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Central administration versus provincial arbitrary governance: Patmos and Mount Athos monasteries in the 16th century*

Eugenia Kermeli

Department of History, Bilkent University

The confiscation of monastic properties ordered by Selim II in 1568 served as a catalyst precipitating a process of negotiation and mutual accommodation between the centre – represented by the sultan and his jurisconsult- and the periphery articulated by the monks. Even in formulaic imperial orders, it is apparent that the monastic communities successfully negotiated the terms for the normalisation of the affair, whereas the jurisconsult accommodated the Porte's interests to the local society's needs. On the local level, the judge functioned as a mediator, addressing the monks' requirements, even if he had to transgress a number of Islamic rules and imperial orders. Thus, this case study illustrates the gradual transformation of a polity in dialogue with local communities.

‘All a historian does when she or he attempts the reconstruction of the past by writing it down is simply a temporary attesting of the fluidity inherent in the historical process’.¹

In 1568, what is perceived today as a temporary attesting of fluidity was, for the subjects of the Ottoman sultan, a reality to be dealt with. Upon his succession to the throne in 1566, Selim II ordered a new registration of all imperial orders and deeds validating possession of movable and immovable properties. None of the monks in the monastery of Saint John the Theologian situated on the remote Aegean island of Patmos and of those in Dionysiou monastery on Mount Athos could have predicted the intensity of the legal

* A first draft of this paper entitled ‘The Aegean Sea in the 16th century: the archives of Patmos monastery’, was presented at a workshop organised by the Centre for Byzantine Studies of the National Research Centre of Greece, 14 January 1997. I would like to dedicate this paper to the memory of the late Professor Oikonomides who suggested the title. I would also like to thank Professor Zachariadou for guiding me through the archive of Patmos monastery and for allowing me to see the important *firman* of Dionysiou monastery.

1 R. A. Abou-El-Haj, ‘A Response to Linda Darling’s review of *Formation of the Modern State: The Ottoman Empire Sixteenth to Eighteenth Centuries*’, *International Journal of Middle East Studies* 26/1 (1994) 175.

battle that followed. Luckily we can trace the origins of the dispute and describe the way it unfolded until the time when a final settlement was reached between the Porte and the monks. The confiscation and repossession of monastic properties illustrates the negotiation process and the argumentation employed by central and local actors in an effort to solve the dispute. This case elucidates efforts on the part of the Sultan to normalize complicated — and often conflicting — agrarian and endowment laws. It depicts local resistance to the commands of the centre and negotiation between centre and periphery in an effort to reach a viable settlement. Finally, it demonstrates the efforts of the local judge, ensnared in a web of central commands and local needs.

The Case

Selim II's order to confiscate monastic properties in 1568 took the monks of Mount Athos and of Patmos by surprise. It was customary for a new sultan to validate documents issued by his predecessors. The monks had failed to foresee the change in regard to the land-system and its taxation. This change was initiated by Selim's father, the illustrious Süleyman the Magnificent, otherwise known as the Lawgiver. Süleyman rightfully earned this last epithet due to the strenuous efforts of one of his most able subjects, the juriconsult (*şeyhülislam*) Ebu's Su'ud, who was renowned for reconciling the Holy Law (*Shari'a*) with the Ottoman 'secular' law (*kanun*).²

Ebu's Su'ud had already attempted to create a uniform system with regard to land and its taxation, and to redefine general principles. The system that applied in the Balkans until his time was based primarily on custom and imperial legislation. Practice, though, was not uniform and there was no description of its norms.³ Following the tradition of Hanafi jurists like Qadikhan, Ibn Bazzaz and Kemalpaşazade, Ebu's Su'ud redefined the basic laws on land tenure and taxation.⁴ In 1541 Ebu's Su'ud addressed the problem of

2 C. Imber, *Ebu's Su'ud: The Islamic Legal Tradition* (Stanford 1997) *passim*; H. Inalcik, *Ottoman Empire: the classical age 1300–1600* (New York 1989) 70–73 and 'Islamization of Ottoman laws on land and land taxation', in C. Fragner, K. Schwarz (eds.), *Festgabe an Josef Matuz: Osmanistik- Türkologie- Diplomatiek* (Berlin 1992) 100–116.

3 Imber, *Ebu's Su'ud*, 122; Inalcik, 'Islamization', 157; J. Barnes, *An Introduction to Religious Foundations in the Ottoman Empire* (Leiden 1987); A. Akgündüz, *Osmanlı Kanunnameleri* (Istanbul 1990); Ö. L. Barkan, *XV ve XVIinci asırlarda Osmanlı İmparatorluğunda zirai ekonominin hukuki ve mali esaslar, Kanunlar* (Istanbul 1943); H. Lowry, *Fifteenth Century Ottoman Realities: Christian peasant life in the Aegean island of Limnos* (Istanbul 2002) and 'The Ottoman Liva Kanunnames contained in the Defter-i Hakani', *Journal of Ottoman Studies* 2 (1981) 43–74; G. Veinstein, 'Le législateur ottoman face à l'insularité: l'enseignement des Kânûnnâme' in N. Vatin, C. Veinstein, eds., *Insularités ottomans* (Paris 2004) 91–110.

4 Imber, *Ebu's Su'ud*, 136–7.

misappropriation of land and its revenues while drafting the law-book (*kanunname*) for Hungary. Nonetheless, customary practices proved tenacious.⁵ Thus, the significantly old by now jurisconsult had another golden opportunity to rectify whatever he considered to be the 'mistaken supposition' of peasants (*re`aya*) and even of judges on the issue of land ownership by supervising the promulgation of a new *kanunname* for Thessaloniki and Skopje (1568–1569).⁶ The same *kanunname* enunciated the legal grounds for ordering the confiscation of monastic properties. Thus all title deeds (*hüccets*) and endowment documents (*vakfiyes*) issued by judges became invalid.

There could be a number of reasons behind the late response of the monastic communities to the paramount changes in the system. Like the peasants, the monks had not yet grasped the nature of the changes in the law on land.⁷ Using a legal stratagem, Ebu's Su`ud categorized all land in the empire as 'royal demesne' (*aradi'l-mamlaka*), apart from lands recognized by the sultanic authority as freeholds (*mülk*). The cultivators had acquired the ownership of the usufruct as a loan (*`ariyya*). Thus, the entry fee (*tapu*), which a new occupant paid for his land to the fief holder (*sipahi*), was the advance rent (*ücret-i mu`accele*).⁸ In practice the monks, like the other peasants, continued to treat land as their freehold, by selling, buying, pre-empting and exchanging it.⁹

Monastic properties other than land, that is vineyards, orchards, mills, shops, houses, wine houses, animals and ships were also confiscated on the basis of another legal technicality. Monastic estates had expanded over the centuries as a result of private and imperial patronage. The Byzantine collections of monastic documents are full of smaller and bigger gifts and donations.¹⁰ Pious Christians donated part or all of their properties to monasteries in order to have the family name commemorated, others because they died without issue, or as they entered monastic life. The extent of monastic wealth is

5 Ibid., 122–136.

6 See especially the introductory paragraph of the law book where Ebu's Su`ud explained all these problems: Barkan, *Kanunlar*, 298–99.

7 For an extensive analysis of the legal tricks employed by Ebu's Su`ud see Imber, *Ebu's Su`ud*, 123–125; B. Johansen, *The Islamic Law on Land Tax and Rent* (London 1988) 84ff; E. Kermeli, 'Ebu's Su`ud's Definition of Church Vakfs: Theory and Practice in Ottoman Law', in R. Gleave, E. Kermeli, eds., *Islamic Law: Theory and Practice* (London 1997, pbk ed. 2001) 146–147.

8 Imber, *Ebu's Su`ud* 123–124; Kermeli, 'Church Vakfs' 146; Inalcik, 'Islamization' 159.

9 Imber, *Ebu's Su`ud* 130, fetva n. 17.

10 A. Laiou Thomadakis, *Peasant Society in the Late Byzantine Empire: A Social and Demographic Study* (Princeton 1977) 163ff.; P. Charanis, 'The monastic properties and the state in the Byzantine Empire', *DOP* 4 (1948) 53–118; *Mount Athos and Byzantine Monasticism*, eds. A. Bryer, M.B. Cunningham, Section III (Aldershot 1996); J. Thomas, A. Constantinides Hero, *Byzantine Monastic Foundations Documents* (Washington, D. C. 2000); E. Vranousi, *Βυζαντινά Έγγραφα της Μονής Πάτμου*, I (Athens 1980); N. Oikonomides, *Actes de Dionysiou, Archives de l' Athos*, IV (Paris 1968); J. Lefort, N. Oikonomides, and D. Papachryssanthou, *Actes d'Iviron, Archives de l' Athos* XIV (Paris 1985); P. Papageorgiou, 'Η ἐν Θεσσαλονίκῃ μονὴ τῶν Βλαταίων καὶ τὰ μετόχιά της', *BZ* 8 (1899) 408–10.

interrelated with the history of the various regions under Ottoman rule. War and conquests were destructive, but recovery was expeditious if diplomacy worked well. Some communities, such as most Athonite monasteries, even managed to expand under the Ottomans.¹¹ In certain cases the monasteries acted as the representative of the Christian peasants to the Porte, assuming the responsibility of paying the peasants' taxes.¹² These movable and immovable properties accumulated by monasteries were the target of Ebu's Su'ud who saw a challenge to the imperial authority and finances due to the ever increasing privilege of the monasteries, to pay their taxes in a lump sum (*maktu*).

In a legal opinion (*fetva*) included in the imperial order (*firman*) Aa40 sent to Patmos monastery, Ebu's Su'ud formulated his legal reasoning. It is against the law to endow property and make trusts in mortmain (*vakfs*) for churches.¹³ Although Ebu's Su'ud defended the inheritance rights of the natural heirs of the monks — close and distant relatives — in another *fetva*, under the pressure of monastic communities he eventually had to recognize the collective character of monasteries, despite the restraints emanating from a legal tradition which does not accept corporations as legal entities.¹⁴ By allowing monks in a monastery to inherit the properties of deceased monks, he circumvented the complicated Islamic laws of inheritance and redefined the monastic *vakfs* as family *vakfs*.¹⁵

The negotiation between the monasteries and the Porte in an effort to resolve the crisis is also of great interest. This process can be seen in two *firman*s. The first one initiated the confiscation and was sent to the monastery of Saint John the Theologian in Patmos, on 6 Cemazi'l-ahir 977/17 November 1569. The second reflected the final stage of negotiations between the Porte and the monks of Dionysiou monastery in Mount

11 V. Dimitriades, 'Ottoman Chalkidiki: an area in transition' in A. Bryer, H. Lowry, eds., *Continuity and Change in late Byzantine and early Ottoman Society* (Birmingham 1986) 40–41; G. A. Lavriotes Lazarides, *Tó Áγιον Όρος μετά την Όθωμανικήν κατάκτησιν* (Athens 1963) 1–2; J. Haldon, 'Limnos, monastic holdings and the Byzantine state: ca. 1261–1453', in A. Bryer, H. Lowry, eds., *Continuity and Change in Late Byzantine and early Ottoman Society* (Birmingham 1986) 154–74, 186–88; H. Lowry, 'The island of Limnos: a case study on the continuity of Byzantine forms under Ottoman rule', in A. Bryer, H. Lowry, eds., *Continuity and Change in late Byzantine and early Ottoman Society*, 250–53; G. Salakides, *Sultanurkunden des Athos- Klosters Vatopedi aus der Zeit Bayezid II und Selim II* (Thessaloniki 1995) 65–76; E. Zachariadou, 'Ottoman documents from the archives of Dionysiou (Mount Athos) 1495–1520', *SF* 30 (Munich 1971) 23–30 and 'Early Ottoman documents of the Prodromos monastery (Serres)', *SF* 28 (Munich 1969) 11–12.

12 E. Zachariadou, 'Συμβολή στην Ιστορία του Νοτιοανατολικού Αιγαίου (με άφορμή τὰ πατμιακά Φιρμάνια τῶν ἐτῶν 1454–1522)', *Σύμμεικτα* I (Athens 1966) 196–98. E. Balta, 'Recensements ottomans de Patmos (XVe–XVIIe s.)', *Peuple et Production: pour une interprétation des sources ottomanes* (Istanbul 1999) 61–75.

13 In another article I have discussed his employment of legal stratagems to legitimise the confiscation and solve a seemingly insuperable problem: Kermeli, 'Church vakfs', 147.

14 Kermeli, 'Church vakfs', 149; J. Schacht, 'Early doctrines on Waqf', *Mélanges Fuad Köprülü* (Istanbul 1953) 443–52.

15 Kermeli, 'Church vakfs', 149.

Athos, 13 Saban 976/25 January 1569.¹⁶ It seems that the order to confiscate all monastic properties, at least in the Balkans, was a general one, as copies of the *firman* initiating the process are found in almost all monasteries. It is also clear that the confiscation and repossession of monastic properties was not initiated at the same time. This is apparent in the dating of the *firman*s sent to the monasteries of Mount Athos and to the Patmos monastery. Two reasons are behind the choice of these geographical regions. The first is methodological: it is important to examine whether the collective power of Mount Athos monasteries determined the negotiation process between the Porte and the monks. In other words it would be interesting to see whether the monks of Mount Athos managed to reach a more favourable arrangement than the monks of Patmos. The second reason is that the repossession process is well documented in the Patmos monastery archive.

The monasteries then proceeded to negotiate the terms of repossession of properties. This process is apparent in the *firman* of Dionysiou monastery which is particularly interesting as it echoes the 'voices' of the monks. It includes a petition that outlines what is acceptable to the monks and negotiates the terms of the repossession of properties:

At the present time the monks of the monasteries on the shores of the peninsula of Ayonoro (Mount Athos) in your *kadılık* have presented a petition to the exalted Porte. 'Our *çiftlik*s and vineyards and orchards, fields and mills and shops, houses and wine-shops, our animals and winter pastures in the plain of Longos and goats and all we have always possessed from old days, in part and in whole, up till now in the aforementioned *kadılık*, the *mülks* (private possessions) and animals of our monasteries [these] were [all] sold by the *miri* (Treasury) By mutual cooperation, all of us have borrowed and acquired a debt of 14,000 golden coins. We, the monks living in our monastery, have taken possession of our former lands and animals. We bought them back to hold on the following condition. According to the previous decision none of the monks in our monasteries has the freehold of our mentioned possessions (*emlaks*), fields, vineyards, windmills, orchards, *çiftlik*s and animals. They belong in their entirety to the monasteries on the condition that they are used to feed travellers'.¹⁷

The monks are requesting from the Porte to prevent any interference by local authorities in the event of the death or departure of a monk. According to the Islamic law

16 E.Kermeli, *The Confiscation of Monastic Properties by Selim II, 1568–70*, Unpublished Ph.D. Thesis, (Manchester 1997) Appendix III. The *firman* from Athos, although anterior to the Patmos one, represents a later phase of the affair. It seems that the process was slow and it was not initiated simultaneously in all monastic communities in the Balkans. For the Alaca Hisar *sancak*, see a *firman*, 22 Rebiü'l-ahir 976/14 October 1568 in A. Fotiç, 'The official explanations for the confiscation and sale of monasteries (churches) and their estates at the time of Selim II', *Turcica* 26 (1994) 33–54; P. Wittek-P. Lemerle, 'Recherches sur l'histoire et les status des monastères athonites sous la domination turque', *Archives d'histoire du Droit oriental* 3 (1947) 411–72.

17 Kermeli, *Confiscation*, Appendix III.

of inheritance, if no heir claims the deceased's properties, they revert to the Fisc. The rest of the monks in the same monastery asked to be recognized as a collective body and not as individuals. Thus, should one of them die, his property could not be claimed either by his physical heirs, if any, or by the Fisc. They promised to pay in return 14,000 golden coins for their possessions on Mount Athos, 130,000 silver coins for their dependencies (*metochia*) in Limnos and outside Athos and 70,000 silver coins as tax (*haraç*) per year. They concluded the petition with an unprecedented and clear threat:

If you do not order an imperial document of confirmation, we will sell our possessions and pay back the gold we borrowed and we will scatter all around the world; it is certain that our monasteries will be deserted and our taxes, which we customarily pay in a lump sum (*maktu`*) each year, will be lost.¹⁸

The response of the sultan reiterates the reasons for ordering the confiscation and grants the monks all their requests. The threat to cease paying their taxes weighs heavily on the Sultan's decision because the monks were paying with the *maktu`* system, meaning payment made in advance. In an apologetic manner, the sultan's order concludes with the reasoning of the centre. The answer is a clear reflection of Ebu's Su'ud's legal opinions avoiding threats we normally encounter in imperial orders.

The reason for interfering now is that they [monks] acquired private possessions (*mülk*) by buying and selling royal domains from the peasants. They made them into *vakf* for the benefit of the monasteries and they got title deeds and dedication deeds. They have not been paying their taxes which are obligatory by the Holy Law. They were paying a tiny lump sum (*cüz'i mukataat verüb*). It is patently obvious they have damaged the Treasury of the Muslims, clearly acted contrary to the Holy Law, and shamefully betrayed the glory of the Sultanate.

On the local level the monks were eager to conclude the unfortunate affair and repurchase their properties. The required capital was obtained as we have seen, either through loan or alms (*zyteia*). Apart from land, the rest of their properties were repossessed and made into trusts for the benefit of the monks, travellers and the indigent. The repossession process was completed in the justice court (*kadı* court) of the near-by island of Kos. A series of court proceedings related to the Patmos monastery (*hüccets*), dating from 1–10 Safer 977/16–25 July 1569, illustrates this process. The bulk of transactions are made in only one month, from 1–10 Zi'l-kade 977/ 7–17 April 1570 to 21–30 Zi'l-kade 977/28 April–6 May 1570, as the monks would have to travel to the near-by island of Kos to be present in court.¹⁹ These *hüccets* include documents of sale and validation of *vakfs*. Husam son of Murad was the judge on Kos and validated all sale documents,²⁰ whereas

18 Kermeli, *Confiscation*, Appendix III.

19 Kermeli, *Confiscation*, Appendix IV.

20 Kermeli, *Confiscation*, Patmos File IV, 8, 10–17, 19–40, 42–48.

his deputy a certain Hasan, son of Kemal, put his seal on all documents making the new acquisitions into valid and irrevocable trusts.²¹ By personally supervising the sale, the judge indicates what is important for the Porte.²² The discretion of the judge in adjudication is apparent in a series of irregularities in the drawing of the documents. We can divide them into technical irregularities and irregularities of substance. Ergene questions the degree to which judicial entries in the judge's book reflect 'realities'. According to him the nature of the connection between the actual processes in the Ottoman court and their recording 'may not be as direct or immediate as has been generally assumed in literature'.²³ By claiming that the entries were the 'translations' of dispute into the language of court, he questions the representative power of these documents and anathematises scholars' tendency to accept them as accurate depictions of past realities.²⁴ Despite the fact that the *hüccets* of Patmos monastery were notary deeds and had a certain degree of formalistic rigidity in their drawing, as they were supposed to follow certain established rules, the *kadı* of Kos seems to have used his own discretion.²⁵

I. Technical-Structural Irregularities

One cannot fail to notice the uniqueness of the *hüccets* of Patmos. Upon close scrutiny they defy a number of standard traditions and rules. In documents of this kind, the two parties meet in court, their names are registered, and then each one proceeds to make a statement (*ikrar*). The statement of the seller describes the property to be sold, its boundaries, if it is landed, or the particulars for movables, and the price. When the buyer accepts the property in his statement and the price, as set by the seller, the transaction is

21 Kermeli, *Confiscation*, Patmos File IV, 4–7, 9, 18, 41, 52–63.

22 R. Gradeva, 'Orthodox Christians in the Kadi courts: the practice of the Sofia shariat court, seventeenth century', *Islamic Law and Society* 4/1 (Leiden 1997) 57–60; I. Ortaylı, 'On the role of the Ottoman-Kadi in provincial administration', *Turkish Public Administration Annual* 3 (Ankara 1976) 18.

23 B. Johansen, 'Formes de langage et fonctions publiques: stéréotypes, témoins et offices dans la preuve par l'écrit en droit musulman', *Arabica* 44 (1997) 333–76; B. Ergene, *Local Court, Provincial Society and Justice in the Ottoman Empire: Legal Practice and Dispute Resolution in Çankırı and Kastamonu (1652–1744)* (Leiden 2003) 141; 'Evidence in Ottoman courts: oral and written documentation in early-modern courts of Islamic law', *Journal of the American Oriental Society* 24/4 (2004) 471–91, and 'Document use in Ottoman courts of law: observations from the sicils of Çankırı and Kastamonu', *Turcica* 37 (2005) 83–111.

24 Ergene, 'Document use', 85.

25 U. Heyd, 'Some aspects of the Ottoman fetvas', *Bulletin of the School of Oriental and African Studies* 32 (1969) 35–56; J. Wakin, *The Function of Documents in Islamic Law: The Chapters on sales from Tahāwī's Kitāb al-Shurūṭ al-Kabīr* (New York 1972) 41. There are numerous treatises to facilitate the scribes' work. Ebu's Su'ud wrote two treatises, one was instruction to his clerks and the other was about the correct use of language. See Imber, *Ebu's Su'ud*, 22.

complete. In the *hüccets* of Patmos, the procedure is reversed because the *ikrar* of the buyer precede that of the seller, in this case the representative of the Treasury. This is in violation of Tahawi's rules, as set up in his chapter on sales. According to him, the statement of the seller should be registered first, because the seller initiates the sale and the buyer is the one who then accepts it.²⁶ There are many reasons why this judicial procedure was necessary. In court, accepting the price implies that the seller has given his permission. Also, by putting the buyer's statement second, he is protected against future false claims on the part of the seller in a potential lawsuit in which he could argue, for example, that the buyer acquired the property by usurpation (*gasb*). Since this procedure in the provincial court of Kos is reversed an obvious suggestion would be to suppose that the judge of the provincial court on Kos was ignorant of the procedure and incompetent. However, by examining other entries in the archive signed by the same judge, we discover his adherence to the rules.²⁷ Evidently the judge had his own reasons. Perhaps by placing the statement of the buyer first, an association was made with the legal concept of presumption. When there is no proof, presumption operates in favour of the second litigant. It is his statement supported by oath that is admitted as stronger.²⁸ In such a case, therefore, the statement of the representative of the Treasury would be second in order to protect him against the buyer's future claims. If we accept this hypothesis, then it is apparent that the judge of Kos had the interest of the state at heart.

By contrast, another major irregularity shows that the judge made an effort to keep the monks content. After sale was complete, the monks would proceed to validate their repossession as irrevocable trusts. The rules are set by Ebu's Su'ud. As long as properties are not dedicated to the monastery but rather to poor monks, travellers, and the indigent the legal process follows the general Islamic rules on trusts.²⁹ The procedure is followed strictly in the *vakıfname* of Orfani, a dependency of Dionysiou monastery. Daniel, son of Manoli the prior, appeared in court with all his title deeds. He delivered the trust to his trustee (*Müteveli*) on the condition that the income will be used for the benefit of

26 The *hüccets* in the court compilations follow this mainstream Islamic law pattern. See *Şer'iyye Sicilleri. Mahiyeti toplu katalğu ve secme hükümler* II (Istanbul 1989) 19–30. The same applies to entries from Bulgaria in the seventeenth century. See Gradeva, 'Legal procedure in the kadi's court according to the documents in the kadi's sijills in Bulgaria (17th century)', paper presented to the 'Islamic, Hebrew, Ottoman Law' conference (Manchester 1991) 4–7.

27 Patmos, File III, 3, 24, 26, 29, 41, 44.

28 Wakin, *The Function*, 56; J. Schacht, *An Introduction to Islamic Law* (Oxford 1964) 194.

29 Following Qadikhan's prescriptions, the founder must make his freehold into a trust and deliver it to the trustee of his choice. Because of disagreement in Islamic law about the process, the founder is then expected to abrogate the dedication quoting the opinion of Abu Hanifa. The trustee will employ the opinions of Abu Yusuf and Shaibani to enable the judge to proclaim a verdict in his favour, since their opinion is accepted in practice. Thus the trusts could become valid and irrevocable. For the advice of Ebu's Su'ud on the matter see, M.E. Düzdğ, *Şeyhülislam Ebusuud Fetvaları* (Istanbul 1972) d. 299, 76; Imber, *Ebu's Su'ud*, 148.

poor monks and travellers.³⁰ According to the Islamic laws on trusts, the property to be dedicated should be the freehold of the founder. One cannot make as *vakf*, property that is not clearly his/hers.³¹ In the case of Patmos, however, the judge, or rather his deputy, made the properties into valid and irrevocable *vakfs* fifteen days *before* their repurchase from the Fisc.³² It would be naïve to suppose that the *kadı* was not informed of the irregularity. Due to this irregularity he refrained from sealing these documents personally. The reason for such an astonishingly high disregard for Islamic law can be adduced from the imperial order sent to the judge of Kos and the representative of the Treasury on 17 November 1569.

You should register in a registration book (*defter*) all church *vakfs* in the said district. If the priests and the monks accept [to pay] the standard *tapu* a stranger³³ would pay, upon their acceptance, you should put the *vakfs* attached to each church in the manner set forth, in their charge. Take the *tapu* tax for the Treasury, give them title deeds and let them have the disposal of them. If, however, they do not accept the *vakfs* attached to the churches and for the settlement due an outsider would pay, you should give the properties to others among the peasants who request them.

Obviously the monks would be eager to ensure that outsiders did not snatch their properties. The Sultan gave them a priority over the peasants. The monks must have used as an argument for the reversal of the procedure a phrase in the *firman* saying ‘put their properties in their charge (*uhdelerine edüb*) and then collect the tax and give them title deeds’. Making properties into inaccessible trusts was the best method of taking charge of them. By viewing the activities of a group of peasants who bought former properties of the monastery, we are better able to understand the fears of the monks. The judge exercised all limits of discretion to mollify the monks. Though aware of the transgression of the law, the judge accommodated local demand, while he also refrained from personally sealing these documents.

II. Irregularities of Substance

Husam Efendi also seems to treat favourably a group of Christians buying former monastic properties in court. The interaction between these Christians and the judge seems to be peculiar. Although Ebu’s Su’ud repeatedly forbade the sale of arable land and

30 N. Papazoglou, *Μεταφρασμένα Τουρκικά Έγγραφα τοῦ Μετοχίου Ὁρφάνη τῆς Μονῆς Διονυσίου τοῦ Ἁγίου Ὁρους* (1576–1733) (Kavala 1987) Appendix 2.

31 Düzdağ, *Ebussuud Fetvaları*, d.301, 76; Schacht, ‘Early Doctrines on Waqf’, 447–49.

32 Patmos, File IV, 5–7, 13, 24–28, 30–39, 41–53.

33 Kermeli, *Confiscation*, Appendix II.

explained in the imperial orders his legal reasoning, the local judge in Kos applied different rules to different groups. When the monks attempted to repossess their lands, Ebu's Su'ud's prescriptions were precisely followed. They bought only the usufruct of fields and they were forbidden from using them as private property.³⁴

The judge however, was not as meticulous when registering transactions between the representative of the Treasury and lay Christians. On the same day he granted the usufruct of fields to monks, 1–10 Zi'l-kade 977/ 7–17 April 1570, he registered the sale of lands to three Christians with a final and irrevocable sale. Yorgi Nimeku, Izmalı Nimeku and Izmalı Alyu Christians from Kalymnos Island castle bought a field (*tarla*) of one kile sown with seed and five beehives that were formerly the trust of Kire church, a dependency of Patmos monastery.³⁵ In his statement Ahmet Çelebi, the representative of the tax collector (*emin*) of Rhodes, Yakub Bey, sold the field for 200 silver coins with a definite and irrevocable sale (*bey'i kat'i ile bey' edüb*). The same Christians together with a certain papa Constandin Samila bought on the same day another field of 6 kile sown with seed belonging to the same church with a definite sale.³⁶ Their acquisitions included also a vineyard with olive trees in Kato Yalos and Arkos in Kalymnos, former trust of Kebere church, dependency of Patmos monastery, for 300 silver coins.³⁷ These Christians from Kalymnos Island must have been testing the flexibility of the judge when they attempted to buy in another entry, apart from fruit bearing trees also the land beneath.³⁸ It was a popular belief that planting trees densely, to prevent any other crop from growing, led to *de jure* ownership of the ground. As Imber has argued, Ebu's Su'ud rejects this view and claims that if the plants are removed the land reverts to the Treasury.³⁹ Both the judge and the tax collector probably knew this. The latter in his statement accepted the sale of the

34 The phrase used is as follows: 'I have given the aforementioned field to the said monk for a *tapu* of 2000 silver coins. I have received the tax on behalf of the Treasury. From today the monk should plough and cultivate it. No one should interfere, if he pays his taxes'. Patmos File IV, 8; 14; 32.

35 Patmos, File IV, 43.

36 Patmos, File IV, 17.

37 Patmos, File IV, 38.

38 Patmos, File IV, 48.

39 For orchards and trees in Ottoman law see C. Imber, 'The status of orchards and fruit-trees in Ottoman law', *Tarih Enstitüsü Dergisi*, Prof. Tayyib Gökbilgin Hatıra Sayısı (Istanbul 1982) 763–74; H. Inalcik, 'Islamization', 102–103. It is important to note the striking resemblance between the treatment of trees and orchards in Ottoman law with the Byzantine laws of *emphyteusis*. The term in Greek means 'planting'. The peasant who planted trees in someone else's property acquired the usufruct of the property on condition he did not leave the property unattended. His right on the property can be transferred and inherited. The only obligation is to pay yearly a tax called *emphyteutikos kanonas* or *emphyteuma*, either in kind or in money. In addition, the peasant is obliged, if he sells his right or transfers it, to ask the permission of the owner who in return can levy, for his permission, up to 2% of the value of planting. This tax is called *eisdektikon*. See for more information on *emphyteusis*, M. Kaser, *Das römische Privatrecht: Die nachklassische Entwicklungen*, Handbuch der Altertumswissenschaft X.3.3.1–2 (Munich 1975) 308–12; I. Konidaris, *Tò Δίκαιον τῆς μοναστηριακῆς περιουσίας, ἀπό τοῦ 9ου μέχρι καὶ τοῦ 12ου αἰῶνος* (Athens 1979) 195–201.

trees but refrained from the mention of the land. In this case, because the statement of the Christians precedes, the representative of the central administration is invested with the right to omit an item, another obvious advantage of the reversal of the procedure. However, although the Christians of Kalymnos Island failed to appropriate the land upon which fruit-bearing trees grow, Papa Marko, acting as the agent for his son Nikitas residing inside the Leros castle, succeeded. On the same day, he bought a vineyard and its ground, again a former property of the monastery, for 210 silver coins.⁴⁰

Unpleasant as the affair might have been, even incomprehensible in all its legal technicalities for the monks, it demonstrates effectively that the monks understood the complexities and peculiarities of the system. When they petitioned to the Sultan they were firm on the conditions they attached to the normalization of their status. By openly threatening to disperse and deprive the Fisc of valuable income, they managed to have their voices heard by the centre. Unfortunately, our sources cannot provide us with an answer concerning the web of social support they were employing. Most importantly, the sources remain silent as to who advised them in their course of action. It would be interesting to know if their verbalization of a threat to the Sultan was a result of calculating information from inside, or an act of desperation.

On the other hand, the centre, be that the Sultan himself or his jurisconsult Ebu's Su'ud, were quick to understand the repercussions of their actions and alleviate concerns arising from them. Ebu's Su'ud exhibited all his mastery in Islamic law in order to accommodate the monks' needs as long as they accepted the new arrangements. Thus, the Byzantine monastic collectivity was recognized even if Ebu's Su'ud had to employ legal stratagems.

When the affair was transferred to the local level, the judge of Kos was even more adventurous than the jurisconsult. He used his own discretion to safeguard the interests of the centre. By reversing the procedure he furnished the seller i.e. the Fisc, with an advantage against future claims. Amidst the 'chaos' following the order of confiscation, he lent a sympathetic ear to the monks' fears of losing their properties to outsiders. He allowed them to rededicate their properties, before they had acquired full ownership, in direct defiance of Islamic law. The limitations of our sources again do not permit us to explore more the web of local actors and their interaction with the judge. Thus, we cannot explain the reasons for his favouritism towards the Christians of Kalymnos and Leros islands. Because the same names are involved in illicit transactions of land, we can only suspect that their ties must have been strong. After all, the judge transgressed the most important of the Sultan's orders. He alienated public property, and this may be seen as an instance of corruption. Whatever the case though, the judge had been instrumental in keeping all sides content.

Since the confiscation and repossession of monastic properties in the late 16th century affected many monastic communities in the Balkans, the affair allows us to draw interesting conclusions on issues concerning the centre and periphery, as well as decline and

40 Patmos, File IV, 42.

transformation in the Ottoman Empire. Based on Şerif Mardin's seminal work on centre and periphery⁴¹ scholars primarily concentrated on the definition of the terms and the examination of the power of the centre vis-à-vis local 'elite' groups⁴². The centre-periphery discussion became part of the extensive discourse on the Ottoman polity as an extreme patrimonial state and subsequently as the main constituent of decline.⁴³ According to the advocates of this approach, the earlier period until the end of the 16th century is characterized as a kind of 'enlightened' despotism.⁴⁴

The deconstruction of the Ottoman decline paradigm was initiated by specialists who, as Darling argues, felt that it fails to explain Ottoman transformation and change. According to Darling 'it is teleological: because we know that eventually the Ottoman became a weaker power and finally disappeared, every earlier difficulty experienced becomes a 'seed of decline', and Ottoman successes and sources of strength vanish from the record'.⁴⁵ The emphasis put forward in the revisionist approach is not dismissive of any of the Ottomans' efforts to transform and address new challenges but discusses the pace of adaptation to new challenges.⁴⁶ These new challenges are illustrated

41 Ş. Mardin, 'Center-periphery relations: a key to Turkish politics', *Daedalus* 102 (1973) 169–190.

42 The theme of centre and periphery in the social sciences has been argued with vigour since the 1960s. G.W. Lapidus, E.W. Walker, 'Nationalism, regionalism and federalism: centre-periphery relations in post-communist Russia', in G. Lapidus (ed.), *The New Russia: Troubled Transformation* (Westview 1995) 79–114; U. Hannerz, 'Flows, boundaries and hybrids: keywords in transnational anthropology' *Mana* 3/1 (1997) 7–39; S.N. Eisenstadt, 'Mobilization center-periphery structures', in S.N. Eisenstadt, S. Rokkan (eds.), *Building States and Nations* (London 1973). For the historical approach, see S. Langholm, 'On the concepts of Center and Periphery', *Journal of Peace Research*, 8/3.4 (1971) 273–78. For a definition on centrality see J. Galtung, 'A structural theory of Imperialism', *Journal of Peace Research* 8/2 (1971) 81–117.

43 B. Lewis, 'Some reflections on the decline of the Ottoman empire', *Studia Islamica* 1 (1958) 111–27 and 'Ottoman observers of Ottoman decline', *Islamic Studies* 1(1962) 71–87; P. Fodor, 'State and society, crisis and reform, in 15th –17th century Ottoman Mirrors for Princes', *Acta Orientalia Hungarica* 60 (1986) 217–40; D. Howard, 'Ottoman historiography and the literature of 'decline' of the sixteenth and seventeenth centuries', *Journal of Asian History* 22 (1988) 52–77; H. Inalcik, 'The heyday and decline of the Ottoman empire', *The Cambridge History of Islam*, I (Cambridge 1970) 'Centralization and decentralization in Ottoman administration', *Studies in Eighteenth Century Islamic History*, T. Naff, R. Owen (eds.) (London 1977) 27–52; M. Heper, 'Center and Periphery in the Ottoman empire: with special reference to the nineteenth century', *International Political Science Review* 1/1 (1980) 81–105.

44 H. Gerber, *State, Society and Law in Islam: Ottoman law in Comparative Perspective* (New York 1997) 129; S. Faroqi, 'Crisis and change, 1590–1699', in H. Inalcik, D. Quataert (eds.), *Economic and Social History of the Ottoman Empire, 1300–1914* (Cambridge 1994) 411–636.

45 L. Darling, *Revenue-Raising and Legitimacy: Tax Collection and Finance Administration in the Ottoman Empire 1560–1660* (Leiden 1996) 5.

46 R. Murphey, 'The Veliyuddin Telhis: notes on the sources and interrelations between Koçi Bey and contemporary writers of Advice to Kings' *Belleten* 43 (1979) 547–61; R. A. Abou-el-Haj, 'The Ottoman Nasihatname as a discourse over 'Morality'', *Revue d'histoire maghrébine* 14 (1987) 15–30. S. Demirci, 'Complaints about Avâriz assessment and payment in the Avâriz-tax system: an aspect of the relationship between centre and periphery: a case study of Kayseri, 1618–1700', *Journal of the Economic and Social History of the Orient* 46/4 (2003) 437–74; R. Murphey, 'Continuity and discontinuity in Ottoman administrative theory and practice during the late seventeenth century', *Poetics Today* 14 (1993) 419–43.

in the negotiation efforts between the two sides and function as evidence of transformation, transgressing our traditional views on periodization, since even the advocates of transformation argue that change did not occur before the beginning of the 17th century.⁴⁷

With regard to Ottoman legal studies, the decisions and acts of both the jurisconsult in Istanbul and the judge on Kos renegotiate the image of the Sultan as the sole protector of the aggrieved, inherent in the official ideology.⁴⁸ This image somewhat alienates the other actors in the administration of justice, presenting them as mere instruments of 'divine' justice. The legal opinions of Ebu's Su'ud, regardless whether they are an example of independent reasoning (*ijtihad*)⁴⁹ or a manipulation of pre-existing concepts⁵⁰, demonstrate a well balanced accommodation of both the needs of the Porte and the demands of the local society⁵¹. Thus, the role of the jurisconsult goes beyond that of a subservient subject.

In addition, the issue of judicial corruption, central in the decline-transformation debate, is reflected in the actions of the judge in Kos. The degree of judicial corruption, the process of adjudication and the exorbitant legalism of the court are issues for discussion. The advocates of the decline model consider serious corruption and disorganization as responsible for the decline of the efficiency and honesty of the provincial administration.⁵² Ergene depicts a very grave picture of the judicial corruption. He claims that corruption and illegal practices of the *kadıs* in Anatolia and Rumelia during the seventeenth and eighteenth centuries were extensive.⁵³ Gerber, on the other hand, holds a different opinion, based on research of Books of Complaints (*Şikayet Defterleri*). He concludes that the extent of corruption in the Ottoman bureaucracy is probably exaggerated and that 'the supremacy of the *kadı* in the Ottoman legal system in the post-sixteenth century period was undiminished'.⁵⁴ Whether the judge of Kos was corrupt to a greater or lesser degree or

47 L. Peirce, 'Changing perceptions of the Ottoman empire: the early centuries', *Mediterranean Historical Review* 19/1 (2004) 23; J. Hathaway, 'Problems of periodization in Ottoman history: the fifteenth through the eighteenth centuries' *Turkish Studies Association Bulletin* 20/2 (1996) 25–31.

48 Inalcik, 'Adâletnâmeler', *Belgeler* 2/3–4 (1965) 49–145; Ergene, 'On Ottoman justice: interpretations in conflict (1600–1800)', *Islamic Law and Society* 8/1 (2001) 52–87.

49 M.K. Masud, B. Messick, D. S. Powers, *Islamic Legal interpretations: Muftis and their fatwas* (Harvard 1996) 28–29; W.B. Hallaq, 'Was the Gate of Ijtihad closed?', *International Journal of Middle East Studies* 16/1 (1984) 3–41; B. Johansen, 'Die sündige, gesunde Amme: Moral und gesetzliche Bestimmung (*hukm*) im islamischen Recht', *Contingency in a Sacred Law: Legal and Ethical Norms in the Muslim Fiqh* (Leiden 1999) 189–219.

50 Imber, *Ebu's Su'ud*, 271.

51 Kermeli, 'Church Vakfs', 141–157.

52 Heyd, *Ottoman documents on Palestine, 1552–1615* (Oxford 1960) 49; Inalcik, 'The Ottoman decline and its effects upon the Reaya', *The Ottoman Empire: Conquest, Organization and Economy* (London 1978) 346; idem, 'Tax collection, embezzlement and bribery in Ottoman finances', *Turkish Studies Association Bulletin* 15 (1991) 326–46.

53 Ergene, *Local Court*, 109.

54 H. Gerber, *State, Society, and Law in Islam: Ottoman Law in Comparative Perspective* (New York 1994) 182, 173.

not, his independence from the centre is apparent in the number of major and minor transgressions of rules and laws, although judicial documents are designed to conceal rather than reveal such activities. Nevertheless, we cannot argue that his administration of law was whimsical, based on his arbitrary discretion. Such a conclusion would have accepted a rule-driven orientation attached to the Weberian model of ‘*kadı* justice’⁵⁵ that ignores, as Ergene rightfully argues, the extra-judicial ties between provincial courts and local communities. In the Ottoman Empire the *kadı* is more than a judge.⁵⁶ He is also a mediator and arbitrator and his settlements satisfy the law as well as the needs of the community; his role is similar to that played by the *kadı* of Kos.

In conclusion the confiscation and re-possession of monastic properties at the end of the sixteenth century is an instructive example of the dialogue between centre and periphery. The periphery, on the one hand, represented by the monastic communities is successfully negotiating the terms for the normalization of their relation with the centre. The centre’s decisions, on the other hand, assert the limits of the negotiation, while the jurisconsult’s opinions included in the sultanic decrees reflect the accommodation between the Porte’s interests and the needs of the locals. Overly schematized paradigms are thus replaced by the example of a polity in dialogue with local communities, which undergo continual reformation. The activities of the local judge in Kos manifest the extra-judicial ties between local courts and local communities. The judge shows flexibility and awareness that custom and the needs of the community were fundamental to the formation of normative law and practice. The application of law and the procedure in the court of Kos (*İstanköy*) echo the role of the *kadı* as the mediator who attempts to appease all. This role does not, however, inhibit the judge from being involved in petty corruption, even if he has to violate explicit orders of the centre.

The confiscation and repossession of monastic properties in Mount Athos and Patmos should not be considered as the seed of decline preceding the seventeenth-century crises. It could rather serve as an example of a central administration in negotiation with peripheral actors.

55 Gerber, *State*, 176; Ergene, *Local Court*, 115.

56 Ergene, *Local Court*, 195.