Armenians in the Ottoman Legal System
(16th – 18th centuries)

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Dedicated to Alice

And to Onnig (in memory)
Armenians in the Ottoman Legal System
Sixteenth – Eighteenth centuries

CONTENTS

Abstract ........................................ iv
Résumé .......................................... v
Acknowledgments .............................. vi
Introduction .................................... 1

Chapter 1 – Background
   I. Literature review and historiography .... 5
       Armenians in Armenian and Ottoman History
       The Ottoman shari'a court records as a historical source
   II. Concise description of Armenian population in Ottoman Empire .... 23
   III. “Armenians” before Armenian nationalism .............. 24
   IV. Dhimmīs in Islamic and Ottoman jurisprudence .......... 26

Chapter 2 – Armenian legal structures within the Millet
   I. The Office of the Patriarch of the Armenian Millet .... 32
   II. The Armenian Church ........................... 36
   III. Armenian laws and legal codes ..................... 39
   IV. Theory vs. practice ................................ 42

Chapter 3 – Armenians at the shari’a courts
   I. The qadi and his court .......................... 47
   II. Armenians in the Courts: an overview .............. 50
   III. Circumstances of shari’a court use by Armenians ... 54
       Taxation, Conversions, Financial Transactions, Property and Waqt,
       Crimes and Misdemeanours, Marriage and Divorce
   IV. Motivation for shari’a court use ................... 62

Conclusion .................................... 67
Bibliography ................................. 69
Abstract

This thesis examines the participation of Armenians in the shari’a courts of the Ottoman Empire from the 16th to the 18th centuries. Scholars have traditionally thought that Armenians in the Ottoman Empire resolved their disputes within their own communities’ legal systems. However, new studies of Ottoman court records reveal that Armenians in the Ottoman Empire frequently used the shari’a courts to resolve a wide variety of disputes. There are several possible reasons to account for this frequent shari’a court use by a community that theoretically had its own courts. The first is that the Armenian millet’s legal structures were perhaps exaggerated or misunderstood by previous scholars. The second is that Islamic law was not as unfavourable to dhimmis as presumed and that the shari’a courts were adequate for their needs. Finally, the way the courts applied Islamic law was sometimes advantageous to certain dhimmis.
Résumé

Cette thèse examine la participation des Arméniens dans les tribunaux shari’a de l'empire Ottoman du 16ème au 18ème siècle. Bien qu'il soit traditionnellement accepté que les Arméniens utilisaient les structures judiciaires propre à leurs communautés, de nouvelles études des comptes rendu d'audiences ottoman révèlent que ces Arméniens fréquentaient les cours shari’a pour résoudre une grande variété de conflits. Il y a plusieurs raisons possibles en se qui attrait à l'utilisation des cours shari’a par les Arméniens, surtout qu'ils avaient en théorie leurs propre système légal. Premièrement, les structures légales du millet arménien étaient exagérées, ou encore, mal compris par les historiens précédents. La seconde est que le droit islamique n'était pas aussi défavorable aux dhimmīs que l'on avait présumé. Et finalement, la nature même de la cour et la manière dont le droit islamique y était appliqué était parfois plus avantagéuse pour certains dhimmīs que leur propre système légal.
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Introduction

A considerable amount of research has made use of court records to explain how the law functioned in the Ottoman Empire. The available work is broad in both geographical and chronological scope; more recently, the subject of women's use of Ottoman courts has also been of special interest to researchers.¹ By deciphering court records, scholars have made inferences not only about the way in which women interacted with the law during the Ottoman period, but also about the use of these courts by religious minorities within the empire.

Throughout these works, there is frequent mention of Armenian men and women using the Ottoman shari'a court system. As the available works clearly show, dhimmī use of these courts was by no means uncommon although non-Muslim communities had maintained their own denominational laws, which the Ottoman Empire even approved.² The aim of this thesis is to gather, synthesize and analyze information written both on Armenian use of Ottoman courts and on legal structures found within Ottoman-Armenian communities, in order to answer questions about Armenian legal activity in the Ottoman Empire.

¹ See, for example, Leslie Peirce, Morality Tales: Law and Gender at the Ottoman court of Aintab (Berkeley: University of California Press, 2003), Judith Tucker, In the House of the Law (Berkeley: University of California Press, 1998), among many others.
To my knowledge, there is no single work that thoroughly examines the legal participation of Armenians in the Ottoman Empire and, therefore, no analysis of what that participation meant or why it is significant to the study of the Ottoman legal system. Examining the legal rights of a specific minority population within the Ottoman Empire will allow for a richer understanding of the Ottoman legal system as a whole.

In *The Armenian People from Ancient to Modern Times*, Dr. Peter Cowe of UCLA writes: "It seems clear that Armenians would appeal to the Muslim legal system on occasion for redress in disputes arising within their community. One factor behind this practice was the lack of a written codification of Armenian customary law."\(^3\) In light of Cowe’s statement and the frequent mention of Armenians in court cases, there are a number of questions that this thesis will seek to answer: Were the Islamic courts only used by Armenians who lived in locales where Muslims constituted a majority? Were the courts used primarily in cases that involved Armenian-Muslim interaction/transaction? What was the nature (that is, legal sphere) of these cases? What can they teach us about the legal status of minorities under Islamic/Ottoman rule? Did the authority given to Armenian religious leaders by the Ottoman Empire supersede the rulings of Ottoman courts when it came to inter-Armenian disputes? And finally, if, as Cowe contends, there was no written legal code for Armenians, how did the law within Armenian communities operate and who was responsible for its application?

While delving into the answers to these questions, a primary concern of mine will be the use of the term or category “Armenian.” We must keep in mind the crucial fact that Armenians, as an ethnic minority in the Ottoman Empire, were not defined by others, nor even conceived of themselves, in modern nationalistic terms. In order to avoid inappropriately imposing a modern category onto an older historical context, my research will endeavor to understand what being “Armenian” meant in the specific geographic and historical context under consideration.

In the same vein, I will be mindful of the biases found within the sources I draw upon, as I realize that academic work on minorities in the Ottoman Empire is often highly politicized. As Bruce Masters writes in the introduction to his monograph, *Christians and Jews in the Ottoman Arab World*:

> The dispute over writing the past is perhaps the most strident in the territories of the former Ottoman Empire where competing, endogenously selective memories of former defeats and atrocities serve to validate violence directed at those deemed to be outside the boundaries of the “nation.”

This thesis is divided into three main sections. The first chapter will present all of the necessary background for the project: First, I will give an overview of the literature that I am using for my research, pointing to trends in the various fields that I am consulting—looking at the historiography of my subject. After this broad review will follow a concise history and description of the Armenian population of the Ottoman Empire. I will also examine what it meant to be termed an “Armenian” in the historical context of the Ottoman Empire and whether the term

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“Armenian” between the sixteenth and eighteenth centuries had similar socio-ethnic/national connotations as when used today. Following this, I will turn to the topic of non-Muslims under Islamic legal rule, identifying what rights and guarantees were theoretically provided to non-Muslims under Islamic law, and specifically in the Ottoman Empire.

The second chapter will then focus exclusively on the Armenian community within the Ottoman Empire and the internal legal structures of the Armenian millet. I will examine the legal role of the Patriarch of Constantinople—the official head of the Armenian millet—as well as that of the Armenian Church. To finish, I will identify religious and customary laws that were available to Armenians living in the Ottoman Empire.

The third and final chapter will investigate the presence and participation of Armenians in Ottoman courts, looking in detail at the ways in which Armenian litigants used šari‘a law. In particular, I will look at the significance of the frequency of court appearances by Armenians, of the circumstances of these appearances, and the implications of the outcomes of their cases. These findings, along with those of chapter two, will allow me to speculate on and conclude why so many Armenians used Ottoman courts and šari‘a law to resolve their legal problems.
Chapter 1

Background

I. Literature review and historiography

This thesis will heavily draw on secondary sources dealing with Armenian history, Ottoman history and Ottoman shari'a courts. Within the field of Armenian Studies I will be looking particularly at detailed histories of the Armenian people—for example, George Bournoutian's *A History of the Armenian People* and Richard Hovannisian's *The Armenian People*. In the realm of Ottoman Studies, I will primarily be using works on religious minorities in the Ottoman Empire, such as Benjamin Braude and Bernard Lewis' *Christians and Jews in the Ottoman Empire* and Bruce Masters' *Christians and Jews in the Ottoman Arab World*, but also general works on the Ottoman Empire and its legal system. The bulk of my sources are from the continually expanding field that draws on Ottoman court records, the *sijill*, as a historical source. These include works by Najwa al-Qattan, Leslie Peirce and Ronald Jennings. The purpose of this section is to look at some of the problems and trends found within the sources in these three fields of study.

Armenians in Armenian and Ottoman History

In writings on both Armenian and Ottoman history, the representation of Armenians is frequently problematic for numerous reasons. In this section I will examine some of the historiographical problems found specifically in the field of Armenian Studies. First I will individually examine some of the works written on
Armenians in the Ottoman Empire, and then identify some patterns that can be found throughout them.

Although only translated in 1965, archaeologist Jacques de Morgan's *The History of the Armenian People* is one of the oldest secondary sources on Armenian history, written in 1918. Clearly the date of its original publication influences the writing, as the preface states: "During this seemingly endless war ... Armenia has undoubtedly been the most unfortunate of all lands, the most racked and tortured, more so even than Belgium, more so than Serbia!"\(^5\)

Thus from the start, a tone of Armenian martyrdom is set that continues throughout the book. The book is written in a melancholic style that accentuates the author's view of the Armenians as a perpetually struggling people. Several chapters of de Morgan's book touch on Armenian-Muslim history, with de Morgan clearly favouring the Armenian side: "As Moslem fanatics, they had only hatred and contempt for the Christian peoples at the mercy of their whims, and they did not stop at the most wickedest [sic] deeds in shedding blood and satisfying their greed."\(^6\) The author likens Arabs to other "uncivilized races" that previous western empires had faced,\(^7\) and Armenia is portrayed as constantly being "ravaged" by "Moslems." de Morgan does not hide his contempt for Turks and Turkic peoples, whom he characterizes as "bloodthirsty."\(^8\)

De Morgan's background is mostly in Egyptian archaeology, but he has traveled extensively in the Armenian region. In the book's preface, one of his

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\(^6\) Ibid., 147.
\(^7\) Ibid., 152.
\(^8\) Ibid., 174.
colleagues states that “no one has more carefully studied the mysterious beginnings and the history of those races that settled over the magnificent lands south of the Caucasus.” Despite this praise, de Morgan’s book does not seem to be written as serious academic research—rather, it appears that the author’s purpose is to familiarize Europe with the “tragic” situation of the Armenians at the time it was written by narrating their similarly tragic past.

In 1977, with Armenia still under Soviet rule, Stephen Svajian, whose background is as a D.D.S., wrote a fairly thorough, though biased and arguably racist account of Armenian history in *A Trip Through Historic Armenia*. Svajian does not hide his discriminatory views against Muslims as invaders of Armenia, and is openly prejudiced against the incoming Turkic tribes whom he claims are well-suited to the warring ways of Islam. Svajian looks at Armenian history as the story of victims who time and time again, put up a good fight, but to no avail. Svajian quotes some of de Morgan’s less flattering characterizations of the Seljuks. The best example of his tone is in his portrayal of Armenian history from the eleventh century on as “...nine centuries of martyrdom for the Armenians on their road to Golgotha.”

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9 Ibid., 8.
10 There is no explanation of the D.D.S. title in the book or in any other source I have consulted. My only guess is doctor of dental surgery(?)
11 Stephen G. Svajian, *A Trip Through Historic Armenia* (New York: Greenhill, 1977), 171. Svajian writes: “The defeat of powerful Persia was most unfortunate for the Armenians, for it paved the way for Arabs to invade Central Asia and later convert the Turkish elements to Islam. These Turkish nomads, revitalized by this new religion which was so compatible with their natural nomadic instincts of conquest and plunder poured southward and out of Turkestan in the 10th century...”
12 Ibid., 174.
13 Ibid.
Another scholar who has written a number of books on Armenian history is David Marshall Lang, Professor of Caucasian Studies at the University of London. In the preface to his monograph, *Armenia, Cradle of Civilization*, Lang admits his fondness for the Armenians, with whom he came into contact during the Second World War, while stationed in Tabriz. The tone of his study is set as he waxes nostalgic about being told stories of the Armenian Genocide by his new Armenian friends, and about his eventual journey to Soviet Armenia, which he enjoyed.\(^{14}\)

Lang credits the Armenians with strength of character and writes that their “independent spirit” helped them triumph in war.\(^{15}\) Lang also emphasizes that Armenians were able to retain their individuality even while playing prominent roles in other cultures, such as in the Ottoman Empire.\(^{16}\) His focus on Armenians’ individuality is probably related to comments he makes in the preface about the individuality of Soviet Armenia as compared to the other Soviet states, the implication being that no matter where Armenians go or whom they encounter, they manage to hold on to their identity (i.e. even under Communism). The tone of his writing, specifically on the matter of Armenians under Ottomans, is thus similar to that of the previous two authors. In *The Armenians: a People in Exile*, Lang writes:

> The miseries of the Armenians in the homeland were aggravated still further by the fall of Constantinople to the Ottoman Turks in 1453. Eastern Armenia was cut off from Europe, and sank back into a state of stagnation and poverty. The country was devastated in the course of destructive wars fought between the Ottoman Turks and the Persian dynasty of the Safavids...\(^{17}\)

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\(^{15}\) Ibid.

\(^{16}\) Ibid., 184.

As well as being written in an overly-dramatic style, this paragraph accentuates the author’s higher regard for Europe as a non-stagnant, positive influence, set against the Ottoman Empire.

George A. Bournoutian, the first scholar to receive a doctorate in Armenian history from UCLA, devotes a couple of chapters in his *A History of the Armenian People* to the description of Armenians under Ottoman rule. His book seems to be written for an Armenian-American audience, published in California, where there is a significant Armenian population. Bournoutian’s forte is contextualizing Armenian history by contrasting its events to those taking place in other regions of the Middle East and the rest of the world. However, while Bournoutian does not show specific bias against Turks or Muslims as do the others, he does have a tendency to simplify Ottoman history, subscribing to popular, outdated notions on Ottoman “bribery, corruption and nepotism,” without any explanation or investigation of these characterizations.\(^{18}\)

He is not the only one to do so—there are several other works on Armenians in the Ottoman Empire that, while providing less outright prejudiced and more detailed accounts of the Armenian people, tend to explain the Ottoman Empire through a rhetoric of Ottoman decline and corruption, without any particularly convincing corroboration—a frequently asserted historical paradigm of Orientalist scholarship. In *The Armenian People from Ancient to Modern Times*, Dickran Kouymjian suggests that the Ottoman governing system “degenerated” because the entire administration was being run “by officials and

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men born, almost without exception, as Christians.”¹⁹ In the same book, Richard Hovannisian writes that what little self-government Armenians in the Ottoman Empire were allowed “was undermined by political, economic, and social decay,” again neglecting to elaborate any further.²⁰ Elisabeth Bauer-Manndorff also suggests that “despotism” was a source of discontent for the Armenians in the Ottoman Empire, again, without giving any examples.²¹ One can only speculate as to why so little analysis of Ottoman history is given in these contexts; perhaps it is that the main field of inquiry is the Armenians, and not the Ottoman Empire itself. Whatever the reason, this lack of contextualization weakens the sources by casting doubt on their overall reliability.

There are two main trends in the sources that discredit the useful information that historians provide about the internal workings of the Armenian communities in the Ottoman Empire. First, there is an over-emphasis on the Armenian people as victims at the hands of non-Christians. Second, there is a glorification of the Armenians as a people with a separate, specific national identity before the actual rise of nationalism or any Armenian state. These trends manifest themselves in the habit of ascribing negative racial characteristics to Muslims and Turks, and in a way that “Armenian suffering” takes a quasi-competitive form where the Armenians are consistently described as having

suffered "more" than anyone else. When reading such material, one gets the impression that the authors are projecting later disputes onto the past.

Let us further examine the way in which the Armenians and Ottomans are portrayed. Lang, Svajian and de Morgan all write using a melancholic and highly dramatic tone. Their scholarship takes the form of a fluid nostalgic narrative in which Armenia is seen as the old country, the motherland, the home of the birth of Christianity. Often, the future "tragedy" of the Armenian people is referred to during writings about events that happened hundreds of years before these "tragedies." Svajian writes that "the history of Greater Armenia since the fall of Ani in 1064 is a series of tragedies unfolding one after another..."22 Lang goes so far as to say that an early Arab attack in Nakhchevan "was one of the first steps trodden by the Armenian people on the road towards their Calvary at the hands of Muslim overlords, culminating in the Ottoman holocausts of 1895 and then of 1915."23 And in the preface to de Morgan's book, his colleague, Gustave Schlumberger of the Academy of Ancient Monuments and Literature, states that de Morgan was "happy to be able still to serve the sublime cause of the oppressed people" by writing their history.24 These admissions unfortunately place doubt on the credibility of the information provided within the works as they show a clear impartiality towards their subject.

As for "the perpetual struggle of the Armenian people" trumping that of others in the Ottoman Empire, examples can be found in the works of both the aforementioned Kouymjian and Bauer-Manndorff. Kouymjian writes that "the

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22 Svajian, 174.
23 Lang, Armenia: Cradle of Civilization, 178.
24 de Morgan, 8.
Georgians were also victimized, but they still had a kingdom, even if disunited. By real and feigned conversion to Islam and alliances with the Ottomans and Persians, Georgians were sometimes able to play one off against the other.²⁵ Bauer-Manndorff similarly writes that the Ottoman Armenians in the later years of the empire “isolated and surrounded by Islam, suffered even more under Turkish rule than the Serbs, Greeks, Rumanians, and Bulgarians.”²⁶ These statements have no purpose other than to cement the identity of Armenians as a historically victimized group, and to this extent they are useless for our purposes.

However, as previously stated, there is also a flip-side to this particular vein of historical writing. Contrary racial characterizations about Armenians can be found in works on the Ottoman Empire, and the act of writing about Armenians—as well as many other minorities within the Ottoman Empire—often takes on a nationalistic or political tone that distorts any attempt at historical objectivity. In Salahi Ramsdan Sonyel’s The Ottoman Armenians, the author begins the book by speculating about the nature of Armenians, mixing positive and negative characterizations that he has collected from various sources.²⁷ While the negative characteristics attributed to Armenians are balanced by other, somewhat more positive claims, one wonders why there is a need to debate and determine what the “true character” is of a group that encompasses different people from diverse locations and backgrounds. In other words, if characterizing Armenians either

²⁵ Kouymjian, 17.
²⁶ Bauer-Manndorff, 147.
²⁷ Salahi Ramsdan Sonyel, The Ottoman Armenians (London: K.Rustem & Brother, 1987), 3. Though in some cases he does not specify what these sources are: an example is where is writes that Armenians are a “highly nervous and over-capable race.” What does that even mean?
negatively or positively, as victims or as culprits, does not serve a constructive function in history-writing, then why would an author do it?

The Ottoman Shari'a Court records as historical source

"Studies on Ottoman society and law through the so-called sijdls have lately proliferated, surpassing in volume all previous studies based on other archival sources, including tax and land registers," writes Wael Hallaq in an article on court records in pre-Ottoman times. Indeed, a staggering amount of history, and—more specifically and recently—social history, has been written using the Ottoman sijdls. Their usefulness in examining women and religious minorities has been demonstrated by the numerous scholars who have meticulously examined these court archives for information on the legal participation of those groups. From micro-histories and economic histories to women's studies and dhimmī studies, Ottoman court records seem to have become an invaluable source of documentation.

As with all primary sources, there are several problems with using Ottoman court records to write history, as well as of course, advantages. In this section I aim to examine some of the main arguments for and against the use of court records as a historical source for writing Ottoman history. In light of my research aims, I will pay particular attention to some of the problems that trouble my specific field of inquiry; however I will also focus on the qualities of the sijd that

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scholars working with religious minorities claim to be advantageous in the writing of dhimmī history.  

The word sijill comes from the Arabic word, sajalla, which Ādel Mannā‘ defines as “to write in a book, to register, to note.” He argues that it is from this definition that the term sijill came to be applied to “a registry or an archive connected with the Shari’a courts,” although he explains that this definition came gradually. The defining of the term sijill, as well as locating the moment in which it came to indicate Ottoman court records specifically, lead to one of the controversial questions within the field of Ottoman court record study: was the sijill unique to the Ottoman Empire? Mannā‘’s argument is that “the sijill, in the form of an archive into which the qadis were expected to note all copies of the written judgement, as well as other documents, was an Ottoman innovation.” His argument is based on the fact that no pre-Ottoman sijills have been found, despite other pre-Ottoman sources having survived. However, his colleagues disagree.

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29 I acknowledge at this time that there is a vast body of work written on the subject and that by looking at the problems that I consider to be specifically relevant to my research I ignore some of the work on the use of Ottoman archives. To quote Jon Mandaville, one of the first to write on the subject of Ottoman court records: “This survey makes no claims to exhaustiveness; I have selected only the studies which best illustrate certain points and problems.” Jon Mandaville, “The Ottoman Court Records of Syria and Jordan,” Journal of the American Oriental Society 86, 3 (1966), 312.

30 ‘Ādel Mannā‘, “The Sijill as Source for the Study of Palestine During the Ottoman Period, with Special Reference to the French Invasion,” in Palestine in the Late Ottoman Period, David Kushner ed. (Jerusalem: Brill, 1986), 351.

31 He continues to note that the term “underwent many changes over hundreds of years, and in the Middle Ages was used to refer to all things that were listed, including a document that was issued by a kadi or another clerical officer,” and that the term isjal, “was widely used in the same connection.” These statements will become more relevant as later scholars challenge what “sijill” should really mean. Mannā‘, 351.

32 Ibid.
In Jon Mandaville’s “The Ottoman Court Records of Syria and Jordan,” one of the earliest modern writings on Ottoman court records, Mandaville argues that keeping a sijill “dates from as early as the ninth century,” and that “there is every reason to suppose that the maintenance of written records was standard judicial procedure for the courts of every Islamic government that had some established form of administration—and for perhaps a few that did not.”

However, Mandaville presents no evidence to support his position and his argument ends there, facilitating Mannā’s refutation twenty years later; Mannā’s view became standard, even in the Encyclopaedia of Islam entry on “Sidjill” by Suraiya Faroqi.

The debate is picked up in Hallaq’s “The Qādi’s Dīwān (sijill) before the Ottomans,” an article whose specific aim is to disprove that the sijill was an Ottoman innovation. Hallaq argues that Mannā’s case for the sijill as an Ottoman product is unconvincing: “If the qadi’s records did not survive, or—more accurately—appear so far not to have survived, this does not mean, or in any way entail the conclusion that they did not exist.” In the process, Hallaq adds to what we know about Ottoman court records, primarily by questioning the term sijill being applied to them at all. Hallaq argues that the more accurate term for the registers of the court would be diwan al-qadi, as the sijill is “only one of a number of elements, or legal genres, making up the qadi’s record, or diwan.”

Despite this challenge, the term sijill continues to be used to talk about the

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33 Mandaville, 311.
35 Hallaq, 416.
36 Ibid., 419. It is interesting here to note that Hallaq uses an abundance of Arabic sources to show examples of the use of the term diwan al-qadi, while Mannā relies more heavily on “western” sources, such as the German Orientalist Joseph Schacht.
entirety of a shari'a court qadi's archives by the subsequent scholars who take up the subject.

The writings on Ottoman court record usage increased as the records become more readily available for scholars to access. Mannā' names the 1930s as the years during which scholars became aware of the existence of sijill in Egypt, Syria, Lebanon and Palestine, writing, however, that they were not utilized until later.\textsuperscript{37} This is not surprising, as Mandaville states that the purpose of his article, written in 1966, is “to draw the attention of scholars unaware of the existence of these court records to their value and locations, and to describe in some detail the records of Syria and Palestine, records assumed by many to have been destroyed.”\textsuperscript{38} According to Mandaville, the earliest found sijill date back to the fifteenth century and were found in Bursa, as well as in a few towns in Bulgaria and Yugoslavia.\textsuperscript{39} In comparison, the earliest of the sijill found in Damascus and Aleppo date back to the sixteenth century.\textsuperscript{40}

Beshara Doumani writes that the sijill from the sixteenth to the eighteenth centuries provide the greatest wealth of information, as “the shari'a court in this period was, by and large, the sole legal arbiter and primary instrument of social control,” and “in varying degrees, independent of the political and military apparatus that represented direct Ottoman rule.”\textsuperscript{41} The sijills also contained the largest quantity of information, because people used the courts to register general events and the court acted as “a public records office of sorts,” where

\textsuperscript{37} Mannā', 353-4.
\textsuperscript{38} Mandaville, 311-2.
\textsuperscript{39} Mandaville, 311.
\textsuperscript{40} Mannā', 354.
\textsuperscript{41} Beshara B. Doumani, "Palestinian Islamic Court Records: A Source for Socioeconomic History," \textit{Middle East Studies Association Bulletin} 19, 2 (1985), 156.
documentation from both the people of the area and the Ottoman administration was stored. This changed in the nineteenth century as people began to use the courts only for personal status cases.

The range of topics covered in the court records is extensive: waqf affairs, marriage, divorce, inheritance, child custody, buying and selling of property, financial disputes, guild regulation, tax payments, approval for economic endeavours, building of mosques and hospitals, teacher appointments and certain criminal matters. However, Dror Ze'evi warns that these court records do not necessarily contain exclusively legal matters: "they usually contain much less legal information than we tend to assume when we think of similar documents in other systems." He points out that, particularly, the records rarely mention any of the legal reasoning behind a qadi's decision.

One of the oft-cited advantages of the court records is the feeling of intimacy that they evoke with the ordinary people whose daily lives they record. Jennings describes reading about people in court records as "the candid looks at human life which only come from judicial registers." For Kasaba, court records fall somewhere between a letter or private journal and official government papers. Thus, the sijill contain a kind of information unavailable elsewhere. Jennings

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42 Doumani, 159.
43 Ibid.
44 Ibid., 157.
45 Dror Ze'evi, "The Use of Ottoman Shari'a Court Records as a Source for Middle Eastern Social History: A Reappraisal," Islamic Law and Society 5, 1 (1998), 38.
writes that Ottoman judicial records “provide detailed summaries of each legal case, as well as verbatim copies of all official orders sent to the local government.” This is useful when it comes to writing local histories vis-à-vis the Ottoman state.

Furthermore, Doumani writes that Palestinian sijill can help in writing the social and economic history of Ottoman Palestine, filling in what he feels is a major information gap:

The advantages of the sijills are many. They can be used to detail the processes of social, economic, political, and cultural changes over a very long period of time. For example, one can trace local notable families and discover their marriage patterns, amount and type of properties they control, and their role in the provincial vs. central struggle that is one of the major facts of Ottoman history. The sijills are also unique as an historical source, in that through them one can investigate the social and economic conditions of women, slaves, the lower classes, and other historically “silent” groups that left little or no traces anywhere else.

Peirce echoes this thought, calling the type of information that can be gleaned from the court records “small knowledge.”

Other scholars see the sijill as a way to compare Islamic legal theory with practice. Writing about seventeenth century Anatolian Bursa, Gerber notes that:

The value of such an approach to the understanding of the pre-modern Islamic legal system has been widely recognized in recent years. While the study of Islamic law in the classical period is mainly based on theoretical legal texts, the availability of the sharia court archives from the Ottoman period drastically changes the research potentialities. It is only with the aid of such archives that the study of the living law can be seriously undertaken.

Agmon adds that, as a primary source, the sijill can play an important role in new trends in social history writing—including anthropological, linguistic and literary

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48 Jennings, 8.
49 Doumani, 155,171.
approaches—in which the “recovery of the lost voices of powerless groups in society [become] its raison d’être...”

Despite the glimpse into ordinary people’s lives that one may get from the court records, Doumani notes that “some groups tend to be overrepresented: more men than women; more city folk than rural folk; men of property and status (such as merchants, ulama, and officials), and those who, for one reason or another are destitute or are involved in civil conflict or crime.” And while we do encounter a wealth of “small knowledge,” Doumani notes that sometimes the information is not viewed critically or put into its proper context.

Alternately, Kasaba sees a disadvantage in that one cannot apply the findings of a local court record to a universal historical theory, as the nature of the court record lends itself to micro-histories more than macro-histories. But this seems to be more of a problem for those trying to infer conclusions about the entire empire from a single sijill rather than just about the particular place from which the records came.

Peirce, who examines a single year in Aintab’s court records for her monograph, Morality Tales, notes that her kind of study leaves many questions unanswered. While this is due partly to the limited period of time under scrutiny, it

52 Iris Agmon, “Women’s History and Ottoman Sharia Court Records: Shifting Perspectives in Social History,” Hawwa 2, 2 (2004), 173, 178. Her comment is in the context of studying Middle Eastern women’s history but it can apply to examining non-Muslim communities and other minorities as well.
53 Doumani, 160.
54 Doumani, 169.
55 Kasaba, 117.
is also because of the fact that courts do not always focus on a whole story, but only on legally relevant details. The courts are "resistant to narration."\(^{56}\)

A key problem for Dror Ze’evi is that several major studies utilizing the sijills treat them as truth.\(^{57}\) In his article, "The Use of Ottoman Shari’a Courts as a Source for Middle Eastern history," he goes into detail about some methodological problems in studies using court records:

Even though sijill records cover a period of over four centuries and can be found in hundreds of locations throughout the well-defended realms of the Ottoman empire, they are still naively regarded as a single, homogeneous source, with the same documentary value, the same literary conventions, and the same legal codes in all places at all times.\(^{58}\)

Ze’evi points out that different types of history writing drawing upon court records have different problems. He elaborates on these problems by defining three categories of historical writing that utilize court records: quantitative history, social history and micro-history.\(^{59}\) Ze’evi criticizes quantitative history using court records—that is, history that "is based on the statistical processing of source materials"—for never contextualizing the population represented in the court records.\(^{60}\) As Fatma Müge Göçek and Marc David Baer also note in their research that uses inheritance registers:

These registers only contain information on those individuals who chose to use the court; those who settled their affairs informally were not always recorded. Therefore, the sample is selective, and generalizations from the court records cannot hold unless confirmed through other sources.\(^{61}\)

\(^{56}\) Peirce, 13.
\(^{57}\) Ze’evi, 37.
\(^{58}\) Ibid.
\(^{59}\) Ibid., 39.
\(^{60}\) Ibid., 39-40.
When it comes to social history, Ze'evi also sees a danger in “creating a false story” through court records, as historians pick at “disconnected pieces of evidence” to create a continuous narrative about a certain social subject.\(^{62}\)

Finally, his concern with micro-history and court records is that the detail required to write a micro-history is absent from the records of trials. Although he admits that “microhistory was born in court archives,” he writes that the “motivation and background” of people are missing in these archives and that this leads to a “feeling of detachment.”\(^{63}\)

Bearing these methodological problems in mind, the question remains: are there still advantages to using court records to write about minorities in the Ottoman Empire? Jennings writes that “judicial records are one of the best sources for information about religious, linguistic, and ethnic groups, although often it is impossible to be more precise than Muslim or non-Muslim (or Christian in Cyprus) [in labelling groups],” adding that, however:

> Occasionally differentiations are made among non-Muslims in Cyprus. Probably all of the Jewish and Armenian Christian Cypriots are explicitly identified as such, and usually even have distinctive personal names... Certain kinds of population and taxation records also distinguish between Muslims and non-Muslims; and sometimes even Jews, Armenians, or other Christians may be differentiated there.\(^{64}\)

He also writes that although the non-Muslims of Cyprus may have had the right to turn to their own clergy for legal problems, no records of any non-Muslim courts survive and “indeed very few references even suggest their very existence. Greek

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\(^{62}\) Ze'evi 45-6.

\(^{63}\) Ibid., 47-8.

\(^{64}\) Jennings, 7-8.
Orthodox and other Christians used the Sharia court of Cyprus very frequently, not just in “mixed” cases but in cases involving other members of the same faith.\textsuperscript{65}

Doumani notes that the qadi’s authority “extended to all religious communities,” and that the Jews and Christians of the empire were still “subject to the rules and customs of the society in which they lived.”\textsuperscript{66} This is clearly shown in the \textit{sijills}, where non-Muslims are seen using the \textit{shari’a} courts “not only for everyday affairs but also as a forum where the grievances of the community as a whole could be put forward.”\textsuperscript{67}

Jennings’ and Doumani’s comments alone establish court records as a worthwhile source for information on \textit{dhimmis}, so long as one is aware of their limitations and of the potential pitfalls in their use. The methodological problems with using court records for research and also the biases in the Armenian history sources both emphasize the necessity to synthesize a variety of sources in order to present accurate findings. Just as recognizing the historiographical trends within the writings on Ottoman Armenians helps to write a less biased account of Armenians in the Ottoman Empire, charting some of the problems within the scholarly works that use \textit{shari’a} court records allows one to avoid making incorrect assumptions based upon them, without foregoing their value as a source entirely.

\textsuperscript{65} Jennings, 69.
\textsuperscript{66} Doumani, 158.
\textsuperscript{67} Ibid. Interestingly, Doumani later writes that \textit{shari’a} court use by non-Muslims continued up to the British Occupation, then “shortly after the Mandate, the courts were limited to the Muslim community,” 160.
II. Concise description of Armenian population in Ottoman Empire

Historic “Greater Armenia” was situated in most of present day eastern Turkey, and was defined by the Pontic range in the north, the Kur River in the east, the Taurus mountains in the south and the Euphrates river in the west. By the end of the Middle Ages, Armenia was no longer independent and had sustained foreign rule by various Turkic and Mongol invaders, eventually falling under the territories of the Ottoman and Safavid Empires. “Armenian territory” only came under Ottoman rule in the early sixteenth century, although Armenians living in, for example, Kayseri, Trabizond, and Constantinople had been under Ottoman rule since the previous century.

In 1639, the two warring empires, Ottoman and Safavid, came to an agreement over their border and “Armenia” was partitioned into eastern and western sections. By that time, however, large numbers of Armenians had already migrated to other parts of the Ottoman Empire—some during the early Seljuk invasions of Armenia and others later, during Ottoman relocation programs that were meant to re-populate various areas of the empire.

Therefore, Armenians could be found throughout the empire and not just in the areas that had been “Greater Armenia.” Some Armenians remained in the area of “Lesser Armenia” (located on the Mediterranean coast of Asia Minor).

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70 Kouymjian, 1-2.
71 Bournoutian, 6.
72 Ibid.
which had been the Kingdom of Cilicia until 1375. Others migrated as far as Syria, resulting in an increase of the Armenian population of Aleppo. Armenians also had their own quarter in Jerusalem and could be found throughout Egypt as well.

In Anatolia, by the sixteenth century, the Lake Van area is said to have had the “most thriving center of Armenian culture.” Other Anatolian cities with increasing Armenian inhabitants at this time were Trabizond, Erzerum, Kayseri, Tokat and, of course, Constantinople. This wide dispersion of Armenians explains their presence in judicial records throughout the empire.

III. “Armenians” before Armenian Nationalism

A primary concern while studying Ottoman Armenians is how to define an “ethnic minority group” that has only relatively recently begun to conceive of itself as a nation. While presently the term “Armenian” has national connotations, during the earlier Ottoman period it obviously did not. Therefore the challenge is to define the Ottoman Armenian community within its historical context.

While nationalistic sentiments among Armenians arguably developed in nineteenth century Ottoman society, especially during the time of the Tanzimat

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74 Kouymjian, 34.
75 Ibid., 25.
76 Ibid., 25-6.
77 Ibid., 25.
78 I am not including population estimates for a number of reasons. First, there is no agreement on the total number of Armenians in the Ottoman Empire at any point in time. Second, attempts to determine the number of Armenians in the Ottoman Empire somehow always become a political battle where numbers are accused of being increased or decreased in order to prove certain historical claims.
reforms and thereafter, “nationalism” as defined by, say, Benedict Anderson,\(^79\) did not exist among Armenians in the sixteenth to eighteenth centuries. Yet, it is not as though the term or category “Armenian” did not exist within the Ottoman context. There was a word for Armenians: “eremi,” as well as an Armenian millet.\(^80\) Additionally, in some instances, Armenians were identified specifically as such in shari’a court records. Other times, however, the sijills did not differentiate between Armenians and other Christians.

Is it fair then to isolate Armenians in a historical study of the Ottoman legal system? Were the Ottoman Armenians seen as one unified group in the eyes of the Ottoman authorities? Would Armenians living in the Ottoman Empire have thought of themselves as significantly different or separate from their Muslim, Jewish, and other Christian neighbours? We cannot answer these questions with certainty, but acknowledging that they exist, or that they might be problematic, is a constructive step.

Ultimately, this thesis is about only one of many Ottoman ethnic minorities, and it is hard not to use modern categories when our vocabulary and language is per force entirely modern. Nevertheless, I can be mindful of several things: of the nature of the scholarship on Armenians in general, of “patriotic” attitudes that permeate the field and, finally, of the tendency to “[divide] the peoples of the Ottoman Empire into monolithic, vertically constructed, sectarian communities.”\(^81\)

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\(^80\) Although this millet included other Monophysite Christians as well.

\(^81\) Masters, 1.
IV. Dhimmis in Islamic and Ottoman jurisprudence

As with many of the subjects covered under Islamic law, there are widely differing legal opinions on the rights of non-Muslims. In this section I will try to elucidate the classical Islamic juristic perspective on *dhimmis* living under Islamic rule, in order to discuss the Ottoman legal perspective on its non-Muslims subjects.

Traditionally, under Islamic law, a non-Muslim monotheist was allowed to retain a certain amount of religious freedom.\(^\text{82}\) There were, however, regulations and conditions for dealing with any non-Muslims. Most of these stemmed from the Qur'an and the Sunna of the Prophet, which shaped early Islamic policies towards non-Muslims.

In his article "*Dhimma* in Early Islam," C.E. Bosworth shows that guidelines for dealing with non-Muslims are discussed in Qur'anic passages on *jihad* which explain that "People of the Book," such as Jews and Christians, should be spared if they accept to pay the poll-tax.\(^\text{83}\) He also points to the "Constitution of Medina" as a precursor to later developments in the treatment of *dhimmis*.\(^\text{84}\)

The "Constitution of Medina" and the actions of the Prophet Muhammad towards the Jewish tribes of Medina led to Muslim authorities recognizing "the rights of believers in the monotheistic faiths to remain at peace within the *umma*, as long as they recognized Islam's political authority over them," writes Bruce

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\(^\text{82}\) In some historical and geographic contexts, non-monotheists also had similar religious freedoms.


\(^\text{84}\) Ibid.
Masters, agreeing with Bosworth. Masters agrees that these bases—the Qur’anic passages, and the “Charter of Medina”—came to form the concept of *ahl al-dhimma*, (“the people of the contract”), “which guaranteed the rights of the non-Muslims to property, livelihood, and freedom of worship in return for extra taxes (the *jizya*) and the promise not to help Islam’s enemies.”

The continuing success of the Muslim armies, especially after the Prophet’s death, made it necessary to expand on the concept of *ahl al-dhimma*. As the number of dhimmīs under Islamic rule increased, jurists continued to develop and elaborate their legal positions on non-Muslims. By the ninth century, the “Pact of ‘Umar” became the forerunner to the way that non-Muslims would be treated under future Muslim territories “from the time of the Abbasids until the Ottoman reforms of the nineteenth century.”

While the details of the origin of the “Pact of ‘Umar” are debatable, the thrust of its contents is attributed to the Caliph ‘Umar ibn al-Khattab. Notable conditions of the pact include: that no new churches or synagogues could be built; that no non-Muslim could have a Muslim slave or marry a Muslim woman; that public displays of faith were to be limited and that dhimmīs should wear garments that were distinct from their Muslim neighbours; that non-Muslims were not to sell *haram* food or drink to Muslims; and that non-Muslims must not teach the Qu’ran to their children or discuss the Prophet, the Qu’ran or the Islamic

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85 Masters, 19.
86 Ibid.
87 Masters, 20.
88 Also referred as the “Covenant of ‘Umar,” see Bosworth, 45-7.
89 Masters, 21.
90 See Bosworth, 46.
tradition. In return for these provisions, Muslims would respect non-Muslim “persons and property” and “not interfere in any internal decisions made by the leadership of the non-Muslim religious communities in regards to personal status law or contracts unless all parties agreed to Muslim adjudication.”

Most of the aforementioned terms continued to apply in the Ottoman Empire, although they were not always strictly upheld. A new development in the treatment of non-Muslims, however, was the consolidation of the millet system. “Tolerance” is a term often used when broaching the subject of non-Muslims in the Ottoman Empire, the early Ottoman “state” is seen as tolerating the non-Muslim communities by letting them govern themselves through the millet system. According to Braude, the term millet means “a religiously-defined people,” and the millet system was the administrative basis under which Ottoman Armenians (and also Greeks and Jews) were dealt with as a community.

The millet system generally allowed the dhimmī population to keep to itself, as it was governed by its own religious leaders and had its own internal legal and social structures: “Each millet was, in effect, self-governing. It was allowed to maintain its own institutions, such as schools, charities, and hospitals. It was responsible for law and order and for resolving disputes within the community,”

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91 Masters, 22.
92 Ibid.
94 For more on the term millet see: Benjamin Braude, “Foundation Myths of the Millet System,” in Christians and Jews in the Ottoman Empire: the functioning of a plural society vol. 1 (New York: Holmes & Meier Publishers, 1982).
95 Braude, 69.
writes Bournoutian.\textsuperscript{96} Taxes were collected for the Ottoman government through the community leaders rather than from each individual \textit{dhimmī}.

The religious minorities of the early Ottoman Empire were divided into three main \textit{millets}: Greek Orthodox, Armenian and Jewish. While in later years of the Ottoman Empire new \textit{millets} were allowed to form, for the earlier years, most Christian minorities were included in either the Greek or Armenian \textit{millets} based on their creed.\textsuperscript{97}

A frequent complaint of “injustice” is made over the inferior legal status of a \textit{dhimmī} in Islamic courts, as, theoretically, the testimony of a \textit{dhimmī} was seen as inferior to that of a Muslim. However, recent studies that examine Ottoman court records argue that this is a misconception or, rather, a merely theoretical rule rather than a practical one. As we will see in Chapter 3, despite the possible bias against them in Islamic law, \textit{dhimmī}s are often found using Islamic courts, not only in cases against Muslims, but also in disputes against each other where their presence in the court was not obligatory. This voluntary court use, coupled with evidence that \textit{dhimmī}s could resolve disputes in Islamic courts, even against Muslims, strongly suggests that \textit{qadis} often gave \textit{dhimmī}s a fair trial in practice.\textsuperscript{98}

But before examining specific examples of \textit{dhimmī} use of \textit{shari’a} courts, there is the question of how non-Muslims within the \textit{millet} would have governed themselves. What were the legal recourses available within their community, and


\textsuperscript{98} Masters, 32.
who was in charge of administrating them? We will answer these questions in the next chapter.
Chapter 2

Armenian Legal Structures Within the Millet

As mentioned in the previous chapter, the religious minorities of the Ottoman Empire were divided into three millets until the nineteenth century: Greek Orthodox, Armenian and Jewish. Of these three, the Armenian millet was the second largest;¹ however, despite its size, there are few details to be gleaned about its inner workings. While a great number of works discuss the millet system of the Ottoman Empire and particularly its history and development, surprisingly little is written on day-to-day legal matters within a millet. While several sources hint at the existence of courts and laws used within the Armenian millet, the information found is not elaborate and is frequently mentioned only in passing.

In this chapter, I will explore the commonly referenced sources of law within the Armenian millet: the Patriarchate of Constantinople and the Armenian Church. I will also investigate the existence of Armenian laws, religious or otherwise, that might have been used by members of the Armenian millet.

I. The Office of the Patriarch of the Armenian Millet

The responsibility of governing the millet fell to the Armenian Patriarch, whose authority came from the Ottoman sultan. The Patriarchate of the Armenian millet may have been established in 1461 when the Armenian Bishop of Bursa was transferred to Constantinople, though this date and the classical story of the Patriarch's appointment by the Sultan Mehmed II are not only disputed but even seen by some as entirely apocryphal. Despite the uncertainty of its origins, however, there was indeed an office of the Armenian Patriarch and records remain, indicating the names of the Patriarchs as well as the periods during which they were in power; between 1461 and 1848, there were more than eighty Armenian Patriarchs.

While the Patriarchate in charge of the Armenian millet of the Ottoman Empire was in Constantinople, there were also Patriarchates in Jerusalem, in Aght'amar and in Sis Each exercised a certain amount of power over the Armenians of their region. Nevertheless, all Armenians within the empire were ultimately the responsibility of the Patriarchate of Constantinople, despite each community having its own clerical figures in charge of local affairs. Sanjian writes:

The sphere of [the Patriarch's] jurisdiction increased proportionately to the extension of the empire, so that gradually all the Armenian communities within its political boundaries came under his administrative authority. This included the bishoprics spiritually dependant upon the regional sees of the Armenian church,

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2 Ibid.
4 Kouymjian, 10-11.
namely, the catholicosates of Sis and Aght’amar and the patriarchate of Jerusalem.⁷

It is clear that the Patriarch’s power at the start was neither as centralized nor as powerful as historians’ description would lead us to believe. Kouymjian writes that the first Armenian Patriarchs of Constantinople only had jurisdiction over the Armenians of Constantinople; only very gradually, over the next few centuries, did they begin to exert their authority over other Armenian prelates in the empire.⁸

Barsoumian emphasizes that the Patriarchate of Constantinople would not have enjoyed its prominent position had it not been part of the Ottoman Empire and recipient of the Ottoman sultan’s blessing.⁹ The Patriarchate of Constantinople was deemed inferior to the Patriarchates of Sis, Aghtamar, and Jerusalem in ecclesiastical hierarchy, “but in real life, it carried more prestige and weight than its spiritual superiors until the middle of the nineteenth century.”¹⁰

Part of the Patriarch’s considerable power came from his economic benefits: he was allowed “to own extensive properties, and, along with his fifteen member staff, was exempted from all Ottoman taxes.”¹¹ He was the one who would appoint tax-collectors within the millet and also had the right to confiscate others’ properties. He did, however, have to give “gifts” to certain government officials from time to time to secure his continued authority.¹²

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⁸ Kouymjian, 11.
¹⁰ Barsoumian, 184.
¹¹ Artinian, 16.
¹² Ibid., 17.
Although there is no procedural detail available, historians do point out certain occurrences that indicate that the Patriarch was in charge of administering civil and religious law within the millet. Bournoutian's description of the office of the Patriarch indicates a certain amount of civil authority:

The Armenian patriarch was approved by the sultan and exercised full authority over his people. He had his own court and could dispense civil and ecclesiastical justice throughout his community. He maintained a small police force, as well as a jail.\(^\text{13}\)

The Patriarchate's legal authority is reconfirmed by several authors. Hrant Pasdermadjian writes that the Patriarch had civil jurisdiction over all Armenians, while also having spiritual and temporal authority over all of the other Christian denominations under the Armenian millet's umbrella. He also argues that the Patriarch was the intermediary between the Ottoman government and the Christians under the Patriarch's jurisdiction.\(^\text{14}\) Most criminal cases that involved a member of the Armenian millet were judged by the Patriarch, who would have to bring the case to the sultan.

Avedis Sanjian, in his monograph on the Armenian community of Ottoman Syria, devotes a chapter to the Patriarchate of Constantinople. Even as he emphasizes that the Patriarchate of Jerusalem seemed to have more direct influence over the Armenians in Ottoman Syria, he details the unique power of the Patriarch of Constantinople:

As head of his millet the Armenian patriarch, ranking with the higher Turkish pashas, received his investiture from the sultan. He was held responsible for the government and the good conduct of his people, over whom he exercised almost unlimited authority. His powers were as much political as ecclesiastical. Through


him the government controlled the millet and collected the community’s annual tribute; and through him the church, her officers, and coreligionists communicated with the government in case of injustice, to secure a privilege, or to obtain rights. The patriarch was personally responsible for, and enjoyed jurisdiction over, his community’s spiritual administration and officials, public instruction, and charitable and religious institutions, and the civil status of his coreligionists. Until the promulgation of the Hatti-Sherif of Gülhané (1839) the patriarch and his ecclesiastical subordinates had the authority to inflict both ecclesiastical and civil penalties on his people; matters of litigation were brought before his court, whether such were civil or criminal; and he maintained a small police force and his own jail at the capital. He could imprison or exile clergy at will, and though the consent of the government was necessary to imprison or exile laymen, such firmans were generally easily obtained.¹⁵

Similarities in the language used by Sanjian and other writers point to a common source of information, which goes to show how scarce information on the Patriarchate is. This commonly used source, cited by almost all authors writing on the Patriarchate of Constantinople is Malachea Ormaneán’s *The Church of Armenia: her history, doctrine, rule, discipline, liturgy, literature, and existing condition.*

Ormaneán may be considered a primary source on the subject, writing on the topic in the early 1900s and also being a Patriarch himself. Despite the fact that the office of the Patriarch had changed considerably by then, especially during the era of reforms in the 19th century, Ormaneán remains one of the authorities on the Patriachate and almost all of the authors writing on Ottoman Armenian history use him as a primary source. Ormaneán describes the Patriarch’s juridical responsibilities as follows:

Thus all matters concerning family life, such as marriage, public instruction, charities, worship and its ministers, spiritual administration, etc., were made over to the jurisdiction of the religious head. In this way the patriarch found himself invested with a kind of civil jurisdiction or imperial patriciate.¹⁶

¹⁵ Sanjian, 32.
¹⁶ Ormaneán, 60.
The main problem with everything mentioned about the Patriarchate and its role in settling disputes within the millet is that there are virtually no records of any court procedures or cases. There is no explanation of how the office of Patriarch worked, how the legal complaints were handled or any other sort of description of legal methods used in the millet. This lack of records is unusual, especially since it seems as though the Patriarch was in charge of nearly everything:

A certificate from the patriarch was presented to the head of the police to procure a permit for marriage; the name of every child was communicated by the patriarch to the same officer for enrolment; permission for every funeral had to be obtained through the patriarch from the board of the health; and no person could travel in the country without a passport, which could be secured only with the patriarch’s voucher for the individual’s honesty.\textsuperscript{17}

We must remember, however, that behind the Patriarch’s power was the institution that he ultimately belonged to: the Armenian Church.

\textbf{II. The Armenian Church}

Aside from the authority of the Patriarch, there was also the considerable influence of the Armenian Church as a community institution. Pasdermadjian argues that the Armenian Church was the guiding force for Armenians within the Ottoman Empire, as it had been throughout Armenian history.\textsuperscript{18}

Whether or not this relationship between the Armenian Church and its people was as strong in pre-Ottoman times, as Pasdermadjian claims, authors like Kouymjian argue that there was a major historical change in "Armenian" history that allowed the Church to assume a position of widespread influence

\textsuperscript{17} Sanjian, 34-5.
\textsuperscript{18} Pasdermadjian, 263.
over Ottoman Armenians. This change was the loss of the Armenian Kingdom of Cilicia in the fourteenth century. Kouymjian points out that, due to the conquest of the Armenian Kingdom in Cilicia in the late fourteenth century, Armenians no longer had a secular governing hierarchy, “no Armenian secular authority for writers of colophons to invoke, only foreign rulers, catholicoses, and local bishops.”\(^{19}\) Even if the secular authority of Cilicia had been far from most of the outside Armenian population, it was still regarded as leadership; those colophons acknowledging the kings of Cilicia made it even to the further former Armenian territories.\(^{20}\) This explains how the Church came to be the center for law and leadership, as well as spiritual guidance:

Immediately after the destruction of the Cilician kingdom, colophons in their formulaic language, stop citing Armenian kings. Only in Siunik and Lori were Armenian rulers, local princes and barons such as the Orbelians, still mentioned. For the rest of Armenia, the church remained the only permanent, widespread national institution.\(^{21}\)

Pasdermadjian is one of many Armenian historians who emphasize the relationship between the Armenian Church and the Armenian people. While it is difficult to quantify the importance of the relationship between a church and its people, there are some evident ways in which the community was tied to its church, forging the bond to which authors like Pasdermadjian refer.

Artingian writes that “[i]n accordance with the centuries-old canonical tradition of the Armenian church the laity participated in the election of parish priests, as well as bishops, patriarchs, and catholicici. Clerical exclusiveness has been alien

\(^{19}\) Kouymjian 2-3, 32.
\(^{20}\) Kouymjian 2.
\(^{21}\) Kouymjian 2-3.
to the Armenian church.” Ormanean dedicates a chapter of his monograph to “The laity in the Church,” introducing the subject thus:

Among the Armenians the clergy are not looked upon as absolute masters and owners of the Church. This Church, since its institution, has belonged as much to the faithful as to the ministers of worship. In virtue of this principle, and apart from sacramental acts, for the performance of which ordination is indispensable, nothing is done in ecclesiastical administration without the co-operation of the lay element. In addition to the lay support it received, the Church also had a clearly structured hierarchy, the constituents of which could help with the endless duties of the Church, including legal ones. For example, a prelate-bishop still had a large amount of authority and could give “judgment, in council, on marriage questions, with the reservation that he possesses no right to pronounce divorces.”

Yet it would be incorrect to characterize the relationship between the Armenian Church and its constituents in the Ottoman Empire as unique. And although Pasdermadjian and Kouymjian stress the bond between the Armenian Church and its people as though it were an Armenian phenomenon caused by an occurrence in Armenian history, in truth the Greek millet and Greek Orthodox Church, as well as various other Christian communities within the Ottoman Empire, had similar relationships with their Church and its officials. This points to an Ottoman policy of support for Church authority, rather than an exceptional relationship forged between the Armenian Church and the Armenian people over the course of history.

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22 Artinian, 19.
23 Ormanean, 133.
24 Ormanean 119. The hierarchy inside the church, according to Ormanean’s text, is as follows: “1. the supreme patriarch or catholicoi; 2. the patriarch or special catholicoi, exarch, or primate; 3. the archbishop or metropolitan; 4. the bishop,” 117.
III. Armenian laws and legal codes

The literature on the subject of the Armenian millet makes several references to laws and legal codes that were followed by Armenians within their *millet*. These are mostly presented in passing, without detail or elaboration, as by Sanjian on two separate occasions:

So long as these peoples behaved properly and gave no trouble, they were accorded official protection and the freedom to follow their own traditional laws, customs, and ways of life.

Each of these subject communities was allowed to retain its own laws concerning matters of civil status and to enforce them under the general jurisdiction of a *millet bashi* (community head) who was responsible to the sultan.

One clue as to the content of these laws comes from an article by Richard B. Rose on the development of personal status laws for Christian *dhimmis*. Rose writes:

By the thirteenth century AD, we find that each of the churches in the Middle East possessed a law code which applied to all of its members. The scope of these laws extended beyond clergy to include all the faithful. And so in addition to the usual chapters on doctrine, scripture, sacraments and hierarchical administration, we find sections on marriage and divorce, dowries and settlements, inheritances, degrees of consanguinity, and on debts and loans, selling and buying, contracts and partnerships, pledges and oaths, etc.; the same kind of topics as those dealt with in the codes of Muslim laws. [...] ...soon the Armenian and Coptic Christians were elaborating their own community laws.

A law code that may have been applied in the Armenian *millet* of the Ottoman Empire is that compiled by vardapat Mkhtar Goch. Primarily known as a writer of fables and not legally trained, Goch compiled an Armenian legal code in the twelfth century, feeling that, as “Armenians were increasingly in adversarial

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25 Sanjian, 31. My emphasis.
26 Ibid., 32. My emphasis.
contact with Muslims, the lack of a general written lawcode put them at a disadvantage.  

In one of the few English-language articles on the subject, Robert W. Thomson notes that Goch was concerned about “Muslim reproaches that the Armenians had no legal code,” which explains, perhaps, why an author of theological and fictional works would take it upon himself to compile a legal code. David Marshall Lang gives some more detail about the code itself:

Mkhitar’s code of laws, completed in 1184, consists of three parts: Introduction, Church Law, and Civil Law. Half a century later, the Code was translated into colloquial Armenian, and introduced into the Armenian kingdom of Cilicia. Such was its authority that other Armenian communities of the diaspora adopted the Mkhitar Code as their own, so that it was translated into Latin, Polish, Georgian, Russian and even Qipchak. In 1519, the Polish King Sigismund I sanctioned the application of the Mkhitar Code for the internal jurisdiction of the Armenians community in Poland.

While Lang’s comments do not indicate directly that Armenian communities in the Ottoman Empire used the code, his claim that other communities in the Armenian diaspora did raises that possibility. So does Thomson’s remark that “the historical significance of his [Mkhitar’s] work for future generations was immense, especially outside Armenia proper....” Peter Cowe, who only briefly mentions Goch in his survey of Armenian cultural trends from the twelfth to the seventeenth centuries, writes that “Goch’s manual laid the foundation for all subsequent legal thought in our period,” which suggests that even if not used by Ottoman Armenians per se, the code could still have influenced millet legal life.

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29 Ibid., 120.
31 Cowe, 299.
The contents of the code indicate that it could have been relevant to Armenians of later generations; Thomson's article shows that Goch addressed issues related to marriage (spousal abuse, infertility), inheritance, ownership of property, witnessing, boundary-marking and so forth.32 Goch did not always acknowledge his sources, but Thomson recognizes laws drawn from scripture and various canons, Armenian historians and even apocryphal literature.33 For instance, Cowe remarks that a large part of the code includes legal sections of the Old Testament, but that Goch also includes customary laws that, until then, had only been transmitted orally.34

Interestingly, according to Thomson, Goch distinguished between his code and canon-law, the latter being concerned with "penance and the sinner's salvation," the former with "penalties for infringement of the laws, penalties normally expressed in terms of a fine."35 Although Goch writes about laws prescribed by the Church, he says that he does not see it as his place to discuss the spiritual consequences of law-breaking. Nevertheless, Thomson points out that Mkhitar's "own interests often take him from the legal into the spiritual sphere."36

Whether or not Goch's code of law was used by Ottoman Armenians within the millet, the spiritual/civil dichotomy of Armenian law that Goch presents seems to persist centuries later in legal social structures of the Ottoman Armenian millet.

33 Ibid., 124-5.
34 Cowe, 299.
35 Thomson, 120.
36 Thomson, 121.
IV. Theory vs. practice

While several sources emphasize the influence of the Patriarch and the Armenian Church, the main shortcoming of much of the information presented is that it is largely theoretical. The authors writing on this subject rarely have specific examples—court documents, oral accounts—of Armenians actually going to the Patriarch to resolve disputes or arrange marriage papers. If there were any records maintained in the courts of the Armenian millet, they have yet to come to light and be used for historical studies like the sijill.

Halil Inalcik, in an article on Ottoman archival materials on millets, mentions various registers that contain records relating to the non-Muslim communities. But these registers only contain data that was related to the Ottoman state as well—tax records, correspondence between Ottoman and non-Muslim leaders, non-Muslim evkāf holdings, etc.—and not local legal records.37

While lack of documentation does not mean that the information we have about the Patriarchate is false, the lack of practical details about day to day legal life for Armenians living under millet rule does raise the question as to whether we can confirm the actual range of the Patriarch’s or the Church’s authority. Amnon Cohen, in an article focusing on the non-Muslim population of sixteenth century Jerusalem, boldly states that his study of the city—based primarily on court records—shows “no indication of any formal or even practical relationship whereby [Christians and Jews in Jerusalem] might be held subject to any superstructure of a millet system in the Ottoman Empire as a whole.”

Cohen's article seems to suggest that legal responsibility within non-Muslim communities in Jerusalem, including the Armenian one, was local, with an upper-ranking neighbourhood religious figure taking the responsibility of being the official head of the community. In the case of the Armenian community, this would still generally be a Patriarch or Archbishop, who would have to interact with local Ottoman authorities and the local qadi to settle legal disagreements.38

Even in this situation, the head of the community would have had limited power, as Cohen writes that the head of the community only remained so if the qadi felt that the community being represented was happy with its official head:

Once [the head of the community] received the official sanction, he would be protected by the qadi from any insult to himself and his title, or against instances of disrespect and disobedience. But once he ceased to please the a’yan of his community, they would withdraw their support from him and have him replaced by their new choice.39

Furthermore, Cohen goes on to describe two other positions within the non-Muslim communities that are not otherwise mentioned elsewhere and which may have limited the power of the community leader. The first is that of raṭṣ (or shaykh), whose job was to aid the official head of the community. This position was not necessarily clerical and was usually appointed by the qadi, at the suggestion of the official head. As an assistant to the official head of the community, the raṭṣ was “in charge of the daily affairs of his community, and [...] was therefore also called the mutakallim or spokesman,” because he essentially

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39 Ibid.
did most of the work that was required of the office of the head of the community.\textsuperscript{40}

The second position described by Cohen is that of the dragoman (turjumān).\textsuperscript{41} This position was independent of the religious hierarchy of the community and was essentially that of an interpreter who would aid the superiors of the community by translating. Cohen writes: "Because of their acquaintance with the issues involving their community and their experience with the Ottoman authorities (both administrative and religious), they attained a high degree of reliability and were entrusted with cases to be pleaded independently before the qadī". He then gives an example found within a sijill that at least partially confirms the existence of the two positions:

On one occasion, in 1588, when the Armenian raṭs had to be absent from the town, he nominated the Armenian dragoman as his official delegate "to be in charge of [all] the interests of the Armenian monastery in the above-mentioned town and of all the matters [related] to it."\textsuperscript{42}

Near the end of his article, Cohen concludes that many non-Muslims actually ended up using the shari'a courts to resolve disputes not only with people from outside their communities, but also with those within. Though few of the Armenian histories mention this happening, Pasdemadjian is an exception, writing: "Sous le régime des grands sultans les droits réduits des sujets chrétiens furent à peu près respectés et la justice assez impartialment rendue par les

\textsuperscript{40} Cohen, 12.
\textsuperscript{41} Ibid., 12-3.
\textsuperscript{42} Ibid., 13.
tribunaux. Les Arméniens trouvèrent souvent une protection efficace auprès d’eux.\textsuperscript{43}

If any of the authors using court records to study Ottoman social history had been asked about this particular comment by Pasdermadjian, they would surely have confirmed what the rest of this thesis will show: that non-Muslims frequently used the sharia courts. While some of the reasons why Armenians used sharia courts will become evident in the next chapter as we examine Armenian sharia court usage, we might already hypothesize, with no real evidence of rulings or court cases, that perhaps Armenians went to sharia courts because their system was not actually as authoritative or as thorough as some historians would have us believe.

\textsuperscript{43} Pasdermadjian, 246.
Chapter 3

Armenians at the shari’a courts

The shari’a courts were arguably the most important arbiters of social justice in the empire, as they dealt with—as Haim Gerber puts it—“almost every conceivable area of life.”¹ In her exhaustive book on gender in the Ottoman court of Aintab, Leslie Peirce writes about the ways in which the Armenian minority population of Aintab used the local court:

They used it to negotiate routine transactions such as purchases, loans, and joint business ventures, the majority of which were transactions with their Muslim colleagues. But they also used the court to mediate delicate family matters such as a wife’s alleged sexual indiscretion or a quarrel between brothers. In other words, like their Muslims cohabitants, the Armenians of Aintab approached the court as a resource in the management of myriad aspects of daily life. By doing so, they revealed themselves to be a typically diverse social group, ranging from pillars of the small community to troublemakers and an alleged murderer.²

Peirce’s description is surprising only when considering that the Armenian millet, as per the findings of the scholars in the previous chapter, is said to have had its own courts and laws for the Armenians of the Ottoman Empire.

Peirce’s paragraph gives us more information on Ottoman Armenian legal activities than any other source yet considered—including those in the field of Armenian history. Her findings from the Aintab court records bring to light a number of issues that remain undiscussed in most social histories of Armenians

² Leslie Peirce, Morality Tales: Law and Gender at the Ottoman court of Aintab, (Berkeley: University of California Press, 2003), 60.
in the Ottoman Empire. Her study on the court records of Aintab—along with Ronald Jennings’ study of Kayseri and Lefkoşa, Al-Qattan’s study of Damascus and Gerber’s study of Bursa, to name but a few—answer many questions not only on Ottoman Armenian participation in the Ottoman legal system, but also on the legal history of dhimmīs in the Ottoman Empire.

Therefore, this chapter will examine the various circumstances and possible motivations of Armenian shari’a court use in the Ottoman Empire. First, I will give a general idea of the way the shari’a courts functioned and of the role of the qadi; then I will give an overview of Armenian participation in shari’a courts of various locations of the empire and, finally, I will examine some specific court cases involving Armenian men and women.

I. The qadi and his court

Unlike the ecclesiastical or civil courts of the Armenian millet, the workings of the shari’a courts of the Ottoman Empire are well documented. While the structure of these courts might have varied somewhat depending on geographic location, the courts in general operated similarly across the empire. The most important figure in any shari’a court was arguably the qadi. While the term can be translated loosely to “judge,” the qadi’s role was, to some extent, different from that of a judge in the current sense of the word. The same can be said for the court, whose role went beyond that of a modern day courthouse. While the functions of the court and the extent of the qadi’s involvement within a district

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3 I say “arguably” because perhaps the scribes who documented the cases therefore allowing us to study them today were more important!
varied from city to city, an example of the range of both institutions is provided in Ze'evi's monograph on sixteenth century Jerusalem:

In fact the district qadi was also acting mayor in charge of municipal planning, maintenance, social welfare and hygiene; chief notary; police commissioner; and part-time purser for the Ottoman government...Sijill records describe the court's involvement in almost all spheres of activity mentioned... Court cases ranged from theft and murder, to requests for welfare, charity, and child custody. Contracts and sales deeds were signed in the presence of the qadi and his aides, marriage agreements were recorded, and divorce cases settled. Representatives of the population came to court to protest against corruption and misrule, and local governors chose the same establishment to convene notables and plebs. Villagers came there to pay their taxes, and dhimmis followed suit to pay the poll tax imposed on them. It is evident, therefore, that defining [the shari'a court] as a mere court of law, does not take into account the immense range of public and municipal activities conducted there in the Ottoman Period (at least until the mid-nineteenth century). Although this institution will be referred to as the "shari'a court," it must be borne in mind that this was the city's main social establishment, and that it wielded considerable political influence within and beyond the city's walls.⁴

In addition to those responsibilities mentioned above, the qadi was also responsible for enforcing shari'a law, as well as any other laws that the Ottoman "state" required.⁵ This kind of combination of shari'a law with state ordained kanun and customary law resulted in what is called "al-siyasah al-shariyyah (government in accordance with the sacred law)."⁶ While the Ottoman courts generally used only shari'a law to determine the result of a court case, the qadi had these two other legal bodies to consider as well.⁷

The first, the kanun, was a series of laws decreed by the Ottoman sultan. These laws generally addressed legal issues that were either outside the realm of the shari'a or inadequately elaborated within the shari'a. Frequent kanun subjects

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⁵ Gerber, State, Society, and Law in Islam, 16.
were, for example, criminal law, court organization, taxation, land law and administration of the army.\(^8\) While the administration of kanuns was handled more often by other executive officials,\(^9\) the qadi was responsible for enforcing the kanun if it was applicable to a case that he was dealing with.\(^10\)

Some authors also mention the qadi’s right to apply ‘urf, customary laws, in cases where the qadi felt it was necessary to do so.\(^11\) This was done without difficulty as ‘urf was usually already implemented into the shari’a and the kanuns. Jennings argues that often, even if an “imperial or customary law” were used in a case, “the method of using such laws [was] explicitly stated as being in accordance with the Shari’a…”\(^12\)

Finally, a fetwa sometimes influenced the outcome of a court case as well. A fetwa was a legal opinion, sought from and given by a mufti (a learned legal expert), upon consultation.\(^13\) While a fetwa was not legally binding and could theoretically be disregarded by the qadi, in practice, the fetwa was almost never ignored. It could be requested by either the qadi or the litigant.\(^14\)

There were usually several shari’a courts spread throughout each province of the Empire, and many more such courts in cities with large populations. A qadi was appointed to a court for a period of time and would often bring a staff or

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\(^9\) El-Nahal, 6.

\(^10\) Gerber, State, Society, and Law in Islam, 16.

\(^11\) Jennings uses the terms ‘adet and resim for the case of Ottoman Cyprus in Christians and Muslims in Ottoman Cyprus and the Mediterranean World, 1571-1640, 69. El-Nahal uses the term ‘urf in The Judicial Administration of Ottoman Egypt in the Seventeenth Century, 5.

\(^12\) Ibid., 70.

\(^13\) El-Nahal, 23.

\(^14\) Ibid. For an example of a fetwa produced by a litigant see Jennings, Christians and Muslims in Ottoman Cyprus and the Mediterranean World, 1571-1640, 87.
some students along with him.\textsuperscript{15} The qadis of the Ottoman Empire generally followed the Hanafi school of law, although, in some situations, one of the other three schools of jurisprudence could be consulted as well. Overall, the task set before the qadi seems to have been enforcing the shari‘a law with his best judgment, in order to maintain social harmony and see to the interests of the plaintiffs as fairly as possible.

II. Armenians in the Courts: an overview

Generally, scholars agree that local shari‘a courts were accessible to dhimmīs. Some authors stress that a community’s own court was used more frequently to settle legal claims, while other authors disagree. In an article on Muslims and dhimmīs in Ottoman society, Haim Gerber postulates that “massive Muslim-Ottoman cultural impact on the zimmi communities is revealed by the latter’s extensive use of the Ottoman Islamic law,” rather than their own internal legal structures.\textsuperscript{16} Therefore, even though Galal El-Nahal, in his study of the Ottoman legal system in seventeenth century Egypt, writes that “disputes between non-Muslims of the same community were heard by their own religious leaders,” Gerber’s statement points toward a different reality.\textsuperscript{17}

Thus, throughout the literature, we see authors writing that dhimmīs could have gone to communal courts according to their faiths, yet were often found at the shari‘a courts instead. This applies equally to dhimmī men and women;

\textsuperscript{15} El-Nahal, 14.
\textsuperscript{17} El-Nahal, 42.
Jennings specifically mentions that dhimmī women who attended the courts had the option of going to their own communities' courts, but that, despite this fact, the shari'a courts were made available to all women, even to the ones who could seek recourse elsewhere.\(^\text{18}\)

One of the main reasons for a dhimmī to present or dispute a case in a shari'a court would be the involvement of a Muslim in the case. If a Muslim litigant were involved in a legal dispute with a non-Muslims, it was mandatory for that case to be tried through shari'a law.\(^\text{19}\) Writers also agree that once a case was presented in the shari'a court, it would most likely be resolved through shari'a law.

Accordingly, shari'a law was frequently applied to non-Muslims as well, as in the case of inheritance in eighteenth century Aleppo, as noted by Abraham Marcus: "evidence indicates that the Muslim law of succession was applied to all, including non-Muslims."\(^\text{20}\) Jennings, in his study of shari'a courts in Ottoman Cyprus, also points out that "Ottoman kadis were obligated to apply the same standard of justice for both zimmī and Muslim."\(^\text{21}\)

Having thus acknowledged that dhimmīs frequented shari'a courts, how do we determine if Armenians were among the frequenters? In some cases, it is hard to distinguish Armenians from other litigants, especially since similar surnames were also used among Christians of various sects, and even among

\(^{18}\) Jennings, *Christians and Muslims*, 16.

\(^{19}\) El-Nahal, 42.


\(^{21}\) Jennings, *Christians and Muslims*, 132-3.
some Muslims. 22 While it is possible to identify some very typically Armenian names, it is not impossible that a non-Armenian might have fancied the name as well and taken it. 23

The only way to know for sure that a dhimmī mentioned in a court record was Armenian would be if the court scribe specifically wrote that the litigant was “Ermeni.” In some cities, like Lefkoşa, this happened fairly often as the majority of the dhimmīs were Greek Orthodox and “the name Greek Orthodox (Rum) was never used; that group was always called zimmis [...] other zimmis—the minorities—were often identified as Armenian (Ermeni), Maronite (Suryani), or Jew (Yahudi)...” 24

In other cities, however, this was not the case. Nevertheless, there are other ways to determine whether Armenians were using the shari‘a courts. Authors often give a breakdown of the Christian population of a city and, in a few cases, it is established that, due to the Christian population being either exclusively or majoritarily Armenian, the courts would not bother to label them so, referring to them simply as dhimmīs.

In her study on Aintab, Peirce mentions that this was often the case and that the ethnicity of Armenians was sometimes not mentioned in court records, since people assumed that all non-Muslims in Aintab were Armenian:

As for non-Muslims, the Armenian Christians of Aintab were routinely referred to in the court record as “the dhimmī So-and-so.” Dhimmi—“the protected”—is the general term for Christians and Jews in Muslim-governed states. When an Armenian woman and a Muslim male came to court to register his loan of 13 gold pieces to her, the record identified the man as “Ali b. Abdurrahman” and the

22 Ibid., 146.
23 By “very typically Armenian” I would mean a name that has a specific meaning in Armenian, and not in Greek, Arabic or Turkish as well. Example: Vartan.
24 Jennings, Christians and Muslims, 132.
woman with the double label of "the female dhimmi Hemdi bt. Iskender." Because Armenians were for all practical purposes the only non-Muslims in mid-sixteenth-century Aintab, their religion was rarely specified; only once in the 1540-1541 records was an individual identified as "the Christian So-and-so" (nasrani). The term "Armenian" was not unfamiliar to Aintabans, however: on one of the occasions when members of the Armenian community of Aintab acted in court as a collective, they referred to themselves as Armenian (Arameniya taifes)... \(^{25}\)

A similar situation might apply in Kayseri, where Jennings notes that 89% of all dhimmis in 1583 were Armenians.\(^{26}\) Unfortunately we do not have this kind of breakdown for many other cities and can only reliably determine if a litigant was Armenian if this is stated in the sijill.

The frequency of visits by dhimmis or Armenians to shari'a courts also varies from city to city, although we do not have this sort of data for every city. In Lefkoşa, Jennings tells us, dhimmis used the courts "with a considerable frequency":

Of 2800 cases in sicils of 1580 (988) and 1593-1589 (1002-1003), 1609-1611 (1018-1019), and 1633-1637 (1043-1046) more than one-third involved at least one zimmi. Moreover, 15% involved only zimmis (and no references to zimmi communal courts were found). Another 19% of all cases were intercommunal, indicating considerable economic and social interaction.\(^{27}\)

Peirce notes that, "according to the 1543 survey, Armenians constituted approximately 1.4 percent of the population of Aintab province,"\(^{28}\) and that they used the courts "in disproportion to their numbers."\(^{29}\) Keeping in mind that Armenians constituted the majority of dhimmis in Kayseri, Jennings writes:

Although the stereotype of the Ottoman millet system presumes separate special courts for non-Muslims, and so one should not expect to find much about them in

\(^{25}\) Peirce, 145-6.
\(^{27}\) Jennings, Christians and Muslims, 133.
\(^{28}\) Peirce, 59.
\(^{29}\) Ibid., 7.
sharia court records, non-Muslims did participate in the Kayseri sharia court. In fact, non-Muslims used the court at about the same per capita frequency as Muslims; they comprised 22% of the population of Kayseri and were involved in 25% of all judicial cases at court.\(^\text{30}\)

There is very little data on the specific numbers of Armenian women using the courts, or on whether they used the courts more or less than Armenian men. Despite the limited information on Armenian women’s appearances in court, several authors conducting research with sijill records give statistics about the use of the courts by Christian women—a number of whom we can presume were Armenian. Examining the court records in Cyprus, Jennings notes that “more than one woman in four who had business before this Islamic court was a Christian”\(^\text{31}\) out of a total 25% of litigants who were female. For Kayseri, out of the total 17% of female litigants, 27% were non-Muslims.\(^\text{32}\)

III. Circumstances of Shari’a court use by Armenians

Armenians, as well as other other Christian dhimmis, appear in the sijill for a variety of cases. In some instances, their presence was mandatory: in cases that involved a Muslim, in criminal and public order cases, and, lastly, in tax cases.\(^\text{33}\) However, a large percentage of cases were brought voluntarily, and involved intra-communal disputes. The range of legal issues that Armenians brought to the

\(^{30}\) R.C. Jennings, “Loan and Credit in Early 17\(^{\text{th}}\)-Century Ottoman Judicial Records – the Sharia Court of Anatolian Kayseri” in Studies in Ottoman Social History in the Sixteenth and Seventeenth Centuries: Women, Zimmis and Sharia Courts in Kayseri, Cyprus and Trabzon, 211.

\(^{31}\) Jennings, Christians and Muslims, 17.

\(^{32}\) R.C. Jennings, “Women in Early 17\(^{\text{th}}\) Century Ottoman Judicial Records – the Sharia Court of Anatolian Kayseri” in Studies in Ottoman Social History in the Sixteenth and Seventeenth Centuries, 147.

\(^{33}\) Najwa Al-Qattan, Dhimmis in the Muslim court: documenting justice in Ottoman Damascus, 1775-1860, Ph.D. diss. (Harvard University, 1996), 153.
shari'a courts varied from region to region, though some issues—such as marriage, divorce, etc.—resurfaced consistently. I have organized a number of sample cases into six general categories: taxes; conversions; financial transactions; property and waqf; crimes and misdemeanors; and marriage and divorce.\footnote{Although some cases may fall under several categories, they each only appear once.} I will discuss their implications in the following section.

**Taxation**

A common reason for an Armenian to visit the shari'a court was the payment of the poll-tax for dhimmis, the jizye. The sijill list cases of Armenian men registering complaints about or defending themselves against accusations of not paying the poll-tax. In the case of Kayseri, Jennings attributes the frequency of this type of case to the difficulties in “determining a zimmi’s legal residence, where he must pay his tax.”\footnote{Jennings, “Zimmis (non-Muslims) in Early 17th Century Ottoman Judicial Records: the Shari’a Court of Anatolian Kayseri”, 357.}

As such, there are a number of cases in which Armenian defendants had to explain where they paid the jizye, or if they had paid it in full. For example: “Zimmi Kara Devlet tk zimmi Bogos: He used to pay his cizye (harac) to us. Now he does not. Bogos denies this charge. Kara Devlet has no witnesses but he requests an oath from Bogos. Bogos takes an oath of denial.”\footnote{Ibid., 358. According to the legend, “tk” stands for takrîr-i kelam, a type of suit.}

Jennings suggests that some of the tax-related cases may “simply represent efforts by responsible zimmis to determine where individual zimmis should pay their cizye.”\footnote{Ibid., 357.} In his monograph on eighteenth century Aleppo, Abraham Marcus
identifies a case in which an Armenian visits the qadi to declare his conversion “from Armenian religious community (milla) to the Maronite,” and to ask “for permission to pay his taxes as a member of his adopted group.”

Conversions

Another type of case, not as frequently seen, would be one of religious conversion, usually from Armenian Christian to Greek Orthodox (or vice versa); or Armenian Christian to Muslim; or, as in the case just seen above, Armenian to Maronite Christian. While there are several examples of male dhimmis converting to Islam, the specific cases I found involving an Armenian conversion are both about women. The first is about a Greek woman named Meryem:

Sehruz v. Sefer (zimmî) of Talan village, an Armenian, has Abraham v. Sefer as his vekil, who sets forth a claim (takrir-i kelam) in the presence of (name illegible) v. Arslan who is vekil and veli for Meryem bint (name illegible): Meryem, who has reached the age of discretion, leaves the Rum (orthodox) religion and accepts the Ermeni (Armenian) religion. Abraham says she has been married (nikah) for three years to his brother Şahruz. Now they are delaying giving her. This is denied. Then Mîsr keşiş v. Andon and Şahîn v. Bali attest that the girl indeed is of age, has changed religion, and has been married three years.39

The second case is from Lefkoşa and involves an Armenian woman, Husna bint Murad, converting to Islam to break away from her husband:

Husna/Husniye (?) bint Murad, Armenian wife, says (bm) before her husband Mergeri (?) v. Kuluk (?), Armenian: He always treats me cruelly (cefa ve eza). I do not want him. He denies that (munkir). Then Husna becomes honoured with Islam. After she takes the name ‘Ayşe, her husband is invited (‘arz) to Islam but he does not accept, so ‘Ayşe’s separation (tefrîk) is ordered...40

40 Jennings, Christians and Muslims, 141.
Financial Transactions

Many of the cases brought before the qadi were business transactions between Muslims and dhimmi̇s. In the case of Kayseri, Jennings writes:

Court cases involving zimmi creditors and debtors were handled at the court in exactly the same way as involving Muslims only. Any zimmi could have summoned to court any Muslim or zimmi from whom he wanted to claim a debt. At the court, the zimmi lodged his complaint against the Muslim or other zimmi just as Muslim litigants made claims against other Muslim zimmi defendants. Both zimmi and Muslim litigants had to produce two Muslim witnesses to substantiate claims against Muslim debtors, but against zimmi debtors they were allowed to call on zimmi witnesses as well...41

Most cases are fairly straightforward, such as this one in Lefkoşa between two Armenian men: “Armenian Yavet v. Kara Biyik claimed Armenian Murad v. Yasef owed him three and a half guruş,”42 and the following ones that involved Muslim-Armenian transactions:

“Armenian Paresun (?) v. Mircan owed 6160 akce to Fatma hatun for two mules and also nine guruş to zimmi Bahine v. Petro, while Armenian Allah Virdi owed four guruş to the Muslim woman Zeyneb bint Nebi and 50 akce to Mehmed bn ʻAbdullah. Armenians Ohan v. Emircan (?) and Yasef b. Tanri Vir(di) owed 40,000 akce to Gamber bn ʻAbdullah of Lefkoşa from a load... The Armenian Bali owed one filori to Ali... and Irer (?) v. Selman owed Ishak bn Salih 420 akce for either (gon)... Murad v. Avs, Armenian, disappeared leaving a debt of 34 guruş to Mehmed beše bn Imam Kuli...43

In an article on Ottoman women in eighteenth century Galata court records, Fatma Göçek and Marc Baer in Galata list a number of examples involving Armenian women in financial transactions. Examples include a mother who inherits a barbershop from her Armenian son and then sells its implements for cash; a wealthy Armenian widow who inherits a small fortune from her husband’s

42 Jennings, Christians and Muslims, 147.
43 Ibid.
estate; and a deceased Armenian razor-maker’s two wives and two sisters who claim ownership of the deceased’s estate, maintaining that they were his creditors.\textsuperscript{44} This case is especially interesting because it is not specified whether or not one of the wives was an ex-wife, making it possible that this man was polygamous.\textsuperscript{45}

Property and \textit{Waqf}

Property transactions and disputes were often brought before the \textit{qadi}. In the case of eighteenth century Aleppo, Marcus writes that “non-Muslims were involved in 14-16 percent of the transactions every year, a figure which is roughly in keeping with their relative share in the population.”\textsuperscript{46} Jennings cites a routine property transaction between Armenians in Lefkoşa: “Armenian (?) v. Erekil sold his house in Hizir lilyas quarter of Atana kasaba to Armenian Yunus (?) v. Kara Goz…”\textsuperscript{47}

He also cites a more complicated inter-family property case:

Bedros v. Bolak (?), and Armenian of Lefkoşa, makes a claim (\textit{da ‘valtk}) against Manuk, grown son of Bedros’ late uncle (‘\textit{ammisi}) Toma of Lefkoşa: When Toma died, his property was remitted cancelling the debt (\textit{iltak}). He had no money or possessions left. His son Manuk was under my care (\textit{hucr ve terbiye}). For 13 years Manuk was supported by loans (\textit{karz}) for five akce/day for his maintenance and clothing allowance. Former Lefkoşa kadi mevlanı Mustafa efendi presented a signed official record of the case (\textit{huccet}) dated 1 Rebi’ I 1033 (late December 1623). Manuk replies: Bedros allotted me maintenance and clothing allowance. When I was small I did work (\textit{hidmet}) for him. However, Manuk has no proof. When an oath is proposed to Bedros, he takes an oath by God who sent down the Gospel (\textit{Incil}) to Jesus (‘\textit{Isla}) that nothing remains of the inheritance (muhallefat) of Manuk’s

\textsuperscript{45} Or perhaps had converted to Islam, in which case, why refer to him as “the Armenian”?\textsuperscript{46} Abraham Marcus, “Men, Women and Property: Dealers in Real Estate in 18\textsuperscript{th} century Aleppo,” \textit{Journal of the Economic and Social History of the Orient} 26, no.2 (1983), 147.
\textsuperscript{47} Jennings, \textit{Christians and Muslims}, 146.
father; all was allotted for maintenance and clothing. Of the 13 years, he was a minor for six years, and after that he was able to work...48

We also see Armenian women engaged in property transactions: Peirce describes an Armenian woman appearing "as guardian (vasi) for, and mother of the minor children of the late Armenian Mosis," selling his house to another Armenian.49 In Jennings' work on Cyprus, a case is mentioned in which an Armenian woman named Altun claims that her husband owes her money from a loan. A notable element of this case, unseen in any of the other mentioned cases, is that a Muslim man and two Muslims women served as witnesses to substantiate her claim.50

Jennings also mentions a case that confirms the existence of Armenian-owned waqf properties (religious endowments) in Lefkoşa. In the case:

The Armenian woman Mogal bint Haristo, mother and guardian of the orphans of Ilyas of Terbiyodi quarter, presented a fetva showing that certain property which the administrator of the church of that quarter claimed as vakf could never be legally made into a vakf because she owned it.51

Another case shows that "Zimmi Murad v. Eymur beşe, mutevellii of the church (kenise) of Terbiyodi quarter, claimed that the late Armenian Ilyas of that quarter owed its vakf 2000 akce..." Al-Qattan also mentions a case with an Armenian waqf marked in the sijill, but does not give any details.52 In an article on Christians in sixteenth century Damascus, Muhammad Adnan Bakhit notes:

Christians were also permitted to make donations and establish endowments to their churches. In 982/1574 the Armenian metropolitan Andiryas b. Ibrahim endowed his nephews and their descendants with a small garden in the

48 Ibid., 98.
49 Ibid., 146.
50 Ibid., 19.
51 Ibid., 87.
52 Al-Qattan, Dhimmis in the Muslim court: documenting justice in Ottoman Damascus, 1775-1860, 219.
neighbourhood of the Armenian Monastery... In case their line would come to an end, the endowment would go to the Armenian community...  

**Crimes and Misdemeanours**

The cases in this category are not unusual for a qadi’s court, as most of them also involve Muslims litigants, or Ottoman officials. It is interesting to note that, in this case, a Muslim who lodges a complaint against an Armenian cannot win his case unless he brings forward the correct number of qualified witnesses:


‘Abdi bn Mustafa of Lefkoşa says (bm) before above Murad, Armenian: He struck me and imprisoned me. Let him be asked and let justice be done. Denied. When ‘Abdi has no proof, an oath is proposed (teklif) to Murad that he did not do as ‘Abdi charged. Murad takes the oath and it is registered...

In one of the cases, an Armenian successfully sues a Muslim man for acting out against him:

‘Abdullah (?) v. ‘Abdullah (?) Armenian, of Lefkoşa says (bm) before Bayran bn Ridvan: He blocked me way and struck me with a rock (taş) and injured (mecrub) my head. I want the Sharia enforced. I want justice done (ihkak-i hakk). Denied. ‘Udul-i Muslimin Mustafa beşe bn Mehmed and ‘Ali bn Ibrahim confirm the Armenian...

Another case features an Armenian man getting picked up for public drunkenness by a public official: “Za ‘im ul-vakt Mustafa su başi and night watchman (‘asses başı) ‘Ali su başi say: We apprehended Armenian Anderik v.

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54 Jennings, *Christians and Muslims*, 100.
55 Ibid., 148.
56 Ibid.
Keşiş of Terebiyotı (?) quarter drinking wine (şurb-i hamr) at night in the market place (suk) of that quarter...57

Marriage and Divorce

Marriage and divorce cases between Armenians are especially interesting to encounter as dhimmīs were not forced to present them to the qadi. Also, they are a type of case that Armenians could presumably resolve within their own community, either with a religious official or even with a family member. In Morality Tales, Peirce writes about an Armenian woman named Harim who "was a silent participant in a dispute over her engagement to Vanis, who was sued in court by Harim’s father for failure to get on with the marriage; Vanis prevailed, claiming that the men had agreed on a three-month waiting period."58

In another case, "an Armenian husband and wife, Hüdavirdi and Mısırr, chose to divorce according to Muslims practice, Mısırr retained custody of their daughter in exchange for renunciation of her property rights."59 In another case, in a slightly more complicated set of circumstances, two Armenian men enter into a dispute when one sees his wife with the other, in public. A knife fight and, eventually, divorce ensue, leading Peirce to deduce that seclusion/decency norms similar to the Muslims’ were present in the Armenian community of Aintab.60

Jennings stresses that divorce procedures in the shari’a court among dhimmīs were exactly the same as among Muslims: “İskender v. Hızır (?) ik Altun

57 Ibid., 124.
58 Peirce, 86.
59 Ibid.
60 Ibid., 168-9.
bint Agob: My wife and I were not living together (*zindegane*). She renounces *mehr*, *nafaka’i ʿiddet*, and other *zevciyyet* for 15 gurus. I divorce her... She accepts this.  

461

IV. Motivation for shariʿa court use

While the above cases demonstrate the use of the shariʿa courts by Armenian litigants, they do not outright explain the motivations of the participants. Even the cases that fall under the mandatory court visit category are a bit confusing, given that we have seen, in the previous chapter, that the Armenian Patriarch supposedly had jurisdiction over affairs like civil punishment and taxation.

Authors who have used shariʿa court records to conduct extensive research on dhimmis hold several hypotheses as to why dhimmis used shariʿa courts. Many of their explanations can apply to the contexts of the cases mentioned above. Having extensively researched the *sijill* records of Damascus, al-Qattan proposes two primary motives for non-Muslims to use and attend Muslim courts; the first is:

...because the courts acted as a public record office, a depository for all kinds of official and notarized agreements, it was natural that the dhimmis should file their commercial and their sale and purchase transactions therein.

The second motive is related to why, as al-Qattan puts it,

Christians and Jews took to the Muslim court matters that, in theory, belonged to their own autonomous communal courts: marriage, divorce, inheritance, and child custody as well as inter-communal litigation.  

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Al-Qattan deduced that in these cases, *dhimmīs* resolved their disputes in the *shariʿa* court because “their financial or personal affairs were better served,” or due to “the prospect of an easier divorce, for example, or a share in a legacy otherwise denied them in their own communal courts.” The implication of this statement is outside the scope of Al-Qattan’s study, but directly relevant to this study. Al-Qattan’s reasoning would imply that in some cases, Islamic law, or at least Islamic law as practiced by the *shariʿa* courts of the Ottoman Empire of eighteenth-century Damascus, sometimes better served the interests of non-Muslims in the Ottoman Empire than the non-Muslim communities’ own traditional laws.

Peirce specifically offers an explanation as to why Armenians in Aintab used the *shariʿa* courts. She claims that Armenians knew their rights within the *shariʿa* courts and used them to defend themselves “when their minority status put them at risk,” because “the local court was attentive to its less powerful constituencies.” The cases we have seen corroborate this, as they certainly don’t seem to indicate that *dhimmīs* were ill-treated in the court, or that their *dhimmī* status—which did make them inferior witnesses—was a handicap.

Jennings speculates as to why *dhimmī* women, specifically, would be compelled to use the *shariʿa* courts and concludes that “Women were entitled to many of the same legal rights as men and they had equal opportunity to use the court to ensure those rights,” implying that this was not always the case within the

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63 Ibid., 515.
64 Peirce, 60.
non-Muslim communal courts. Jennings specifically mentions inheritance as a legal right that non-Muslim women sought in court, as inheritance laws within the dhimmi communities were not always as generous towards women.

Göçek and Baer come to the same conclusion based on findings in court records from eighteenth-century Galata. They suggest that Armenian and Greek women “who were dissatisfied with the inheritance partitioning within the context of their local communities, and were willing to defy the hold of the communal courts over them, brought cases to the Islamic court.”

Seng stresses that the use of the Üsküdar courts by non-Muslim women was “doubly-weighted, for the act of bringing a case to court meant that a woman had overridden the social authority of the negotiation within her own community...” However, the accuracy of this statement is questionable—it is unlikely that non-Muslim women would so actively seek justice at shari’a courts if this fell outside of the social norm of their own communities.

While Jennings doesn’t seem to consider shari’a court use by Jews and Christians to be exemplary of systemic discrimination, al-Qattan argues otherwise:

We can see the absence of officially sanctioned communal courts to which dhimmis were in theory legally entitled as itself evidence for discrimination and injustice. This is particularly true of the rites of marriage and divorce, for the imposition of shari’a marital arrangements on dhimmis represented at some level a triumphant imposition of one religious code over the others, even in cases when the dhimmis voluntarily sought the auspices of the court.

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65 Jennings, Christians and Muslims, 16.
66 Ibid., 22.
68 Seng, 185.
69 Al-Qattan, “Litigants and Neighbours,” 517.
This is supported by Bakhit, who writes that “It is apparent in the records that Christians had to obtain the approval of the Hanafi judge to authenticate their marriage contracts,” in sixteenth century Damascus.\textsuperscript{70} His example also emphasizes the authoritative quality that the qadi’s court might have had over the supposed “Patriarch’s court.”

A final hypothesis as to why dhimmīs frequently used the shari’a courts instead of their own courts, is suggested by al-Qattan and Jennings, among others: that the communal courts and millet structures that scholars have been pointing to were, in actuality, either weaker than scholars have assumed, or possibly even non-existent. As al-Qattan frames the question:

“If communal courts were widely available and officially sanctioned, why did considerable numbers of Ottoman Jews and Christians flout the dictates of their religion and the orders of their spiritual leaders in litigating personal matters in Muslim courts that were perceived by dhimmis themselves as corrupt and discriminating?”\textsuperscript{71}

As Jennings simply states that “We have absolutely no evidence about the existence of Orthodox Christian or other non-Muslim courts at any time.”\textsuperscript{72}

This hypothesis is consistent with the lack of documentation or detail about the internal legal workings of the Armenian millet and the frequent visits to the shari’a courts by Armenians, explaining the number of cases found in the sijill between Armenian litigants that one would expect to be resolved within the Armenian millet, under the authority of the Patriarch.

\textsuperscript{70} Bakhit, 27.
\textsuperscript{71} Al-Qattan, \textit{Dhimmis in the Muslim court: documenting justice in Ottoman Damascus, 1775-1860}, 163.
\textsuperscript{72} Jennings, \textit{Christians and Muslims in Ottoman Cyprus and the Mediterranean World, 1571-1640}, 31.
Surely the answer is not as clear-cut as a simple “yes, there were communal courts for dhimmīs,” or “no, there were not.” It is possible that the influence of the Patriarch was greater in some areas of the empire than in others, or that the Armenians of one city were far more integrated with their neighbors than in another. We know that at least theoretically, the Patriarch had the authority to give rulings within the Armenian community. However, we also know from the sijill that Armenians did not necessarily consult the Patriarch when in need of a legal verdict.

Unfortunately, the evidence we have thus far, from shari‘a court records and historical accounts on Ottoman Armenians, does not provide us with enough detail to conclusively resolve the issue. The answer is probably out there, hiding in undiscovered court records, waiting to be translated, published, and scrutinized to death.
Conclusion

This thesis has explored the participation of Ottoman Armenians in the legal system of the Ottoman Empire. As the second largest millet of the Ottoman Empire, the Armenian millet was said to have its own internal legal structures to deal with matters of civil justice that would have arisen among its members. Yet there is a shortage of information on any courts or laws that would have been used within the Armenian millet.

While the figure of the Armenian Patriarch is discussed at length in the literature—his jurisdiction and authority stated and re-stated—there is little evidence of the Patriarch’s legal actions or decisions within the community. This lack of information, coupled with the presence of Armenians in the shari’a courts of the Ottoman Empire, point to a possible alternative: that the authority of the Armenian millet has been miscalculated or misinterpreted.

However, there are also a number of other reasons why Armenians might have attended shari’a courts, of their own volition, to settle disputes in front of the qadi. First, it may have been advantageous for some to settle their financial or marital disputes through shari’a law rather than with the ecclesiastical laws of their own community. Second, the authority and credibility of the shari’a court and the qadi might have been perceived as greater than those of the millet and the Patriarch. Third, and finally, the shari’a court’s all-encompassing nature, as a
center for law and as an efficient records office, may have encouraged Armenians to have their qualms documented and settled there.

The findings of this thesis are not exhaustive; there is still much to learn about the Armenians of the Ottoman Empire in the sixteenth to eighteenth centuries. Also, there are some serious limitations to my study—most noticeably, the lack of primary sources. With further training in the Armenian and Ottoman Turkish languages, it would be worthwhile exploring the national archives in Armenia, as well as the Ottoman archives, for more first-hand material on the subject. Unfortunately, there is a regrettable lack of emphasis on the Armenians of the pre-nineteenth century Ottoman Empire, as many scholars prefer to focus on the effects of the Tanzimat and subsequent reforms on dhimmi “equality,” rather than the way in which Armenians lived in, and interacted with, Ottoman society in the earlier years of the empire. Hopefully, this thesis will encourage others to write about Armenians in the Ottoman Empire and the way they co-existed with their Muslim neighbours in pre-Tanzimat times.
Bibliography


