead)?
The Answer: He cannot. [258]

So there is a will that pawning should never turn to a completed transfer of the *miri* land. However the fatwa does not give a further information for the case that if the inheritors never pay the dept. In any way, pawning is allowed in the fatwas of Esad Efendi against the fatwa of Ebussuud. So that becomes another development for the proprietary claims of the farmer although the source of this development is not exactly known. The source was whether the change in the sultan's edict or in the perception of the sharia on the issue. But the pawning of the *miri* land is allowed within the consent of the timar holder.

The same contradiction between Ebussuud and Esad Efendi appears on the exchange of *miri* lands. Ebussuud does not recognize that transaction. [259] However, Esad Efendi allows it without even laying down a condition:

Zeyd exchanged the land under his use with the land under Amr's use. Zeyd's property trees were not mentioned. Are they included into the exchange?
The Answer: They are not. [260]

Exchange of *miri* lands is already accepted as a given in the fatwa and the fatwa question was built upon it. Considering these two deviations (on the exchange and pawning) from the fatwas of Ebussuud, and the reduction in the power of timar

[257] "Zeyd mutasarrıf olduğu tarlalardan bir kıta tarlasını bir miktar meblağ mukabelesinde Amr'a sipahi izniyle tefviz bi'l-vefa ile verip, ba'de fevt olup tarlaları tapuya müstehak olsa sahib-i arz rehn namına Amr yedinde olan tarlayı dahi tapu ile elinden almaya kadir olur mu? El-Cevab: Kable'l-fas? olmaz." Esad Efendi, *Fetava*, f. 179b.

[258] "Bu surette Amr meblağ-ı mezburu Zeyd'in terekesinden almayıp tarla-yı merkum'u tapu ile elinden almaya kadir olur mu? El-Cevab: Olmaz." Ibid.

[259] "Bey' ve rehn ve istibdal meşru değildir. / Sale, pawning, and exchande are not valid (for these *miri* lands)" *Miracü'l-Eyale*, f. 142a.

[260] "Zeyd tasarrufunda olan tarlasını Amr'ın tarlası ile mübadele ettikte, Zeyd'in tarlası içinde olan mülk eşcarı zikrolunmuş olmayıcak, mübadelede dahil olur mu? El-Cevab: Dühule dal hal olmayıcak. Olmaz." Esad Efendi, *Fetava*, f. 179b.

holder's permission, it can be argued that the timar holder was in the way of becoming merely an agent of the treasury who just collects the taxes. He was not an agent yet, because he was still spending what he collects for himself in return of his military service but his proprietary autonomy was getting weaker. In the other side of the story, proprietary rights of the farmers on the *miri* lands were developing.

The fatwa above presents a good example of that. Inclusion of the private property trees in the *miri* lands' exchange process shows how close the *miri* land was perceived to the private ownership. The question was answered that it cannot be included unless it is clearly stated during the exchange. Nevertheless, even though the answer was negative, it became a matter of discussion by simply asking. Furthermore, the answer was not totally negative. The private property trees could be included, if it is clearly stated during the exchange. So not only in the eyes of the farmers but also of the Esad Efendi, the farmer's claim on the *miri* land was perceived as a close thing to the private ownership.

Another subject in which the *miri* land was perceived as a close thing to the private property in the fatwas of Esad Efendi is the recognition of conditional sub-contract between the farmers:

> The land under Zeyd's use was causing him a harm. Under the consent of the timar holder, he transferred it to Amr with the condition of planting a vineyard. But Amr did not plant the vineyard. The condition was written in the contract. Now can Zeyd broke the transfer and take back the land from Amr by quashing the transfer?
> The Answer: If the benefit of vineyard's plantation was evident for Zeyd, he can. [261]

The benefit of the transfer condition is not clear in the fatwa but the clear thing is that the transfer was a secondary or a sub-transfer in which an interest-based financial relation remains between the old and the new user after the transfer. As it is mentioned in second chapter, Ebussuud was forbidding all kinds of sub-contracts on *miri* lands. [262] Because they were bringing the *miri* land closer to being the private

[261] "Zeyd tasarrufunda olan tarlasının kendine zararı olmakla, Amr'a bağ ğars etmek şartı ile izn-i sahib-i arzla tefviz eylese, Amr ol tarlayı bağ ğars etmeyip, şart-ı merkum ?-i akidde dahil olucak, Zeyd tefviz-i mezburdan rücu' edip, tarlayı fesh-i tefviz ile Amr'dan almaya kadir olur mu? El-Cevab: Zeyd'e bağ ğarsının nef'i mukarrer ise olur." Ibid. f. 180a.

[262] "Tahrir olunan ahkamın vediası ve ariyeti şerʿi değildir.-The recorded verdicts of consignment and rental are not concurrent with sharia." *Miracü'l-Eyale*, 142a.

property of the farmer, limiting the authority of treasury on the *miri* lands' transactions and hardening the collection of the land taxes by making it difficult to decide which user gives the tax. But Esad Efendi validates the secondary transactions on the *miri* lands first by accepting the conditional sub-contract on then by recognising its revocability in the fatwa above. In that way, the farmer of the *miri* land comes one step closer to the private ownership.

However, it was not exactly seen as the private ownership yet. There were still some restrictions. All the previous restrictions on the inheritance and pre-emption of *miri* lands were valid in the fatwas of Esad Efendi. Nevertheless, some little new details on pre-emption and inheritance come to light in his fatwas. The following fatwa is the first of its kind in asking how the pre-emption or inheritance works when the deceased's wife is pregnant:

> Zeyd died and left his son Amr and his pregnant wife Hind. Before Hind gave birth, Amr died too, without having a child. Now, can the timar holder give Zeyd's lands with tapu?
> The Answer: If the pregnancy is evident it is held. [263]

So the fate of the land is decided after the pregnancy according to the sultan's decree on female and male inheritors of the *miri* lands.

The following fatwa shows the exact difference between the Islamic inheritance law and the inheritance rules of *miri* lands:

> Non-Muslim Nicola died leaving his Muslim son Zeyd and non-Muslim sons Yeorgi and Dimitri behind. Can Zeyd, take a share from the land of Nicola?
> The Answer: It is not the kind of (normal) inheritance. He can, with the decree of the sultan. [264]

In the Islamic law there is no inheritance right between non-Muslim to Muslim. No Ottoman sultan decreed that the *miri* lands of non-Muslim father can be inherited by his Muslim son. But Esad Efendi states that the sultans could allow inheritance between non-Muslim and Muslim in theory, because the normal inheritance law was

[263] "Zeyd vefat edip oğlu Amr'ı ve zevcesi Hind-i hamili terk ettikte, Hind vaz'-ı haml etmeden, Amr dahi bilaveled fevt olsa, sipahisi Zeyd'in tarlalarını tapu ile vermeye kadir olur mu? El-Cevab: Haml mütebeyyin ise tevkif olunur." Esad Efendi, *Fetava*, f. 182a.

[264] "Nikola-yı zımmi mürd oldukta oğlu Zeyd-i müslim ve diğer oğulları Yorgi ve Dimitri'yi terk eylese Zeyd, Nikola'nın tarlasından hisse almaya kadir olur mu? El-Cevab: Miras makulesi değildir, olur. Emr-i sultani ile." Ibid. 179a.

not in force on *miri* lands. So, all the developments in the farmer's proprietary rights on *miri* lands were seen as the grant of the sultan by Esad Efendi. In theory, these grants must be seen as revocable. However, we should check the later changes in order to see how revocable these rights were in the practice of land law.

### 4.3. Zekeriyazade Yahya Efendi: Restoration and Further Systemization

Zekeriyazade Yahya Efendi (d. 1053/1644) is maybe the most influential şeyhülislam in the field of land law after Ebussuud. He was the student of şeyhülislam Malülzade Mehmed Efendi who was the son in law of Ebussuud. But his self-confidence was not coming from this indirect relation with Ebussuud alone. He was also the son of şeyhülislam Zekeriya Efendi. Additionally it is reported that he was in his nineties when he died at 1644. [265] That means he eye witnessed all the great ʿulamaʾ of the late sixteenth and early seventeenth century and even had a chance to meet them in person because he was born in the highest circle of the Ottoman ʿulamaʾ hierarchy.

His long life means a long career which is the biggest factor behind his competency and impact in the Ottoman land law. He became the judge of Istanbul in 1604 and the chief judge of Rumelia in 1605. [266] Up to this point, his career was not that extraordinary for an Ottoman alim who had close connections with the other elites. From then on, his long life played the important role for his influence. From 1605 to his death in 1644 he was one of the (if he was not the) most influential scholar bureaucrats in the Ottoman capital. Yahya Efendi became chief judge of Rumelia for three times, in between: 4/1605 – 6/1606; 12/1609 – 1/1611; and 3/1617 – 7/1619. He became şeyhülislam for another three times, between: 5/1622 – 9/1623; 5/1625 – 2/1631; and 1/1634 – 27.2.1644 (to his death). [267] He was one of the best poets of his age that he was called the sultan of the poets and giving pseudonyms to the other poets. [268] Additionally, he was the greatest literary patron of his period that most of

[265] Şeyhi, *Vekayiü'l-Fuzala*, v.1, 114.

[266] Ibid. 111.

[267] Ibid. 110-114.

[268] Ibid. 257; Bayram Ali Kaya, "Zekeriyâzâde Yahyâ Efendi," *DİA*, vol. 43: 245-246.

the penmen attributed their works to him in the early seventeenth century. [269] Among these penmen, Nişancı (imperial secretary) Okçuzade Mehmed (d. 1039/1630) must be especially noted.

There was a very close relationship between Okçuzade and Yahya Efendi who patronised him as his old friend from the days of him being the students of Malülzade Mehmed Efendi. [270] Thanks to that intimate relationship, Yahya Efendi was able to access to the older land laws and master them. Great majority of Yahya Efendi's fatwas was codified as the result of his cooperation with Okçuzade. Many of Yahya Efendi's fatwas in the *Kanunname-i Cedid* (1674), come with the name of Okçuzade. [271] However, that does not necessarily put him in front of Yahya Efendi in the land issues. His friendship and patron-client relationship with Nişancı Okçuzade was just one of many other factors behind Yahya Efendi's success in the land law. Otherwise, Yahya Efendi could use his mektupçu (secretary) as a replacement of Nişancı Okçuzade. And he did after Okçuzade's death. [272] Whether due to Yahya Efendi's political power or his intellectual competency in the land law, he was able to affect the course of land law and express it more clearly in his way.

Fatwas of Yahya Efendi were compiled by his student şeyhülislam Esiri Mehmed Efendi (d. 1092/1681) who was the student and fatwa emini (secretary) of him during his three times in the office. [273] For this section of the thesis I used its one copy dated in 1083/1672 which was two years before the compilation of *Kanunname-i Cedid*. [274]

---

[269] Christine Woodhead, "Ottoman İnşa and the Art of Letter-Writing", 147; Aslı Niyazioğlu, "Ottoman Sufi Sheiks between this world and the Thereafter: A Study of Nev'izade Atayi's (1583-1635) Biographical Dictionary", PhD Diss. (Harvard University, 2003), 40-61; Halûk İpekten, "Atâî, Nev'izade," *DİA*, vol. 4: 40-43.

[270] Christine Woodhead, "Ottoman İnşa and the Art of Letter-Writing," 147.

[271] *Kanunname-i Cedid*, İstanbul Büyükşehir Belediyesi Atatürk Kitaplığı (From here on; "Bld.") MC. Yz. K0133, f.11b.

[272] Ibid. 12b.

[273] Şeyhi, *Vekayiü'l-Fuzala*, 479.

[274] Zekeriyazade Yahya Efendi, *Fetava-yı Yahya Efendi*, comp. Esiri Mehmed Efendi, Süleymaniye Manuscript Library, Ayasofya, nr. 1569.

The land fatwas in the compilation are attached to the end of the compilation under a separate title named *fī mā yeteʿalleḳu bi'l- arażī* (addendum on the land). [275]

### 4.3.1. Pre-emptive Practices and Inheritance on the *Miri* Lands

The first thing that attracts the attention in the land fatwas of Yahya Efendi is the extreme elaboration of farmer's pre-emptive rights on the *miri* lands. Yahya Efendi recognizes all the basic rules for the pre-emptive rights including the daughter's pre-emptive right. [276] The daughter can enjoy that right when she becomes an adult even if the right emerged before she is born. [277] That understanding was first pronounced by the fatwa of Esad Efendi above. [278] But the following details of the pre-emptive rights on the *miri* lands were announced by Yahya Efendi for the first time in the Ottoman history of land law.

According to Yahya Efendi the daughter of the deceased can use her pre-emptive right even at the edge of her deceased father's time limit on the issue of leaving the land empty for three years:

> Question: Zeyd left the land in his use uncultivated without an excuse. When the timar holder was about to give the land to an outsider, Zeyd died. And the timar holder gave it to Amr the outsider. Now Bekr, who is the (legal) guardian of Zeyd's little daughter Hind, wants to take the land from Amr for Hind by spending from Hind's money in the amount Amr paid. Is he able to do that?
> The Answer: He is. [279]

---

[275] Ibid. ff. 377a.-385b.

[276] "Mesele: Zeyd'in tasarrufunda olan çayır vefatından sonra müstehakk-ı tapu oldukta kızı Hind el verdiği resm-i tapuyu verip, almaya talibe iken, sipahi vermeyip, ecanipten Amr'a vermeye kadir olur mu? El-Cevap: Olmaz." Ibid. f. 379a.

[277] "Mesele: Bir tarlaya mutasarrıf olan Zeyd fevt oldukta, hamil zevcesi Hind'i terk etmişken, sahib-i arz Zeyd'in tarlasını tapu ile Amr'a verip, ba'de zaman Hind'den Zeyneb tevellüd edip baliğa olduktan sonra, "hakk-ı tapu benimdir" diye Amr'ın verdiğini verip, ol tarlayı Amr'dan ahz murad ettikte, Amr "baban Zeyd fevt oldukta sen mütevellide olmamakla senin için hakk-ı tapu yoktur" diye imtina'a kadir olur mu? El-Cevap: Olmaz." Ibid. f. 381a.

[278] See: the fatwa on p. 93.

[279] "Mesele: Zeyd mutasarrıf olduğu tarlasını bila özr üç sene tatil etmekle, sipahi tapu ile ahara vermek üzere iken Zeyd fevt oldukta Amr-ı ecnebiye vermiş olsa, halen Zeyd'in sağire kızı Hind'in vasisi Bekr Hind'in malından Amr'ın verdiğini verip, ol tarlayı Amr'dan Hind için almaya kadir olur mu? El-Cevap: Olur." Ibid. f. 381b.-382a.

So, as long as the daughter's legal guardian does it for her, the pre-emptive right is valid even if the daughter is not able to buy and cultivate the land for herself. However, the same rule was not applied to the little brother of the deceased. He cannot use his pre-emptive right through his legal guardian. [280] That difference may be caused by the difference in the strengths of two different pre-emptive rights. The daughter's pre-emptive right is prioritised over the brother's for sure. [281] Therefore the superiority of daughter's pre-emptive right must encapsulate its usability through the hands of the legal guardian for the daughter while it does not for the brother.

The sister has a pre-emptive right too. [282] Pre-emptive rights of the two sisters could be combined even before its use. [283] That rule of combination must be valid for all the pre-emptive rights on the same level. The pre-emptive right of the brother must be superior to the pre-emptive right of the sister. There is no superiority of the sibling who shares only father with the deceased over the sibling who shares both parents with the deceased, in terms of pre-emptive rights. [284] The sibling who shares only the mother with the deceased is not even a question, because s/he is not an inheritor according to the Islamic law of inheritance either. Pre-emptive right of the sister is

[280] "Mesele: Bilaveled-i zükur fevt olan Zeyd'in tarlası müstehakk-ı tapu oldukta, Zeyd'in li-ebeveyn er karındaşı Amr-ı sağirin vasisi Bekir, ol tarlayı Amr için resm-i tapu misli ile alıvermek nafi olmakla, sağirin malından, sağire için alıvermeye kadir olur mu? El-Cevap: Olmaz." f. 378b.

[281] "Mesele: Bila veled-i zükur fevt olan Zeyd'in tasarrufunda olan tarlası müstehakk tapu oldukta, kızı Hind tapu ile almaya talibe iken Zeyd'in li-ebeveyn er karındaşı Amr hakk-ı tapu benimdir diye Hind'e aldırmayıp kendi almaya kadir olur mu? El-Cevap: Olmaz." Ibid. f. 378a.

[282] "Mesele: Zeyd-i sağire Amr-ı müteveffadan intikal eden tarlayı sağirin vasisi ve marifet-i sipahi ile Bekr'e tefviz eylese, ba'de sağir baliğ olmadan fevt oldukta, sağirin li-ebeveyn kızkarındaşı olup, tarla olduğu mahalde sakine olan Hind, Bekr'in verdiğini verip, tarlayı almaya kadir olur mu? El-Cevap: Olur." Ibid. f. 383b.

[283] "Mesele: Bilaveled-i zeker fevt olan Zeyd'in tarlasını sipahi kızkarındaşı Hind ve Zeyneb'in sağirler olmakla Amr-ı ecnebiye tapu ile verip, ba'de Hind baliğa, ba'de fevt olup, ba'de Zeyneb dahi baliğa olup, Amr'ın verdiğini cümle verip, Amr'dan ol tarlayı ahz murad ettikte, Amr Zeyneb'e "Zeyd fevt oldukta sen ve kızkarındaşın Hind kalıp, ba'de kızkarındaşın fevt olmakla sen ancak benim verdiğimin nısfını verip tarlanın nısfını alırsın" deyip, cümlesin vermemeğe kadir olur mu? El-Cevap: Olmaz." Ibid. f. 383b.

[284] "Mesele: Hakk-ı tapuda li-ebeveyn karındaş ile li-eb kardaş bir midir? Yoksa li-ebeveyn mukaddem midir? El-Cevap: Beraberdir." Ibid. f. 379a.

superior then the pre-emptive right of the mother. [285] Similarly the brother is prioritised over the mother in the pre-emptive right. [286] The brother is prioritised over the father. [287] And the father comes before the mother. [288] So the usufruct of the *miri* land is inherited by only the son and the rest of the inheritors has the pre-emptive right in the following order from first to the last: daughter, brother, sister, father and mother. The siblings who are only maternal and the other relatives do not have pre-emptive rights on the land, including the grandsons. [289] Just like in the fatwas of Sunullah Efendi, non-Muslim sons of Muslim fathers and Muslim sons of non-Muslim fathers cannot inherit the land from their fathers. [290] As a new rule, the son who murders his father cannot inherit the *miri* land of his victim father. [291] And as a whole new case the slave owner can inherit the *miri* land of his slave. [292] But these rules are valid only for the *miri* lands under the use of male farmers. There are other rules for the inheritance of the usufruct in the *miri* lands under the use of female farmers.

---

[285] "Mesele: Zeyd bilaveled fevt olup, tarlaları tapuya müstehak oldukta, Zeyd'in li eb kızkarındaşı olup, tarla olduğu mahalde sakin olan Hind tapuyla almak murad ettikte validesi Zeynep hakk-ı tapu benimdir diye Hind'i men' edip, kendi almaya kadire olur mu? El-Cevap: Olmaz." Ibid. f. 377b.

[286] "Mesele: Bilaveled-i zeker fevt olan Zeyd'in tarlası müstehakk-ı tapu oldukta, hakk-ı tapu validesi Hind'in midir? Yoksa li-eb karındaşı Amr'ın mıdır? El-Cevap: Amr'ındır." Ibid. f. 383a.

[287] "Mesele: Bilaveled-i zeker fevt olan Zeyd'in müstehakk-ı tapu olan tarlasını sipahi Zeyd'in babası Amr'a tapu ile vermiş olsa, halen Zeyd'in li-ebeveyn karındaşı Bekr "hakk-ı tapu benimdir" diye Amr'ın verdiğini verip, ol tarlayı Amr'dan almaya kadir olur mu? El-Cevap: Olur." Ibid. f. 381a.

[288] "Mesele: Zeyd'in tarlası müstehakk-ı tapu oldukda anası Hind tapu ile almaya talibe iken babası Amr Hind'e aldırmayıp, kendi almaya kadir olur mu? El-Cevap: Olur." Ibid. f. 378b.

[289] "Mesele: Bilaveled fevt olan Zeyd'in tasarrufunda olan müstehakk-ı tapu olup, sahib-i arz dahi ahara tapu ile vermek murad ettikde Zeyd'in oğlunun oğlu Bekir benim için hakk-ı tapu vardır diye ahara aldırmayıp, kendi almaya kadir olur mu? El-Cevap: Olmaz." Ibid. f. 377b.

[290] "Mesele: Zeyd-i zımmi fevt oldukta, tasarrufunda olan tarlaları oğlu Amr-ı müslime intikal eder mi? El-Cevap: Etmez." Ibid. f. 379b; "Mesele: Zeyd-i müslim fevt olup, tasarrufunda olan oğlu Amr-ı zımmiye intikal eder mi? El-Cevap: İntikal etmez." Ibid. f. 383b.

[291] "Mesele: Babasını katleden Zeyd'e babasından kalan tarla intikal eder mi? El-Cevap: İntikal etmez." Ibid. f. 377b.

[292] "Mesele: Zeyd'in kulu Amr Zeyd'in izni ile Bekir'den marifet-i sahib-i arz ile tarla tefevvüz edip, mutasarrıf iken Amr bila veled fevt olup, sahib-i arz dahi ol tarlayı tapu ile vermek murad ettikde Zeyd tarla bana intikal eder diye sahib-i arzı men'e kadir olur mu? El-Cevap: Olurlar." Ibid. f. 378b.

The *miri* land under the use of females cannot descend without the tapu fee. Sons of females are the only ones have a pre-emptive right on the land. [293] Daughters and the rest of the relatives of the deceased female farmers do not have pre-emptive rights on the land. [294] Additionally all the pre-emptive rights born from the kinship is superior to the pre-emptive right born from partnership. [295] There is no superiority between the pre-emptive rights of the two partners. They are exactly the same. [296]

A new pre-emptive right emerges in the fatwas of Yahya Efendi. When the farmer loses his *miri* land he can have a pre-emptive right if he wants to reclaim his *miri* land by repaying its tapu fee. [297] However, he cannot use that pre-emptive right retroactively. Once the timar holder transfers the land to an outsider, and the new farmer begins to cultivate the land, the re-emptive right expires. [298]

---

[293] "Mesele: Hind-i müteveffanın tasarrufunda olan tarlalarını, oğulları Zeyd ve Amr tapu ile almaya talipler iken, sahib-i arz vermeyip ecnebiye vermeye kadir olur mu? El-Cevap: Olmaz." Ibid. f. 381a; Mesele: Hind-i müteveffanın tasarrufunda olan tarlaları evlad-ı zükuruna intikal eder mi? Yoksa el verdiği resm-i tapu ile mi alırlar? El-Cevap: Tapu ile alırlar." Ibid. f. 382a.

[294] "Mesele: Hind fevt olup tasarrufunda olan tarlası müstehakk-ı tapu oldukta sahib-i arz ol tarlayı Zeyd'e tapu ile vermiş olsa, halen Hind'in sağire kızı Zeynep baliğa oldukta "hakk-ı tapu benimdir" diye ol tarlayı Zeyd'den almaya kadir olur mu? El-Cevap: Olmaz." Ibid. f. 382a; Mesele: Bilaveled-i zeker fevt olan Zeyd'in tarlasını kızı Hind tapu ile almazdan mukaddem, Hind dahi fevt olup, ba'de Zeyd'in li-ebeveyn kızkarındaşı olup ol tarla olduğu mahalde sakine olan Zeyneb, tapu ile ahz murad ettikte, sahib-i arz Zeyneb'e vermeyip, Hind'in anası Hatice'ye vermeye kadir olur mu? El-Cevap: Sahib-i arz kime dilerse verir." Ibid. ff. 383b. - 384a.

[295] "Mesele: Zeyd ammi oğlu Amr ile iştirak üzere mutasarrıflar oldukları tarlalar vefatından sonra müstehakk-ı tapu oldukta, Zeyd'in li-ebeveyn karındaşlar olup, tarlalar olduğu mahalde sakin olan Hind ile Zeyneb el verdiği resm-i tapuyu verip, Zeyd'in ol tarlalarından hissesini tapu ile almak murad ettiklerinde, Amr "ben şerikim, hakk-ı tapu benimdir" deyip mezburelere aldırmamaya kadir olur mu? El-Cevap: Olmaz. Şerik ancak ecanibden takdim olunur." Ibid. f. 381b.

[296] "Mesele: Bir yaylak'a iştirak üzere mutasarrıf olan Zeyd ve Amr ve Bekr'den Zeyd ol yaylaktan hissesini, sahib-i arz marifetiyle Amr'ın haberi yok iken Bekr'e ferağ ve tefviz eylese, halen Amr Bekr'in Zeyd'e verdiği bedel-i tefvizden hissesini verip Bekr ile iştirak üzere tasarrufa kadir olur mu? El-Cevap: Olur." Ibid. f. 385b.

[297] "Mesele: Hind mutasarrıfı olduğu tarlasını beş-altı sene bila-ğadr tatil etmekle, sahib-i arz tapu ile vermek murad ettikde Hind ecnebiye aldırmayıp, tapuyu misl ile kendi almaya kadir olmaya kadir olur mu? El-Cevap: Olur. Cevab-ı Ahar: Emr-i sultani var ise olur." Ibid. f. 378a.

[298] "Mesele: Zeyd mutasarrıf olduğu tarlasını üç seneden ziyade bila ğadr ziraat etmeyip, tatil etmekle sahib-i arz Amr'a tapu ile verip, Amr dahi alıp, tasarruf üzere iken Zeyd Amr'ın verdiğini verip, tarlayı almaya kadir olur mu? El-Cevap: Olmaz." Ibid. f. 377b.

Up to this point, the rules are for the *miri* lands. However, inheritance of the usufruct seems to work in a slightly different way in *mukataalı miri* lands. If the trees are enfolded with each other, owner of the trees can cultivate the land beneath the trees. The land beneath these enfolded trees descents to the inheritors with the private property trees like a private property without a tapu fee. But the inheritors continue on paying a fixed rent in cash (*mukataa*) for these trees. However, if the trees are not enfolded and there are enough spaces between them permitting ploughing, the tree owner can take the land between these trees with a tapu fee. He pays the rent for the trees just like in the previous case and taxes for the land between the trees just like in normal *miri* lands. The trees descends as private properties but the land between the trees descends like a normal *miri* land and the rules of the pre-emptive rights are applied. [299]

So far, the pre-emptive rights that emerge after death are discussed. There were pre-emptive rights after the sale of the usufruct too but they were working in a slightly different way. When the male farmer sells his usufruct on the *miri* land, his sister cannot have a pre-emptive right. [300] However, his brother may have a pre-emptive claim on the land. [301] Fatwas of Yahya Efendi do not give information on the pre-emptive rights of the other relatives in similar cases. Nevertheless, they show that the partners have pre-emptive claims during the sale of the *miri* land's usufruct. [302]

---

[299] "Mesele: Zeyd'in mutasarrıf olduğu bahçesinin eşcarı mülteffe olmamak ile altını ziraat edip hasıl olan mahsülün öşrünü sipahiye verirken, Zeyd fevt oldukta, evlad-ı zükuru olmamakla sipahi ol yeri tapu ile Amr'a verip, Amr tasarruf murad ettikte, Zeyd'in kızları "babamızdan intikal etmiş mülkümüzdür" diye Amr'ı tasarrufundan men'e kadire olur mu? El-Cevap: Arz-ı miri olup mukataa-yı muayyinesi yok ise tapu ile kızlarına verilir." Ibid. ff. 382a.- 382b.

[300] "Mesele: Karındaşlar olan Zeyd ve Amr bir tarlayı iştirak üzere mutasarrıflar iken, sahib-i arz marifetiyle haricden Bekir'e tefviz ve teslim ettiklerinde, Zeyd ve Amr'ın kızkarındaşları Hind "hakk-ı tefviz benimdir ahara aldırmam" deyip, Bekr'in verdiğini verip, almaya kadire olur mu? El-Cevap: Olmaz." Ibid. f. 378b.

[301] "Mesele: Zeyd karındaşı Amr ile iştirak üzere mutasarrıf oldukları tarlaları, Amr ahar diyarda iken, Bekr'e bir mikdar akçe mukabelesinde marifet-i sipahi ile tefviz ve teslim eylese, hala Zeyd gelip, hissesinde tefvizi tutmayıp, "Zeyd'in hissesini dahi tefevvüze ben ehakkım" diye Bekr'in verdiği resm-i tapudan hissesi miktarını vermeyip, tarlayı cümleten tasarrufa kadir olur mu? El-Cevap: Beş sene geçmediyse olur." Ibid. f. 379b.

[302] "Mesele: Zeyd ve Amr ve Bekr bir tarlaya iştirak üzere mutasarrıflar iken, Zeyd hissesini marifet-i sipahi ile Amr'a tefviz eylese, halen Bekr Amr'a mukabele-i ferağda Zeyd'e verdiği akçenin nısfını verip, Zeyd'in hissesinin nısfını dahi tasarrufa kadir olur mu? El-Cevap: Olur." Ibid. f. 381a; For a similar fatwa, see: ft. 115.

Another important development on the pre-emptive rights on *miri* lands in Yahya Efendi's fatwas, is the specification of the time limit for the usage of pre-emptive rights. First of all, he recognizes the time limit first put by his father Zekeriya Efendi for the brother of the deceased. The retroactive usage limit for the brother's pre-emptive right, either emerged by death or sale of the usufruct, stayed for five years. [303] Additionally, Yahya Efendi states that the same time limit is in force on sister's pre-emptive right on the land. [304] The time limit was longer for the pre-emptive right of the daughter. Yahya Efendi recognizes that the daughters of the deceased can retroactively claim their pre-emptive rights up to ten years. [305] Their pre-emptive claim becomes invalid after ten years. [306]

Maybe the most interesting contribution of Yahya Efendi on the pre-emptive rights is his attitude in terms of the religion of the farmer. He recognizes a pre-emptive right to Muslims over non-Muslims:

> Question: Zeyd the Muslim died without a male child. Amr the Muslim is aspirant to take his field with its tapu tax. Is the timar holder able to not to give it to Amr and to give it to Bekr the Armenian?
> The Answer: It should be given to Amr the Muslim. [307]

However, there is no further information on whether that pre-emptive right of the Muslim is valid for the deceased Muslims' *miri* lands or for all the *miri* lands including deceased non-Muslims'.

---

[303] "Beş sene geçmediyse olur." see: ft. 288; compare that fatwa with the fatwa on pp. 99-100 and in ft. 251.

[304] "Mesele: Bilaveled-i zeker fevt olan Zeyd'in müstehakk-ı tapu olan tarlasını sipahi ecnebiye verip, Zeyd'in li-ebeveyn kızkarındaşı Hind beş sene sükut eylese, halen Hind Amr'ın verdiğini verip, ol tarlayı Amr'dan almaya kadir olur mu? El-Cevap: Beş sene sükut edecek, olmaz." Ibid. f. 383b.

[305] "Mesele: Zeyd vefat ettikte evlad-ı zükuru olmamakla mutasarrıf olduğu tarlaları müstehakk-ı tapu olmak ile sipahi ecnebiyye tapu ile verse, halen Zeyd'in kızı olup ahar diyarda olan Hind yedi sene mürurundan sonra gelip, ol tarlaları "hakk-ı tapu benimdir" diye, Amr'a verdiği resm-i tapuyu verip ol tarlaları yedinden almaya kadir olur mu? El-Cevap: Olur." Ibid. f. 385b.

[306] "Mesele: Bila veled fevt olan Zeyd'in tasarrufunda olan tarlası müstehakk-ı tapu oldukta, kızları sağire bulunmakla sipahi ol tarlaları Amr-ı ecnebiyye vermiş olsa, Zeyd'in kızları Hind ve Zeyneb baliğa olduklarında on sene sükut edip tapu ile almaya talibe olmuşlar iken, halen talip olup Amr'ın verdiğini verip almaya kadire olurlar mı? El-Cevap: Olmazlar." Ibid. f. 381b.

[307] "Mesele: Bila veled-i zeker fevt olan Zeyd-i müslimin tarlasını Amr-ı müslim resm-i tapusu ile almaya talip iken, sahib-i arz Amr'a vermeyip, Bekr-i Ermeni'ye vermeye kadir olur mu? El-Cevap: Amr-ı Müslim'e vermek gerektir." ff. 382b.-383a.

Yahya Efendi recognizes a similar collective pre-emptive right for the first time in land fatwas. According to him the residents around the *miri* land in question has a pre-emptive right over outsiders. [308] However, that must be the weakest pre-emptive right. There must be no close relative and no partner of the deceased for the turn to come to the residents close by the land.

### 4.3.2. The Other Ownership Claims and Their Limitations on the *Miri* Lands

Yahya Efendi recognizes the rules for leaving the *miri* land empty and the limits of these rules began to be drawn in his fatwas. The previous şeyhülislams were stating that the *miri* land is taken back from the farmer if s/he leaves it empty for three years without a legitimate excuse. However they do not say much about which excuses are legitimate. Fatwas of Yahya Efendi sheds a light on the subject at this point.

If the farmer is a child, this three years of time limit does not work for him/her until s/he becomes an adult. When s/he becomes an adult s/he can reclaim his *miri* land. [309] Similarly a war captive can take back his *miri* land if he comes back from the captivity. [310] Or an official in a post away from his *miri* land can retake his land when he comes back. [311] Or if a natural cause hinders cultivation, the farmer does not lose his right on the land. [312] In short, unavoidable causes like natural causes, or

[308] "Bir karyede sakin olan Zeyd, karye-i mezbure toprağından mutasarrıf olduğu tarlasını tefviz murad ettikte karye-i mezbure ahalisi talipler iken mezburlara vermeyip, marifet-i sipahi ile hilaf-ı emr karye-i uhra ahalisinden Amr'a tefviz eylese, hala karye-i ûlâ ahalisi Amr'ın verdiğini verip, ol tarlayı almaya kadir olur mu? El-Cevap: Olurlar. Cevab-ı ahar: Öyle emr var ise olurlar." Ibid. f. 377a.

[309] "Mesele: Hind-i sağire ahar vilayette bulunup, tarlası birkaç zaman boz kaldıkta, sahib-i arz ol tarlayı tapu ile vermiş olsa, hala hind baliğa olup geldikde tarlasını Amr'dan almağa kadire olur mu? El-Cevap: Olur." Ibid. f. 377b; "Mesele: Zeyd-i müteveffanın tarlası sağir oğlu Amr'a intikal ettikte, on seneden ziyade zaman ziraat olunmasa, halen mütevelli-i vakf ol tarlayı "ziraat olunmadı" deyip, tapu ile vermeye kadir olur mu? El-Cevap: Olmaz." Ibid. f. 381b.

[310] "Mesele: Darülharb'de esir olan Zeyd'in tasarrufunda olan tarlasını sahib-i arz boz kaldı diye tapu ile Amr'a vermiş olsa, nice zamandan sonra Zeyd halas olup, geldikde tarlasını Amr'dan almaya kadir olur mu? El-Cevap: Olur." Ibid. ff. 378a.- 378b.

[311] "Mesele: Ahar diyarda sakin olup, tarlaya mutasarrıf olan Zeyd fevt oldukta oğlu olup harem-i hasda olan Amr çıkmaya imkan olmamakla, sipahi ol tarlaları tapu ile Bekr-i ecnebiye verse, on sene harem-i hasdan çıkıp, diyarına geldikte, ol tarlaları dava edip, Bekir'den almaya kadir olur mu? El-Cevap: Olur." Ibid. f. 379a.

[312] "Mesele: Zeyd'in tasarrufunda olan tarlayı su basıp otuz sene mikdarı su çekilmemek ile Zeyd ziraat edemeyip, ba'de ba-muradullahi teala çekilip, Zeyd dahi ziraat murad ettikte, sipahi "otuz sene muattıldır" deyip, tapu ile vermeye kadir olur mu? El-Cevap: Olmaz." Ibid. f. 381b.

being a child or a war captive, are the legitimate excuses for not cultivating the land. Being an official in a post far from the land is counted as a legitimate excuse. The officers in inferior ranks were expected to treat their superiors as their masters. That is why the permission of the superior is so decisive in building up a legitimate excuse. In that case, Yahya Efendi seems to restore the understanding before the fatwas of Esad Efendi as regards the permission of the timar holder.

Yahya Efendi recognizes the rule in which the transaction without the permission of the timar holder is invalid. Esad Efendi was recognising the same rule but he was viewing it as a mere formality. The timar holder had to give his permission if there was no obvious damage to his timar and for the transactions already had happened without his permission, he was officially advised to give his permission retroactively. [313] But Yahya Efendi decides in the favour of restoring the authority of the timar holder on the question of permission. [314] So that the transfers without the permission of the timar holder can be cancelled even after years. [315] Similarly, tree plantation without the permission of the timar holder is seen invalid and can be cancelled likewise. [316] While Yahya Efendi highlights the importance of the timar holder, he mentions the cases in which the timar holder has to give his permission like Esad Efendi. [317] However, since the timar holder's permission has a sanction power in the fatwas of Yahya Efendi, it is held more seriously. Unlike in the fatwas of Esad

[313] See: pp. 87-88.

[314] "Mesele: Zeyd-i müteveffadan sağir oğulları Amr ve Bekir ve Beşir'e intikal eden tarlalardan bir mikdarını valideleri Hind sahib-i arz marifetiyle Halid'e tefviz edip, ba'de Amr ve Bekir baliğ olmadan fevt olduklarında, sahib-i arz bulunan kimesne "Hind'in tasarrufu muteber değildir" diye tekrar tapu ile vermeye kadir olur mu? El-Cevap: Mukaddeman sahib-i arz marifetiyle tefviz olucak, Olmaz." Ibid. f. 378b.

[315] "Mesele: Zeyd tasarrufunda olan bir kıta tarlasını Amr'a sahib-i arz marifetinsiz tefviz edip, ba'de Zeyd fevt olup, sağir oğlu Bekr'i terk ettikte, Bekr baliğ olunca, Amr ol tarlayı tasarruf eylese, halen Bekr baliğ oldukta "babamın tefvizi muteber değildir" deyip, ol tarlayı Amr'dan almaya kadir olur mu? El-Cevap: Olur. Geçersiz tefvizin bozulması." Ibid. f. 380a.

[316] "Mesele: Zeyd mutasarrıf olduğu tarlasını sipahi marifetsiz Amr'a tefviz, Amr dahi üzerine bağ ğars eylese, halen Zeyd "tefviz-i mezkur sahih değildir" diye ol Amr'ın ğarsı kürumu kal' ettirip, tarlayı yedinden almaya kadir olur mu? El-Cevap: Sipahi izinsiz ğars etti ise olur." Ibid. f. 385b.

[317] "Mesele: Zeyd yer alıp tasarrufunda olan tarlaları ziraate kadir olamamak ile Amr'a tefviz ettikte, sahib-i arz-ı ğaraz fasidi için inat edip izin vermemeğe kadir olur mu? El-Cevap: Bi vech-i sipahi izinden imtina edemez." Ibid. f. 384a.

Efendi, even when the timar holder does not give his permission in spite of the fatwa that obliges him to give his permission, the timar holder is not presumed that he had given his permission automatically in the fatwas of Yahya Efendi. For example, in the fatwa of Esad Efendi, if the timar holder collects *öşr* of the the newly reclaimed land, it counts as a permission. [318] But in the fatwas of Yahya Efendi, collecting *öşr* alone is not counted as a permission. The timar holder actually has to give his permission for it to be counted. [319]

Discordance between Yahya Efendi and Esad Efendi is not limited with the issue of the timar holder's permission. There are important signs for the difference in the legal thinking of the two şeyhülislams on some of the proprietary claims. As it is shown in the previous pages, Esad Efendi made some changes in the advantage of the farmer's proprietary claims while he was putting some restrictions for the timar holder. Yahya Efendi seems to partially restore the understanding before Esad Efendi.

On the act of giving the *miri* land as security the restoration reveals itself clearly. Esad Efendi was recognising the act of pawning with the condition that it would never turn to a full transfer of the *miri* land and it should only serve as a guarantee. Yahya Efendi, however, takes a side with the older fatwas especially with Ebussuud:

> Question: Zeyd delegated the lands under his use to Amr in return of some money with the permission of the timar holder. Zeyd set a condition that when he pays back the money he had taken form Amr he would take back his lands from Amr. Now is Zeyd able to take back the lands from Amr by paying back the money which he had taken from Amr before?
> The Answer: He is not. [320]

[318] "Zeyd arz-ı miriden bir miktar ormanı bila izn-i sahib-i arz baltasıyla açıp tasarruf edip, sahib-i arza öşr-ü şerisini verirken sahib-i arz ol arzı tapu ile ahara tefvize kadir olur mu? El-Cevab: Zeyd'den öşr aldıysa hükm-ü izinden olmağla olmaz." Esad Efendi, *Fetava*, f. 180b.

[319] "Mesele: Zeyd tasarrufunda olan tarlasını Amr'a bir miktar akçe bedel mukabelesinde tefviz, Amr dahi tefevvüz ve altı sene tasarruf ve ziraat ve öşr-i mahsülünü sahib-i arz'a eda edip, ba'de Zeyd bilaveled fevt oldukta, sahib-i arz "ben Amr'ın tasarrufuna izin vermedim" diye altı sene öşr almış iken ahara tapu ile vermeye kadir olur mu? El-Cevap: İzin vermicek olur." Yahya Efendi, *Fetava*, f. 282b.

[320] "Mesele: Zeyd mutasarrıf olduğu tarlalarını Amr'a bir mikdar akçe mukabelesinde sahib-i arz marifetiyle tefviz ettikte Amr'dan aldığı akçe her ne zamanda verirse tarlalarını yine almak şartıyla tefviz eylese, hala Zeyd Amr'dan aldığı akçeyi Amr'a verip, Amr'dan tarlaları almaya kadir olur mu? El-Cevap: Olmaz." Ibid. f. 378b.

Just like Ebussuud, Yahya Efendi was not recognising the pawning of the *miri* lands. Farmers were knowing that and were trying indirect ways to pawn the *miri* lands under their use. They were trying to go around that rule by unofficially making agreements between themselves. However, in that case the money lender could keep the land even the indebted wants to pay his debt because there was no coercive power of the law. It was not recognising the the act of giving the *miri* land as security and seeing it as a *miri* land transfer between farmers. [321]

On the *miri* land's exchange Yahya Efendi seems to recognize it like Esad Efendi did before. However, Yahya Efendi leaves all the risk that comes out of the transfer to the farmers and gives no official guarantee for the exchange:

> Question: Zeyd exchanged the land under his use with the land under Amr's use with the permission of the timar holder. Both of them used each other's land and then they both died. When, sons of them were cultivating the lands, Bekr came out. He claimed the land which Zeyd's son is cultivating, proved that his claim was right and took the land. Now, is Zeyd's son able to take the land that his father had given to Amr in the exchange back from Amr's son?
> The Answer: He is not. [322]

Yahya Efendi should have decided to the contrary if he was seeing the exchange fully legitimate. But he did not. In short he was recognising the exchange of *miri* lands reluctantly and he was discouraging the farmers from exchanging their lands by leaving all the risk to them.

On consignment, Yahya Efendi is on the same line with Esad Efendi. He fully recognizes it:

> Question: Amr was cultivating the lands in Zeyd the timar holder's timar. He went to another town and consigned the lands to Bekr. Now, Bekr is cultivating the lands and paying the *öşr* to the timar holder. Is the timar holder able to give the lands by saying "Amr has not showed up for six years"?
> The Answer: If the news from Amr are not ceased, he is not. [323]

---

[321] "Mesele: Zeyd mutasarrıf olduğu tarlasını Amr'a bir miktar akçe mukabelesinde izn-i sahib-i arzla tefviz, Amr dahi tefevvüz edip, ba'de Amr'dan ol bedel ile talep ettikte, Amr vermemeğe kadir olur mu? El-Cevap: Olur." Ibid. f. 380a.

[322] "Mesele: Zeyd mutasarrıf olduğu tarlasını Amr'ın tarlasıyla sahib-i arz marifetiyle mübadele ve herbiri aharın tarlasını zabt-u tasarruf edip, ba'de Zeyd ve Amr fevt olup, oğulları tasarruf üzereler iken, Bekir zuhur edip, Zeyd'in oğlu tasarruf ettiği tarlaya müstehak çıkıp, ba'del-isbat vel-hükm zabt ettikde, Zeyd'in oğlu dahi babasının Amr'a mebdel diye verdiği tarlayı Amr'ın oğlu yedinden almaya kadir olur mu? El-Cevap: Olmaz." Ibid. f. 377b.

Therefore, in the fatwas of Yahya Efendi, consignment and exchange are allowed. The act of giving the *miri* land as security was not allowed. The common feature behind all these recognitions and non-recognitions was the conditionality of the transfer. Yahya Efendi was not recognising conditional land transfers. [324]

Similarly, the transfers without the free will of the transferor are not recognized either. Such transfers are retroactively broken as soon as it is understood that it happened without the free will of the transferor. [325] In deciding what limits the free will and what does not, traditions and customs are considered as well:

> Question: Zeyd delegated the land under the use of his elder son Amr to Bekr with the permission of the timar holder. And Bekr took it. Amr stayed silent without an excuse. After six months Zeyd died. Is Amr able to repudiate the mentioned delegation and take back the land?
> The Answer: He is. [326]

It is highly possible that Amr stayed silent because of his respect to his father despite the fact that he is an adult. Normally his silence must be considered as his free will before the law because he is an adult. But Yahya Efendi considers the tradition of respect for father in expressing his judgement and decrees otherwise.

The discussed topics so far are mostly related with the proprietary status of the farmer except the subject of timar holder's permission because there are very few fatwas revealing the ownership claims of the timar holder. As far as it is understood from these few fatwas, the timar holder seems relatively weaker in the face of the farmer in terms of the ownership claims on the *miri* lands.

---

[323] "Mesele: Zeyd-i sipahinin tımarı dahilinde tarlalara mutasarrıf olan Amr, ahar diyara gittikte, ol tarlaları Bekr'e sipariş edip, Bekr dahi ziraat edip, öşrü sipahiye eda ederken, sipahi Amr'dan "altı senedir gelmedi" diye ol tarlaları tapu ile vermeye kadir olur mu? El-Cevap: Amr'ın haberi münkatı' olmayacak, olmaz." Ibid. f. 382a.

[324] "Mesele: Zeyd tarlasını Amr'a marifet-i sahib-i arz ile tefviz ettikte kendi veli oluncaya dek beslemek şartıyla tefviz, Amr dahi ol şartla tefviz edip, ba'de Amr Zeyd'i beslemeyecek, Zeyd dahi tefvizinden rücu' edip, tarlayı almaya kadir olur mu? El-Cevap: Olmaz." Ibid. f. 378a.

[325] "Mesele: Tehdidini ika'a kadir olan Zeyd, Amr'a "tasarrufunda olan tarlaları Bekr'e tefviz etmezsen, seni katlederim" demekle, Amr havfından ol tarlaları marifet-i sipahi ile Bekr'e tefviz eylese, tefviz-i mezbur, muteber olur mu? El-Cevap: Olmaz." Ibid. f. 379a.

[326] "Mesele: Zeyd, kebir oğlu Amr'ın bir kıta tarlasını, Amr'ın huzurunda bir mikdar akçe mukabelesinde Bekr'e marifet-i sipahi ile tefviz, Bekr dahi tefevvüz ettikte, Amr bila özr sükut edip, altı ay mürurundan sonra Zeyd fevt oldukda tefviz-i mezkuru tutmayıp, almaya kadir olur mu? El-Cevap: Olur." Ibid. f. 379a.

The timar holder was still enjoying his tax collection right as his property during his lifetime in the fatwas of Yahya Efendi. However, he was not authorized to transfer that right to another person unlike the real property. In terms of transfer of the right, the timar holder's right is not seen like a property. It was more like an office. When he dies all of his proprietary claims born from his status end with him. Only his private properties descend to his inheritors none of his timar-related assets can be bequeathed including the debt of farmer owed to him because of his status as the timar holder. [327] If the timar holder cultivates his own timar the land comes really close to be a private property. However, cultivation of the timar land is officially prohibited for the timar holder. [328] A similar prohibition or non-recognition was in force for the trustee. [329] Therefore, in the fatwas of Yahya Efendi, the role of timar holder was perceived closer to a tax collector officer than a semi-autonomous contractor.

### 4.4. Road to *Kanunname-i Cedid* (1674)

Ebu Said Mehmed Efendi (d. 1072/1662) became şeyhülislam after Yahya Efendi's death. After two years he was dismissed. [330] He had no land fatwas as far as the sources can tell. He was the son of Hocazade Esad Efendi and the grandson of Hoca Sadeddin. That allowed him to intervene the appointment and dismissals of the high ranking officers including grand viziers. So he was busy with political affairs mostly.

Muid Ahmed Efendi (d. 1057/1647) became şeyhülislam after the dismissal of Ebu Said Mehmed Efendi. According to Naima, he became şeyhülislam by bribing his

[327] "Mesele: Zeyd-i sipahi tımarı toprağında tapuya müstehak olan tarlayı Amr'a bir miktar akçe bedel mukabelesinde tefviz, Amr dahi tefevvüz, ve bedel-i tefvizin bir miktarını Zeyd'e verip, bir miktarını vermeden Zeyd fevt oldukta verese bakiyeyi Amr'dan talep edip, almaya kadir olur mu? El-Cevap: Olmazlar." Ibid. f. 381b.

[328] "Mesele: Zeyd ve Amr bir tımara iştirak üzere mutasarrıflar iken, tımar-ı mezbur dahilinde tarlalar mahlul oldukta Zeyd ol tarlaları tapu ile vermeyip, kendi tasarruf ve ziraat eylese, hala Amr "sahib-i arz olanlar tarla tasarruf etmek memnu'dur" deyip, ol tarlaları tapu ile isteyenlere vermeye kadir olur mu? El-Cevap: Olur." Ibid. f. 378a.

[329] "Mesele: Bir vakfın arazisinden tarlalar mahlul oldukta, mütevellisi Zeyd tapu ile vermeyip, kendi tasarruf eylese, halen Zeyd tevliyetten mazul olup yerine Amr mütevelli oldukta, ol tarlaları tapu ile verme kadir olur mu? El-Cevap: Olur." Ibid. ff. 379a.-379b.

[330] Şeyhi, *Vekayiü'l-Fuzala*, v.1, 296.

patron Grand Vizier Sultanzade Mehmed Efendi and Silahdar Yusuf Paşa. [331] After spending one year in the office, he died without leaving a land fatwa behind. [332]

Hoca Abdürrahim Efendi (d. 1066/1656) became şeyhülislam after the death of Muid Ahmed Efendi. [333] His most important achievement is that by taking the support of some high ranking ʿulamaʾ and janissary aghas he gave fatwas for the dethronement and regicide of Sultan İbrahim. [334] After one year, in 1649, Murad Paşa caused his dismissal with the turn of janissary aghas. [335] He has no land fatwas like the two previous şeyhülislams.

Bahai Mehmed Efendi (d. 1064/1654) became şeyhülislam after the dismissal of Hoca Abdürrahim Efendi. He was a true ʿulamaʾ aristocrat. His father was the Kazasker of Rumelia Abdülaziz Efendi who was the grandson of Hoca Sadeddin. His mother was the granddaughter of Ebussuud. [336] His time in the office passed by struggling with Kadızadelis and political cliques and he was dismissed in 1651. [337]

Karaçelebizade Abdülaziz Efendi (d. 1068/1658) became the next şeyhülislam after the dismissal of Bahai Mehmed Efendi. He held the office for four months and then he was dismissed upon the events developed after the murder of Kösem Sultan. [338]

Ebu Said Mehmed Efendi became the şeyhülislam for the second time after the dismissal of Karaçelebizade Abdülaziz Efendi. After one year, in 1652, he was dismissed because his uncontrollable temper caused unpleasant events. He beat the

---

[331] Naima Mustafa, *Tarih-i Naima*, ed. Mehmet İpşirli, vol. III (Ankara: Türk Tarih Kurumu, 2007), pp. 1000-1001.

[332] Şeyhi, *Vekayiü'l-Fuzala*, vol.1, 138

[333] Ibid. 235-236.

[334] Naima, *Tarih*, vol. 1168.

[335] Ibid. 1233-1234.

[336] Şeyhi, *Vekayiü'l-Fuzala*, vol.1, 214.

[337] Naima, *Tarih*, vol. III, 1295-1301.

[338] Ibid. 1349-1350.

Kazasker of Anatolia. [339] Bahai Mehmed Efendi returned to the office after that event and stayed there until his death in 1654. [340] Bahai Efendi did not have a fatwa compilation on his own. Nevertheless, he had many fatwas in several mixed fatwa compilations. Among these fatwas there were lots of land fatwas. However, it requires an unmanageable time and effort to track down all of these fatwas in mixed compilations. Fortunately, all of his land fatwas were later collected in the articles of Kanunname-i Cedid. His land fatwas will be evaluated in the next pages.

Bahai Mehmed Efendi's death, Ebu Said Mehmed Efendi became the şeyhülislam for the third time. [341] Ebu Said Mehmed Efendi played an important role in the appointment of İbşir Paşa as the Grand Vizier. However, his affiliation with him ended his third time in the office at the same time. Opponents of İbşir Paşa revolted against and demanded the head of Mehmed Efendi. Sultan delivered İbşir Paşa to rebels but he just dismissed and exiled Mehmed Efendi. [342]

After his dismissal Hüsamzade Abdurrahman Efendi (d. 1081/1670) became the next şeyhülislam. He could held the office just for one year. Then he was forcefully resigned during the Çınar Incident (1656). [343] Memikzade Mustafa Efendi became şeyhülislam. However his tenure became the shortest one in the Ottoman history. Supporters of Hocazade Mesud Efendi spread rumours among the mutinous janissaries against Memikzade. So the janissaries demanded his dismissal after thirteen hours upon his appointment. He was dismissed and Hocazade Mesud Efendi became the next şeyhülislam. [344] With the tide of political events in four months, Mesud Efendi was dismissed too. When he was on his way to exile, he was executed

[339] Ibid. 1411-1421.

[340] Şeyhi, *Vekayiü'l-Fuzala*, vol. 1, 216.

[341] Naima, *Tarih*, vol. III, 1509.

[342] Ibid. vol. IV, 1607-1618.

[343] Şeyhi, *Vekayiü'l-Fuzala*, vol.1, p. 370; Naima, *Tarih*, vol. IV, 1655-1656.

[344] Naima, *Tarih*, vol. IV, 1656-1657.

in Bursa. [345] Hanefi Mehmed Efendi (d. 1069/1658) became the next şeyhülislam. After five months, however, he was dismissed because of the turn of political balance. [346] Balizade Mustafa Efendi (d. 1073/1662) became the next şeyhülislam. After six months, he was dismissed too. [347] Bolevi Mustafa Efendi (d. 1086/1675) became the next şeyhülislam. He worked closely with Grand Vizier Köprülü Mehmed but when he did not give the fatwa asked by Köprülü (1659), he was dismissed. [348] Esiri Mehmed Efendi (d. 1092/1681) became the next şeyhülislam. After three years he fell afoul of Köprülü Fazıl Ahmed Paşa and dismissed. [349] Sunizade Mehmed Emin Efendi (d. 1076/1665) became the next şeyhülislam. But after ten months, he was dismissed because of the disorders caused by his old age. [350] Minkarizade Yahya Efendi (d. 1088/1678) became the next şeyhülislam (1662). He held the office until his health was broken in 1674. So finally the office regained its long gone stability. [351]

That stability was the result of a general stability in the Empire. During the years between 1656 and 1687 there was no great janissary rebellion. [352] Kadızadelis were finally taken under control. The war with Venice which lasted twenty four years

[345] Ibid. 1683-1687; Şeyhi, *Vekayiü'l-Fuzala*, vol. 1, 238-239.

[346] Şeyhi, *Vekayiü'l-Fuzala*, vol. 1, 265; Naima, *Tarih*, vol. IV, 1719.

[347] Şeyhi, *Vekayiü'l-Fuzala*, vol. 1, 298; Naima, *Tarih*, vol. IV, 1735-1736.

[348] Naima, *Tarih*, vol. IV, 1828-1829.

[349] Fahri Çetin Derin, "Abdurrahman Abdi Paşa Vekayineme'si", Ph.D. Diss. (İstanbul Üniversitesi, 1993), 131-132.

[350] Ibid. 134.

[351] For detailed information on Minkarizade Yahya Efendi see: Mehmet İpşirli, "Minkarizade Yahya Efendi," in *Mübahat S. Kütükoğlu'na Armağan*, ed. Zeynep Tarım Ertuğ (İstanbul: İstanbul Üniversitesi Edebiyat Fakültesi, 2006), 229-249; and: Mehmet İpşirli, "Minkarîzâde Yahyâ Efendi" *DİA*, v. 30: 114-115.

[352] Cemal Kafadar, "Janissaries and Other Riffraff in Ottoman Istanbul: Rebels Without a Cause?," in Baki Tezcan & Karl K Barbir (ed) *Identity and Identity Formation in the Ottoman World: A Volume of Essays in Honour of Norman Itzkowitz* (University of Wisconsin Press: Madison, 2007), 113-134.

finally came to an end with the Ottoman acquisition of Crete. [353] Above all, Mehmed IV came to his twenties. He was enthroned as a six year old child in 1648. That created a power vacuum which was tried to be filled with several power groups. That rush for power toughened the Ottoman politics and created an instability. Nevertheless that situation had an advantage for the Empire too. When Mehmed IV became an adult, he happened to grow up out of the imperial cage practice. That made him to be a self-confident ruler who could fill the power vacuum created in his absence.

All the şeyhülislams between Zekeriyazade Yahya Efendi and Minkarizade Yahya Efendi struggled in that power vacuum and get involved with rapidly changing political affairs as it is shown above. For that reason their tenures were short and they could not get busy with long term regulations such as giving land fatwas. As a matter of fact şeyhülislams before Zekeriyazade Yahya Efendi were active in the political affairs. They were even intervening the appointment and dismissals of high ranking officers like viziers and grand viziers. Sunullah and Esad Efendi are just two such examples. The thing makes the politicization between 1644 and 1662 special is the unprecedented vacuum. Şeyhülislams' political actions in that vacuum became more intensified and more broadened in terms of their effects. Almost all of the şeyhülislams above played important roles during the major events like dethronement and regicide of Sultan İbrahim, enthronement of Mehmed IV, murder of Queen Grandmother Safiye Sultan, Çınar incident, war decisions, appointment of grand viziers and so on. Their political actions included making a current şeyhülislam dismissed and acquiring the office through political connections and sometimes through bribery.

During these unstable years the legal tool of administrative power was not *kanunname*s (code of law). Sultans, in those years, were issuing *ferman*s (imperial edicts) rather than applying long-term legislative solutions (that is namely *kanunname*s) because they had to find a chance to consolidate their power before making a *kanunname*. Not every sultan could find a chance to do that. Apparently

[353] Cristoph K. Neumann, "Political and Diplomatic Developments," in Suraiya Faroqhi (ed) *Cambridge History of Turkey: The Later Ottoman Empire 1603-1839,* Vol. III (Cambridge University Press: Cambridge, 2006), 50-51.

throughout the seventeenth century, only Ahmed I (d. 1617) and Mehmed IV (d. 1693) were able to make a *kanunname* and the other sultans contented with issuing *fermans*. For that reason, the number of *kanunnames* written by individuals are multiplied in that age. However, the situation for the sultanic *kanunnames* was much more tragic than that. Regulations during the reigns of Ahmed I and Mehmed IV were actually on the same *kanunname* text. In another word, the regulation of Ahmed I can be considered as an earlier version of the *Kanunname-i Cedid* which was compiled during the reign of Mehmed IV in the stable period provided by Köprülü grand viziers.

Assuming that it took its final form in 1674, in the light of the information given by İnalcık, *Kanunname-i Cedid* was maybe the greatest Köprülü achievement. [354] With its introduction, all the previous land fatwas and land *kanuns* were happened to be selected and compiled in a single law book for the first time in the Ottoman history. However, its structure was not persistently stable. It was a very dynamic artefact which accommodate itself to new conditions through accepting new additions. That is why there are discussions on its origins and its final date. İnalcık and Murphey bring forward the reign of Ahmed I as its beginning. [355] Nineteenth century Ottomanist Joseph von Hammer argues that it began to be compiled as early as the reign of Selim II. His argument is based on a compilation of Ebussuud's land fatwas and some land *fermans* entitled with *Kanunname* and dated back to the time of Selim II. [356]

I argue that *Kanunname-i Cedid* was more than a written code of law. It was a conception which has no clear beginning nor a final formation and it was the other name of the "land law" for the Ottomans. That conception's first comprehensive composition was the text of *Kanunname-i Cedid* of 1674. All the previous land *kanunnames* were limited in their comprehensiveness. Either Nişancı laws or şeyhülislam laws were missing in them.

---

[354] Halil İnalcık, 'Kanunnâme' *EI2*, vol. 4, (Leiden: E.J.Brill, 1978), 566.

[355] Ibid.; Rhoads Murphey, "The Historical Setting", *Essays on Ottoman Historians and Historiography* (İstanbul: Eren Yayınları, 2009), 24.

[356] Joseph Von Hammer, *Osmanlı Tarihi*, vol. 2 (İstanbul: Kumsaati Yayınları, 2008 ), 237 and 281.

Four periods come forward in building the Ottoman land law when the text of *Kanunname-i Cedid* of 1674 is considered. First one is the Suleiman the Lawgiver's reign in which Ebussuud, Kemalpaşazade and Celalzade Mustafa formed the basics of Ottoman land law. The second great development in the land law was the reign of Ahmed I in which Nişancı Hamza Paşa and the Town Judge Pir Mehmed Üskubi built on those basics. The third and the greater breakthrough is the time of Murad IV when Zekeriyazade Yahya Efendi and his friend Nişancı Okçuzade Mehmed Efendi preserved the continuity in the face of the change Hocazade Esad Efendi had made in the time of Osman II. Being strongly connected with the third, the fourth development is the early years of Mehmed IV when Bahai Mehmed Efendi built upon the existing tradition.

These are the most effective names in the text of *Kanunname-i Cedid*. However, the greatest effort among them was exerted by Zekeriyazade Yahya Efendi after Ebussuud. Before his time in the office, şeyhülislams were surely aware of the *kanun*s because they were issuing their land fatwas by considering these *kanun*s and *fermans*. Nevertheless, after Ebussuud, there is no example that the şeyhülislams were directly affecting the making process of these *kanun*s which were prepared under the observation of *nişancı*s. The first exception of that seems to be Zekeriyazade Yahya Efendi. He was a close friend and the patron of the famous Nişancı Okçuzade Mehmed and most probably he was the reason of his appointment as the Nişancı. [357] Therefore Yahya Efendi was in a position to directly affect the land *kanun*s and legislate his understanding easily by using Okçuzade's authority in the Imperial Council. He used that position by ordering Okçuzade to make a land *kanun*. [358] Furthermore, Bahai Mehmed Efendi was under the effect of Yahya Efendi when he was giving the multitude of fatwas on land issues. His pseudonym of "Bahai" was given to him by Yahya Efendi who was called as the sultan of poets in his time. In return Bahai had two poems written for Zekeriyazade Yahya Efendi. [359]

---

[357] Christine Woodhead, "Ottoman İnşa and the Art of Letter-Writing," 152.

[358] "Şeyhülislam merhum Yahya Efendi'nin talebiyle Divân-ı Humâyundan Okçuzade Efendi'nin ihrâc eylediği kanundur ki naklolundu"*Kanunname-i Cedid*, Bld. MC. Yz. K0133, f.11b.

[359] Harun Tolasa, *Şeyhülislam Bahâyî Efendi Dîvânı'ndan Seçmeler* (Tercüman: İstanbul, 1979), 166, 190.

Most probably Minkarizade Yahya Efendi, who was the şeyhülislam when the *Kanunname-i Cedid* was being compiled, was good with Zekeriyazade Yahya Efendi. He thought at the madrasa of Şeyhülislam Zekeriya Efendi. [360] The deed of trust which belongs to the waqf of Şeyhülislam Zekeriya Efendi shows that the descendants of Zekeriya Efendi had the priority in teaching and Zekeriyazade Yahya Efendi, as his son, was administering the waqf. [361] So his appointment to that madrasa shows a probable intimacy between the two şeyhülislams.

### 4.5. Conclusion

Ahmed I's reign was in many ways the basis of the *Kanunname-i Cedid*. The land fatwas began to be included into the land *kanun*s after those years. Fatwas and *kanun*s from the reign of Suleiman the Lawgiver are seen as the basis of the *Kanunname-i Cedid*, in the first look. However, in a deeper look, they were taken as the basis by the *kanun*s of Ahmed I at first. The *Kanunname-i Cedid* was taking them through the *kanun*s of Ahmed I. Moreover, a *kanunname* made of fatwas seems to be the invention of the reign of Ahmed I.

The long period from the beginning of Ahmed I's reign to the midst of the reign of Sultan Ibrahim was the effective years of Zekeriyazade Yahya. In the half of that period he was a şeyhülislam. That allowed him to directly affect the making process of the *Kanunname-i Cedid*. He served nineteen years as a şeyhülislam which is the second longest tenure in the office after Ebussuud. That allowed him to be experienced on the land issues, as well as on the non-fiqh issues, just like Ebussuud. [362] With the help of his influence on the other high ranking bureaucrats like Okçuzade, he had an access to the old *kanunname*s that formed the tradition. In that way, he was able to learn the tradition of land law and he leaned on that tradition to the degree that he was almost identified with it.

---

[360] Şeyhi, *Vekayiü'l-Fuzala*, vol. 1, 439.

[361] Bahaeddin Yediyıldız, "Bayramzâde Zekeriyya Efendi'nin (1514-93) Vakfı," *Uludağ Üniversitesi İlahiyat Fakültesi* 12/1 (2003): 157.

[362] "Ebussu'ûd Efendimden gayri ekser müftîler mesâ'il-i fıkhiyyeden gayriye nâdir yazup, husûsân müte'ahhirîn mesâ'il-i fıkhiyyeden ekser muamelâta hasr eylemişlerdir. Lâkin Ebussu'ûd Efendi zamân-ı medîd müftî olup, mesâ'il-i fıkhiyyeden mâ'adâ sâir müşkilât-ı fünûndan iftâ eylemek de'bi idi. Nitekim, suver-i fetvâsı delâlet eder." Hazerfan Hüseyin Efendi, *Telhîsü'l-Beyân fî Kavânîn-i Âl-i Osmân*, ed. Sevim İlgürel (Ankara: Türk Tarih Kurumu, 1998), 200.

Esad Efendi's land fatwas were not included into *Kanunname-i Cedid* although he had many, some details of which did not accord with the fatwas of Zekeriyazade Yahya Efendi and with the tradition behind him. And maybe that was because the tradition was not known to him as it was to Yahya Efendi. Şeyhülislams after Yahya Efendi learned the tradition from his works. Old *kanun*s were extracted from imperial archives upon his requests and they were used as a source for his land fatwas. In short, it was Yahya Efendi who traditionalised the discourse of Ebussuud by merging it with the new *kanun*s of seventeenth century and therefore connecting it to the seventeenth century. Without his efforts Ebussuud's land fatwas may not transcend beyond the 16th century and form the basics of Ottoman land law to the nineteenth century.

# CHAPTER V

## Conclusions

Major questions of this thesis were: How did Ebussuud elucidate the mentality behind Ottoman Land Law and how was his understanding developed by the fetvas of later şeyhülislams in sixteenth and seventeenth centuries? What was the fatwa approach to the land ownership? What was built upon the base of Ebussuud on that matter? And what do the answers of these question mean for the Islamic character of Ottoman land law?

According to the fatwa and land law literature, Ebussuud was the first to conceptualize Ottoman land law. Ebussuud chose the concepts of Islamic law in doing that first conceptialization. That represents a deep discursive change in the legal texts on the land. After that, almost all land codes and fatwas used his discourse. That seems to be a change in the paradigm. However, that paradigmatic change does not seem to be in the level of shifting from non-Islamic to Islamic or harmonising non-Islamic practices and Islamic ones. Because there was no major contradiction between the practices before Ebussuud and the Islamic law. The period before Ebussuud falls out of the timeframe this thesis focuses. So the thesis did not try to prove it. However, there is enough knowledge to build an assumption in that way. Land legislators were Muslim and mostly ʿulamaʾ even if they did not reference directly to Islam. Additionally, the tradition they lean on had at least five centuries long Islamization experience.

This thesis approached the tradition as the sum of practical and successful solutions in the past. The processes and stories leading to these successful solutions are generally seen as irrelevant in the tradition and forgotten in time. Most probably the Islamic concerns during the process of the formation of countless solutions were forgotten too. Therefore, the thesis assumes that there were traditional elements that do not contradict with Islam and they were not referencing to it at the same time.

This thesis accepts that *örf* had more central role than the Islamic law in Ottoman land law before Ebussuud. But it denies viewing *örf* and Islamic law as separate and irreconcilable entities due to the broad *örf* definition made in the first chapter.

Instead, it suggest defining the land law before Ebussuud as Turkic-Muslim because the land law before him was a Turkic law made by Muslim Turks. In the view emerged after Ebussuud, Turkic elements did not disappear totally in the land law but they were less stressed in a more multicultural picture of an Islamic Empire. So this thesis argues that what Ebussuud did in the land law was simply changing it from Turkic-Muslim to Islamic-Imperial. That was not only because of the individual intention of Ebussuud. It was also forced by the context.

To state exactly what Ebussuud changed we have very little data on the land law before Ebussuud. There are some little information in Ebussuud's critics on his contemporary judges. However, that is the judicial and executive part of the business. This thesis's focus was on the legislative side of the business. There is no şeyhülislam fatwa monologue before Ebussuud except the compilation of Molla Arab which contains no fatwas on land issues. [363] The only information we have for that timeframe is derived from the land codes. From the little information we have on the subject, this thesis came to the conclusion that the practices generally did not change but the discourse and the conception of the land law was changed by Ebussuud. However, labelling that change as "Islamization", as İnalcık does, would be an exaggeration because the outlook before was not outside the Islamic paradigm.

Whether religious or not, law is something living, changing, evolving and a developing thing. Moreover, law comes out from social practices in its very origins. Living social practices becomes rules and ultimately form the law. From that perspective, promulgating a law for legitimising something denotes that originally that thing is a socially marginal practice. Because there is no need for legitimisation in setting a popular thing as a rule. That thing already has been legitimised through being put into practice by the society. That is the synchronic dimension of the business. In diachronic dimension (in the Islamic paradigm in that case), there may be still a need for justification. Nevertheless, Islam left a space for the changes in the

[363] Şükrü Özen, "Osmanlı Döneminde Fetva Literatürü," *TALİD* 3/5 (2005): 255.

face of contextual exigencies with the concepts like *maslahat*, and *istihsan* and hadiths like "Indeed Allah will not gather my Ummah upon deviation". [364]

In the Ottoman legislative practice it seems that Ebussuud never legislated a marginal social practice in land issues. What he did was explaining and conducting the existing practices through Islamic references. So his legislative actions on land issues cannot be labelled as religious legitimisation either. Between Islam and non-Islamic local traditions, it is Islam which is more eager for reconciliation with the other. As long as they do not contradict with its core sources, Islam enriches itself by considering and recognising the local tradition and practices where it goes. For that reason *örf* has a place in Islamic law. Above all, Islamic law is a big and detailed law paradigm that cannot be reduced to a whole law system. That is why there are many school and interpretations in the Islamic law. There is a complete agreement between the Sunni schools on the core sources of the Islamic law. None of those schools and their interpretations contradict with the *naṣṣ*. So it does not make it non-Islamic, even if Ebussuud prioritised another Sunni madhab over Hanafism in some land issues either.

What şeyhülislams did not say were important as much as what they say for this thesis. Ebussuud was criticised by his contemporaries like Çivizade and Birgivi. But his arrangements on lands were never subjected to a question neither in his life nor later. Moreover, there is no compliment for him on "Islamizing" the Ottoman land law or harmonising the *örf* with Islamic law in the sources. This is another indicator of the Islamic character of the Ottoman legislative practice on the lands.

This thesis never denies that Ebussuud was unique in the Ottoman legal history on land issues. But his uniqueness was coming from the temporal spot he lived in. It seems that no other şeyhülislams after Ebussuud defined the mentality behind the Ottoman land law and none of them diverged from his main road. The reasons behind both of these outlooks are the same. Ebussuud was the first to explain the legislative mind-set on Ottoman lands that none of later şeyhülislams needed such basic explanation. When they did, it was enough to quote Ebussuud's explanations.

[364] Imam Hafiz Abū ʿEīsa Mohammad Ibn ʿEīsa At-Tirmidhī, *Jamiʿ At-Tirmidhī*, trans. Abu Khaliyl (Riyadh : Darussalam, 2007) Vol. 4, p. 227, Hadith 2167.

Later şeyhülislams did not diverge from Ebussuud's mentality because it became the same with leaving the Ottoman mentality. He monopolised the legal mentality by doing all the basic definitions at first. That was half the result of the context. The empire never needed such basic explanations until nineteenth century. That was another factor behind the lack of mental change among the şeyhülislams after Ebussuud.

The şeyhülislams did not push the borders of Ebussuud's land fatwas until Hocazade Esad Efendi. They were just contended with elaborating the land law as far as new cases came to them. Their major concerns were political power balances and that was shortening their tenures. That was hindering them to specialize on land issues. Therefore they could not present a change or a development in the land law, not more than the new fatwa questions asked.

Şeyhülislams enriched or changed the land fatwas of Ebussuud were the şeyhülislams enrich or change the Ottoman land law at the same time. Hocazade Esad Efendi was one of them. He broadened the proprietary claims of the farmer in the face of the *timar* holder. The situation came to the degree that the *timar* holder almost had no administrative power on the lands in his *timar*.

After him Zekeriyazade Yahya Efendi restored the older situation back. Yahya Efendi was the most prominent şeyhülislam on the land law after Ebussuud. His long tenure and strong political and intellectual networks, allowed him to overweight the next century after Ebussuud. What he did was simply a standardisation in the land law. He built a bridge between sixteenth century and seventeenth century. One abutment of the bridge was Ebussuud and the other was Yahya Efendi himself. The discordant fatwas between the two abutments like Hocazade Esad Efendi's were suppressed. At the end, there was no place for them in the *Kanunname-i Cedid*.

For the land ownership, this thesis focused it as a theme and just its legislation side from the perspective of land fatwas. However, the thesis contains very important findings that affects the literature's approach to the Ottoman land ownership in sixteenth and seventeenth centuries. There is a pre-assumption that the private land ownership came to the Ottoman realms in the nineteenth century. However, the fatwas show that there were private land ownership practice in sixteenth and

seventeenth centuries under the name of *öşri* and *haraci*. Nevertheless, these privately owned lands were small in the total lands.

Most of the Ottoman lands were defined as treasury's demesne lands in the first place. Land ownership was fragmented through different layered parties in that *miri* lands. The farmer, timar holder and treasury were the three main parties in that relationship. Treasury was holding the essence of the land. Timar holder was collecting the lands taxes and rents for himself and supplying the treasury by administering the land of treasury and by serving as a soldier for free. The farmer was acting like a tenant on the land. But his usufructuary rights on the *miri* land was under the guarantee of the law, as far as the fatwas show.

That picture was changed in the advantage of the proprietary claims of the farmer in the beginning of the seventeenth century. Now they could use the land almost on their own, out of the control of the timar holder. Zekeriyazde Yahya Efendi's restoration pushed the proprietary claims of the farmer back. But some of these rights, as giving the *miri* land as security, remained in its place. It was legislated in that form in the *Kanunname-i Cedid* later.

There are valuable information if the implementation of the law is considered. However, that is outside the scope and limits of this research. If such studies are conducted in the future, it would be more possible for us to be more certain on the Ottoman land ownership in sixteenth and seventeenth centuries. That will be also very helpful in concluding the land side of the debate on the Islamic character of the Ottoman law.

# REFERENCES


**Primary Sources:**

**Istanbul Municipality Atatürk Library**

Ebussuud, *Fetava*, comp.Veli bin Yusuf, Bld. K. 0125 (981 / 1573)

Ebussuud, *Fetava-yı Ebussuud*, comp. Sefer ibn al Hacc Hüseyn, Bld., B. 0017, Vol. 1 (985 / 1577).

Ebussuud, *Maruzat*, Bld., K.000660/1.

Kemalpaşazade, *Fetava-yı Kemalpaşazade*, Bld. O. 0044.

Mehmed b. Mehmed İmadi, *Kanunname-i Cedid*, Bld., MC. Yz. K0133, f. 3b.

Minkarizade Yahya Efendi, *Fetava-yı Ataiyye*, comp. Ataullah Mehmed Efendi (d. 1127/1715), Bld., MC. Yz. B. 0023.

**Süleymaniye Manuscript Library**

Aşık Çelebi, *Miracü'l-Eyale ve Minhacü'l-Adale*, Reisülküttâb, nr. 1006.

Boyabadi Sağir Mehmed Efendi, *Mecmuatü'l-Fetava*, Şehid Ali Paşa, nr. 1067 (18.12.1087 / 21.02.1677).

Esad Efendi, *Fetava-yı Müntehabe*, comp. Şaranizade Hafız es-Seyyid İsmail İbn Hafız Abdülkerim, Kasecizade, nr. 277 (1218/1803).

Hoca Sadeddin, *Fetava*, Şehid Ali Paşa, nr. 2728.

Karaçelebizade Abdülaziz, *Fetava*, Şehid Ali Paşa, nr. 1048.

Zekeriyazade Yahya Efendi, *Fetava-yı Yahya Efendi*, comp. Esiri Mehmed Efendi, Süleymaniye Manuscript Library, Ayasofya, nr. 1569.

**Published Primary Sources**

"Hüdavendigar Livası Kanunnamesi" In *XV ve XVI'ıncı Asırlarda Osmanlı İmparatorluğunda Ziraî Ekonominin Hukuki ve Mali Esasları: Kanunlar*. Edited by Ömer Lütfi Barkan 1-6. İstanbul: Bürhaneddin Matbaası, 1943.

"Karaman Kanunnamesi (1528)" In *XV ve XVI'ıncı Asırlarda Osmanlı İmparatorluğunda Ziraî Ekonominin Hukuki ve Mali Esasları: Kanunlar*. Edited by Ömer Lütfi Barkan 45-47. İstanbul: Bürhaneddin Matbaası, 1943.

"Karaman Kanunnamesi." In *XV ve XVI'ıncı Asırlarda Osmanlı İmparatorluğunda Ziraî Ekonominin Hukuki ve Mali Esasları: Kanunlar*. Edited by Ömer Lütfi Barkan 39-45. İstanbul: Bürhaneddin Matbaası, 1943.

"Kitâb-ı Kavânîn-i Örfiye-i Osmanî." In *Osmanlı Kanunnameleri ve Hukukî Tahlilleri*, edited by Ahmed Akgündüz, vol. 2, 32-63. İstanbul: Fey Vakfı, 1990.

"Selânik Kanunnamesi." In *Osmanlı Kanunnameleri ve Hukukî Tahlilleri*, edited by Ahmed Akgündüz, vol. 6, 631-647. İstanbul: Fey Vakfı, 1990.

Abdī Abdurrahman Paşa. "Teşrifat ve Teşkilat Kanunnamesi." *Milli Tetebbular Mecmuası* 1/3 (1331/1913).

Ahmed b. Yahyâ el-Belâzurî. *Fütûhu'l-Büldân*. translated by Mustafa Fayda. Siyer Yayınları: İstanbul, 2013.

Düzdağ, Mehmet Ertuğrul. *Şeyhülislâm Ebussuud Efendi Fetvaları Işığında 16. Asır Türk Hayatı*, İstanbul: Enderun Kitabevi, 1972.

Ebu Yusuf. *Kitabü'l-Harac*. translated by Müderriszade Mehmed Ataullah. edited by İsmail Karakaya. Ankara: Akçağ Yayınları, 1982.

Ebussuud. *Maruzat*, edited by Pehlül Düzenli. Klasik Yayınları: İstanbul, 2013.

Evliya Çelebi. *Seyahatname*. edited by Seyit Ali Kahraman et al. Istanbul: Yapı Kredi, 2007.

Fahri Çetin Derin, "Abdurrahman Abdi Paşa Vekayineme'si." Ph.D. diss. İstanbul Üniversitesi, 1993.

Gelibolulu Mustafa ʿĀlī. *Kitabü't-Tarih Künhü'l-Ahbar*. edited by Ahmet Uğur, Mustafa Çuhadar, Ahmet Gül and İbrahim Hakkı Çuhadar. Kayseri: Erciyes University, 1997.

Hazerfan Hüseyin Efendi. *Telhîsü'l-Beyân fî Kavânîn-i Âl-i Osmân*. edited by Sevim İlgürel. Ankara: Türk Tarih Kurumu, 1998.

Imām Hāfiz Abū ʿEīsā Mohammad Ibn ʿEīsā At-Tirmidhī, *Jamiʿ At-Tirmidhī*, translated by Abu Khaliyl. Riyadh : Darussalam, 2007.

İpşirli, Mehmet. "Osmanlı Devlet Teşkilâtına Dair Bir Eser: Kavânîn-i Osmânî ve Râbıta-i Âsitâne." *İstanbul Üniversitesi Edebiyat Fakültesi Tarih Enstitüsü Dergisi* 14 (1994): 9-35.

Joseph Von Hammer. *Osmanlı Tarihi*. İstanbul: Kumsaati Yayınları, 2008.

Kınalızade Ali. *Ahlâk-ı Alâî*. Prepared by Mustafa Koç. İstanbul: Türkiye Yazma Eserler Kurumu Başkanlığı, 2014.

Koçi Bey. *Koçi Bey Risalesi*. Edited by Zuhuri Danışman. İstanbul: Milli Eğitim Basımevi, 1972.

Köprülü, Mehmed Fuad. "Osmanlı Kanunnameleri", *Milli Tetebbular Mecmuası*, 1 (1331/1913).

Mecdi Mehmed Efendi. *Hadaikü'ş-Şakaik*. Edited by Abdülkadir Özcan. İstanbul: Çağrı Yayınları, 1989.

Mecdi Mehmed Efendi. *Şakaik-i Numaniye ve Zeyilleri: Hadaikü'ş-Şakaik*. Edited by Abdülkadir Özcan. İstanbul: Çağrı Yayınları, 1989.

Mehmed Arif. "Kanunname-i Al-i Osman." *Tarih-i Osmani Encümeni Mecmuası* (1912).

Menteşzade Abdürrahim Efendi. *Fetava-i Abdürrahim Efendi*. İstanbul: Matbaa-i Âmire, 1243/1827.

Naima Mustafa, *Tarih-i Naima*. Edited by Mehmet İpşirli. Ankara: Türk Tarih Kurumu, 2007.

Nevizade Atai, *Şakaik-i Numaniye ve Zeyilleri: Hadaikü'l-Hakaik fi Tekmiletü'ş-Şakaik*. Edited by Abdülkadir Özcan. İstanbul: Çağrı Yayınları, 1989.

Pir Mehmed Üskübi. "*Zahirü'l-Kuzat*" In *Osmanlı Kanunnameleri ve Hukukî Tahlilleri*, edited by Ahmed Akgündüz, vol. 9, 394-489. İstanbul: Fey Vakfı, 1990.

Uzunçarşılı, İsmail Hakkı. "Kanûn-ı Osmânî Mefhûm-ı Defter-i Hâkanî." *Belleten* 59 (1951): 381-399.

http://quran.com, Sahih International

**Secondary Sources:**

**Unpublished Master Theses and Ph.D. Dissertations**

Atçıl, Abdurrahman. "The Formation of the Ottoman Learned Class and Legal Scholarship, 1300-1600." PhD diss., University of Chicago, 2010.

Çavuşoğlu, Semiramis. "The Kadizâdeli Movement: An Attempt of Şeriat-Minded Reform in the Ottoman Empire." PhD diss., Princeton University, 1990.

Demiray, Mustafa. "Eksik Borç Kavramının İslâm Hukuku Açısından İncelenmesi." PhD diss., Marmara Üniversitesi, 2008.

Karagöz, Fatma Gül. "The Evolution of *Kânûnnâme* Writing in the 16th and 17th Century-Ottoman Empire: A Comparison of *Kânûn-i Osmânî* of Bayezîd II and *Kânûnnâme-i Cedîd*." MA. Thesis, Bilkent University, 2010.

Kaya, Eyüp Said. "Mezheblerin Teşekkülünden Sonra Fıkhî İstidlâl." PhD diss., Marmara Üniversitesi, 2001.

Kömbe, İlker. "*Adalet Dairesi*nin Teşekkülü ve Temel Kavramları." PhD. diss., Marmara Üniversitesi, 2014.

Niyazioğlu, Aslı. “Ottoman Sufi Sheiks between this world and the Thereafter: A Study of Nev’izade Atayi’s (1583-1635) Biographical Dictionary.” PhD diss., Harvard University, 2003.

Yılmaz, Mehmet Şakir. “Koca Nişancı of Kanuni: Celalzade Mustafa Çelebi, Bureaucracy and Kanun in the Reign of Süleyman the Magnificent (1520–1566).” PhD diss., Bilkent University, 2006.

Zildzic, Ahmed. “Friend and Foe: The Early Ottoman Reception of Ibn ‘Arabi.” PhD diss., University of California-Berkeley, 2012.

**Published Articles and Books**

Akgündüz, Ahmed. *Osmanlı Kanunnâmeleri ve Hukukî Tahlilleri*. Istanbul: Fey Vakfı, 1990.

Akgündüz, Ahmet. “Osmanlı Kanunnâmelerinin Şerʾî Sınırları.” In *Osmanlı*, edited by committee, vol. 6, 401-411. Ankara: Yeni Türkiye Yayınları 1999.

Aksan, Virginia. “War and Peace.” In *Cambridge Histoy of Turkey: The Later Ottoman Empire (1603-1839)*, edited by Suraiya N. Faroqhi, Vol. 3, 81-117. Cambridge: Cambridge University Press, 2006.

Altınsu, Abdülkadir. *Osmanlı Şeyhülislamları*. Ankara: Ayyıldız Matbaası, 1972.

Apaydın, Yunus. “Siyâset-i Şerʿiyye” *TDV İslam Ansiklopedisi*. Vol. 37: 299-304.

Atar, Fahrettin. “Fetva” *TDV İslam Ansiklopedisi*. Vol. 12: 486-496.

Aydın, Mehmet Âkif “Halʾ” *TDV İslam Ansiklopedisi*. Vol. 15: 218-221.

Aydın, Mehmet Akif. *Türk Hukuk Tarihi*. İstanbul: Hars Yayıncılık, 2005.

Baktır, Mustafa. “İçki (İslam’da)” *TDV İslam Ansiklopedisi*. Vol. 21: 458-462.

Bardakoğlu, Ali. “Hanefî Mezhebi” *TDV İslam Ansiklopedisi*. Vol. 16: 1-21.

Bardakoğlu, Ali. “Osmanlı Hukukunun Şerʾîliği Üzerine” In *Osmanlı*, edited by committee, vol. 6, 412-417. Ankara: Yeni Türkiye Yayınları, 1999.

Barkan, Ömer Lütfi. ““Tarihi Demografi” Araştırmaları ve Osmanlı Tarihi.”, *Türkiyat Mecmuası* 9 (1951-53): 1-26.

Barkan, Ömer Lütfi. “H. 933-934 (M. 1527-1528) Malî Yılına Ait Bir Bütçe Örneği.” *İstanbul Üniversitesi İktisat Fakültesi Mecmuası* Vol. 15, 1-4 (1953-1954): 251-329.

Barkan, Ömer Lütfi. “Türk Toprak Hukuku Tarihinde Tanzimat ve ; 1274 (1858) Tarihli Arazi Kanunnamesi.” In *Tanzimat 1*, edited by Commitee, 321-421. İstanbul: Milli Eğitim Bakanlığı, 1999.

Buzpınar, Ş. Tufan. “Osmanlı Hilafeti Meselesi: Bir Literatür Değerlendirmesi.” *Türkiye Araştırmaları Literatür Dergisi* Vol. II-1 (2004): 113-131.

Cin, Halil. *Osmanlı Toprak Düzeni ve bu Düzenin Bozulması*. Konya: Selçuk Üniversitesi Yayınları, 1992.

Darling, Linda. *Revenue-Raising and Legitimacy: Tax Collection and Finance Administration in the Ottoman Empire 1560-1660*. Leiden: E.J. Brill, 1996.

Demir, Abdullah. *Şeyhülislam Ebussuud Efendi: Devlet-i Aliyye’nin Büyük Hukukçusu*. İstanbul: Ötüken, 2006.

Dönmez, İbrahim Kâfi. “Örf” *TDV İslam Ansiklopedisi*. Vol. 34: 87-93.

el-Ensârî, Abdülhamîd İsmâil. “Ehlü’l-Halʾ ve’l-Akd” *TDV İslam Ansiklopedisi*. Vol. 10: 539-541;

Erkal, Mehmet. “Öşür” *TDV İslam Ansiklopedisi*. Vol. 34: 97-100.

es-Seyyid Mahmud, Seyyid Muhammed. *XVI. Asırda Mısır Eyâleti*. İstanbul: Edebiyat Fakültesi, 1990.

Fayda, Mustafa. *Hulefâ-yı Râşidîn Devri*. İstanbul: Kubbealtı Neşriyat, 2014.

Fleischer, Cornell H. *Bureaucrat and Intellectual in the Ottoman Empire: The Historian Mutafa Âli (1541-1600)*. Princeton: Princeton University Press, 1986.

Genç, Mehmet. “Mâlikâne-Divanî” *TDV İslam Aansiklopedisi*. Vol. 27: 518-19.

Gerber, Haim. *State, Society and Law in Islam: Ottoman Law in Comperative Perspective*. New York: State University of New York Press, 1994.

Gülsoy, Ersin. *Girit’in Fethi ve Osmanlı İdaresinin Kurulması (1645-1670)*. İstanbul: TATAV, 2004.

Heyd, Uriel. "Some Aspects of the Ottoman Fetva." *Bulletin of the School of Oriental and African Studies* 32 (1969): 36-56.

Heyd, Uriel. *Studies in Old Ottoman Criminal Law*. Oxford: Clarendon Press, 1973.

Imber, Colin. *Ebu’s-Su’ud: The Islamic Legal Tradition*. Edinburgh: Edinburgh University Press,1997.

İnalcık, Halil. “Islamization of Ottoman Laws on Land and Land Tax.” *Essays in Ottoman History*, edited by Halil İnalcık, 155-173. İstanbul: Eren Yayınları, 1998.

İnalcık, Halil. “Kanunnâme” *E.J. Brill Encyclopedia of Islam 2*. Vol. 4: 562-566.

İnalcık, Halil. “Military and fiscal transformation in the Ottoman empire, 1600–1700.” *Archivium Ottomanicum* 6 (1980): 283–337.

İnalcık, Halil. “Osmanlı Hukukuna Giriş: Örf-i Sultani Hukuk ve Fatih’in Kanunları” In *Osmanlı İmparatorluğu Toplum ve Ekonomi*. İstanbul: Eren Yayınevi, 1996: 319-342.

İnalcık, Halil. “Raiyyet Rüsumu” *Belleten* 22 (1959): 575-610.

İnalcık, Halil. “Şeriat ve Kanun, Din ve Devlet.” In *Osmanlı’da Devlet, Hukuk, Adalet* edited by Halil İnalcık, 39-46. İstanbul: Eren Yayınları, 2000.

İnalcık, Halil. “Timar” *TDV İslam Ansiklopedisi*. Vol. 41: 168-173.

İpekten, Halûk. “Atâî, Nev’izade”, *TDV İslam Ansiklopedisi*. Vol. 4: 40-42.

İpşirli, Mehmed. “Ayn Ali Efendi” *TDV İslam Ansiklopedisi*. Vol. 4: 258-259.

İpşirli, Mehmet. “Minkarizade Yahya Efendi.” In *Mübahat S. Kütükoğlu’na Armağan*, edited by, Zeynep Tarım Ertuğ, 229-249. İstanbul: İstanbul Üniversitesi Edebiyat Fakültesi, 2006.

İpşirli, Mehmet. “Minkarîzâde Yahyâ Efendi” *TDV İslam Ansiklopedisi,* Vol. 30: 114-115.

İpşirli, Mehmet. “Şeyhülislâm Sunʿullah Efendi.” *Tarih Enstitüsü Dergisi* 13 (1987): 209-256.

Kafadar, Cemal. “The Myth of the Golden Age: Ottoman Historical Consciousness in the Post-Suleymânic Era.” In *Süleymân the Second and His Time*, edited by Halil İnalcık and Cemal Kafadar, 37-48. İstanbul: Isis Press, 1993.

Kafadar, Cemal. *Between Two Worlds: The Construction of the Ottoman State*. Los Angeles: University of California Press, 1995.

Kafadar, Cemal. “Janissaries and Other Riffraff in Ottoman Istanbul: Rebels Without a Cause?.” In *Identity and Identity Formation in the Ottoman World: A Volume of Essays in Honour of Norman Itzkowitz*, edited by Baki Tezcan & Karl K. Barbir, 113-134. Madison: University of Wisconsin Press, 2007.

Kallek, Cengiz. “Haraç” *TDV İslam Ansiklopedisi*. Vol. 16. p. 71-88.

Kallek, Cengiz. *İslam İktisat Düşüncesi Tarihi: Harâc ve Emvâl Kitapları*. İstanbul: Klasik, 2004.

Kaya, Bayram Ali. “Zekeriyâzâde Yahyâ Efendi” *TDV İslam Ansiklopedisi*. Vol. 43: 245-246.

Köprülü, Mehmed Fuad. “İslam Amme Hukuku’ndan Ayrı Bir Türk Amme Hukuku Yok Mudur?” *Belleten* 5-6 (1938): 39-72.

Küpeli, Özer. *Osmanlı-Safevî Münasebetleri (1612-1639)*. İstanbul: Yeditepe, 2014.

Kütükoğlu, Bekir. *Osmanlı-İran Siyâsî Münâsebetleri (1578-1612)*. İstanbul: İstanbul Fetih Cemiyeti, 1993.

Mandeville, Jon E. "Usurious Piety: The Cash Waqf Controversy in the Ottoman Empire." *International Journal of Middle East Studies* 10/3 (1979): 289–308.

Mundy, Martha and Richard Saumarez Smith. *Governing Property, Making the Modern State: Law, Administration and Production in Ottoman Syria*. London: I.B. Tauris, 2007.

Mundy, Martha. "Ownership or Office? A Debate in Islamıc Hanafite Jurisprudence over the Nature of the Military 'Fief', from the Mamluks to the Ottomans." In *Law, Anthropology, and the Constitution of the Social: Making Persons and Things*, edited by Alain Pottage and Martha Mundy, 142-165. New York: Cambridge University Press, 2004.

Murphey, Rhoads. "The Historical Setting." In *Essays on Ottoman Historians and Historiography*, edited by Rhoads Murphey, 13-28. İstanbul: Eren Yayınları, 2009.

Neumann, Cristoph K. "Political and Diplomatic Developments." In *Cambridge History of Turkey: The Later Ottoman Empire 1603-1839*, edited by Suraiya N. Faroqhi, Vol. 3, 44-64. Cambridge University Press: Cambridge, 2006.

Öğüt, Salim. "Ebû Yûsuf" *TDV İslam Ansiklopedisi*. Vol. 10: 260-265.

Özcan, Tahsin. *Osmanlı Para Vakıfları : Kanuni dönemi Üsküdar Örneği*. Ankara: Türk Tarih Kurumu, 2003.

Özen, Şükrü. "Osmanlı Döneminde Fetva Literatürü." *Türkiye Araştırmaları Literatür Dergisi* 3/5 (2005): 249-378.

Repp, Richard C. *The Müfti of Istanbul*. London: Ithaca Press, 1986.

Sahillioğlu, Halil. "Bursa Kadı Sicillerinde iç ve Dış Ödemeler Aracı Olarak "Kitabu'l-Kadı" ve "Süfteceler"." In *Türkiye İktisat Tarihi Semineri*, edited by committee, 103-142. Ankara: Hacettepe Üniversitesi Yayınları, 1975.

Tabakoğlu, Ahmet. *İktisat Tarihi*. İstanbul: Kitabevi, 2005.

Tabakoğlu, Ahmet. *Türkiye İktisat Tarihi*. İstanbul: Dergah, 2012.

Tolasa, Harun. *Şeyhülislam Bahâyî Efendi Dîvânı'ndan Seçmeler*. Tercüman: İstanbul, 1979.

Turan, Şerafettin. "Hoca Sâdeddin Efendi", *TDV İslam Ansiklopedisi*. Vol. 18: 196-198.

Uzunpostalcı, Mustafa. "Ebû Hanîfe" *TDV İslam Ansiklopedisi*. Vol. 10: 131-138.

Woodhead, Christine. “Ottoman İnşa and the Art of Letter-Writing: Influences Upon The Career of the Nişancı And Prose Stylist Okçuzade (d. 1630).” *The Journal of Ottoman Studies* VII-VIII (1988): 143-159.

Yediyıldız, Bahaeddin. “Bayramzâde Zekeriyya Efendi’nin (1514-93) Vakfı.” *Uludağ Üniversitesi İlahiyat Fakültesi* 12/1 (2003): 153-166.

Zilfi, Madeline. “The Kadizadelis: Discordant Revivalism in Seventeenth-Century Istanbul.” *Journal of Near Eastern Studies* 45/4 (1986): 251-269.

Zilfi, Madeline. *The Politics of Piety: The Ottoman Ulema in the Postclassical Age (1600-1800)*. Minneapolis: Bibliotheca Islamica, 1988.