The Right to Choice: Ottoman Justice vis-à-vis Ecclesiastical and Communal Justice in the Balkans, Seventeenth–Nineteenth Centuries*

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Ecclesiastical and Communal Justice: A Myth?

The legal choice enjoyed by Ottoman subjects in their pursuit of justice has been discussed primarily as a privilege granted to the non-Muslim populations of the empire.[1] Scholars like Aryeh Shmuelevitz, Joseph Hacker and Nicolaos Pantazopoulos verified the existence of separate courts for Christians and Jews operating in the Ottoman empire by using *Responsa* and patriarchal and synodical letters. They illuminated the points of tension between these separate courts and the *kadi* courts ── a tension emanating from the doctrinal differences and procedural practices of different bodies of law.[2] They also focused on the level of legal autonomy enjoyed by the non-Muslim subjects, and on questions posed by scholars' utilization of *kadi* court records. If indeed the *zimmi*s had the right to litigate most of their legal affairs in officially and communally recognized *zimmi* courts when their cases did not cross religious boundaries, involve capital crimes, or threaten public order and security, how could we explain their opting for *kadi* courts, even in family law cases? Hacker acknowledges that he is unable to 'provide an answer to the Jewish habit of

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1 A. Fattal, *Le Statut légal des non-Musulmans en pays d'Islam* (Beirut 1958); N. al-Qattan, '*Dhimmis* in the Muslim Court: Legal Autonomy and Religious Discrimination', *IJMES 31* (1999), 429–44; H. Inalcik, 'Ottoman Archival Material on *Millets*', in B. Braude and B. Lewis (eds), *Christians and Jews of the Ottoman Empire: The Functioning of a Plural Society*: *The Central Lands* (2 vols, London 1982), 2:437.

2 For example, A. Shmuelevitz discusses the difference in views between Jewish and Islamic law on the point of who is responsible for taking an oath in litigation that requires it. A. Shmuelevitz, *The Jews of the Ottoman Empire in the Late Fifteenth and the Sixteenth Centuries* (Leiden 1984), 48–9. See also, M.S. Goodblatt, *Jewish Life in Turkey in the XVIth Century: As Reflected in the Legal Writings of Samuel De Medina* (New York 1952), 118–29.

turning to the *kadi* with regard to matters of personal status'.[3] Historiography has provided us with some arguments regarding the issue, stating that lower costs were involved if one applied to the *kadi* court,[4] and that litigants also enjoyed certain rights if they applied outside their own legal system. For example, Jewish women could get a divorce and claim inheritance[5] and Christian women could overcome the *trimoiria* and *trachoma* restrictions. However, these are examples of legal awareness and a legal environment readily offering legal advice to clients regardless of their religious or legal status, and hence they do not address the question of the legal autonomy of *zimmis* or the degree of this autonomy.[6]

It is now believed that the Ottomans initiated the *millet* system shortly after the conquest of Constantinople, thus classifying the empire's *zimmi*s into Jewish, Armenian and Orthodox *millet*s. This view states that the *zimmi*s were presided over by the appropriate religious authorities appointed by Istanbul to oversee the empire-wide affairs of the three communities. There is now a consensus that it was a latter-day Ottoman institution 'that had been retrospectively cast into the past in the form of "foundation myths"'.[7] As Najwa al-Qattan rightly argues, although the earlier official and empire-wide application has been questioned, the notion of legal autonomy has been retained.[8] What is still contested is the degree of this autonomy.[9] The failure of

3 J. Hacker, 'Jewish Autonomy in the Ottoman Empire: Its Scope and Limits: Jewish Courts from the Sixteenth to Eighteenth Centuries', in A. Levy (ed.), *The Jews of the Ottoman Empire* (Princeton 1994), 185.

4 B. Ergene, *Local Court, Provincial Society and Justice in the Ottoman Empire* (Leiden 2003), 181–4. In communal courts it seems that it was a burden to be paid by the one who opted for such a solution; see further on.

5 N.J. Pantazopoulos, *Church and Law in the Balkan Peninsula During the Ottoman Rule* (Amsterdam 1984), 53–7, 59, 65–6, 93, 107; A. Shmuelevitz, *The Jews*, (see note 2), 66–7, 69; A. Cohen, *Jewish Life Under Islam: Jerusalem in the Sixteenth Century* (Harvard 1984), 110–39.

6 E. Kermeli, 'Marriage and Divorce of Christians and New Muslims in Ottoman Crete', in *Gender, Family and Property in Legal Theory and Practice: The European Perspective from 10th–20th Century,* forthcoming, 2008, 1–15. In particular there are *fetvas* discussing the marital affairs of Christians and converts: ibid., 5–8. The use of *fetvas* in Ottoman courts by Christians to support their cases, found even in *fetva* collections of Ottoman *şeyhülislam*s*,* are indications of this legal aid. For example, in 1651 — six years after the partial conquest of Crete by the Ottomans — a poor peasant woman managed to petition her case to the Porte. Her case was reheard in the local court and she won: ibid., 11.

7 N. al-Qattan, 'Dhimmis', 431.

8 Ibid.

9 For example, Smuelevitz argues that in the sixteenth century, Ottoman Jewish judges were liable to being suspended from office for prohibiting Jews from seeking justice in the Ottoman courts. Smuelevitz, *The Jews*, 43–4. In the appointment *berat*s of patriarchs and metropolitans, the Ottomans

parochial leadership to exert its legal prerogatives is viewed as a function of Ottoman counter-regulations, as Shmuelevitz has argued with regard to the right of Jews to apply to the *kadi* courts. It is also viewed as a function of Ottoman equivocation, as Pantazopoulos has stressed, or as a function of weak communal organization, as Hacker has contended.[10] Despite all of these reasons, non-Muslims continued to resort to Ottoman courts, which were often described by *zimmi* sources as being corrupt and discriminatory. Hence, it is not surprising that scholars' utilization of Ottoman court records casts doubt on whether *zimmi*s had access to their courts. For example, Ronald C. Jennings points out that even if these non-Muslim courts existed, they are never mentioned in the *sicils*. He concludes that this leads the historian to 'suppose that [the *zimmi*s] had no internal judicial apparatus of their own or at least a very weak one'.[11] Suraiya Faroqhi also makes the same observation from the courts of Ankara and wonders why large numbers of *zimmi*s readily went to the Muslim court.[12]

To unravel this extant *mitos*, communal court records are required. However, Hacker acknowledges that 'the vast majority of Jewish court records bearing the rulings, the testimony, and the documentation have been lost, and for all intents and purposes there exists today not a single series of Jewish court records.'[13] On the other hand, *Responsa* collections have been rendered problematic, as they are restricted to a community or a time-period.[14] What is still relatively unknown is that ecclesiastical and communal court records of Orthodox communities in the Greek lands of the empire are preserved in the national and local archives of Greek cities and monasteries.[15] The silence surrounding these sources in international discourse can be

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stressed the choice *zimmi*s enjoyed to apply to Ottoman courts. See no. 33–9 and no. 95, 97, 101 for *Berat*s and '*ahdname*s'.

10 Shmuelevitz, *Jews,* 43–4; Pantazopoulos, *Church*, 103–7; Hacker, 'Jewish Autonomy', 183–4.

11 R. Jennings, '*Zimmis* (non-Muslims) in early seventeenth Century Ottoman Judicial Records: The *Sharia* Court of Anatolian Kayseri', *Journal of the Economic and Social History of the Orient* 213 (1973), 251, 271, 274; Idem, *Christians and Muslims in Ottoman Cyprus and the Mediterranean World, 1571–1640* (New York 1993), 69, 133.

12 S. Faroqhi, *Men of Modest Substance: House Owners and House Property in the Seventeenth Century Ankara and Kayseri* (Cambridge 1987), 154, 200–10. R. Gradeva, 'Orthodox Christians in the *kadi* Courts: the Practice of the Sofia Sheriat Court, Seventeenth Century', in *Rumeli under the Ottomans 15th–18th Centuries: Institutions and Communities* (Istanbul 2004), 165–94, argues that Christians preferred the Ottoman court since it provided better documentation, lower fees, more favourable procedures and a greater likelihood of enforcing its rulings.

13 Hacker, 'Jewish Autonomy', 181.

14 Qattan, 'Dhimmis', 432.

15 Many have been published, but a great number are still in manuscript form. For a more detailed bibliography see, Arnaoutoglou, http://www.geocities.com/ekeied/. These are some of the sources I

attributed to many reasons. The major hurdle is an ideological one, both with regard to ecclesiastical sources and to communal ones. Even today, some Greek scholars vigorously argue about the privileges given to the Patriarch (particularly the instrumental role both he and the Church had) in preserving the national identity of Greeks during 'the long and dark ages of the Turkish yoke' (*tourkokratia*) through the *millet* system. For these scholars, patriarchal letters, synodical orders and canonical orders prove the existence of a centralized system. They also demonstrated the degree of obedience required by the Patriarch and offered by his obedient local dignitaries and lay Christians. Thus, the three canonical orders sent by the Patriarch Maximos II sometime between 1476 and 1482 to instruct judges (*kritai*) and to stress that marriage cases should be judged by bishops are evidence enough of a judicial system

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used: D. Gkines, *Περίγραμμα Ιστορίας του Μεταβυζαντινού Δικαίου* (*Historical Framework of Post Byzantine Law*) (Athens 1966); N. Pantazopoulos, D. Papastathi, *Κώδιξ Μητροπόλεως Σισανίου και Σιατίστης, 17ος –19ος αιώνας* (*The Codex of the Metropolitan See of Sisaniou and Siatista, Seventeenth-Nineteenth centuries*) (Thessaloniki 1974); N.K. Giannoules, *Κώδικας Τρίκκης* (*Trikkes* Codex) (Athens 1980); E. Karpathios, *Αρχείον Ιεράς Μητροπόλεως Κω* (*Δωδεκανήσου*) (*Archive of the Holy Metropolitan See of Kos* [*Dodecannese*]) (Athens 1958–1962) vol. i–iv; P.D. Michaelares, 'Οι δύο αρχαιότεροι κώδικες της I.M. Μυτιλήνης' ('The Two Earliest Codices from the Metropolitan See of Lesbos') in *Γραπτές πήγες στη Λέσβο: Ο πλούτος των τοπικών συλλογών* (*Written Sources in Lesbos: The Wealth of Local Collections*) (Mytilene 1993), 41–6; E. Pelagides, *Ο Κώδικας της Μητροπόλεως Καστοριάς, 1665–1769* (*The Codex of the metropolitan See of Kastoria, 1665–1769*) (Thessaloniki 1990); N. Bees, 'Τοπικά νομικά έθιμα Βυτίνης και των περιχώρων αυτής και της επαρχίας Τριπόλεως' (Local Judicial Customs of Bytines and its Environs and of Tripoli Province) in *Πρακτικά Ακαδημίας Αθηνών* (*Minutes of the Academy of Athens*) (Athens 1945), vol. xx, 68–85; P. Zepos, 'Τα νομικά έθιμα της Πελοποννήσου' (The Judicial Customs of Peloponnese) in *Πρακτικά Α' Διεθνούς Συνεδρίου Πελοποννησιακών Σπουδών* (*Minutes of the 1st International Congress of Peloponnesian Studies*) (Athens 1976), 73–85; M.A. Tourtoglou, 'Συμβολή στη Μελέτη του Μεταβυζαντινού εθιμικού Δικαίου των Κυκλάδων' (Contribution to the Study of post-Byzantine Law in Cyclades), *EEKM 13* (1985–1990), 245–56; A. Antoniades, 'Δικαστικές αποφάσεις απο την τουρκοκρατούμενη Σκύρο' (Judicial Decisions from Syros Under the Ottoman Yoke) in *Αρχείο Ευβοικών Μελετών* (*Archive of Euboian Studies*) (Athens, 1978–9), vol. xxii, 39–62; I. Bizbizes, 'Δικαστικαί αποφάσεις του 17ου αιώνος εκ της νήσου Μυκόνου' (Seventeenth Century Judicial Decisions from the Island of Myconos) *EAIED 7* (1957), 20–154; M.A. Tourtoglou, 'Η νομολογία των κριτηρίων της Μυκόνου' (The Jurisprudence of the Myconos Courts, Seventeenth –Nineteenth Centuries), *EKEID* (1980–1), 27–8, 3–257; Idem, 'Η νομολογία των κριτηρίων της Νάξου' (The Jurisprudence of the Naxos Courts, Seventeenth–Nineteenth Centuries) *Mnemosyne 14* (1998–2000), 97–184; S. Athanasakis, 'Ανέκδοτα ιστορικά Έγγραφα' (Unpublished Historical Documents) *Filiatra* 10 (1979), 257–360; Ag. Tselikas, *Τα δικαιοπρακτικά έγγραφα των μοναστηριών Ομπλού, Χρυσοποδαριτίσσης, Αγίων Πάντων και Γηροκομείου Πατρών, 1712–1885: Διπλωματική έκδοση* (*The Judicial Documents of the Monasteries Omblou, Hrysopodaritissas, Agion Panton and Home for the Aged of Patras*) (Athens 2000); D.G. Kampouroglou, *Μνημεία της Ιστορίας των Αθηνών* (*Monuments of the History of Athens*) (Athens 1891–2).

that was in place even in the fifteenth century.[16] The challenge is not to prove the existence of such judicial bodies, but to determine their jurisdiction; to discuss the body of law used; and to explore the degree of interaction between different legal systems in the Ottoman empire. Only by examining these records will we be able to discuss whether there was legal autonomy, and what the limitations placed by the community on itself and the Ottoman administration were. Elizabeth Zachariadou, who promotes the revisionist side of the *millet* theory, has made admirable contributions regarding the matter.[17] Zachariadou has painstakingly argued against the privileges given to the first Patriarch Gennadios Scholarios by Mehmet II, and depicted an institution subordinated to and in need of Ottoman executive power, especially in her book *Ten Turkish Documents Concerning the Great Church (1483–1567)* where she published the earliest Ottoman documents concerning the Patriarchate.[18] The appointment documents (*berat*s) of patriarchs and metropolitans found in the book allow us to analyse the degree of judicial jurisdiction given by the Ottomans to the Orthodox Church. A survey of *berat*s issued before the end of the nineteenth century can allow us to determine whether Ottoman policy changed, and if the judicial jurisdiction of the Orthodox Church expanded over the centuries. This research should be combined with the earliest ecclesiastical records, dating from the seventeenth century.[19] Although there are various earlier documents to refer to, the question to ask is whether local bishops decided to document their decisions as a result of a development in their judicial authority, or to follow suit with general societal developments in the Ottoman society from the seventeenth century onwards. In other words, either Episcopal decisions carry more weight in litigation processes if used in other courts from the seventeenth century onwards, or Christians applied to communal courts more frequently as a result of a general trend observed in seventeenth century *kadi* records, whereupon Christians and Muslims seemed to be

16 D. Gkines, *Post Byzantine Law*, doc. 34, 49.

17 E. Zachariadou, *Δέκα Τουρκικά Έγγραφα για την Μεγάλη Εκκλησία (1483–1567)* (*Ten Turkish Documents Concerning the Great Church* [*1483–1567*]) (Athens 1996).

18 Konortas, working on the *berat*s of patriarchs and metropolitans, reached similar conclusions. P. Konortas, *Οθωμανικές Θεωρήσεις για το Οικουμενικό Πατριαρχείο, 17ος–αρχές 20ου αιώνα* (*Ottoman Perception Regarding the Ecumenical Patriarchate, Seventeenth – Beginning of the Twentieth Centuries*) (Athens 1998), 296.

19 N. Pantazopoulos and D. Papastathi, *Κώδιξ Μητροπόλεως Σισανίου και Σιατίστης, 17ος–19ος αιώνας* (*The Codex of the Metropolitan See of Sisaniou and Siatistas, Seventeenth – Nineteenth Centuries*) (Thessaloniki 1974); N.K. Giannoules, *Κώδικας Τρίκκης* (*Trikkes Codex*) (Athens 1980); E. Karpathios, *Αρχείον Ιεράς Αρχείον Ιεράς Μητροπόλεως Κω (Δωδεκανήσου)* (*Archive of the Holy Metropolitan See of Kos [Dodecannese]*), (Athens 1958–62), vol. i–iv.

more conscious of their rights and better informed on legal procedures. Other issues to explore would be the extent of adherence to the rights granted by the Ottomans' ecclesiastical judicial jurisdiction, and whether local societies and bishops oversaw other civil matters in addition to family affairs and arbitration cases. Finally, the interaction between *kadi* and ecclesiastical courts, and an investigation into whether the local bishop accepted the *kadi* decisions (in addition to the case of doctrinal conflict and what methods he used to overcome it) would allow us to determine whether the *zimmi* courts were independent judicial bodies or arbitration councils.

Whereas in the ecclesiastical court records the canonical and Byzantine law forms the corpus of law utilized by the bishop, who is occasionally accompanied by upfront members of the local community, in the case of communal courts we observe regional variations that came to be known as 'local custom'. Most of the surviving community records are located in the Aegean islands and developed in an idiosyncratic manner. This was the result of historical and geographical reasons, their status before conquest, and the way these areas were incorporated into the Ottoman system. What they refer to as their own 'local custom' is a mixture of Byzantine, canonical, Latin/Venetian and Ottoman influences. Unlike the ecclesiastical records concentrating primarily on family matters, the community records are a rich source of cases related to taxation, inter-communal administration, civil matters, family law and even (albeit rarely) criminal law. As observed with regard to the use of ecclesiastical sources, researchers have different ideological perspectives. For some, these records are the best examples of a communal organization centred on the Church, 'pockets of resistance' and 'fine examples of independent societal bodies taking the lead in the struggle against the oppressors in the nineteenth century'. For others, these are examples of idiosyncratic *insularités*, an interesting concept developed by Nicolas Vatin and Gilles Veinstein and a result of the interaction between geography vis-à-vis the nature of the Ottoman presence in the region.[20]

Being aware of my shortcomings, and given the vast corpus of sources involved, I will firstly attempt to present the sources to a wider audience; to discuss the judicial jurisdiction of both the Church and local communities and their development in time; to explore the litigation process and the involvement of Ottoman authorities to determine the degree of legal autonomy, if any; and finally to reach some preliminary conclusions on the position of these courts in the Ottoman legal system.[21]

20 N. Vatin and G. Veinstein, *Insularités Ottomanes* (Paris 2004), 9–18.

21 The influences of Ottoman, Venetian/Latin and canon law on the formulation of local custom in the communal courts are still part of ongoing research.

Sources on Ecclesiastical and Communal Justice

A letter published by the late Nicolas Oikonomides in the corpus of documents from the Dionysiou Monastery in Mount Athos is among the earliest references we have regarding the existence of a litigation process conducted by ecclesiastical authorities in the Ottoman empire.[22] Ioasaf, the Metropolitan of Limnos Island in the Aegean, sent a letter dated around 1500 to the monastic council at Karyes in Mount Athos concerning litigation over a sheep-run (*mandra*) between the dependencies of the Athonite monasteries of Dionysiou and of Pantokrator on the island. The case was judged by the Metropolitan Ioasaph himself with the help of the elders, who are the signatory witnesses in the document. In terms of procedure, the litigants (in this case, the representatives of the two monastic dependencies), Kallistos of the Dionysiou Monastery and Neophytos of Pantokrator were present. The elders were summoned and 'under threat, on pain of spiritual punishment', they were asked 'for the truth'. They then examined the charters (*chrysoboula*) of both sides and painstakingly looked at every section to unanimously conclude that the Dionysiou Monastery was right and therefore their examination of the charters was in accordance with what they formerly knew. Thus, we can understand why these particular witnesses were summoned. They were required to offer their own testimony about the dispute. Clearly, this must have been the end of the affair. However the monk representing the Pantokrator Monastery, Neophytos, had been 'unruly' and threatened to take his case to foreigners (i.e. the Ottoman authorities). In fact, this is the reason why the letter was sent to the monks of Mount Athos, his superiors. In his letter the Metropolitan urges them to write a severe letter to Neophytos, stating that there should be no disorder and 'spreading of scandal among the barbarians [i.e. Ottomans]' and 'if the confusion and lawlessness or rather sacrilege should continue, let them [the dissidents] bear the curses of the 318 God-fearing Fathers and my own humble person.' The Metropolitan, in an effort to pacify the defiant Neophytos, threatened him with aphorism (expulsion) — the only tool in the hands of the Church.

The letter concluded with the statement that Konstantis, probably a shepherd who was brought to the court in chains, had returned the sheep-run to the monastery. Thus the Metropolitan asked to be forgiven. The witnesses of the case are of interest. Nine Christians and three Muslims — possibly converts — signed the document. Out of the

22 N. Oikonomides, *Actes de Dionysiou: edition diplomatique* (Archives de l'Athos Sereis 4, Paris 1968), 187–9.

nine, five were clearly religious men (priests or monks), one was a son of a priest, and the others had the title of *Kyr* (Lord), denoting their high position in the society.[23] This letter indicates that already in 1500 the justice of the metropolitan was binding to the local community. Litigants, however, reserved the right to plead their cases to the Ottoman authorities. It was through fear of interference that the ecclesiastical and communal authorities tried to prevent it, to no avail. The presence of new Muslims as witnesses does not, as Heath Lowry presumes, indicate a shared court. Rather, it reminds us of the many converts in Istanbul who had interfered and shown interest in the affairs of the Patriarchate, as narrated in *Historia Politica et Patriarchica.*[24]

The sources available on ecclesiastical justice until the seventeenth century, when the first codices of ecclesiastical court records were accessible, are mainly letters sent to the Patriarch from local bishops, or orders to local bishops to attend to the affairs of laymen who had required his arbitration. In addition to the three synodical orders we mentioned before, we can add a few sources, such as the letter of the Patriarch Ioasaf (dated September 1500) regarding family matters[25] and a synodical decision of the Patriarch Dionysios related to divorce in the case where the husband had been missing for five years, and the wife had not received maintenance or a letter indicating that he is alive.[26] Metropolitans also issued synodical prohibitions regarding certain aspects of

23 H. Lowry, *Fifteenth Century Ottoman Realities: Christian Peasant Life on the Aegean Island of Limnos* (Istanbul 2002), 38–41, has used the same document to argue that the Ottomans allowed the local population to conduct its own judicial affairs. 'The complete absence of civilian Muslim population, the lack of a *kadi* (religious judge) among the 1490 *timariot*s, and the relatively small size of the Ottoman presence all suggest that the actual day to day governing of the island must have been the prerogative of its local leaders.' Lowry is not at ease with the intentions of Neophytos to go to the Ottomans to solve the dispute. He suggests that Neophytos' intention is 'a thinly veiled warning' and that the council at Karyes needed to ratify the decision to make it binding and to 'prevent it being appealed to the secular authorities' (ibid., 38). Lowry also provides evidence from the *tahrir*s that the Muslim witnesses are most probably new converts to Islam (ibid., 40). On the point of procedure, the Metropolitan would need no authorization from the Council of Karyes. His decision could be binding and undisputed with the help of aphorism, an interesting method of persuasion, which developed (as we will see) into an important tool of litigation (Ibid., 41). See P. Mihaelaris, '*Αφορισμός: Η προσαρμογή μιας ποινής στις αναγκαιότητες της Τουρκοκρατίας*' (*Aphorism: The Adjustment of a Sentence to the Necessities of Tourkokratia*) (Athens 1997), 269–335.

24 E. Bekker (ed.), *Historia Politica et Patriarchica Constantinopoleos* (Bonn 1849), 43–4, 113–5.

25 He is responding to the question of whether a fourth marriage is allowed if the third one is cancelled, or whether the baptismal children can be married to the physical children of their godfathers or their relatives; Gkines, *Post Byzantine Law,* doc. 30, 50; doc. 60, 54. These are two synodical letters of the same Patriarch concerning the fourth marriage, and they are dated 1560.

26 Ibid., doc. 59, 54, dated 1554. For family law see, Gkines, *Post Byzantine Law* (doc. 277), 164–5; the synodical letter of Patriarch Ieremias III related to inheritance, dated 1715–33; (doc. 278), 165, dated 1715–33; the letter of the same Patriarch on engagement, (doc. 289), 169, dated 1721; the letter of the

family law.[27] Sometimes the Patriarch would be asked to answer a number of questions on matters regarding family law. For example, in 1701, the Patriarch Kallinikos answered the questions of the Metropolitan of Chrysypoleos in the Peloponnese related to the abduction of girls and their marriage to their abductors and rapists and whether the father involved in the accidental death of his child would be allowed to become a priest.[28] Sometimes the format of the questions resembles the *fetva* structure, with a question followed by an answer.[29]

The cases addressed so far in the letters and orders of ecclesiastical authorities pertained to family law and ecclesiastical matters, like the ordination of priests and their conduct. However, there are two early cases of arbitration between laymen. Patriarch Ieremias II wrote a letter to Daniel sometime between 1572 and 1579, stating that the Priest of Saint Nicolas Church in Galata wanted him to intervene in a financial dispute between two members of his flock.[30] The Patriarch asked the Priest to confront the debtor and threatened him with aphorism to force him to comply and pay his debt. We can presume that the lender resorted to the Patriarch out of desperation. Finally, there is another interesting letter dated between 1572 and 1579 of the Metropolitan of Trikkes to the same Patriarch, which depicts the involvement of the Church in intercommunity and interfaith disputes.[31] Four Christians had borrowed 50,000 *akçe*s from a 'Turkish *archon*' (lord), as the document states. They promised to pay back twelve out of ten per year, that is, 10,000 *akçe*s interest for the 50,000 *akçe*s. They gave him 10,000 *akçe*s capital per year for five years. When he asked for the interest, two of the four replied that he had received the interest and the capital. The Turkish '*archon*' took them to the *kadi* court, and the judge decided that

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Patriarch Ieremias III about inheritance, (doc. 337), 181, dated 1736 and an order of Patriarch Neophytos VI on dowry.

27 Gkines, *Post Byzantine Law* (doc. 207), 144–5, dated 1690; a synodical prohibition on unblessed marriages by Metropolitan of Paronaxia Ioasaf, doc. 209, 144–5, June 1690. The same metropolitan threatened those who accepted the custom of long engagement blessed by church and who did not subsequently marry in the church, but produced children unwed, with aphorism.

28 Gkines, *Post Byzantine Law* (doc. 239), 153–4; doc. 260, 158. In 1707, Patriarch Gabriel explicitly stated that marriage by force is null and void.

29 Ibid., doc. 132, 125–6, dated 1646–91.

30 Ibid., doc. 76, 59, dated 1572–9. *Calfa* Doukas (most probably a member of a guild, as we gather from the epithet), owed the psalmist of the Church Meletios the Thebean (from Thebes in central Greece) 600 *akçes,* and he refused to pay. 'Thus we write to you to force the said Doukas to pay back his debt, as he should. Otherwise he should be excommunicated, not forgiven by God and left outside the Church of Christ. If he happens to die, he should not be honoured with a burial, unless he [his heirs] pays first.'

31 Gkines, *Post Byzantine Law,* doc. 77, 59.

the man should have no more claims. 'As he could do nothing, he seized the two Christians and forced them to pay their share. He also asked and received the share of the other two missing.' The Metropolitan then asked the Patriarch to issue two aphorism letters, one to be used by the Metropolitan against the one who did not pay while residing in his province and the other to be sent to the Metropolitan of Ioannina where the second culprit took refuge. Unfortunately, we do not have the necessary court records to follow the stages of the affair in the *kadi* court. The financial dispute was settled for the Ottoman Lord outside the court, most probably by the use of force. The ecclesiastical authorities were concerned with justice given to the suffering, and the only tool in their possession was the powerful threat of excommunication: 'the long hand of religious justice' could trace and demand the punishment even of those who managed to escape.

Patriarchal and metropolitan letters and orders primarily concentrated on family law and the internal organization of the Church. Occasionally, ecclesiastical authorities were asked to intervene by adopting an arbitration role rather than a formal judicial one. The tool used to persuade the wrongdoers was the threat of excommunication, a powerful weapon in pre-modern societies and the only one available, as only the Ottomans had executive power. We would reach the same conclusions if we were to examine the appointment documents of patriarchs and metropolitans, whereupon the Ottoman administration had explicitly defined the boundaries of ecclesiastical judicial jurisdiction.

In the *Berat*s published by Zachariadou, it is apparent that any privileges given were personal to the Patriarch and not to the Church.[32] It is interesting to observe that ecclesiastical jurisdiction was restricted only to family law. Even in this case, the Sultan recognized custom (*'adet*) and did not refer to the *kanun*. In the first *berat* of Bayezid II (9–18 April 1483) given to the Patriarch Symeon, he was granted the authority to appoint and remove his clergy at will and to inherit them in case they died without issue. In terms of family law, the Patriarch was to oversee marriage, divorce, and inheritance according to their 'custom'. If a lay Christian did not marry and divorce according to their religious practices, then he/she could not be accepted in the Church.[33] On the issue of inheritance, a second *berat* of Suleyman issued 17 October 1525 to Patriarch Ieremias permitted the interference of the provincial Ottoman authorities. 'Nobody but the Patriarch should interfere and disturb the inheritance of

32 Zachariadou, *Ten Turkish Documents*, 94–5. This is in accordance with the Islamic prescription wherein collectivity is not legally recognized.

33 Zachariadou, *Ten Turkish Documents*, doc. 1, 158.

the infidels according to their custom (*'adetleri*), unless the heirs resorted to the *vilayet* (provincial) authorities, in which case the *kadi*s would have to attend to the affair.'[34] This is the first mention of the right to judicial choice for the Christians of the empire, who were allowed to take inheritance cases to Ottoman courts.

The Patriarch's right to punish was further elaborated in the seventeenth century *berat*s. In 1688, the Metropolitan of Crete, Athanasios, was granted a detailed appointment order.[35] His financial responsibilities to the Porte were determined in detail, and his right to inherit clergymen and collect ecclesiastical dues was established. Additionally, he was allowed to punish priests who refused to pay their taxes to the treasury. This development was related to the change in the tax collection system in the seventeenth century. As local communities were collectively responsible for the payment of their taxes, local bishops functioned as tax collectors in the *iltizam* (tax farming) system.[36] The new responsibilities of the ecclesiastical authorities were reflected through the permission to punish insubordinate clerical taxpayers. However, the prohibition of local *kadi*s, *naib*s and dignitaries from imposing fines upon the bishop in case he punished those who defied religious laws on marriage was an indication of the encroachment on previously accepted judicial rights of the Orthodox Church.[37] The Sultan forbade similar attempts when the Bishop imposed an oath or aphorism in marital disputes. The extension of the right to punish in the seventeenth century is an important development. Similarly, the Ottomans recognized a restricted use of oath and aphorism as a tool to attain church justice on marital affairs.

A further development regarding the judicial authority of bishops was established in the 1704 *berat* of the Metropolitan of Crete, Ioasaf.[38] The Metropolitan was further permitted to act as an arbitrator between lay Christians who had jointly agreed to submit to his judgment, and to administer oaths as part of the procedure in their churches.[39] It seems as if the long-established practice of arbitration we have

34 Ibid., doc. 7, 174. The other two *berats* given to the bishop of Karpathos Papa Ioannis in 1551 and Pahomios the bishop of Kassandra are less detailed but granted the same judicial rights to the bishops. Ibid., doc. 8, 179, doc. 9, 183.

35 N. Stavrinides, *Μεταφράσεις Τουρκικών Ιστορικών Εγγράφων αφορώντων εις την ιστορίαν της Κρήτης* (*Translations of Turkish Historical Documents related to the History of Crete*) (5 vols, 1972–85), vol. ii, doc. 953, 312–14.

36 Ibid., II, doc. 1826, 248; doc. 1827, 250, doc. 1834, 393.

37 Ibid., II, doc. 953, 313.

38 Ibid., III, doc. 1,082, 313–15.

39 Ibid., II, doc. 1,082, 313. In the order, local authorities were also instructed to remove property donated to the church by lay Christians from their heirs, and to deliver it to its recipient. For similar *berats* see

witnessed in patriarchal and episcopal orders had finally found its way into an Ottoman order. In the process of arbitration, the ecclesiastical authorities were given the right to administer oaths. This fact was an obvious recognition of the power of oaths as a valid tool of arbitration among Christians.[40] The development of the seventeenth and eighteenth centuries with regard to the jurisdiction of ecclesiastical authorities and their arbitration role, despite occasional drawbacks, remained unchanged until the nineteenth century.[41]

There are two main points to stress before embarking on the collection of ecclesiastical court records. The authority of the Church to adjudicate marriage, divorce and inheritance issues of lay Christians, though established as a personal privilege granted by the Sultan to patriarchs and metropolitans from the fifteenth century onwards, had not deterred the interference of local Ottoman dignitaries. The numerous warnings against their encroachment included in the *berat*s, as well as the allowance of lay Christians to seek justice outside the communal environment, reflected a continuous struggle between the Church and central administration. On the one hand, the administration recognized the Church with limited judicial rights; on the other, it was not willing to limit the individual judicial freedom of its subjects to submit to the arbitration body of their choice. We therefore cannot argue about a legal autonomy offered to the Orthodox Church. Even the extension of judicial jurisdiction to include cases of amicable settlement should not be viewed as an establishment of the authority of the Church over its people. It was an external rather than an internal development. The changes in seventeenth-century Ottoman society and the expansion of the tax farming system, in which religious dignitaries participated as tax farmers, resulted in the strengthening of local communities, as they were collectively responsible for their obligations to the administration. This gave the opportunity to the Church and other local elements to establish authority over the *zimmi*s, as they acted

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N. Stavrinides, *Translations,* doc. 1,617, 283, doc. 1, 618, 284, doc. 1,853, 253. The arbitration right of laymen is testified in the *berats* from other areas of the empire. In 1734, the metropolitan of Kayseri, Parthenios, was granted the right to attend to *sulh* settlements; Gkines, *Post Byzantine law*, doc. 326, 178–9. Ibid. See also, the *berat* to the Metropolitan of Chios Dionysios, doc. 373, 193–4, dated 1755. As we mentioned before, *berat*s are personal letters of appointment, therefore, they also reflect local and historical variations. In the case of the Kayseri *berat,* powerful landowners (*ayan*s) are explicitly prohibited from interfering in the affairs of the Church, or from forcing the metropolitan to use them as bodyguards. A detailed study on the judicial aspects of all the surviving *berat*s might be very illuminating with regard to these points.

40 Ecclesiastical records confirm the frequency and power of oaths, see *Codex of Trikkes,* 54, 60, 86, 87, 92; *Codex Sisaniou*, doc. 20, doc. 52, doc. 92, doc. 94, doc. 96.

41 See the 1854 *berat* of the Patriarch Gregorios VI, in Konortas, *Ottoman Perception,* 75–85.

as agents/mediators between the centre and the periphery.[42] Thus, the Ottomans expanded the jurisdiction of the Church to include arbitration in cases other than family law, using oaths and aphorism as judicial means. However, this acknowledgement of informal practices of the past did not limit the right of the individual to seek justice outside the community.

There are many ecclesiastical codices that are still awaiting publication in the local and state archives and monasteries of Greece.[43] Many individual documents and parts of codices have already been published.[44] However, to examine the procedure in the court, the nature of the cases judged, and any changes occurring over time, we need codices that are nearly complete. Thus, we have chosen the codices of the Metropolitan See of Sisaniou and Siatistas in Northern Greece, 1686–1838; the codex of the Metropolitan See of Trikkes, 1688–1857; and the codex of the Metropolitan See of Kos in the Aegean, 1688–1948.[45]

The surviving part of the codex of Sisaniou and Siatistas was found in the archive of the Metropolitan See, and according to its editor, Pantazopoulos, there are two systems of numbering: one in folios and one in pages. The handwriting is different, indicating different scribes. The assumption is that the codex was numbered in the beginning and the individual entries were added over time. The first sixty-five folios are missing and were probably removed when the documents were rebound, either because they were obsolete by then or were going to be bound in other thematic volumes. It seems that the registered documents handed over to litigants were copies of the decisions and not the originals.[46] Pantazopoulos presumes that the registration was voluntary in order to secure rights in future disputes.[47] As we conclude from a

42 E. Kermeli, 'Central Administration versus Provincial Arbitration: Patmos and Mount Athos Monasteries in the 16th Century', forthcoming in *Byzantine and Modern Greek Studies* (2007).

43 Pantazopoulos, *Codex of Sisaniou*, 11.

44 A. Mpekiaroglou-Exadaktylou, *Κώδικες Μητρόπολης Αδριανούπολης (1889–1911): Περιγραφή και αναλυτικά περιεχόμενα των Κωδίκων* (*ΓΑΚ, Κ 213*) (*Codices of the Metropolitan see of Adrianople, 1889–1911: Description and detailed index of the Codices* [*GAK, K 213*]) (Athens 1991); T. Gritsopoulos, 'Πωλητήρια και άλλα έγγραφα της παρά την Δημητσάναν μονής του Φιλοσόφου (1626–1787)' (Judicial and Other Documents of the Demetsana Monastery of Philosophou [1626–1787]), *EAIED* 3 (1950), 118–57; Idem, 'Η μονή του Φιλοσόφου κατά τους 16ου –17ου αιώνας' (The Monastery of Philosophou in the Sixteenth and Seventeenth Centuries), *IEEE* 12 (1957–8), 103–36; Idem, 'Μονή Επάνω Χρέπας' (Monastery of Epano Hrepas), *Mnemosyne* 1 (1967), 199–234.

45 Karpathios, *Codex Kos*; Giannoules, *Codex Trikkes*; Pantazopoulos, *Codex Sisaniou***.**

46 This practice bears striking resemblance to *sicil* collections and individual *hüccet*s.

47 Pantazopoulos, *Codex Sisaniou*, doc**.** 101, 135; 'The present document was registered in the Codex to be proof and security;' doc. 97, 130, 'this declaration is registered as security in the present Codex, and it was given to the hands of the said lady, in the presence of witnesses,' doc. 103, 136–9.

1735 entry, the registration fee was high (five *aslan gurus*), perhaps prohibiting the registration of all decisions.[48] This partially explains the chronological gaps between the entries. The first entries were copied in 1694 from another codex. Upon ascending to the Metropolitan See, the Metropolitan Zosimas personally ordered the registration of the codex. The mention of other parallel codices kept in the churches of the region might explain the chronological gaps in the series.[49] Metropolitans signed the documents personally. In most cases the witnesses also signed in person, although occasionally the scribes would sign for the witnesses.[50]

The codex of Trikkes verifies that registration was not automatic but was rather granted upon request. The codex contains 144 folios, and different scribes also registered the entries. Many pages were left blank, whereas the entries do not follow a chronological order.[51]

The Metropolitan of Kos Karpathios published the 116 codices found in the archive of the Metropolitan See in four volumes. The first volume covers the period of 1688–1796 and includes 191 entries related to judicial and notarial acts.[52] As a preliminary observation, it is interesting to notice that all three codices are dated around the 1680s. The earliest ones from Sisaniou and Siatistas are from 1686 and the other two from Trikkes and Kos started in 1688.[53]

The majority of the cases registered in the Codex of Sisaniou and Siatistas are inheritance related. The heirs of the deceased would resort to the Metropolitan to receive their shares.[54] Underage children's property was handed over after the division

48 Pantazopoulos, *Codex Sisaniou*, doc. 99, 18–19**.** The use of the Codex for the registration of copies of the decisions is familiar to the Ottoman registration in the *sicil* collections.

49 Ibid., doc. 91, 12.

50 Illiteracy might have been the reason for the scribes' intervention.

51 Giannoules, *Codex Trikkes*, 10. At times, an entry is dated fifty years later than the following one.

52 Karpathios, *Codex Kos* (1958), vol. i.

53 This is a strange coincidence that I have not managed to explain. The Codex of the See of Andros and Syros was established in 1769 by the bishop Ioasaf, who noted that he had inherited a disorganized archive. I. Kolovos, *Η νησιωτική κοινωνία της Άνδρου στο Οθωμανικό Πλαίσιο* (*The Island Society of Andros in the Ottoman Framework*) (Andros 2006), 10.

54 Pantazopoulos, *Codex Sisaniou.* Three children of the deceased Thannasis appeared in front of the metropolitan to divide moveable property and silver, doc. 1, 1, n.d. See also, Ibid., doc. 2, 1, 25 April 1686; doc. 156, 9, dated 10 January 1691; doc. 16, 10–11, dated 20 February 1691; doc. 17, 11, dated 27 February 1691; doc. 18, 12, dated 28 July 1691; doc. 22, 14–15, dated 19 July 1692; doc. 38, 39, dated 12 April 1697 in the presence of the Patriarch.

to the hands of their guardians,[55] and there is one entry about receiving their shares from their guardian upon coming of age.[56] Misunderstandings regarding the division prompted heirs to seek the intervention of the bishop.[57] Adopted children sought their rights in court,[58] and wills were registered in the codex.[59] The codex contains family law cases of settlement between the litigants who promised to accept the agreed terms.[60] A rather large part of the codex is devoted to financial disputes among trading partners, the earliest dating from the 1688, or to the acknowledgment and payment of debts.[61] Very few cases are related to civil law, like, for example, disputes over the boundaries of a house.[62] The codex has a few entries on monastic properties,[63] the refurbishing of churches,[64] and debts owed by clergymen.[65] Communal debts and disputes against other communities were infrequently registered, and they all date from the nineteenth century on.[66] This must have been the result of administrative changes following the issuance of the *Hatt-i Hümayun* of 1838, a Greek translation of which is found in the codex. Following the orders of 1838, on 15 October 1839, six community members petitioned the Porte and were allowed to oversee property cases and register them in the code.[67]

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55 Pantazopoulos, *Codex Sisaniou,* doc. 23, 15–16, dated 10 August 1692; doc. 30, 22–8, dated 8 April 1697. This document was presented to the Patriarch. Given the extensive residual property, we can presume that the deceased was an affluent member of the community.

56 Ibid., doc. 75, 74–5, dated 22 July 1703.

57 Ibid., doc. 31, 29, dated 20 January 1694.

58 Ibid., doc. 32, 30, dated 20 January 1694; doc. 71, 89–90, dated 13 January 1715.

59 Ibid., doc. 33, 31, dated 5 February 1696; doc. 58, 70–3, dated 1699; doc. 60, 73–4, dated 25 May 1703.

60 Ibid., doc. 37, 38, dated 13 April 1697; doc. 54, 66, dated 30 January 1700; doc. 109, 144, dated 1 October 1839; doc. 87, 117–18, dated 28 April 1721.

61 For example see ibid., doc. 6, 4, dated 14 July 1688, doc.7, 8, 9: 5–6, dated 22 July 1688; doc. 10, 6, dated 27 July 1688; doc. 13, 8, dated 4 July 1690; doc. 20, 13, dated 10 July 1692; doc. 21, 14, dated 12 May 1690; doc. 24, 17, dated 17 August 1692; doc. 25, 18–19, dated 18 October 1692; doc. 26, 19, dated 23 October 1692; doc. 43, 49, dated 29 July 1698; doc. 45, 52–3, dated 17 February 1699; doc. 46, 53, dated 25 March 1700; doc. 49, 58–9, dated 28 February 1699; doc. 53, 64–5, dated 15 January 1700; doc. 64, 80–1, dated 6 March 1704.

62 Ibid., doc. 89, 119, dated 13 July 1722.

63 Ibid., doc. 105, 140, undated.

64 Ibid., doc. 104, 139, dated 22 December 1797.

65 Ibid., doc. 111, 145, dated 25 November 1841. There is also a trial of a teacher and priest who was accused of spreading heretical ideas. He was excommunicated and his books were burned, doc. 93, 123–6, dated August 1723.

66 Ibid., doc. 112, 147, dated 25 March 1845; doc. 113, 148, dated 26 March 1845; doc. 114, 149, dated 25 March 1845.

67 Ibid., doc. 106, 141–2, dated 15 October 1839.

Although inheritance is over-represented in the code, marriage and dowry contracts are absent, and there are only four cases of divorce due to fornication, illness of the spouse, or abandonment.[68] This strengthens the hypothesis that other codices, perhaps thematic ones, were kept parallel. The assumption is verified by the examination of the contents of the codex of Trikkes. The Metropolitan See was re-established in April 1739 as a result of the increasing debts of the Metropolitan of Larissa, who was unable to oversee the affairs of Tyrnovo and Trikkes.[69] As a smaller Metropolitan See, the codex includes entries on the appointment of bishops;[70] ecclesiastical property and the accounts of retiring officials responsible for its administration;[71] agreements and disputes of guild members;[72] private donations to the Church;[73] the registration of agreements between guilds and the community about state taxes;[74] sales of property; loans;[75] a list of ecclesiastical and lay officials;[76] a bishopic order of the Archbishop of Larissa related to marriage and dowries;[77] and a registration of all fields belonging to the Metropolitan See in the nineteenth century.[78] The great part of the code, however, is devoted to family law, especially divorce;[79] prenuptial gifts; dowry contracts; inheritance disputes; the appointment of guardians; claims of inheritance upon maturity; and wills.[80] The same is true for the codex of Kos, where out of 191 notary and judicial decisions, fifty-nine were divorce cases.[81]

Therefore, we can tentatively conclude that the registration of cases heard in the episcopal courts was voluntary. Additionally, an indication as to the need to register is stated in some of the entries of the codex of Sisaniou and Siatistas: '…a copy [of the

68 Pantazopoulos, *Codex Sisaniou,* doc. 27, 20, dated 11 January 1693; doc. 56, 69, dated 21 September 1700; doc. 73, 93, dated 8 June 1715; doc. 91, 120, dated 24 July 1722; doc. 92, 122, dated 14 June 1723.

69 Giannoules, *Codex Trikkes*, 17–22.

70 Ibid., 22–6.

71 Ibid., 27–43.

72 Ibid., 43–5.

73 Ibid., 68–74 and 78–82.

74 Ibid., 74–7.

75 Ibid., 90, dated 3 December 1761; 92, dated 29 May 1766; 93, dated 23 June 1767.

76 Ibid., 96–8, dated 25 March 1744.

77 Ibid., 98–100, dated 14 October 1795.

78 Ibid., 100–2, dated 20 July 1816, as a result of the order of Ali Pasha Tepedenli.

79 Ibid., 46–68.

80 Ibid., 82–94.

81 Karpathios, *Codex Kos,* I. G. Michaelides-Nouarios, 'Οι Λόγοι Διαζυγίου κατά την Νομολογία του Εκκλησιαστικού Δικαστηρίου της Κως (του 18ου αιώνα)' (The Reasons for Divorce According to the Jurisprudence of the Ecclesiastical Court of Kos, Eighteenth Century), *EKEIED* vols. xxix–xxx, 1990, 7–22. Given the difficulty in remarrying without a canonical divorce, these numbers are not surprising.

decision] should be registered in the present Holy Codex, as it is the custom, and it should be sealed to have weight and power in any court (*kritirio*) internal (communal) and external (Ottoman).'[82] In cases of *sulh,* the litigants agreed to provide each other with a *hüccet* obtained from the *kadi* as a further guarantee, and the registration in the codex was to be used as proof of the agreement.[83]

So far, the conclusion we can make about ecclesiastical justice points to an informal arbitration body, which from the end of the seventeenth century and the beginning of the eighteenth century onwards gradually gathered momentum and became respectable enough within the Christian communities. As a reflection of this development, Christian litigants who sought ecclesiastical court justice would also undertake the financial burden of registering the episcopal decisions officially in ecclesiastical codices, despite the considerable cost involved. The Ottoman recognition of the arbitration role of the Church, as reflected in eighteenth century *berats,* allowed the Christian litigants to use the episcopal court as a first level arbitration body, the decisions of which were binding when registered in the *kadi* court. Apart from a few civil law cases, the Church adhered to the judicial jurisdiction granted by the Ottomans and concentrated mainly on family law, although from the eighteenth century onwards it gradually attempted to expand its jurisdiction to civil law.[84] This process was completed by the end of the eighteenth century. In 1788, the Bishop Theophilos of Campania mentioned in his *Nomikon* that although the prelates did not previously interfere with civil cases, they now judged lawsuits for inheritance, debts and almost all issues that 'deal with the Christian civil law'.[85] What the bishop

82 Pantazopoulos, *Codex Sisaniou*, doc. 79, 103, dated 1719; doc. 80, 104, dated 1719; d. 81, 105, dated 1720; doc. 85, 115, dated 27 April 1720.

83 Ibid., doc. 71, 89, dated 13 January 1715, 'to verify the truth, they will give each other a *hüccet* according to our ruling law (the Ottoman law), including all the particulars [of the agreement]. For this purpose the agreement has been registered in the present codex in the presence of the witnesses signing below, and it stands as proof.' Also see doc. 76, 100, dated 14 August 1719, '…all were satisfied, and from now on none of the aforementioned should disobey. To make [the agreement] binding one is to give the other a common *hüccet*. This is the reason why the present document is registered in the present Codex, and it should carry weight in all courts (εν παντί κρητιρίω).'

84 Pantazopoulos, *Church and Law*, 44.

85 D. Gkines, *Νομικόν Θεοφίλου του εξ Ιωαννίνων* (*Nomikon of Theophilos of Ioannina*) (Thessaloniki 1960), 237. 'At the times of the Christian kingdom (alas) the prelates governed only the priesthood and matters of the church and did not interfere with the civil ones… But now… the prelates in the provinces accept the mundane lawsuits and trials, for inheritance, for debts and almost all that deal with the Christian civil law, which even now is in favour of the royal external [Ottoman] orders, according to which, when they judge and decide on the basis of our law, and punish the disobedient ones with penance, not one of the external authorities is opposed to them.'

failed to mention was that the expansion of church judicial jurisdiction was a *de facto* development, a result of the increased political role given by the Ottomans to the Patriarchate of Istanbul, leading to the 1766–7 annexation of the rival Patriarchates of Ochrid and Peć. Is it coincidental that the ecclesiastical courts and their expanded jurisdiction were crystallized during the Patriarchate of the same Phanariot Patriarch Samuel Handjeris who oversaw the annexation?[86] The judicial expansion of metropolitan courts in the islands of the Aegean is attested in the many cases of real estate and other civil differences judged by the Metropolitan of Paronaxia during the entire second half of the eighteenth century.[87] As a result of these developments, the Orthodox Church operated antagonistically with the other source of justice available to Christians in the Ottoman Empire, i.e. the communal courts.[88]

A number of theories have been proposed to help explain the existence of communal councils in the Greek lands under the Ottomans. We can categorize them into two main trends: the ones defending the uninterrupted continuation of the communal institutions from ancient times to the present (Paparrygopoulos, Vakalopoulos),[89] and those supporting the Ottoman influence on the development of local community councils (Urquhart, Argyropoulos).[90] Most of the sources available

86 Pantazopoulos, *Church and Law*, 44.

87 J. Lykouris, *Η Διοίκησις και δικαιοσύνη των τουρκοκρατουμένων νήσων Αίγινα-Πόρος-Σπέτσαι-Ύδρα* (*The Administration and Justice of the Turkish Occupied Islands of Aigina-Poros-Spetses-Hydra*) (Athens 1954), 219.

88 In the collection of customs from Santorini in 1797, in Chapter 6 it is stated that 'the ecclesiastical authorities should not interfere in the affairs of the community', Siatras, *Ελληνικά Κοινοτικά Δικαστήρια κατά την Τουρκοκρατία* (*Greek community Courts During the Tourkokratia*) (Volos 1997), 43. In the customs of Naxos, 1810, it is stipulated that no clergyman should be accepted in communal courts and that they should restrict themselves to their judicial boundaries. I. Della-Rokka, 'Κώδικας εθίμων της Νάξου του 1810' (Codex of customs of Naxos, 1810), in *Επετηρίδα της Εταιρείας Κυκλαδικών Μελετών* (*Yearbook of the Society of Cycladic Studies*) (Athens 1968), vol. viii, 426**.**

89 Paparrygopoulos, *Ιστορικαί Πραγματείαι* (*Historical Treatises*) (Athens 1858), 219–20; Idem, *Ιστορία του ελληνικού έθνους* (*History of the Greek Nation*), 5:2, 115; A. Vakalopoulos, *Ιστορία του Νέου ελληνισμού: Τουρκοκρατία 1453–1669* (*History of the Modern Greeks: Tourkokratia 1453–1669*), (Thessaloniki 1976), vol. ii. There are variations to this theory, such as the theory of Mosxovakis. Mosxovakis argued that communities during the Ottoman period had the same structure as the ones arising in the Macedonian Dynasty (867–1056). However, as a result of various local needs, they are not identical to each other. N. Mosxovakis, *Το εν Ελλάδι Δημόσιον Δίκαιον επί τουρκοκρατίας* (*Public Greek Law During Tourkokratia*) (Athens 1882), 73–6.

90 D. Urquhart, *La Turquie. Ses resources, son organisation municipale, son commerce, traduit de l'anglais par X. Raymond* (Paris 1836), vol. ii, 37, 43. P. Argyropoulos, *Δημοτική Διοίκησις εν Ελλάδι* (*Communal Administration in Greece*) (Athens 1859), vol. ii, 26, 36–7. In the nineteenth century, the English diplomat Urquhart argued that the tax collecting system of the Ottomans created communal

about mainland Greek communities in the Ottoman empire point to the second theory. The majority of sources date from the mid-seventeenth century onwards as a result of the change in the taxation system. Even sixteenth-century references to Christian communities were related to the special status given by the Ottomans to mountainous communities in return for the service of guarding routes.[91] A further indication of the 'informal' development of Christian communities in the Balkans is the fact that community councils varied regionally in numbers and organization.[92]

I have chosen to concentrate on community council records from the Aegean islands instead of the mainland ones for two reasons. Firstly, due to the idiosyncratic nature of the Ottoman presence in the islands, local communities were allowed to continue enjoying (?) pre-conquest judicial habits. Thus, a substantial number of extant sources and adjudication and notarial documents are preserved. Secondly, since representatives of Ottoman justice were not always readily available on each island, and due to the 'privileges' granted to these communities, we can trace the interaction between different sources of justice — communal and Ottoman.[93] Most of the islands came under Ottoman dominion in the fifteenth century. Rhodes was taken away from the hands of the Knights of Saint John in 1522 and in 1537, Syros, Ios, Paros, Antiparos, Skyros and North Sporades were added to the province of the Admiral (*Cezayir-i Bahr-i Sefid*). Only Tinos was still recognized as under Venetian occupation.[94] In Naxos, Giovanni IV was appointed by the Ottomans as Duke in 1539, and his son Giacomo IV replaced him after his death in 1564.[95] It seems that he was

councils. Argyropoulos supported this view, adding that communal councils were the result of the political and administrative choices of the Ottomans.

91 Vacalopoulos, *Modern Greeks*, II**,** 338–42.

92 For example, Thessaloniki and Serres had twelve-member councils, whereas Athens, Mystra and Aegean islands had four *epitropoi* elected annually. On Chios Island there were two councils, a twelve-member one and four governors above them (*governatori*). Vacalopoulos, *Modern Greeks*, II, 332.

93 See, for example, the codex of the notary of Naxos, Ioannis Meniates 1680–1689, published by Karapa-Rodolakes-Artemiades, 'Ο Κώδικας του Νοταρίου Νάξου Ιωάννου Μηνιάτη (The Code of the Notary of Naxos Ioannes Meniates), 1680–1689', *EKEIED* 1990, 127–1311.

94 For the *ahdname* between Hayreddin Barbarossa and Venetian see, H.P. Theunissen 'Ottoman-Venetian Diplomatics: The 'Ahdnames; the Historical Background and the Development of a Category of Political-Commercial Instruments Together with an Annotated Edition of a Corpus of Relevant Documents', *Electronic Journal of Oriental Studies* 1:2 (1998), 448–68.

95 B.J. Slot, *Archipelagus Turbatus: Les Cyclades entre Colonisation Latine et Occupation Ottoman c. 1500-1718* (Istanbul 1982), published a French translation of the *berat* of Giovanni IV, dated *Muharrem* 946/9–17 June 1539, 76–7, 355, no. 18. The original Ottoman *berat* of his son, Giacomo IV, has been published by S. Safvet, '*Nakşe (Naksos) dukalığı, Kiklad adaları' Tarih-i osmanı encümeni mecmu`ası* (1913), vol. iv, 1, 446–8 and in *6 Numaralı Mühimme Defteri* (*972/1564–1565*) (Ankara 1995), vol. i, 291–2.

allowed limited judicial rights. For example, the rulers were responsible for civil and penal law, and according to their 'custom', judicial acts worth up to 5,000 *akçe*s were not registered in codices and Ottoman officials were ordered not to interfere.[96] In 1566, the Duke Giacomo IV Crispo was replaced by Iosif Nassi, a favourite of Selim II.[97] His death in 1579 and the dispute for the succession between the former Duke of Naxos Giacomo IV and the former Duke of Andros Francesco Somaripa resulted in the incorporation of the islands into the Ottoman province of the Admiral.[98] Chios remained in control of the Genoese until 1566 when the Maona, the twelve-member governing body, was arrested by the Ottomans. Whether these islands were autonomous areas[99] or integrated into the Ottoman system is a subject of debate.[100] Two *ahdname*s were given to the population of Chios in 1567 and to Naxos, Paros, Andros, Mylos, Syros and Santorini in 1580, following the islands' incorporation into an Ottoman province.[101] These were documents conferring certain privileges to the

96 *6 Numaralı Mühimme Defteri*, I, 291–2.

97 Abraham Galante, *Don Joseph Nassi duc de Naxos d'après de nouveaux documents, conference faite à la société 'Béné-Bérith'*, 15 February 1913 (Istanbul 1913); B. Arbel, *Trading Nations: Jews and Venetians in the Early Modern Meditteranean* (Leiden 1955), 55–65. The titles used by these rulers in Ottoman sources recognize them as *mültezims* (tax collectors) rather than independent rulers since they were also forbidden from having any relations with the enemies of the Sultan. See N. Vatin, 'Îles grecques? Îles Ottomans: L'insertion des îles de l'Égée dans l'Emprire Ottoman à la fin du XVIe siècle', in *Insularités Ottomans*, 72–6.

98 Slot, *Archipelagus*, 98–9.

99 E. Koukou, *Οι κοινοτικοί θεσμοί στις Κυκλάδες κατά την Τουρκοκρατία* (*The Community Institutions in the Cyclades During Tourkokratia*) (Athens 1989), part I, 47–52; Vacalopoulos, *Modern Greeks*, I, 342–6.

100 Even the degree of integration is disputed. Vatin, ('Îles grecques', 83–8) is supporting the idea that islanders, although members of the Ottoman polity, often complied and addressed the needs of Latin pirates, and that the incapability of the Ottomans to effectively control the islands led to the creation of an insularity which consequently strengthened Hellenism and the development of local communities. On the opposite side are the supporters of a full integration to the Ottoman system, like C. Küçük (ed.), *Ege Adalarının Egemenlik devri tarihçesi* (Ankara 2001) and I. Bostan (ed.), *Ege Adalari'nın idarî malî ve sosyal yapısı* (Ankara 2003) who argue that any peculiarities are not inherent in the islands *per se*, but are found in other regions under special status. According to them, the fact that the collection of taxes and disputes were put to the arbitration of the Ottomans is evidence enough of the Ottoman sphere of influence.

101 Slot, *Archipelagus*, 98–100. The Greek translation of the '*ahdname'* of Chios has been published by P.P. Argenti, *Chius Victa or the Occupation of Chios by the Turks and their Administration of the Island* (Oxford 1941), 113–17, 208–20. For the '*ahdname'* of the Cyclades islands see, K. Hopf, 'Venetobyzantinische Analekten', *Sitzungsberichte der Kaiserlichen Akademie der Wissenschaften*. 32:3 (1859), 521–3 and P.G. Zerlentis, 'Γράμματα Φράγκων Δουκών του Αιγαίου Πελάγους' (Letters of the Frankish Rulers of the Aegean), *BZ* 13 (1904), 136–57; Idem, 'Γράμματα των τελευταίων Φράγκων Δουκών του Αιγαίου πελάγους (Letters of the Last Frankish Dukes of the

islands. In the *ahdname*s, it is established that judicial cases would be heard by *sancakbey*s, *kadi*s *and naib*s. They were instructed not to judge cases heard before and to accept previously held documentation.[102] The *kadi* would be paid a fee for his services. However, he was not to exceed the rates given for a *hüccet* and a *sicil*. If one appealed a previous decision, the *kadi* would not be allowed to interfere. The islanders were allowed to solve the dispute amongst themselves. If they chose to resort to the arbitration of a third party, the *kadi* would not interfere but rather would simply verify the settlement. The *kadi* would investigate cases and he would not put faith in false witnesses. He would not allow the hearing of a case worth more than 500 *akçe*s without a *sicillat* or a *hüccet* on the basis of witnesses only. Wills would be respected without the interference of local dignitaries. If a criminal took refuge on the islands he would be sought and brought over to the imperial justice. If one was a fugitive, people who were not legally bound to find him would not be forced to do so.[103] In a case concerning the community the *kadi* would personally come and examine it. He would not listen to or give faith to false witnesses. If a person had a dispute, he/she would be not be prevented from bringing his case to the Ottoman court. Equally, neither the *sancakbey* nor the *kadi* could prevent anyone from petitioning and complaining to the Porte. Nobody could force Christian women to marry against the (canon) law.

In the *ahdname* of 1621 for the Cyclades, there is an additional clause related to marriage and the treatment of insolvent debtors who were imprisoned: 'If a Christian woman married a Muslim and then repented, nobody should force her to draw up a *kepini* (this is the term used for the marriage contract in the *kadi* court),[104] unless she

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Aegean), 1438–1565', *BZ* 13 (1904), 136–57; Idem, *Ιωσήφ Νάκης, Ιουδαίος δούξ του Αιγαίου Πελάγους, 1566–1579, το σανζάκ των νήσων Νάξου, Άνδρου, Πάρου, Σαντορίνης, Μήλου, Σύρου, 1579–1621 (Josef Nassi, Jewish Duke of the Aegean 1566–1579: The Sancak of the Islands Naxos, Andros, Paros, Santorini, Melos, Syros, 1579–1621)* (Hermoupolis 1924), 101–05. There is extensive discussion as to whether the '*ahdnames'* resemble the character and content of 'capitulations' or if they were appointing documents (*berats).* Unfortunately, the Ottoman originals have not been found yet. However, the Greek translation of the 1580 privilege charter given to Cyclades islands mentioned that Ieronymos Somaripas, Bartholomaios Kampy and Michael Pangalos had petitioned to the Porte on behalf of the islanders and were granted a *berat* similar to the one given to Chios Island. The confusion in terminology and the adaptation of the term *ahdname,* which denotes a covenant, understood as *ahdname*s**,** like all documents conferring a privilege, was drawn up in the form of a *berat.* See, Inalcik, 'Imtiyazat', *EI²*.

102 This must be a reference to notarial and other deeds produced before the final Ottoman incorporation of the island.

103 This is an addition in the '*ahdname'* of Chios.

104 For the *kepinion* see Pantazopoulos, *Church and Law*, 96–102.

had become Muslim (*tourkisa*).'[105] Insolvent debtors would not be put in chains or imprisoned without the opinion of the elders (of the community) being sought, and they would not be deprived of food and drink.[106]

*Kadi*s were appointed to large and important islands like Chios, Rhodes, Mytilene,[107] Paros,[108] Andros,[109] and Samos.[110] Smaller islands did not have permanent *kadi*s since they would be required to travel to oversee cases.[111] These travelling *kadi*s, according to Joseph de Tournefort, were buying their rights to the office from the *kadi* of Chios. They used to advertise that upon arrival to the islands, the litigants could come with their papers and witnesses, and their cases would be heard quickly and at a low cost. Tournefort comments that because Greeks did not apply to their own officials and priests to solve a case amicably, they were idiotic enough to apply to the *kadi*s.[112] The *kadi*s seemed to adhere to local custom and accept the services of local elders. Tournefort complains that the *kadi* in Syros accepted the wishes of the three representatives of the community elected annually, as for example, in the punishment of a woman who was put on a donkey and subjected to public scorn. Frequent corsair attacks or Venetian-Turkish wars in the seventeenth century resulted in the evacuation of the *kadi* for safety reasons.[113] Foreign travellers visiting the islands attested to the fact that sometimes the *kadi* was almost the only Ottoman presence on these islands.[114] The presence of corsairs in the region, apart from forcing the *kadi*s to flee, had more ramifications in the administration of justice. Tournefort notes that the Malta knights

105 Gkines, *Post Byzantine Law*, doc. 111, 118, dated 1621 and doc. 112, 119, dated 1621 '*ahdname' of Naxos*. In the copy for Naxos there is direct recognition of a marriage contract among Christians in the *kadi* court. It is mentioned that 'if unfortunate women bear children without being married according to the imperial justice (ευγενική δικαιοσύνη), this is a reference to registration in the *kadi* court) or their habits, these children are bastards and do not inherit.' Gkines, *Post Byzantine law,* 119.

106 Ibid., doc. 111, 119.

107 J.Tournefort, *Tournefort Seyahatnamesi* , translated by S. Yerasimos, (Istanbul 2005), 251.

108 Ibid., 163. In Paros the *kadi* resided in Paroikia with the French, English and Dutch consuls.

109 Ibid., 230.

110 Ibid., 258.

111 Ibid., 153. Sifnos Island did not have a permanent *kadi,* but a travelling one. The same applied to Sikinos. See ibid., 189; and Anafi, ibid., 197 and Myconos, ibid., 202.

112 Ibid., 201–2.

113 Tournefort, *Seyhatnamesi,* 218. If the corsairs approached, the *kadi* of Syros escaped to monasteries for safety. If the *kadi* was abducted, Syros islanders had to pay ransom and have him released. Ibid., 281.

114 Tournefort is describing the *'wandering kadi'* in Kimolos Island, saying that the only Muslim is the *kadi* who does not even have a servant and who is afraid to raise his voice in case the islanders complained to foreign corsairs and had him abducted, ibid., 126.

would occasionally answer to the complaints of Latins living on the islands against Greeks, and they would administer either fines or strokes as punishment.[115] The other source of justice on the islands was the Admiral (*Kapudan Pasha*).[116] He was the recipient of most taxes and he would hear cases on appeal in his council.[117] On his annual tour of the islands, he would also listen to cases and seal his decisions. The role of the translator of the fleet, *Dragoman*, was instrumental in the preparation and execution of decisions, and his role increased towards the end of the eighteenth century.[118]

These privilege-granting documents, similar to the *berat*s of ecclesiastical authorities, portray the framework of judicial freedom granted to the Aegean islands. The undisputed power of local arbitration and the use of legal documentation (even in the *kadi* court), as we will see in the cases we will further examine, depict the pursuit of justice in the Ottoman legal system, which is much more complicated than we think if we concentrate only on *kadi* records. The choice to apply to any court or

115 Ibid., 145. According to Tournefort, captains would oversee cases without the presence of lawyers. They would demand no fee, only presents, food and wine. He considers them the only choice Latins had to seek justice against Greeks. He complains that in Naxos Island, if a Latin even considered revolting, the Greeks would immediately inform the *kadi,* ibid., 169.

116 B. Randoph, *The Present State of the Islands in the Archipelago* (Oxford 1687), 17, gives a vivid description of the Kapudan Pasha's justice. In 1680, when Anzolo Maria (a pirate) attacked a ship coming from Alexandria, he sought refuge in Myconos Island. The captain of the abducted ship managed to find his way to Chios and complained to the Kapudan Pasha, who immediately sailed. However, Anzolo managed to escape at the last minute. All the inhabitants were summoned and their *Vecchiardi* (elders) were told that they would have to turn him in. The elders ordered the priests to excommunicate all those who concealed him or any of his companions as well as those who did not bring them out before the Pasha. The Kapudan Pasha arrested some of Anzolo's companions, his wife and his physician. They were all tortured to no avail, as described vividly by Randolph, and some were executed. The Pasha threatened the elders, stating that if he heard that Anzolo returned, he would punish all of them and force their children into slavery. He eventually departed with 100 prisoners who had cooperated with the privateers and riches, ibid., 14–20. We should note however that this account has not been verified by other sources. Randolph, like other travellers, seemed to have projected his own understanding of Ottoman justice. Researchers have used these accounts frequently to describe Ottoman justice as whimsical and arbitrary. However we have other examples where Christians have successfully used the system to cancel previous arbitrary decisions, see no. 175.

117 M. Tourtoglou and L. Paparrega-Artemiade, *Η Συμβολή των Δραγομάνων του Στόλου στην Προαγωγή της Δικαοσύνης των νησιών του Αιγαίου* (*The Contribution of the Dragomans of the Fleet in the Advancement of Justice in the Aegean Islands*) (Athens 2002), 7–11.

118 Ibid., doc. 1, 29, dated 30 March 1710. In the eighteenth century, the office of the *Dragoman* of the fleet was granted to Greek Phanariots, and they were allowed even more participation in the administration of justice. See, B.B. Sfyroeras, *Οι Δραγουμάνοι του Στόλου. Ο Θεσμός –οι φορείς* (*The Dragomans of the Fleet: The Institution and the Conveyors*) (Athens 1965), 1–192.

arbitration body is established once more in the imperial orders and was exercised by Christian subjects even in 'highly self-governed' communities such as those in the Aegean. The right was frequently exercised by islanders, despite the physical effort and high costs involved in having a case heard before the *kadi,* as they would have to travel to find the representative of 'imperial justice'.[119]

The communal court records and notary deeds I have used date from the seventeenth century until the nineteenth century.[120] Although there are references to scattered earlier documents,[121] as in the case of ecclesiastical codices, we can presume that communal and notarial deeds were kept more systematically from the seventeenth century onwards. They have been published as notary collections[122] or single documents.[123] Unlike the ecclesiastical records, the communal ones cover most cases of civil law, acknowledgement and payment of debts,[124] inheritance and business disputes,[125] as well as penal cases such as slander, participation in abduction, wounding, injury and even homicide.[126] From the seventeenth century onwards we also observe an effort to put several customs into writing. Among the earliest collections are those from Myconos, 1647; Syros, 1695; Leros, 1722; and Patmos,

119 See cases further on pp. 46–58.

120 Notaries were registering private documents and communal decisions. Thus, notarial codes were serving as communal codes.

121 A. Kasdagli, *Land and Marriage Settlements in the Aegean: A Case Study of Seventeenth-Century Naxos* (Venice 1999), 8, 59–66. Kasdagli has utilized these sources and extant notarial entries to reconstruct the Naxian society in the seventeenth and eighteenth centuries. See also, L. Paparrega-Artemiades, 'Μορφές δωρεών και νομικοί περιορισμοί στον κυκλαδικό χώρο κατά τη μεταβυζαντινή περίοδο, 17ος –18ος αι.' (Types of donations and legal restrictions in the Cycladic islands during the Post Byzantine period, seventeenth–eighteenth centuries), *EKEID* 36 (2002), 135–81.

122 A. Sifinou-Karapa, G. Rodolakes and L. Artemiades, 'Ο Κώδικας του νοταρίου Νάξου Ιωάννου Μηνιάτη, 1680-1689' (The Code of the notary of Naxos Ioannes Meniates) *EKEIED* (1982–3), 29–30, (Athens 1990), 125–1,311; G.A. Petropoulos, *Νοταριακές πράξεις Μυκόνου των ετών 1663–1779* (*Notarial acts of Myconos, 1663–1779*) (Athens 1960); Idem, *Α. Νοταριακές Πράξεις Χίου των ετών 1724–1780, Β. Έγγραφα Ρόδου και Καστελλορίζου των ετών 1847–1874 (A. Notarial Acts of Chios 1724–1780. B. Documents of Rhodes and Kastellorizo, 1847–1874)* (Athens 1963).

123 For an extensive bibliography see no. 59.

124 Sifinou-Karapa, 'Meniates', doc. 2, 8–9, 15, 17, 30, 35, 38, 42, 56–9, 70–1, 90, 96, 122, 128, 142, 144–6, 155, 163–4, 173, 185, 202, 204, 246–147, 152, 258, 266, 276, 278, 314–15, 331, 333, 338, 344–5, 348, 442, 452, 456, 481,500, 542, 544, 551–2, 556, 560, 615–17, 677, 719, 728, 730, 784, 789, 841, 843–5, 866–8, 870, 896, 902, 903, 908.

125 Ibid., doc. 10, 20 26, 27, 31, 37, 39, 45, 50, 55, 57, 63, 100, 104, 125, 126, 134, 137, 178–9, 186, 188, 199, 203, 206–8, 212, 225, 227–9, 235, 238, 240, 242–3, 248, 253, 255–6, 261, 283, 299, 393, 412, 431, 458, 471, 482, 571, 728, 788, 789, 816.

126 See further on, 41–2.

1732.[127] The Santorini collection of 1797, commissioned by the *Dragoman* of the fleet Kostas Hanzeris, was much more detailed.[128] This is in addition to the Naxos collection of 1810, which was compiled by the *proestoi* (elders) upon the request of the *Dragoman* Mourouzis and organized by the monk Ilarion.[129] We can presume that these attempts were the result of a dispute. They do not have the form of systematic codification. Based on them, however, we can note which crimes the communities consider themselves responsible for.[130]

Litigation Process in Ecclesiastical and Communal Courts

Ecclesiastical Courts

We have already discussed the judicial jurisdiction of the ecclesiastical courts and have concluded that there was a *de facto* expansion on behalf of the Patriarchate, followed by a *de jure* partial recognition by the Ottomans of the arbitration role of the Church starting from the eighteenth century onwards. In terms of procedure, the bishop is accompanied by a number of priests and *archons* (local elders).[131] At the end of the entries, the bishop would either personally confer the decision and place his seal[132] or his confirmation would be supplemented by the signatures of the witnesses either in their own hand or added by the scribe.[133] It is difficult to distinguish between

127 Kasdagli, *Land*, 78. Kasdagli informs us that in the 1732 Patmos customary 'codification' there is a reference to an even earlier written custom that is now lost.

128 I. Arnaoutoglou, 'Συλλογές εθιμικών κανόνων δικαίου στις Κυκλάδες (τέλη 17ου –αρχές 19ου αι.)' (Collections of Customary Law in Cyclades, End of Seventeenth-Beginning of 19th Centuries) *EKEID* 37 (2003), 126; Gkines, *PostByzantine Law*, doc. 134, 127–8.

129 Arnaoutoglou, 'Collections', 127. When the *Dragoman* Mourouzis visited the island, he witnessed confusion about local 'customs' interfering with the administration of justice and subsequently ordered the codification. Another important source of customary law is the answers to the questionnaires that the Ministry of Justice sent to all parts of kingdom of Greece in 1833. They were published by G.L. von Maurer in *Das griechische Volk in öffentlicher, kirchlicher und privatrechtlicher Beziehung vor und nach dem Freiheitskampfe bis zum 31. Juli 1834* (Heidelberg 1835).

130 Gkines, *Post Byzantine,* 127. The priest and laymen of Myconos gathered on 26 October 1647 and decided to write down some of their customs 'to be binding for all in eternity' since the island was in a worse position than others. The majority of decisions related to torts against property and persons.

131 Pantazopoulos, *Codex of Sisaniou,* passim.

132 Ibid., doc. 1–32 'the Sisaniou Zosimas confirms'.

133 Clergymen used their ecclesiastical titles (*priest*, *deacon*, *oikonomos*, *sakellarios*, *protopapas*) and laymen used their own eponyms, such as *protonotarios*, *doucas*, *protokathoumenos*, *protekdikos*, *retor*, *epitropos*, *exarchos*. Pantazopoulos, *Codex Sisaniou*.

the notary of the deed and the witnesses. All witnesses were male and in one case a Muslim also signed.[134] Litigants would express their desire to apply to the court orally, and they were summoned together — unless one of them presented a written statement in court. According to the nature of the disputes, decisions were detailed, and the bishop questioned the evidence produced. He also allowed expert witnesses to assess the statements. Since the Church was not very eager to dissolve marriages, spouses applying for a divorce would be advised to reconsider; even the bishop would personally intervene to eliminate some of the sources of grievances to prevent separation. This process is apparent in the following case. In 1704, Eirene (a young lady) presented her case in front of the metropolitan and the clergymen, and requested separation from her husband Triantafyllos, claiming that he was cruel to her and beat her daily. She persistently begged to be divorced. Therefore, upon being summoned to the court, her husband was reprimanded, but to no avail. Given that the wife realized that going to the Church had not saved her, 'she decided to betray her belief in church, and although she would be punished by God, she went to an external court [i.e. Ottomans] and she was separated from his [husband's] tyrannical hand.' She claimed that her husband was forcing her to have intercourse with her neighbour and that he had forced her to become an adulteress twice. The woman, unable to tolerate this anymore, requested the examination of the husband, who subsequently admitted his guilt. Following the decision, the bishop made the following remarks:

> Although this is an obvious crime and a valid reason for divorcing them, we many times unsuccessfully advised them to avoid separating. The woman, though, did not at all consent to continue cohabiting with such a vile man. Seeing the real danger and her inalterable mind we decided to separate them. They have reached a settlement and Triantafyllos promised to return to the woman her dowry and half of the pre-nuptial gifts.[135]

134 Pantazopoulos, *Codex Sisaniou*, doc. 91, 120–2, dated 24 July 1722, a woman requested to be divorced as she had been seriously ill for eleven years. She agreed to the divorce on the condition that her husband would provide her with food, clothing and accommodation until the end of her life. The agreement was first registered in the code of the Church of Saint Demetrios. The couple then went to the bishop to obtain the divorce — as the document states. It was registered once more in the metropolitan code, but this time on 24 July 1722. The agreement document was then registered. The witnesses were Michel Gazis, Demos Bardakopoulos, Kotzi Hacimarkou, Ioannis Doucas and Hüseyn Kiatos from Kastoria. We can assume that since the implementation of the agreement was probably very difficult, the presence of a Muslim witness would have facilitated the hearing of any dispute in the *kadi* court.

135 Giannoules, *Codex Trikkes*, 54–5.

This is an excellent example of the process of litigation, the different stages of a case, the reasons why the wife resorted to the *kadi* justice, and the need to have her divorce recognized by the ecclesiastical court. After a long and legally complicated battle it seems that her insistence to be canonically divorced was not only related to her wish to remarry: she also struggled to safeguard her financial rights in a court that could perhaps implement its decision.

In the above-mentioned case, confession proved full proof of a claim. Signs were also accepted as full proof. In a divorce case, the adulterous wife abandoned the husband who was away for business purposes, and was impregnated by another in his absence.[136] However, documentation was the most important tool in the litigation process. It could either be copies of statements, wills and dowry contracts registered in the codex,[137] *hüccets*,[138] or accounting books of trading partners.[139] All documents had equal weight in court, and in the case that a document was disputed or when it was claimed that it had been obtained by force, witnesses were examined. At least two witnesses were summoned to court, and they were usually referred to as reliable.[140] However, in some cases the bishop submitted the witnesses to the threat of aphorism and an oath when there was no other proof.[141] In the case of a married woman who gave birth to an illegitimate child, two women present at the birth came forward as witnesses to testify. Since all the witnesses were male, it is not surprising to see that their names were not among the signing witnesses.[142] Expert opinion was

136 Pantazopoulos, *Codex Sisaniou*, doc. 56, 69, dated 21 September 1700.

137 Ibid., doc. 87, 117.

138 Priest Papa Demetrios, the maternal grandfather of two orphans, was appointed as their guardian both ecclesiastically and 'externally' by *hüccet* (Pantazopoulos, *Codex Sisaniou*, doc. 77, 100, dated 25 August 1719). On 30 January 1700, the ownership of vineyards was determined in an inheritance case by *hüccets* (Ibid., doc. 54, 67).

139 Ibid., doc. 64, 80–1, dated 6 March 1704; doc. 84, 13–115, dated 29 February 1720.

140 Ibid., passim.

141 Giannoules, *Codex Trikkes*, 50; Pantazopoulos, *Codex Sisaniou,* doc. 27, 20, dated 11 January 1693. In the case of an abandoned woman, both the witnesses and the wife claiming that her husband had not informed her or supported her for seven years were submitted to the threat of severe aphorism. Ibid., doc. 92, 122, dated 14 June 1723, doc. 92, 127, dated 7 September 1724. The power of aphorism is obvious in a case dated 28 October 1690; ibid., doc. 14, 8–9. A sister claimed a silver necklace that her brother had left for safe keeping in the hands of a man. Since the brother was missing for seven years, the sister went to court to claim it. The recipient admitted having it and added that it was given as a pledge in return for 830 *akçes* owed to him. The metropolitan decided to take him to court to receive aphorism in an effort to determine whether or not he was telling the truth. However, the sister did not allow this and after paying the debt she received the necklace.

142 Pantazopoulos, *Codex Sisaniou,* doc. 73, 93, dated 8 June 1715.

sought by the court and accepted as proof.[143] Finally, the bishop (as we mentioned before) would state that the registration was conducted as a form of proof and guarantee that the agreement or decision was to be respected, in order that it would be used in any court in the future. In some cases an aphorism was written to deter disputing his decision.[144] There is no further evidence of another form of punishment exercised by the metropolitans. However, in a reference, it seems that he was aware of community punishment. In 1700, a proven adulteress was, as the document states, 'punished by her own community with external punishment'.[145]

Apart from the holy canons and the patriarchal and synodical orders, local bishops utilized the *Hexabiblos* of Harmenopoulos (drawn up in 1345) and the *Nomokanon* of Malaxos (dated 1561), which was based on the *Hexabiblos* and which included some elements of customary law.[146]

Until the middle of the eighteenth century, the *Nomokanon* of Malaxos prevailed in practice, as it was drawn up in the spoken language and contained extensive provisions with regard to ecclesiastical family law. The expansion of ecclesiastical jurisdiction over civil cases attested in the eighteenth century created a need for another source in addition to civil law.[147] Thus, in 1744, Spanos published the *Hexabiblos* in Venice, reintroducing Byzantine law to meet the new needs of the Church. Its seven editions (dating from 1744 to 1820) are evidence of the book's success. However, prior to these developments there were efforts to regulate the involvement of ecclesiastical authorities to restricted civil cases. Gkines published *Nomokritiron,* a law book in manuscript, and he dated it sometime between 1600 and 1700.[148] It was written in the common language and had many loanwords from

143 Ibid., doc. 89, 119, dated 13 July 1722. In a dispute over the boundaries of the courtyard, three males, builders and neighbours were asked to offer their expert opinion.

144 Ibid., doc. 93, 123–6, dated August 1723.

145 Ibid., doc. 56, 69.

146 The opinion that the *Hexabiblos* was the only text used throughout the Ottoman period has been disputed. A number of *nomokanon* collections were copied and circulated during this period, like the *Nomokanon* of Kounale Kritopoulos, which was based on Vlastares and Armenopoulos, *c.* 1498; Manuel Malaxos' Nomokanon, around 1581; the epitome of *Hexabiblos* of Zygomalas, in 1575; *Nomikon* of Ioannes Troullinos in 1573; *Nomokrites* of Theokletos, 1671; and *Nomos Ecclesiastikos kai Politikos* or *Nomikon* of Theophilos Campanias in 1788. For Malaxos see, Gkines and Pantazopoulos, *Νομοκανόν Μανουήλ Νοταρίου του Μαλαξού του εκ Ναυπλίου της Πελοποννήσου* (*Nomokanon of Manuel Notarios Malaxos from Nauplio, Peloponnese*) (Thessaloniki 1985). See K. Pitsakes, *Πρόχειρον Νόμων ή Εξάβιβλος* (*Hexabiblos*) (Athens 1971), 101–9.

147 Theophilos Kampanias in his *Nomikon* expands on the need for a manual incorporating civil law. See note 85**.** Pantazopoulos, *Church,* 44–5.

148 Gkines, *Post Byzantine Law*, doc. 100, 65–114.

Turkish. These facts, in addition to the book's limited circulation, indicate local use. The majority of clauses are related to marriage, engagement, inheritance and the duties of priests and bishops. However, there is also a part on civil cases; torts against property and person such as indemnities paid if stray animals caused damage toproperty or bodily harm;[149] sexual offences like adultery and rape;[150] loans and transfer of loans;[151] selling and buying of property and persons;[152] clauses on the punishment of those verbally abusing a judge;[153] refuting the judgement of bishops;[154] the rehearing of cases;[155] the responsibilities of an appointed arbitrator;[156] and the time allowed to elapse before claiming a right.[157]

149 Ibid., 90–1.

150 Ibid., 73–4.

151 Ibid., 94–8.

152 Ibid., 80–4.

153 Ibid., 90. One had the right to challenge the decision of the judge, but not to verbally abuse him. If one abused the judgement during the procedure or afterwards, then the punishment inflicted was public scorn. He was placed on a donkey and was paraded around the neighbourhood.

154 Ibid., 110. If one of the two litigants was afraid he would not have a fair trial because of the social standing of his opponent, he was allowed to transfer his case to a nearby court provided that it was not further than two days walk away. *Nomokritirion* set forward the rules for appeal. If a litigant considered the decision of the bishop unjust, he could appeal within ten days to the local archon who was entitled to hear the case. The patriarch was the ultimate appeal court and the cases he judged could not be transferred to another judge. However, that did not mean that the decision was final. The patriarch could rehear a case that he had judged before.

155 Ibid., 111. Nobody was allowed to raise a claim of debt from the heirs of the deceased debtor until nine days after the death, as a form of respect. No claim of moveable or immoveable property could be heard in an ecclesiastical court, if forty years had elapsed. However, if a case had been misjudged no time span, law, or custom could not prevent a rehearing.

156 Ibid., 112. In case the decision of the bishop, patriarch, ruler, or 'civil judge' was not to the liking of the litigants, they could agree to take a case to a commonly accepted arbitrator. The decision of the elected arbitrator (*airetos krites*) was respected by all, even the patriarch and ruler. His decision was challenged only if it was proven that he was biased. If two arbitrators were appointed and they disagreed, a third one was appointed and their decision would be unanimous. One could not become an arbitrator if one was younger than twelve years of age. Challenging the decision of the arbitrators inflicted punishment and a fine of sixty or seventy *akçe*s.

157 Ibid., 84. No clergyman could be judged in non-ecclesiastical courts. If the lay litigant forced a clergyman to go to a non-ecclesiastical court, even if he was right, he would be beaten and would have to pay a fine. However, if the clergyman had accepted to go to a non-ecclesiastical court he would be defrocked and punished.

Communal Courts

Although communal courts would have to be restricted to overseeing civil law cases (in addition to ceding the exclusive right of family law to ecclesiastical courts), we can still observe the registration of dowry contracts, wills and judgment on inheritance and dowry disputes. The majority of members were community elders who were elected annually. Sometimes clergymen participated, not necessarily with reference to their religious identity, but rather as representatives of the community. Occasionally Ottoman dignitaries like *voyvoda*s or *Dragoman*s[158] participated and sealed the documents or appointed local elders as their representatives. As most of them were Christians, we would have to examine their role in court and determine whether they participated officially as members of the Ottoman administration[159] or rather as negotiators to eradicate points of conflict. The procedure was oral, as it was in the ecclesiastical courts. The interested party would appeal to the secretary of the community to ask for a case to be heard. On the islands, *protesto* was a document drafted by the secretary of the community and presented in court to document a protest against an action and invite action.[160] Apart from final verdicts, statements were registered as part of an ongoing procedure. Confession was considered to be full proof, and oath coupled with the threat of aphorism was administered in case of a lack of evidence.[161] Witnesses were important in the procedure and the court had to establish their impartiality. Thus, relatives were excluded since they were considered potentially biased.[162] In some cases their examination was under oath or the threat of aphorism.[163] The refusal to be put under oath was considered proof of guilt. Sometimes witnesses were not present but a privately drawn or preferably registered written statement in the communal code was accepted in court.[164] Documents played a

158 Tourtoglou, 'Η Νομολογία των Κριτιρίων της Μυκόνου' (The Jurisprudence of Myconos Courts, Seventeenth–Tenth Centuries) *EKEIED* (1980–1), vol. xxvii–xxviii, (Athens 1985), 10; D. Siatras, *Ελληνικά Κοινοτικά Δικαστήρια κατά την Τουρκοκρατία* (*Greek Community Courts during tourkokratia*) (Volos 1997), 42.

159 Tourtoglou, *Dragomans*, 14–19; Siatras, *Greek Community Courts*, 42.

160 See further on, note 171.

161 Tourtoglou, 'Myconos', 13, mentions that if both parties were priests they would be released from the obligation of oath.

162 Ibid., doc. 70.

163 Ibid., doc. 31, 35, 104.

164 Sifoniou, 'Meniates', documents 29, 42, 52–4, 77, 79, 11–113, 142, 155, 167, 173, 177, 181, 183, 193–5, 213–22, 227, 250, 295, 299, 306, 309, 442, 449, 465, 475–7, 506, 541, 543, 566, 569–71,

very important part in the procedure, and they were examined thoroughly. They were either copies from the communal codes, private documents signed in front of witnesses, or any official Ottoman documentation. The decisions could be contested. The Ottoman courts and the *Kapudan Pasha* operated as the appeal court. In some cases a litigant applied to the communal courts once more, usually after new members of the council were elected. To render more legal weight to the decisions, a high fine payable by the non-compliant party was registered.[165] Apart from the fine, the litigants expressed and registered their satisfaction with the decision at the end of the entries. If not, the litigants registered that they reserved the right to contest the decision in the future and apply to another court.[166] Experts were employed to determine civil disputes, and their witnessing was accepted in court.[167] Apart from these bodies arbitration was sought by the two parties who agreed beforehand to accept the decision of *kritai* (*airetokrisia*). Alternatively, arbitrators were appointed by the communal court. In the first case the acceptance of the decision was voluntary, whereas in the second it was final since it was registered in the communal codes.[168]

As we have seen, the basis of law is far more complicated than ecclesiastical justice. Byzantine legislation and 'local custom' blended together in an idiosyncratic manner unique to each island. The investigation of the interaction of previous legal Frankish/Venetian practices with Byzantine law and the Ottoman influence is a very interesting and unexplored subject. Islamic/Ottoman law was obviously used in cases judged by Ottoman officials. Community council decisions were generally respected within the community although community members were free to apply to other courts.[169] The expense of 'external litigation' was high, therefore it was sometimes

574–8, 580, 588–91, 606–8, 725–6, 732, 744–5, 802–3, 806, 810, 822–3, 833, 869–71, 890, 898, 899, 913.

165 Tourtoglou, 'Jurisprudence', documents 25, 28, 33, 47, 55, 59, 60, 62, 63, 72, 78, 81, 85, 87, 88, 90, 93,101, 103, 105, 107, 108, 111, 112, 115, 129, 143, 152, 161, 164, 172, 185.

166 Ibid., doc. 25, 30, 85, 87, 97, 124, 129.

167 Sifoniou, 'Meniates', doc. 194; Tourtoglou, 'Jurisprudence', doc. 28, 105.

168 *Gerontokrisia* was a variation of the *airetokrisia* system, the members of which were elders (*proestoi*) presided by a bishop. D. Siatras, *Greek Community Courts*, 48–50.

169 Tourtoglou, *Dragomans*, doc. 13, 38, dated 13 September 1795. A brother and a sister claimed a vineyard after the death of their parents. It was part of the dowry and registered in the dowry contract of the daughter, but later on it was given to the son by will. The community council decided in favour of the daughter, arguing that dowry property could not be reclaimed and given to others through a will. However, the son contested the decision and stated that he wished 'to be judged in the presence of our long lived lords [Ottomans]'. Because the process would be long, the council decided to allow the daughter to harvest the vineyard. The wine would be left as deposit in the hands of a third person, until the litigation process in the Ottoman court was completed. In another case,

agreed beforehand that the party referring a case to the *kadi* would have to bear the costs. In contrast to aphorism used by the Church, local community elders used fines to add weight to their decisions. In a society where community is important and one relies upon neighbours' witnessing and help, non-compliant members could be deprived of communal protection. In a case from Syros, dated 27 September 1761, the elders signed a document stating that although they had tried to be fair by proclaiming their verdict in the dispute between Margarita and her neighbour, Margarita had been uncooperative. She refused to comply with the urges of the *castelano* (clerk of the court, it. Castellano), advising her to remove stones from the front yard of her neighbour's house. They decided to hand her over to the Ottoman officials who were visiting the island so that she could be punished and forced to pay a fine (*tzereme***,** tr. *Cereme*). She was also condemned to pay indemnities to her neighbour for his losses. Finally, she would not be defended by any *epitropos* or *proestos* in the Ottoman court, and she would have to pay a fine of twenty *guruş* to the representative of the Ağa regardless of the case's result.[170]

Interaction of Ecclesiastical/Communal Justice and Ottoman Justice

A *protesto* was filed in the community register of Syros on 3 November 1763 by Linardos Halavazis, son of Zane, against his father-in-law Nikolas Previlezios of Georgi. The *protesto* claimed the return of his wife's dowry. Linardos Halavazis of Zane went to file the *protesto* against Nikola Prebilezio of Georgi in the chancery, claiming the following:

> The aforementioned Nikolas gave a dowry to my wife, Kandia, and drew up a dowry contract. Later on the said Nikolas took back the entire dowry, and removed her from the house he gave her. She wrote to me in the City [Istanbul] and I went to the *malikiane saapi* [tax collector, tr. *malikane sahibi*] of our lands Ali Ağa Belatoglou. He sent a letter to Ismail Ağa *voyvoda* of Andros and asked him to send the *kadi* of Andros and Syros to examine [the case], and to give me back the property written in my dowry contract. The *kadi* went and summoned the *epitropos* Sior Zanoulaki Salaha, the *kantzilieri* [the secretary, it. *cancelliere*,] Marko Bambakari, and the

when the dowry contract was contested again, the woman was successful in issuing an imperial order (*pougiourouldu*, tr. *Buyuruldu*) that she had used in the communal council of Naxos. Ibid., doc. 61–2, dated 20 October 1810.

170 Siatras, *Community Courts*, doc. 59, 162, dated 27 September 1761. Tourtoglou, *Dragomans*, doc. 29, 56, dated 13 February 1810.

> rest of the *proestoi*. They all decided in accordance with the dowry contract and the *kadi* decided the same and he gave me a *hontzeti* [title deed, tr. *hüccet*] signed by the *epitropos* and the *proestoi*. However, the said Nikolos is disobedient towards the *hüccet* and the dowry contract. This is why I have put forward the present *protesto* to forbid him from entering any property written in the *hüccet* and dowry contract [*prouxoxarti*]. If he disobeys, he should be *kontenarismenos* [fined, it. *condanna*, fine] to pay a fine of 500 *guruş* to our Ağa. Gianis Halavazis, I witnessed.[171]

This is a fine example of the interaction between the different systems and the legal freedom enjoyed by a Christian in his pursuit of justice. There must have been points of friction between the two sides before. We do not know if the litigant tried communal justice before taking his cause to the Ottomans. The executive power of the decision made by the *kadi* is the reason he resorted to him. However, in the islands the local administration would have to implement the *kadi*'s decision. Therefore, despite his success in obtaining a favourable decision in the *kadi* court, his opponent was not willing to comply. By applying to the local council he had used his legal right to ban his opponent from access to his property under the threat of a fine payable to the local Ottoman dignitary — being certain that it would be collected.[172] The methods that he used to initiate the procedure were remarkable. Local networks were used to guarantee success. The tax collector of the island sent a letter to his local representative and established the *kadi*'s involvement.

Fear of being taken to the *kadi* sometimes led to injustice. The local court, taking into consideration that a judicial act was made under duress, promptly rectified it. On 1 August 1685 a woman called Frosyne took Nikolas, the lender of her deceased husband, to a communal court, claiming that he had illegally forced her to sign a pledge in the *kadi* court. 'Although the woman had not yet testified for the dispute, the said Nikolas took a Turk (… from the court) and forced her to go to the *kadi*.[173] Because the said Frosyne was scared, she gave him a *skritto* (letter, it. s*criptum*,) with which she pledged her properties to him (*obligarise* from it. *obligo,* pledge).' The two sides put forward their evidence. The lender then produced the pledge document obtained in the *kadi* court, and the woman produced three reliable witnesses. Since

171 Siatras, *Greek Community Courts*, 52–3.

172 In many documents, especially in settlements, there is a clause that states that if the agreement was not respected, the contesting party would have to pay money to both the *kadi* and the *voyvoda*. See, Sifoniou, 'Meniates', documents 9, 11, 15, 16, 24, 30, 50, 51, 55, 60, 66, 75, 102, 110, 111, 128, 149, 150, 158, 164, 171, 209–10, 152, 304, 310, 316, 320, 321, 327, 347, 357, 363.

173 He had asked the services of a clerk in the *kadi* court to ensure her presence in the court.

she gave the pledge under duress, the decision was to release her property (freed, it. *Libero*).[174] This is an example of what happened when an official Ottoman document was contested in the communal court. However, if the woman had presented her witnesses in the *kadi* court, the decision would have been the same.[175]

The aggression of local Ottoman officials was not tolerated if it contradicated the local custom. This is attested in a letter sent on 28 February 1754 to the elders of Myconos by the *Dragoman* of the fleet, Stephanos Demakes:

> Your most useful and honourable *archon* and *proestoi* of Myconos. …With this letter we inform you that it has come to our attention that Ali Ağa, the former *voyvoda*, has contested the will of Kalomoira Kizes and has taken the field in Kardamila and has given it to the daughter of Demetres Kizes. Because it is illegal to contest a will[176] and additionally *voyvoda*s do not have the power to make such decisions, upon receipt of this letter, the will of Kalomoira should have weight and the letter of the *voyvoda* should be torn up as soon as you receive it.[177]

Even community elders were reprimanded if they violated local custom and Ottoman law. The *Dragoman* of the fleet sent a very strong letter to the community of Myconos following the appeal against their decision regarding the only son and heir of a deceased mother. When he went to claim his inheritance, he found out that for

174 I. Bisbizes, 'Δικαστικαί αποφάσεις του 17ου αιώνος εκ της νήσου Μυκόνου' ('Judicial Decisions from the Seventeenth Century Island of Myconos'), *EAIED* 7 (1957), 111.

175 E. Kermeli, '*Sa'i bi'l fesad* and Rebels in a Seventeenth-Century Ottoman Court', forthcoming. In a similar case, the Ottoman court cancelled a guarantor statement previously registered in court because it was taken by force. The *rea'ya* of the Merabello area in Crete complained that Mustafa Pasha (probably Köprülü Mustafa Pasha, who held office 1688–90) and Mehmed Pasha (Fındık Hacı Mehmed governor two times in 1689 and 1691) had forced them (*cebran*) to guarantee that they would keep the roads clean from bandits and that they would release captured Muslims and refund their stolen properties. They requested to be released from the guarantorship, and threatened to otherwise disperse. The judge granted their request. *Τουρκικό Αρχείο Ηρακλείου* (*Turkish Archive of Herakleion*), *TAH 7* (19 July 1691), 55.

176 See privileges' chart, notes 101 and 105.

177 Tourtoglou, *Dragomans*, doc. 3, 31, dated 28 February 1754. The local social standing of a litigant was important in obtaining Ottoman official support. Mehmed Pasha asked the local elders of Myconos to look favourably into the claim of a monk. He managed to obtain their *sentenzia* (decision, it. *senteza*) by force. However, the monk's opponent took him to the newly elected communal court. This body summoned the former elders. They verified that there hadn't even been a hearing and that the Pasha forced them to issue the decision in favour of the monk. On the basis of their statement, three witnesses and a dowry contract dating from 1663 produced by the litigant, he won. Tourtoglou, 'Jurisprudence', doc. 88, 98–9, dated 6 June 1709. Note that the dowry contract used in court was forty-six years old.

unknown reasons his mother had disinherited him. He applied to the local council to no avail:

> You did that without respect to law, fear for our civil [Ottoman] laws, going against the general law saying that children inherit from their parents even if passion might interfere with their [parents'] judgment. We thus decided on civil [Ottoman] laws that he should receive his inheritance without any hindrance... We thus demand the enactment of our just and legal decision and you should be careful, *proestoi* and others, not to come against it, as we will send a *mubasiris* [court clerk, tr. *mubaşir*] to execute our decision and he will have the right to punish anybody who might come against it.[178]

However, the involvement of the Ottoman authorities was not always to the benefit of the two sides. On 10 November 1681, a copy of a statement from the code of the notary of Chios was registered in the code of the notary of Mykonos. It verified that Anastasios Zakynthinos went to Naxos with an order to collect a debt from Ioannis Diasorymos. Zakynthinos was escorted by Mahmud Ağa, a *çavuş* (law enforcer) of the vizier. After they arrested the debtor, they surveyed his property (the term used for survey was *kanan spati,* tr. *ispatlamak*) to collect the debt. However, the lender and the debtor came to a secret agreement and escaped from the island, leaving the *çavuş* unpaid for his services. He then arrested three locals, put them in a boat, brought them to Chios, and imprisoned them. Eventually the imprisoned Christians reached a compromise with the *çavuş* and gave him sixty *aslan guruş* with the understanding that they would be allowed to collect the money from the debtor, Diasorynos. According to the agreement, they would claim their money back from a deposit (the term used was *amanati,* tr. *emanet*) that the debtor had left in the safekeeping of the *kadi* of Naxos. The aforementioned Ağa gave them this letter to produce as evidence of their agreement and put his seal on it. Two Christians, the notary and a Muslim — a certain Mehmed Çelebi — signed the letter.[179]

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178 Tourtoglou, *Dragomans*, doc. 25, 51–2, dated 5 January 1809.

179 Sifoniou, 'Meniates', doc. 224, 399, dated 10 November 1681. We found another phase of the affair from a note following under the registered copy of the letter. On 12 May 1682, one of the men who had been taken forcibly to Chios asked for a copy of the letter since he was preparing to go to Istanbul to find the *çavuş* and claim his money. This means that the scheme did not work. In the privileges' charter there is a special clause forbidding the apprehension of people unless they were legal guarantors (see above, note 105). Also, in the nineteenth century the community of Hydra decided that if one brought over a *mubaşir* for a private affair, then he would have to pay for his food and service (the term used *xismeti*, tr. *hizmet*). They also decided that if the elders were put in chains by force and they were imprisoned by the *mubaşir* who was asking money for his services, then the community would take possession (the term used *kanoun zapti*, tr. *zabt etmek*) of the property of the

Communal documents also shed light on the *sulh* procedure observed in the *kadi* court. In 1683, the registration of a witnessing in the communal code of Myconos took place. Efendi Iakoumakis Mranotzes and Mister Tzortzis Baranes were witnesses in a case of inheritance in the *kadi* court. Kyr Markos, son of Papa Orfanis, claimed his inheritance from the property of his late niece Sofia. He summoned Master Stamatis Pelekanos, another relative of Sofia, to court. 'After going out in the street in front of the *kadi*'s house, Markos said "let's go and pay to find our right". Stamatis answered: "I have no intention to go and spend on the judgment [of the *kadi*]. You go and whatever you get is yours and I will have no claim."'[180] The two witnesses in the *kadi* court and others who overheard the statement went to the notary to verify and sign an oral agreement.[181] It is interesting to observe a legal tradition whereupon documentation is the most important form of proof coexisting with Islamic procedural law where words and witnesses played a more significant role. It also makes one wonder about the degree to which written documents had weight in the *kadi* court. In this case, we can presume that the written statement of the withdrawal of one of the litigants from any claim might have served as proof in the *kadi* court. The signing eyewitnesses could then serve subsequently as witnesses when summoned by the *kadi*. This process is supported by entries in ecclesiastical codes whereupon documents had titles like 'Registration of Witnesses to be Used to Issue a *Hüccet* by the *Kadi'*.[182] Another example of the *kadi* taking into consideration indirectly written documents is the case of a dispute over the return of a pledge. The two parties went to the *kadi,* who could not decide after hearing both parties. He then summoned Mister Iakoumakis and other elders and asked them to investigate the 'letters of the two sides presented to him, and to tell him whatever they knew about the case, so that he would decide'. After the investigation they came to a decision: 'they told the *efendi kadi* [their findings] who decided likewise'.[183]

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person who summoned him and left him unpaid. They would keep it until all expenses were met. Tourtoglou, 'Jurisprudence', doc. 8, 6, dated 1 September 1819.

180 Disputes about expenses resulting from applying to the *kadi* court are frequent. See also Tourtoglou, 'Jurisprudence', doc. 80, 89, dated 25 December 1706.

181 Sifoniou, 'Meniates', doc. 328, 529, dated 21 May 1683.

182 K. Antoniades, 'Το ιδιοκτησιακό καθεστώς και η αγοραπωλησία ακινήτων στην τουρκοκρατούμενη Σκύρο' (The Land System and the Sale and Buying of Property in Skyros in Tourkokratia) *EKEIED* 29–30 (1982–3), Athens, 1990, 61–122; doc. 1, 94, dated 15 July 1650; doc. 4, 95, dated 3 February 1671; doc. 12, 99, dated 5 February 1726.

183 Sifoniou, 'Meniates', doc. 194, 369–70, dated 10 March 1681.

Sometimes litigants tried their luck in two different *kadi* courts before reaching an agreement. In the case of a disputed field left by will to a monastery, the relatives of one of the spouses claimed it from the prior of the monastery in the presence of the *kadi* and won. The prior then took the case to another *kadi,* and he won. As the document stated: 'they went to two *kadis* and one gave right to one side and the other to the other. Thus, both sides spent a lot and they were still ready to go for other judgments and spend even more. Therefore, they decided on these conditions and agreed among themselves …'.[184]

Although *hüccets* are accepted in the communal courts, occasionally locals had problems reading Ottoman. Therefore, the decisions based on them were conditional.[185] Many Turkish loanwords, especially judicial and taxation terms, have found their way into the Greek communal and ecclesiastical records.[186] Sometimes even full Ottoman phrases were included to avoid any misunderstandings and the subsequent contesting of the decision. Thus, in an inheritance dispute, the two sides agreed that anyone who disputed the decision would have to pay 2,500 *guruş* (a rather large sum) to the *Kapudan* Pasha, since the two sides had done, as the document stated, an '*ibra ve iska amei ndavandan ve kiafei metalambandan'* (*ibrâ u ıskât-i âmme-î davadan ve keyfi metâlibimden*, I have forfeited any right and any illegal wishing from this case).[187]

Petty theft and damage to property and person were dealt with 'internally' by the communities, thus avoiding the involvement of the Ottoman authorities. As we have seen above, different island communities referred the wrongdoers to their own

184 Sifoniou, 'Meniates', doc. 260, 452, dated 5 September 1682. They most probably refer to the appeal court of the *Kapudan* Pasha.

185 Tourtoglou, 'Jurisprudence', doc. 34, 48, dated 18 December 1701. The community of Myconos decided in favour of Franzeska with regard to her dispute with her father about the expenses used for the renovation of the house that he had given as dowry to her. They based their decision on the claim of Franzeska. She argued that the *hüccet* she produced stated her as the one who had covered the expenses for the renovation of the house instead of her father, Monk Rianos. The final clause of the decision noted their suspicion, stating that 'if however a *kadi* passes by and he reads the *hüccet* and he says that the expenses were not made by her then her father can claim them.'

186 Tourtoglou, *Dragomans*, doc. 2, 30, dated 29 June 1734. Also '...they became *soulfi* [compromised, tr. *sulh*]', doc. 4, 31, dated 17 October 1774; '… you should *alikoterize* him [arrest, tr. *elkoymak,*]', doc. 31, 39; *davi* (court case, tr. *Dava*); *arzohali* (petition, tr. *Arzuhal*), doc. 46; *zapti* (take possesion, tr. *zabt etmek*); doc. 1, 7, 30, 34, 40, 42, 47, 62; '*marafeti* of the Holy law [by means of, tr. şer` *marifetiyle*]', doc. 7 (it is interesting to note that the term *marafeti* is also used for the *proestoi*, doc. 8); *tzeremes* (fine, tr. *cereme*), doc. 20; *xoggeti* (title deed, tr. *Hüccet*), doc. 1.

187 Tourtoglou, *Dragom*an, doc. 5, 32–3, dated 13 August 1775. This is one of the standard formulae for *sulh* in the Ottoman court.

councils and imposed fines during the collection of their 'customs'. In many cases witnesses testified to the theft in court or arbitrators made a compromise.[188] The community exercised leniency towards wrongdoers to avoid the interference of Ottoman authorities. However, they were merciless in the case of habitual offenders:

> 18 November 1741, Paroikia (Paros island)
>
> Distressed with the scandalous and illegal life of Iaonnis Basilakes, we have decided to hand him over to the punishment of our rulers [the Ottomans]. We have tolerated him, and advised him to abandon his bad habits and calm down. However he has not listened to us in any way. Instead, sometimes he went to the houses of honourable married women, armed in the night, while their husbands were away, and brought them distress. Perhaps he wanted to bring them around to his bad habits. Once during the day, accompanied by one of his brothers of the same twisted nature, he even tried with arms to kidnap a girl who was going to the villages with her family. Luckily, passers-by saved her. Once more he did not reform, but he entered — again armed at night — another house demanding something they did not have, and he hit the landlord. On another occasion, with the company of his arms he verbally abused and hit some people. Today grain came to be sold, and *efendi* Bartholomios Bitzaras went to the shore to facilitate the bargain. He found the said Ioannis verbally abusing some Sifnians [from Sifnos Island] who demanded the return of 6 and 1/2 *aslan guruş* he had taken from them and was not returning. The *efendi* Bitzaras distressed [from the fight] talked to him and scorned him for swearing at the strangers and for doing injustice to them. With impertinence, he replied with horrible swear words. Thus seeing his unreformed life, we arrested him and handed him over to the *epitropos* to keep him. He will be handed over to the ruling hand of justice to receive the appropriate requital. Upon removing him from our land we will find peace.[189]

Slander was also punished in the presence of the Ottomans. In 1752, the *voyvoda* of Syros, Haci Ibrahim, issued a letter in the presence of the *proestoi* to be used in the defence of a man wrongly accused of theft. Although he was not found guilty after the examination of the said *voyvoda*, rumours of his guilt were spreading on the island. The letter he obtained from the *voyvoda* would allow him to take anyone who

188 See Tourtoglou, 'Περί της Ποινικής Δικαιοσύνης επί Τουρκοκρατίας και μετά αυτήν μέχρι και του Καποδιστρίου' (With Regard to Criminal Justice During Tourkokratia Until Kapodistrias' Time), *EKEIED* 15 (1968), (Athens 1972), doc. 3, 32, dated 16 October 1684; doc. 4, 33, dated 20 June 1750; doc. 5, 33–4, dated 8 August 1807.

189 Koukou, *Communal Institutions*, 284–6. For the involvement of the local community in the case of habitual offenders see, Kermeli, '*Sa'i bi'l fesad'*, 21–7.

persisted in calling him a thief to court.[190] In the case of wounding (since indemnities could be sought in Ottoman courts[191]), the two parties would draw a common statement registered in the communal codes to establish the facts just in case the injured party resorted to 'external' justice.[192] Bodily harm incurred indemnities, following the prescriptions of Ottoman law.[193] In cases of homicide and rape, Ottoman officials or their representatives had ultimate authority over judgment.[194] In 1667, Markos Kornaros killed the father of Pierros. Five years later, on 12 August 1673, he and the son of the murdered man (who was underage) came together to the communal court. The council decided that the murderer would have to pay the boy forty *real guruş* upon maturity and twenty *real guruş* at that time as an allowance. Just in case the murderer died, Iosif Grimanes, a priest, would become the guarantor of the murderer. It is interesting to note the translation of the term guarantor in Greek: 'he the aforementioned saintly man is a guarantor, in person and in property, current and future until final payment' (*kefil bi'n nafs ve bi'l mal)*.[195]

190 Siatras, *Greek Community Courts,* doc. 62, 166–7, dated 19 September 1752.

191 C. Imber, *Ebu's-Su'ud: The Islamic Legal Tradition* (Stanford 1997), 246.

192 Tourtoglou, 'Criminal Justice', doc. 6, 34, dated 28 November 1818. A woman was injured while leaving a man's vineyard. He did not ask for damages resulting from her intrusion. He registered this statement 'to avoid being accused later, that he hit her with a stick'.

193 Siatras, *Creek Community Courts*, doc. 22, 115, dated 28 May 1824. The elders of Syros forced a man who wounded another with a knife to pay the medical expenses and indemnities for the loss of income incurred by the wound.

194 Communities respect the rule that homicide can only by judged by Ottoman dignitaries. I only found that they had to inflict punishment in one case. On 29 February 1808, they asked the wife of the murdered man what sort of punishment should be inflicted on the killer. She allowed them to decide for her. In their verdict they stressed that he should be chained and sent to the Ottomans for punishment to serve as an example to others. However, all routes were blocked (the Napoleonic blockade) so they could not send him. Thus they set the blood money at 1,000 *guruş* and asked that it be given to the orphans. As he could not pay, he was banned from Syros and sent to another place to work until he could deliver the money. He was not allowed to return until he paid. If he failed to make his payments, the relatives would have every right to trace him and hand him over to the Ottomans. Additionally, he was whipped before he was sent away.

195 Siatras, *Creek Community Courts*, doc. 20, 112–13, dated 12 August 1673.

Sexual crimes, rape, kidnapping,[196] prostitution,[197] and illicit sex were within the jurisdiction of Ottoman justice. The father of a woman who gave birth to an illegitimate child claimed an allowance from the father of the child. The *voyvoda* of Syros, Ibrahim Ağa, investigated the case locally and found that the community had warned the father before about the affair, but he had failed to take any precautions. It is interesting to observe the legal grounds used by the Ottoman official in terms of his decision not to grant any indemnities to the father of the woman. According to Ottoman law, fornication inflicted a fine on the woman equal to the one imposed on an unmarried man.[198] The *voyvoda*, who would have been the recipient of the fine, was unaware of the affair until indemnities were sought. According to a clause in the 1621 privilege charter for Naxos,[199] a child born outside wedlock is considered a bastard. More specifically in the written customs of Syros, 13 June 1695, there is the following clause: 'If a woman has fallen by her own will, she has no right to demand from the man. She should be punished by the *epitropoi*. If a man rapes a woman, and it is proven by witnesses, he should be banned to the galleys.'[200] Given that Ottoman law is rather vague about issues like rape, and that an illegitimate child (*walad zina*)[201] could not claim maintenance or inheritance,[202] the *voyvoda* quoted the local custom (*andetia,* tr. *'adet*) in his decision: 'If a man rapes a woman by force, he should get

196 Ibid., doc. 64, 169–70, dated 20 September 1791. One of the men who assisted in the kidnapping of a girl was arrested by the *voyvoda* of Syros, Ahmed Ağa. He was given discretionary punishment and he paid a fine. He requested this document to prevent the girl or her mother from further pursuing his punishment. This is in accordance with the Ottoman criminal code. See, U. Heyd, *Studies in Old Ottoman Criminal Law* (Oxford 1973), clauses 10 and 12, 97–9.

197 Koukou, *Communal Institutions*, 287–8. In 1806 the council of Myconos exiled a prostitute who was 'the reason for the divorce of many couples and almost murders'. She was held responsible for the behaviour of another woman who abandoned her husband and lived 'a shameful life' with her. This punishment was a standard procedure in the Ottoman court as well. See, E. Kermeli, 'Sin and the Sinner: *Folles* Femmes in Ottoman Crete', *Eurasian Studies* 1 (2002), 85–97.

198 Heyd, *Studies*, clause 3, 96.

199 Gkines, *Post Byzantine Law*, doc. 112, 119.

200 Being banned to the galleys was a common Ottoman punishment. M. Ipşirli, 'XVI. Asrın İkinci Yarısında Kürek Cezası ile İlgili Hükümler', *İstanbul Ü. Edebiyat Fak. Tarih Enstitüsü Dergisi* (Istanbul 1982), vol. xii, 203–48.

201 Gkines, *Post Byzantine Law*, doc. 221, 148–9.

202 A. Giladi, 'Saghir', *EI²* CD version; E. Kohlberg, 'The Position of "Walad Zina" in Imami Shi'ism', *BSOAS* 2 (1985), 237–66, especially 249–53. I would like to thank Dr Şükrü Özen for pointing out to me that in cases like rape the *el-Veledu li'l-firash ve li'l-ahiri el-hacr ḥadith* could be applied. This would allow the child of a rape to be considered a legitimate child and enjoy all inheritance and maintenance rights. However I have not yet found in Ottoman *fetvas* a reference to this *ḥadith* with regard to children born as a result of rape. For the *ḥadith* see J. Schacht, 'Umm al-Walad', *EI²* CD version.

life imprisonment in the galleys. If, however, such a despicable act is done willingly, then the woman cannot claim anything from the man who committed this mistake. In addition, the woman should be banished from the land, so as not to spoil other women.'[203]

A final example of the legal and sociological ramifications of the coexistence of legal systems in the Ottoman society is the case of Christians marrying in the Ottoman courts. On 11 January 1693, the Metropolitan of Sisaniou Zosimas divorced a couple married with *kepinion* (marriage contract in the Ottoman court). They had resorted to this 'illegal' marriage because they were close relatives (according to canon law). After nineteen or twenty years of marriage, according to the entry, they both decided to be freed from 'sin' and get a divorce. The man, in accordance with the marriage-contract written in the *kadi* court, would have to hand over 500 *akçe*s to his ex-wife, and she agreed to return the house furniture to him. The Metropolitan pronounced them divorced and added that if one of the two disobeyed, he/she would be excommunicated with an unsolved aphorism.[204] In April 1704, the Metropolitan of Trikkes allowed a woman who had already obtained a divorce in the external Ottoman courts to divorce her husband. The reason for the divorce was that after fifteen years of marriage her spouse married another woman 'illegally by *kepinion'*. For two years the canonically wed wife attempted to remove the second wife from her house to no avail. After the confession of the husband the Metropolitan 'released her from living in sin'.[205]

Preliminary Concluding Remarks

The ecclesiastical and communal court records presented in this paper prove that those who claim that they were not much more than a legend are in fact wrong. However, the existence of the records has raised many more questions. In terms of judicial autonomy we can argue that ecclesiastical jurisdiction, more or less and, up until the eighteenth century, followed the rights granted by the sultans in the appointment *berat*s of patriarchs and metropolitans, and that it covered family law. Even the expansion of the Church jurisdiction to include arbitration cases of Christians was initially only granted *de jure* for family related issues. *De facto,* as we

203 Siatras, *Communal Courts*, 115.

204 Pantazopoulos, *Codex Sisaniou*, doc. 27, 20, dated 11 January 1693.

205 Giannoules, *Codex Trikkes*, 50.

can deduce from patriarchal interventions in civil cases (like debts even from the sixteenth century), Christians applied civil disputes to the judgment of clergymen — albeit informally. This ambiguity about rights and responsibilities allowed the Patriarchate to take the lead and establish an undisputed authority from the mid-eighteenth century, not only in the traditional accepted area of family law, but also civil law. It is not coincidental that Byzantine legal manuals like the *Hexabiblos* were published and widely circulated around the same time to 'educate' clergymen on issues of civil law, as Theophylos of Campania argued. I have put forward the hypothesis that the political support the Patriarchate enjoyed after the annexation of rival patriarchates and the active involvement of Phanariots in church affairs facilitated the *ad hoc* expansion of ecclesiastical jurisdiction. Nonetheless, no work has been done on whether the Ottomans were aware of, and fully supported such developments. However, we do know that local Christian communities were not at ease with the expansion of the judicial authority of the Church to civil law, since it was considered to be their area of responsibility.

Regardless of whether the sultans endorsed or ignored the decisions of the patriarch, administrative and taxation reforms in the provinces created more coherent Christian communities in the seventeenth century. They also allowed local agents, clergy, or laymen to act as mediators between the centre and the periphery and as translators of the communal voice through the *iltizam* system. Island communities in the Aegean had already attained this status in the sixteenth century as a result of the idiosyncratic character of Ottoman conquest and presence. Local community councils, although differing in structure according to local 'customs', judged and registered decisions of law on obligation, succession law, commercial law, property law and even torts against persons. The legal structure and notarial tradition inherited from their previous rulers was allowed to continue under the Ottomans. Documentation, being important in the litigation process both inside the communities and in Ottoman courts, has produced admirable volumes of notarial and community records. The collection and publication of these documents since the nineteenth century was a remarkable and painstaking task, and credit should be given to all those responsible for it. These scholars have identified elements of Byzantine law and Frankish/Venetian law. However, a large part of what is termed 'local custom' still awaits proper attention from experts of Ottoman law. We should also note that even in such a highly independent legal system, the legal choice to transfer cases to Ottoman courts was not impaired. On the contrary, we see that the Ottoman administration and its legal system were utilized in ingenious ways at every stage of litigation. In other

words, the level of judicial autonomy local communities enjoyed neither hindered individual freedom of legal choice nor undermined Ottoman law as the law of the land. The supremacy of Ottoman law, however, did not necessarily compromise earned legal privileges. As we have seen, cases were reviewed and decisions of Ottoman dignitaries were cancelled if they were in obvious conflict with local custom.[206]

A second set of unanswered questions is related to the reasons why ecclesiastical and communal court records were codified in the seventeenth century. Christians paid handsomely to have their decisions, witnesses, out-of-court settlements and contracts registered in Christian codices. According to the entries, this was to safeguard the owners of documents from future claims in the Christian or Ottoman courts, or to be used as part of their litigation strategy in 'external' and 'internal' justice. We can presume that this was a result of the general legal awareness that Ottoman subjects exhibited from the seventeenth century onwards. The judicial system became more organized, the *kadi* expanded his jurisdiction even to penal law, and communities and individuals explored the right of appeal to the Porte and registered their complaints in Complaint Books (*Şikayet Defterleri*).[207] Christians and Muslims seemed to be more legally educated. Many private documents attest to the writing up of contracts in the presence of bishops without a subsequent registration in Episcopal codes. However, the question remains as to why certain communities did not codify Christian court decisions or did so very late (at the end of the eighteenth and the beginning of the nineteenth centuries). Until detailed regional studies emerge, we can only guess that the legal 'autonomy' of Christians was determined by the degree of Ottoman 'state' manifestation. Thus, in certain Greek lands, such as the mainland, given that the community organization did not or could not develop above its taxation duties, the metropolitan codices were sufficient to supplement the *kadi sicils*. Another factor to take into account is the influence of legal tradition and practices, as well as literacy levels in different areas of the Ottoman empire. Thus, the level of integration in Ottoman society and the nature of Ottoman presence in Crete eradicated the long

206 The amazing power that local custom had is evident in the registration of pledging and selling of children in the Ottoman court of Crete. Byzantine and Post-Byzantine legal manuals regulated the pledge and sale of children by their parents. This must have been the basis of local custom accepted by the *kadi* in Crete to register these acts against *Sharī'a* Law. See E. Kermeli, 'Children Treated as Commodity in Ottoman Crete', in E. Kermeli and O. Özel (eds), *The Ottoman Empire: Myths, Realities and 'Black Holes'* (Istanbul 2006), 269–83.

207 H. Gerber, *State, Society, Law in Islam: Ottoman Law in Comparative Perspective* (New York 1994).

notarial tradition inherited by the Venetians. Even communal courts (*demogerontia*) were established as a result of Tanzimat reforms. However, we can assume that Ottoman 'will' did not wipe out legal culture. Thus, in 1663, eighteen years after the partial conquest of Crete, a Christian man applied to the *kadi* court of Resmo to replace his lost marriage contract which had been previously written in the same court.[208]

The Christian court records that have been examined have tied up many loose ends with regard to the function of the *kadi* and the administration of Ottoman justice. Documents written in Greek were presented to *kadi*s not only to establish the identity of the parties and witnesses involved but also as judicially legitimate sources of information.[209] This is the reason why the *kadi* asked local community leaders to investigate the documentation presented to him and to then offer him their opinion when he was unable to decide. Formulaic *sicil* entries do not permit us to fully observe the power that documents had in the *kadi* court. However, the registration of an oral agreement between parties to be used in the litigation process in the Ottoman court is another indication of the power of the written documents produced either by Christian communities or by the Ottoman administration.[210] The importance

208 E. Kermeli, 'Marriage and Divorce for Christians and New Muslims in Crete 1645–1670' forthcoming, 11. In 1663, Mihalis Magalis from Lasithi came to court to receive a new copy of his marriage contract to the Christian Paraskevi. According to his statement, he lost the original contract. The judge requested the presence of the witnesses to his marriage to verify that the two were married before. He then proceeded with the issuance of the new contract. We know that the insistence of Ebu's Su'ud with regard to registering marriage contracts was not always adhered to. Imber, *Ebu's-Su'ud*, 165. We also know that documents did not play a significant role in other courts of the empire. See B. Ergene, 'Evidence in Ottoman Court: Oral and Written Documentation in Early-Modern Courts of Islamic Law', *Journal of American Oriental Society* 124:3 (2004), 487–8. Thus we can assume that the legal culture inherited from the Venetians to seek and preserve documents remained strong under the Ottomans.

209 For the discussion on the power of documents in the *sicils* see, B. Johansen, 'Formes de language et functions publique: Stéréotypes, témoins et offices dans lepreuve par l'écrit en droit musluman', *Arabica* 44/3 (1997), 333–76; L. Peirce, *Morality tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley 2003); I. Agmon, 'Text, Court and Family in the Late Nineteenth-Century Palestine', in B. Doumani (ed), *Family History in the Middle East: Household, Property, and Gender* (Albany 2003), 201–28; B. Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society* (Berkeley 1993).

210 An example of the power of documents in the *kadi* court is the following entry from the *kadi* court of Resmo in Crete: Kermeli, 'Marriage and Divorce', 15. The marriage contract was considered proof of the existence of marriage between Anthula and her deceased husband Makrigiannis in 1659. Her representative was her father, a priest called Papa Apostolos from the remote island of Skopelos in the Northern Aegean. His daughter was married and had a son by the deceased. She claimed part of the inheritance from the brother of her late husband in the court of Resmo. In his statement, the

documentation enjoyed in local Aegean communities and the respect the local *kadi*s showed to these documents is testified in the privileges granted by the Ottomans to the communities. Apart from petty cases, any case above 500 *akçe*s could be initiated in Ottoman courts only with the support of *hüccet*s or *sicil*s. This is yet another example of variations in Ottoman court practices based on local legal cultures.[211] However, this was not in any way one-sided. Similarly, *kadis* would be asked to read Ottoman *hüccets* and verify or alter community decisions.

The silence of the *kadi* records regarding the identity of arbitrators and their function is complemented by Christian ecclesiastical and communal court records. The system of arbitration is highly developed and no effort is spared to ensure the viability of the agreement. Threats of excommunication and fines are employed to guarantee the respect of the conditions and to prevent further litigation. The reasons forcing litigants to compromise varied. However, the expenses inflicted during the litigation process in Ottoman courts, and the inconclusiveness of decisions, led parties to seek arbitration.

We have always assumed *kadi*s received a certain amount of local help, given that they had to frequently change posts. We have commented on their ability to identify false witnesses and have also attributed this capacity to the assistance of local elements. The aid local community elders provided was instrumental to *kadi*s visiting occasionally remote islands.[212] These are the same leaders who ensured law and order in their neighbourhoods and villages, who cooperated with local Ottoman dignitaries to uphold morality, and who demanded the expulsion of any element that might threaten their physical and moral space.

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brother declared his ignorance to the existence of both a wife and nephew. He added that his brother had yet another family in Resmo as well as a daughter, whom he considered the rightful heir. He then asked Papa Apostolis to provide the marriage contract and legal proof that the boy was a legitimate child from the *kadi* court of the island of Skiathos near Skopelos island, where the *kadi* resided. The judge in Resmo gave the priest until April 23 to bring over the necessary documents. We only know about the transfer of cases *nakl* or *nakl-i şehade* mainly from *fetvas*. See A. Atçil, '*Procedure in the Ottoman Court and the Duties of Kadis*', M.A. Thesis (Bilkent University, Ankara 2002). This is still an issue demanding more thorough research. As Dr Şükrü Özen has pointed out to me, the Hanafis accepted letters of one *kadi* to another, (except in penal law cases), notes of brokers, money-lenders and retailers as evidence in court. See Muhammad b. ʿAli al-Haskafi, *al-Durr al-mukhtar sharh tanwir al-absar*, in the margin of Muhammad Amin, known as Ibn ʿAbidin, *Radd al-mukhtar ʿala al-durr al-mukhtar* (5 vols, Bulaq 1905–8), vol. v, 425–6; Ibn Abidin, *Radd al-mukhtar*, V, 425.

211 Unfortunately early Ottoman court records from the islands have not survived. We only have collections of *hüccets*. See, I. Kolovos, *The Island Society of Andros*, 142–4.

212 Ibid., 143. The elders are called *ayan-ı nasara*, *ayan-ı kefere* and *ayan-ı zimmiyan*.

Finally, we have had a glimpse of local networks ready to offer legal and other assistance to all Ottoman subjects (regardless of faith or legal status) through the Christian archives. This is yet another point Ottomanists working on *sicil* collections always wondered about. Personal communications mobilized local Ottoman justice and initiated or intervened in litigation. Similarly, Ottoman dignitaries provided statements to facilitate claims registered in notarial codes. However, there is a lot yet to be done to identify, if possible, whether social standing was a determining factor in achieving legal pluralism. We should note, however, that utilizing any 'legal tool' to attain justice was not the exclusive practice of Christians. Muslims were also aware of the power of certain 'Christian legal tools' — like the threat of excommunication — and they used it in their 'pursuit' of justice. In 1784, the Şah Sultan sent her tax collector Yusuf Ağa to Andros to collect her dues. He asked for a new evaluation of taxation and requested an aphorism from the local bishop, in case the Christian estimators did not do their job fairly.[213] Examples like this provide us with a brief glimpse of the complex legal environment Muslims and Christians shared in Ottoman society.

213 P. Michaelares, *Aphorism,* 427.